

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Global Telecom Holding S.A.E.

v.

Canada

(ICSID Case No. ARB/16/16)

PROCEDURAL ORDER NO. 8
INDEPENDENT EXPERT ASSESSMENT ON PRIVILEGE

Members of the Tribunal

Prof. Georges Affaki, President of the Tribunal

Prof. Gary Born, Arbitrator

Prof. Vaughan Lowe, Arbitrator

Secretary of the Tribunal

Ms. Lindsay Gastrell

14 March 2019

I. BACKGROUND

1. On 13 December 2018, the Tribunal issued Procedural Order No. 5, containing its decision on each outstanding issue of legal privilege that had been identified by the Parties in their Stern Schedule dated 29 November 2018.¹

2. Procedural Order No. 5 included the following statement:

It is open to Canada to petition the Arbitral Tribunal to apply Article 3.8 of the IBA Rules and organise the tendering by GTH of non-disclosed unredacted documents either to a Tribunal-appointed neutral expert or to the Tribunal itself (if the Parties so agree) to determine whether the alleged privilege is warranted. The allocation of the resulting costs will depend on the result of the determination.²

3. The Parties' disagreements over GTH's privilege claims persisted, and on 18 January 2019, the Tribunal issued Procedural Order No. 6, addressing the Parties' disputes in relation to common interest privilege, limited waiver of privilege and subject matter waiver of privilege.

4. On 27 January 2019, GTH wrote to the Tribunal to adduce further evidence to support its claims of privilege in relation to two categories of documents.

5. In response, by the Secretary's letter of 30 January 2019, the Tribunal stated:

The Tribunal encourages the Parties to reach an agreement on the production of the remaining documents to avoid unwelcome distraction from preparation for the hearing. Should disagreements persist, the Tribunal will expect timely reasoned applications to determine the disputed privilege in relation to each withheld responsive document either by the Tribunal itself or by a neutral third person as the Tribunal previously mentioned in Procedural Order No. 5.

¹ Procedural Order No. 5 and Procedural Order No. 6 set forth in detail the procedural history relating to the Parties' various disputes over matters of legal privilege.

² Procedural Order No. 5, Annex A, p. 28.

6. By letter of 12 February 2019, Canada informed the Tribunal that the Parties had been unable to reach agreement on the remaining issues of legal privilege. Canada requested “that the Tribunal apply Article 3.8 of the IBA Rules and organise the tendering by GTH of certain non-disclosed and redacted documents to a Tribunal-appointed neutral expert.”
7. Upon the invitation of the Tribunal, GTH responded to Canada’s letter on 15 February 2019. GTH opposed Canada’s request for an expert review of the disputed documents and suggested that the Tribunal itself conduct a review to resolve the Parties’ outstanding dispute over the two categories of documents addressed in GTH’s letter of 27 January 2019 and certain other redacted documents.
8. Canada responded to GTH’s proposal by letter of 18 February 2019. Canada stated that it was “willing to proceed with the Tribunal reviewing certain documents rather than appointing an independent expert to do so.”
9. By letter of 19 February 2019, the Tribunal informed the Parties that, in light of the Parties’ agreement, the Tribunal would conduct the review of documents. The Tribunal instructed the Parties to consult regarding the precise scope of the Tribunal’s review and offered guidance in this regard. The Tribunal also instructed GTH to submit a hyperlinked schedule of the disputed documents to the Tribunal no later than 25 February 2019.
10. On 25 February 2019, GTH informed the Tribunal that, despite the Parties’ continued discussions regarding GTH’s privilege claims, there remained over 160 documents in dispute. GTH shared its view that “it would be neither procedurally fair nor proper for the Tribunal to review all of these documents.” Therefore, GTH stated that “the only timely and procedurally fair way forward is to accept Respondent’s suggestion that an independent third party be appointed to review all of the disputed privileged documents.”
11. The Tribunal responded to the Parties on the same day. It noted that, considering Canada’s letter of 12 February 2019 and GTH’s letter of 25 February 2019, the Tribunal understood this to be in effect a joint application by the Parties to appoint an independent expert to review the disputed documents. The Tribunal granted the application and confirmed that it had identified a list of potential candidates and instructed ICSID to contact them to inquire

about their availability and independence. The Parties were instructed to consult and attempt to agree on detailed Terms of Reference and a list of documents to be provided to the expert.

12. The Parties submitted their joint proposed Terms of Reference on 28 February 2019. After reviewing the Parties' proposal and making certain additions, the Tribunal provided the revised Terms of Reference to the Parties for their consideration. Both Parties subsequently confirmed their agreement with the revised Terms of Reference.
13. On 2 March 2019, the Tribunal informed the Parties that it intended to appoint Dr. Patricia Shaughnessy to serve as the independent expert, and that Dr. Shaughnessy had confirmed her availability and independence. The Parties were given until the following day to raise any objection to the appointment.
14. As neither Party raised any objection, on 3 March 2019, the Tribunal confirmed the appointment of Dr. Shaughnessy as the Independent Expert, and she signed the Terms of Reference.
15. On 4 March 2019, GTH provided the Independent Expert with a hyperlinked schedule of the disputed documents (the "Schedule"). The Independent Expert conducted her review and, on 12 March 2019, submitted her assessment to the Tribunal. Her determination on each disputed document was stated in the final column of the Schedule.
16. The Tribunal has now reviewed the Independent Expert's assessment and hereby adopts each of her determinations.

II. DECISION

17. The Tribunal adopts the Independent Expert's determination on each document as stated in the final column of the Schedule attached as Annex A. This Annex forms an integral part of the present Order.
18. GTH shall produce documents in accordance with the Independent Expert's determination within two days after the date of this Order.

On behalf of the Tribunal,

[signed]

Prof. Georges Affaki
President of the Tribunal
Date: 14 March 2019

Procedural Order No. 8
ANNEX A

Updated Schedule of Disputed Documents Over Which Claimant Asserts Privilege³
7 March 2019

1. Documents Entirely Withheld

| Doc No | Date | Email From | Email To | Email CC | Email Subject | Attachment (s) / Document | National Law | Relevant Tribunal's Order | Relevant Legal Arguments Relied on by GTH | Decision of Third Party Expert |
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| GTH-1 | [REDACTED] | [REDACTED] | [REDACTED] | | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | | <p>GTH- 1 is an email chain of communications from GTH to its internal counsel, who are privilege protected, for the purpose of seeking legal advice relating to investing in Canada and which were made in the expectation of confidentiality.</p> <p>However, the news article copied in the email text, "UPDATE 2-Canada to reserve spectrum for new wireless firms http://www.reuters.com/article/email/idUKN2860394920071128", is not privileged and should be disclosed.</p> <p>The attachments to the email are not privileged and should be disclosed. Attachment (i), the RBC Capital Markets "Industry Comments" report of 29 November 2007, is not privileged as it was not a confidential communication created for GTH to obtain legal advice, but appears to have been generally prepared for subscribing RBS clients and shared with such clients. Furthermore, it describes and generally discusses the regulatory framework and market conditions, which falls within the disclosures ordered by the Tribunal in PO 6, Annex A, page 27, Section 5.6. Similarly, attachments (ii), (iii) and (iv), the Industry Canada "Licensing Framework" and</p> |

³ Citations have been included to the most relevant portions of the Tribunal's Procedural Orders where applicable.

⁴ Global Telecom Holding S.A.E. ("GTH") was previously known as Orascom Telecom Holding S.A.E. ("OTH").

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| | | | | | | | | | | application and agreement forms, contain information and forms for prospective bidders relating to the general regulatory framework that appear to be prepared for broader distribution and do not contain communications relating to legal advice specific to GTH. These attachments are not privileged and should be disclosed. |
| GTH-2 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-2 contains email communications, [REDACTED] with its legal counsel to provide legal advice relating [REDACTED]. The communications between GTH and its legal counsel were made for the provision of legal advice and with the expectation of confidentiality. The content of the communications do not address the topics subject to the claim of subject-matter waiver (deemed waiver), namely they are not communications from [REDACTED] as part of the due diligence prior to investing in Canada regarding whether GTH (a) would be permitted to transfer Wind Mobile’s spectrum licenses to an Incumbent after the five-year rollout period; or (b) would be able to obtain full voting control over Wind Mobile following an anticipated relaxation in the ownership and control rules. (PO 6, Annex A, page 55 – 57.) Accordingly, GTH does not need to disclose GTH – 2. |
| GTH-3 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-3 is an email communication chain between privileged internal lawyers of the parties and the parties’ management [REDACTED]. The communications were |

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| | | | [REDACTED] | | | [REDACTED] | | | | <p>expected to be confidential and subject to a NDA. Some of the information communicated, particularly the attachments, contain largely commercial and financial information, which in and of itself would not be subject to a legal privilege. A communication or document will not become privileged by virtue of sending it to a lawyer. However, the reason for creating and sharing the information in GTH-3 attachments (i), (ii), (iii), (iv) and (v) [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Accordingly, the email exchange and the attachments (i), (ii), (iii), (iv) and (v) are privileged and do not need to be disclosed. However, attachment (vi) is general information prepared by Industry Canada regarding the auction and is not a privileged communication and should be disclosed.</p> |
| GTH-4 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | | <p>GTH-4 is a privileged email chain relating to the provision of legal advice, [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>communicated with the parties' expectation of confidentiality. The email chain and the attached document do not need to be disclosed.</p> |
| GTH-5 | [REDACTED] | [REDACTED] | [REDACTED] | | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | | <p>GTH-5 is a privileged email communication with the same attached memorandum as attached to GTH-4, both of which are privileged as the</p> |

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| | | | | | | | | | | communications were made with the expectation of confidentiality and for the purpose of securing legal advice. Consequently, GTH-5 does not need to be disclosed. |
| GTH-6 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-6 is an email chain of privileged communications for the provision of legal advice that were made with the expectation of confidentiality. However, the email contains the text of a news article, “Ross Marowits, THE CANADIAN PRESS February 26, 2008”, which is not privileged and should be disclosed. Accordingly, GTH may redact the email chain to protect the confidentiality of the legal communications, while disclosing the text of the news article.</p> <p>The attached memorandum [REDACTED] provides legal advice [REDACTED] and is privileged. However, the last paragraph of the memorandum (page 3), should be disclosed, as noted below.</p> <p>Apart from the last paragraph, the contents of the memorandum do not address the topics subject to the claim of subject-matter waiver (deemed waiver), namely they are not communications from [REDACTED] as part of the due diligence on investing in Canada regarding whether GTH (a) would be permitted to transfer Wind Mobile’s spectrum licenses to an Incumbent after the five-year</p> |

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| | | | | | | | | | | <p>rollout period; or (b) would be able to obtain full voting control over Wind Mobile following an anticipated relaxation in the ownership and control rules. (PO 6, Annex A, page 55 – 57.) However, the last paragraph of the memorandum refers to potential future relaxation in ownership controls generally and this paragraph of the memorandum should be disclosed, while all of the remaining content of the memorandum is privileged and may be redacted.</p> <p>Accordingly, GTH may redact from disclosure the email communication except for the text of the news article embedded in the email and may redact from disclosure the contents of the attached memorandum, except for the last paragraph on page 3 of the memorandum.</p> |
| GTH-7 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-7 is an email sharing the document “GTH-6” and its attachment within the client group. Consequently, it shares the same privilege as GTH-6, with the exception of the news article contained in the email chain.</p> |
| GTH-8 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-8 is a privileged communication between a a privileged lawyer and client relating to legal advice and was communicated with the expectation of confidentiality. GTH does not need to disclose any part of the communication.</p> |
| GTH-9 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-9 is an email chain. The only portion of GTH-9 that is a privileged communication between a privileged lawyer and client made for the purpose of legal advice and with the expectation of confidentiality is the email in the chain</p> |

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| | | | | | | | | | | <p>identified as: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] This email in the chain may be redacted from the disclosure of GTH-9.</p> <p>The attached document, a draft press release, was not created between a lawyer and client for the purpose of seeking legal advice but was created by non-lawyers for discussion regarding the public press release and it contains no privileged legal information. Accordingly, the attachment should be disclosed.</p> |
| GTH-10 | [REDACTED] [REDACTED] | [REDACTED] [REDACTED] [REDACTED] [REDACTED] | [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] | [REDACTED] | [REDACTED] [REDACTED] | [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] | [REDACTED] [REDACTED] | [REDACTED] [REDACTED] [REDACTED] [REDACTED] | | <p>GTH – 10 is an email from internal counsel enjoying privilege and clients. It may be redacted to not disclose the first two emails in the chain, the first being the email of [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] which contains confidential communications between a privileged GTH lawyer and the clients in response to the second privileged email on the chain, which is the email contained in GTH 9, identified above as [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Similarly, to GTH-9, the attached draft press release, which is the same document attached to GTH-9, is not privileged and should be disclosed.</p> |

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| <p>GTH-11</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>GTH-11 is an email from GTH to internal counsel, including counsel enjoying legal privilege. The document may be redacted to prevent the disclosure of the first email in the chain, from [REDACTED] as it is a communication from the client to a privileged lawyer. However, the remaining email in the chain, as well as the attached draft press release is not privileged and should be disclosed.</p> |
| <p>GTH-12</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>GTH-12 is an email between internal counsel enjoying privilege and copied to external counsel and clients. It is a privileged confidential communication created for the purpose of seeking legal advice and contains confidential legal advice, including the attachments, all of which the parties reasonably expected would be confidential. Accordingly, the entire document may be withheld from disclosure.</p> |
| <p>GTH-13</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>GTH-13 is a privileged communication for the purpose of seeking legal advice with the expectation of confidentiality [REDACTED] and is not a general discussion of the applicable legal framework. (see PO 6, page 27, section 5.6). Consequently, GTH does need to disclose it.</p> |
| <p>GTH-14</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>GTH-14 contains email communications between a privileged lawyer and the</p> |

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| | | | ██████████ ██████████ ██████████ | | ██████████ ██████████ ██████████ | | | ██████████ ██████████ | | client, together with an attached document, all intended to be confidential for the purpose of obtaining specific legal advice ██████████ and is not a general discussion of the applicable legal framework. (see PO 6, page 27, section 5.6). Consequently, GTH does need to disclose it. |
| GTH-15 | ██████████ | ██████████ ██████████ ██████████ ██████████ | ██████████ ██████████ ██████████ | ██████████ ██████████ ██████████ | ██████████ ██████████ ██████████ ██████████ ██████████ | ████████████████████ | ██████████ ██████████ | ██████████ ██████████ ██████████ ██████████ | | GTH-15 is similar to GTH-14, containing confidential communications between a privileged lawyer and the client, together with the same but amended privileged document that was attached to GTH-14 and deemed privileged, relating to the confidential discussions privileged in GTH-14. GTH does not need to disclose the document. |
| GTH-16 | ██████████ | ██████████ ██████████ ██████████ ██████████ | ██████████ ██████████ ██████████ ██████████ | ██████████ ██████████ ██████████ ██████████ | ██████████ ██████████ ██████████ ██████████ | ████████████████████ | ██████████ ██████████ | ██████████ ██████████ ██████████ ██████████ | | GTH-16 is a document in the same email chain and discussion as GTH 14 and 15, with further confidential discussions to obtain legal advice ██████████ and is privileged for the same reasons as GTH 14 and 15. GTH-16 does not need to disclose the document. |
| GTH-17 | ██████████ | ██████████ ██████████ | ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ | ██████████ | ██████████ | ██████████ | ██████████ ██████████ | ██████████ ██████████ ██████████ ██████████ | ██████████ ██████████ | GTH-17 contains communications between Globalive, OTH and their respective privileged in-house lawyer expected to be confidential relating to the ██████████ and are not general discussions regarding the legal framework in Canada. (PO 6, page 27, section 5.6). Accordingly, GTH does need to disclose GTH-17. |
| GTH-18 | ██████████ ██████████ | ██████████ ██████████ ██████████ ██████████ | ██████████ ██████████ ██████████ ██████████ | ██████████ | ██████████ ██████████ ██████████ | ██████████ | ██████████ | ██████████ ██████████ ██████████ ██████████ | ██████████ ██████████ | GTH-18 is a communication between privileged lawyers and their clients, which was expected to be confidential and communicated in the |

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| | | | [REDACTED] | | | | | | | context of providing legal advice [REDACTED]. It is privileged and GTH does not need to disclose it. |
| GTH-19 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-19 is a communication between a privileged lawyer and client relating to legal advice [REDACTED] and as such it is privileged and GTH does need to disclose it. |
| GTH-20 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-20 is a communication expected to be confidential between the client and privileged lawyer [REDACTED] and is privileged. GTH does not need to disclose it. |
| GTH-21 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-21 contains confidential communications between Globalive and OTH and their privileged lawyers, both in-house and outside counsel, for the purpose of obtaining legal advice in regards to the [REDACTED] and with the expectation that the communications would remain confidential. GTH does not need to disclose the document. |
| GTH-22 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-22 contains [REDACTED] which comments are shared between the parties and their privileged lawyers for the purpose of obtaining legal advice and with the expectation of confidentiality. Based on the common interest doctrine, these communications remain privileged. (PO 6, Annex A, page 27, Section |

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| | | | | [REDACTED] | | | | | | 5.6 and page 28, Section 5.9). GTH does not need to disclose the document. |
| GTH-23 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-23 is an internal email between OTH and its in-house lawyers, including a privileged lawyer, that raises issues to be discussed for the purpose of obtaining legal advice [REDACTED]. Is it privileged and GTH does not need to disclose it. |
| GTH-24 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-24 is an internal email within the OTH group with no privileged lawyer included in the communication. Consequently, the email does not qualify for the legal privilege and GTH must disclose the internal email. However, GTH-14 contains as an attachment, containing privileged communications from OTH's outside legal counsel, [REDACTED], which was made with the expectation of confidentiality and for the purpose of legal advice. It can be noted that the communication did not fall into the category topics subject to the claim of waiver (deemed waiver), namely they are not communications from [REDACTED] regarding whether GTH (a) would be permitted to transfer Wind Mobile's spectrum licenses to an Incumbent after the five-year rollout period; or (b) would be able to obtain full voting control over Wind Mobile following an anticipated relaxation in the ownership and control rules. PO 6, Annex A, page 55 – 57. limited waiver as it did not address Thus the email attachment identified as [REDACTED] |

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| | | | | | | | | | | <p>[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] is privileged and does not need to be disclosed.</p> <p>Similarly, GTH does not need to disclose the email from the client to the outside counsel requesting legal advice on particular issues, said email is identified as: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] This email was expected to be a confidential email to seek legal advice from a privileged lawyer.</p> |
| GTH-25 | [REDACTED] [REDACTED] | [REDACTED] [REDACTED] [REDACTED] | [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] | [REDACTED] | [REDACTED] [REDACTED] [REDACTED] [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] [REDACTED] [REDACTED] [REDACTED] | | <p>GTH-25 contains an email from outside counsel forwarding to the client a link to a general business report describing a recommendation of the regulatory framework. It does not contain any confidential communication intended to enable providing legal advice. GTH should disclose the document.</p> |
| GTH-26 | [REDACTED] [REDACTED] | [REDACTED] [REDACTED] [REDACTED] | [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] | [REDACTED] [REDACTED] | [REDACTED] [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] [REDACTED] [REDACTED] [REDACTED] | [REDACTED] [REDACTED] | <p>GTH-26 is an email chain of communication containing confidential communication between parties and privileged lawyers that was communicated in the expectation of confidentiality and for the purpose of legal advice. These communications are privileged and may be redacted from the email.</p> <p>However, the part of the email that contains a copy of a news report, identified as "UPDATE 1-Canada may consider foreign control of telecoms Wed Mar 3, 2010 5:11pm EST * Canada says</p> |

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| | | | | | | | | | | open to foreign majority control” is a public news article which should be disclosed. |
| GTH-27 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-27 is a chain of email, some of which are communications between a privileged lawyer and client intended to be confidential and for the purpose of seeking legal advice and thus privileged. The privileged emails in this chain are as follows:</p> <p>The first email (most recent) identified as [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] The attached document entitled [REDACTED] [REDACTED] [REDACTED], is also a privileged document.</p> <p>This document and email noted above to not need to be disclosed by GTH and may be redacted when disclosing the remaining contents of GTH-27 as noted below.</p> <p>Additionally, the following two emails in the chain are privileged and may be redacted when disclosing GTH-27 as indicated below: [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p>However, other emails in the chain contained in GTH-27 are not privileged as they either were not intended to be confidential, were not communicated for the purpose of seeking legal advice or were not confidential communications with a privileged lawyer.</p> |

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| | | | | | | | | | | These non-privileged communications include the following emails in the chain, which GTH should disclose: [REDACTED] |
| GTH-28 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-28 is an email chain of communications between privileged lawyers regarding legal advice for their common clients relating to regulatory issues and were expected to be confidential. Consequently, GTH does not need to disclose GTH-28. |
| GTH-29 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-29 is a privileged communication between outside and in-house counsel for the common client group, intended to be confidential and for the purpose of providing the client with legal advice [REDACTED] [REDACTED] [REDACTED] GTH does not |

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| | | | | [REDACTED] | | [REDACTED] | | | | need to disclose the document. |
| GTH-30 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-30 is an email from an external counsel to the internal counsel of the group sharing a common interest and part of the ownership structure of Wind Mobile, where privileged legal advice is communicated with the expectation of confidentiality [REDACTED] are discussed.</p> <p>The email and attached documents are privileged and GTH does not need to disclose the email document nor the attachments.</p> |
| GTH-31 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-31 is an email with attached documents from an external counsel to the client, a group sharing a common interest and part of the ownership structure of Wind Mobile. The legal advice which was communicated to the clients with the expectation of confidentiality, [REDACTED] GTH does not need to disclose the email nor the attachments.</p> |
| GTH-32 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-32 is a confidential communication from an external lawyer to the common client group for the purpose of providing legal advice. The email exchange is privileged.</p> <p>However, the two attachments to the email, (i) the letter from IRD Canada to GTH Canada and Aird & Berlis and (ii) the letter from IRD to Anthony Lacavera do not meet the “Gallo” test (PO</p> |

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| | | | | [REDACTED] | | [REDACTED] | | | | 5, Annex A, pages 28 – 29) as they were not prepared by a lawyer acting in the capacity of a trusted solicitor-client relationship for the purpose of obtaining or giving legal advice, and with expectation that such advice would be kept confidential. The two attached letters should be disclosed, while the email communication to which they are attached does not need to be disclosed. |
| GTH-33 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-33 is an email from a privileged internal counsel to the common client group created with the expectation of confidentiality and for the purpose of seeking and giving legal advice. It is privileged and does not need to be disclosed. |
| GTH-34 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-34 is an email from a privileged internal counsel to the client group sharing a common interest in the matter and created with the expectation of confidentiality and for the purpose of seeking and giving legal advice. It is privileged and does not need to be disclosed. |
| GTH-35 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-35 is an email from a privileged internal counsel to other privileged internal counsel with the group sharing a common interest in the matter. The confidential communication relates to and discusses legal advice received by external counsel. The email contains an |

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| | | | [REDACTED] | | | [REDACTED] | | | | <p>attached draft document prepared by the external counsel relating to the confidential legal advice concerning the common interest of the group. The email communication and attached document was expected to be kept confidential.</p> <p>GTH does not need to disclose the email nor the attached document.</p> |
| GTH-36 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-36 is an email communication which is part of a continuing discussion by the group of privileged lawyers for the purpose of providing legal advice to the common group of clients, similar to those contained in GTH -34 and GTH-35. The communications were created with the expectation of confidentiality. GTH does not need to disclose the document.</p> |
| GTH-37 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-37 is an email communication which is part of a continuing discussion by the group of privileged lawyers for providing legal advice to the common group of clients as contained in GTH -34, GTH-35 and GTH-36. The communications were created with the expectation of confidentiality. The email contains an attached privileged and confidential memorandum from the common client's external lawyer providing legal advice in the matter.</p> <p>GTH does not need to disclose the email nor the attached document.</p> |
| GTH-38 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-38 is an email from one of the privileged internal lawyers to the external lawyer of the common client group, with a copy to other privileged lawyers within the</p> |

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| | | | | [REDACTED] | | | | | | <p>common client group relating to confidential discussions of legal advice concerning the matters addressed in GTH-33 through 37. The communication was expected to be confidential and is privileged.</p> <p>GTH does not need to disclose the document.</p> |
| GTH-39 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-39 is an email from an external lawyer to an internal lawyer of the common client group, with a copy to other privileged lawyers within the common client group. The email relates to confidential discussions of legal advice concerning the matters addressed in GTH-33 through 38. The communication was expected to be confidential and is privileged.</p> <p>The attached documents are also a privileged communication created by lawyers for the common client group for providing legal advice and with the expectation of confidentiality.</p> <p>GTH does not need to disclose the email nor the attached documents (i) and (ii).</p> |
| GTH-40 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-40 is an email from an internal privileged lawyer to an external lawyer of the common client group, with a copy to other privileged lawyers within the common client group relating to confidential discussions of legal advice concerning the matters addressed in GTH-33 through GTH-39. The communication was expected to be confidential and is privileged.</p> <p>The attached document is a privileged communication created by an external lawyer</p> |

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| | | | | [REDACTED] | | | | | | <p>for the common client group for the purpose of providing legal advice and with the expectation of confidentiality.</p> <p>GTH does not need to disclose the email nor the attached document.</p> |
| GTH-41 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-41 is an email from an external lawyer to an internal lawyer of the common client group, with a copy to other privileged lawyers within the common client group relating to confidential discussions of legal advice concerning the matters addressed in GTH-33 through 40. The communication was expected to be confidential and is privileged. The attached documents are privileged communications created by an external lawyer for the common client group for the purpose of providing legal advice and with the expectation of confidentiality.</p> <p>GTH does not need to disclose the email nor the attached documents (i), (ii) and (iii).</p> |
| GTH-42 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-42 is an email from an internal privileged lawyer to another internal privileged lawyer of the common client group, with a copy to another privileged lawyer within the common client group. The communications relate to confidential discussions of legal advice concerning the matters addressed in GTH-33 through 41. The communication was expected to be confidential and is privileged.</p> |

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| GTH-43 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-43 is an email from an internal privileged lawyer to two other internal privileged lawyers of the common client group, relating to the continuing confidential discussions of legal advice concerning the matters addressed in GTH-33 through 42. The communication was expected to be confidential and is privileged.</p> <p>GTH does not need to disclose the email.</p> |
| GTH-44 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-44 is an email from an internal privileged lawyer to another internal privileged lawyer of the common client group, with a copy to another internal privileged lawyer within the common client group. The communication relates to confidential discussions of legal advice concerning the matters addressed in GTH-33 through 43. The communication was expected to be confidential and is privileged.</p> <p>GTH does not need to disclose the email.</p> |
| GTH-45 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-45 is an email chain from an external lawyer to a privileged internal lawyer for the common client group and copied to other privileged lawyers within the common client group. The email communications were created to be kept confidential and for the purpose of obtaining and providing legal advice. These communications are privileged and GTH does not need to disclose.</p> <p>However, the last email communication in the email chain was received by the external lawyer from a</p> |

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| | | | | | | | | | | <p>regulatory office and does not contain confidential client information and should be disclosed. It may be identified as [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>GTH may redact GTH-45 to exclude from disclosure [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] when disclosing only the last email sent by [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> |
| GTH-46 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-46 is an email from an external lawyer to a privileged internal lawyer for the common client group and copied to other privileged lawyers within the common client group. The email communication was created to be kept confidential and for the purpose of obtaining and providing legal advice.</p> <p>This email communication is privileged and GTH does not need to disclose.</p> |
| GTH-47 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-47 is an email from an external lawyer to two privileged internal lawyers for the common client group and copied to other privileged lawyers within the common client group. The email communication was created to be kept confidential and for the purpose of obtaining and providing legal advice.</p> <p>This email communication is privileged and GTH does not need to disclose.</p> |

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| GTH-48 | [Redacted] | [Redacted] | [Redacted] | [Redacted] | [Redacted] | [Redacted] | [Redacted] | [Redacted] | [Redacted] | <p>GTH-48 is an email from an external lawyer to a privileged internal lawyer and an external lawyer for the common client group and copied to other privileged lawyers within the common client group. The email communication was created to be kept confidential and for the purpose of obtaining and providing legal advice.</p> <p>This email communication is privileged and GTH does not need to disclose.</p> |
| GTH-49 | [Redacted] | [Redacted] | [Redacted] | [Redacted] | [Redacted] | [Redacted] | [Redacted] | [Redacted] | [Redacted] | <p>GTH-49 is an email from an internal privileged lawyer to external lawyers for the common client group and copied to other privileged lawyers within the common client group. The email communication was created to be kept confidential and for the purpose of obtaining and providing legal advice.</p> <p>This email communication is privileged and GTH does not need to disclose.</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> |

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| | | | | | | | | | | <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> |
| GTH-50 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-50 is an email chain between external and internal privileged lawyers for a common client group relating to discussions for the purpose of providing and obtaining legal advice, with the expectations that the communications will be confidential. GTH does not have to disclose the document. |
| GTH-51 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-51 is an email chain between external and internal privileged lawyers for a common client group relating to discussions for the purpose of providing and obtaining legal advice, with the expectations that the communications will be |

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| | | | [REDACTED] | | | [REDACTED] | | | | <p>confidential. GTH does not have to disclose the document.</p> <p>The attached documents (i) and (ii) are confidential memoranda prepared by external legal counsel to provide legal advice to the common clients. The lawyers and clients expected that the documents would be confidential. The attached documents are privileged. GTH does not need to disclose the email chain nor the attached documents.</p> |
| GTH-52 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-52 is an email chain between internal and external privileged lawyers for a common client group relating to discussions for the purpose of providing and obtaining legal advice, with the expectations that the communications will be confidential. The attached document is confidential memoranda prepared by external legal counsel to provide legal advice to the common clients. The lawyers and clients expected that the documents would be confidential.</p> <p>The attached documents are also privileged. GTH does not have to disclose the document.</p> |
| GTH-53 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-54 is an email chain between external and internal privileged lawyers for a common client group relating to discussions for the purpose of providing and obtaining legal advice, with the expectations that the communications will be confidential.</p> <p>The attached document is confidential memoranda prepared by external legal counsel to provide legal advice to the common clients. The lawyers and clients expected that the</p> |

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| | | | | | | | | | | document would be confidential. The email and the attached document is privileged. GTH does not have to disclose GTH-53. |
| GTH-54 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-54 is an email exchange between UBS representatives and Vimplecom, and copied to Vimplecom, Wind Mobile and other UBS persons. The email contains an attached memorandum prepared by external counsel that was prepared for the purpose of providing legal advice and with the expectation of legal privilege confidentiality. Sharing the document with UBS in the email communication would destroy the privilege of the memorandum unless sharing the legal advice was for the sole purpose to allow the provision of legal advice which necessitated sharing the communication with UBS, thus allowing for a limited waiver. (PO 6, Annex A, page 41- 42). Sharing the privileged communication with UBS to obtain its business advice destroys the privilege.</p> <p>In reviewing the memorandum, it is noted therein that the legal advice needs to be informed by market information and information to assess the incumbents, which would be relevant for competition issues and other regulatory and legal considerations in the transaction. In its letter of 17 January 2019, GTH claims that “Certain correspondence involving UBS and Bennett Jones was for the purposes of the provision of legal advice by Bennett Jones in relation to the sale, and all such correspondence is accordingly privileged. The</p> |

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| | | | | | | | | | | <p>parties clearly expected that this correspondence would be treated as privileged and confidential and some of this correspondence is expressly marked as such.” (Page 6).</p> <p>This claim appears supported by a review of the external lawyer memorandum. Consequently, the claim for limited waiver as to GTH-54 is met. GTH does not need to disclose the document.</p> |
| GTH-55 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-55 is an email chain between internal privileged and external privileged lawyers for the common client group. It contains confidential communications between the lawyer and clients for the purpose of obtaining and providing legal advice. The communication was expected to be privileged and confidential. GTH does not need to disclose the document.</p> |
| GTH-56 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-56 is an email from an external lawyer to a privileged internal lawyer, which was copied to privileged lawyers in the common client group for the purpose of obtaining and providing legal advice. The email contains an attached draft document prepared by the lawyer in confidential consultation with the internal lawyers relating to legal advice.</p> <p>The email and the attached document is privileged and GTH does not need to disclose it.</p> |

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| | | | | [REDACTED] | | | | | | |
| GTH-57 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-57 is an email from an external lawyer to a privileged internal lawyer, which was copied to privileged lawyers in the common client group for the purpose of obtaining and providing legal advice. The email contains two attached draft documents prepared by the lawyer in confidential consultation with the internal lawyers relating to legal advice. The email and the attached documents are privileged and GTH does not need to disclose it. |
| GTH-58 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-58 is an email from an external lawyer to a privileged internal lawyer, which was copied to privileged lawyers in the common client group for the purpose of obtaining and providing legal advice. The email contains an attached draft document prepared by the lawyer in confidential consultation with the internal lawyers relating to legal advice. The email and the attached document is privileged and GTH does not need to disclose it. |

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| | | | | [REDACTED] | | | | | | |
| <p>GTH-59</p> | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-59 is an email sent by external lawyers to a group of internal and external lawyers and copied to external layers. The communication was intended to be confidential and for the purpose of seeking and providing legal advice.</p> <p>The email and the attached document are privileged and consequently, GTH does not need to disclose email or the attached document.</p> |
| <p>GTH-60</p> | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-60 is an email from a privileged internal lawyer to a group of external and internal counsel relating to obtaining and providing legal advice and with the expectation of confidentiality. The attached document provides legal advice that was intended to be confidential.</p> <p>The document, including the attachment is privileged and GTH does not need to disclose it.</p> |

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| | | | [REDACTED] | | | | | | | |
| GTH-61 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-61 is an email from an external lawyer to a group of lawyers that enjoy the privilege and provide legal advice to the common client group. The email was also copied to [REDACTED] of Earncliffe. The email chain contains this message: “[REDACTED] please circulate to the rest of the Earncliffe group, thanks”. Sharing the email communications, together with the attached document, to unprivileged third-parties prevents creating a privilege and any privileged communications contained in the shared emails lose their privileged status.</p> <p>GTH alleges in its January 27, 2019 letter (page 5) that: “Certain legally privileged documents were shared with Earncliffe in order for Earncliffe to advise Bennett Jones and Aird & Berlis on government relations to enable external counsel to provide legal advice on the voting control application and the disputed national security review. The purpose of sharing such privileged documents with Earncliffe was to permit external counsel to provide legal advice taking into account the political nature of the interactions and/or in contemplation of litigation with the IRD or Industry Canada. GTH respectfully submits that privilege in those specific documents has not been waived.”</p> <p>However, there is no indication of the need for wide distribution of the communication to</p> |

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| | | | | | | | | | | <p>Earncliffe, nor importantly is there any indication that the communication needed to be shared for the provision of legal services. (PO 6, Annex A, page 42, Section 5). GTH bears the burden of establishing that sharing confidential communications with Earncliffe was specifically needed for the obtaining or providing legal advice.</p> <p>GTH should disclose GTH-61.</p> |
| GTH-62 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-62 is an email from external counsel to a group of internal and external lawyers seeking to obtain and providing legal advice to the common client group. The email is also copied to three Earncliffe persons. The content of the email does not indicate expressly or impliedly Earncliffe's specific role and the necessity for it to participate in the confidential communications relating to legal advice. It is not clear why Earncliffe's advice on government relations could not have been obtained without sharing confidential legal communications.</p> <p>GTH should disclose the document.</p> |
| GTH-63 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH- 63 is an email from an external lawyer to an internal lawyer at VimpleCom and is copied to a number of lawyers representing the common client group. The</p> |

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| | | | | [REDACTED] | [REDACTED] | [REDACTED] | | | | <p>communications is also copied to four Earncliffe persons. While the communications was marked as privileged and confidential, it was shared with the Earncliffe group. The email contains two attached documents, both of which assert confidentiality.</p> <p>As noted in regard to GTH-61 and GTH-62, GTH has the burden to demonstrate that sharing otherwise confidential and privileged communications with Earncliffe was specifically needed for seeking and obtaining legal advice. It is insufficient to make a broad general claim that Earncliffe needed to share confidential legal communications to provide advice on government relations in order for the lawyers to provide legal advice.</p> <p>GTH should disclose the document, including the two attachments.</p> |
| GTH-64 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-64 is an email from an external lawyer to a number of lawyers representing the common client group. The communication is also sent to four Earncliffe persons. While the communications was marked as privileged and confidential, it was shared with the Earncliffe group. The email contains two attached documents, both of which assert confidentiality.</p> <p>As noted in regard to GTH-61, GTH-62, and GTH-63, GTH has the burden to demonstrate that sharing otherwise confidential and privileged communications with Earncliffe was specifically needed for seeking and obtaining legal advice. It is insufficient to make a broad general claim that Earncliffe needed to</p> |

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| | | | [REDACTED] | | | | | | | share confidential legal communications to provide advice on government relations in order for the lawyers to provide legal advice. GTH should disclose the document. |
| GTH-65 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-65 is an email from an internal lawyer to a number of lawyers representing the common client group. The communications is also sent to four Earncliffe persons. While the communications was marked as privileged and confidential, it was shared with the Earncliffe group. The email contains an attached document, which asserts confidentiality. As noted in regard to GTH-61 through GTH-64, GTH has the burden to demonstrate that sharing otherwise confidential and privileged communications with Earncliffe was specifically needed for seeking and obtaining legal advice. It is insufficient to make a broad general claim that Earncliffe needed to share confidential legal communications to provide advice on government relations in order for the lawyers to provide legal advice. GTH should disclose the document, including the attached document. |
| GTH-66 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-66 is an email from an internal lawyer to a number of lawyers representing the common client group. The communications is also sent to four Earncliffe persons. While the communications was marked as privileged and confidential, it was shared with the Earncliffe group. The email contains an attached document, which asserts confidentiality. |

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|------------------------|-------------------------------------|---|---|---|-------------------------------------|---|-------------------|---|---|--|
| | | | | <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> | | | | | | <p>As noted in regard to GTH-61 through GTH-65, GTH has the burden to demonstrate that sharing otherwise confidential and privileged communications with Earncliffe was specifically needed for seeking and obtaining legal advice. It is insufficient to make a broad general claim that Earncliffe needed to share confidential legal communications to provide advice on government relations in order for the lawyers to provide legal advice.</p> <p>GTH should disclose the document, including the two attachments.</p> |
| GTH-67 | <p>[REDACTED]</p> <p>[REDACTED]</p> | <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> | <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> | <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> | <p>[REDACTED]</p> <p>[REDACTED]</p> | <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> | <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> | <p>GTH-67 is an email from an external lawyer to an internal lawyer and copied to two UBS persons. The email also contains an attached document marked privileged and confidential relating to bid offers.</p> <p>Sharing confidential legal communications that have been created as privileged with parties outside the circle of the privilege, risks destroying the privilege. To enjoy the privilege (and to qualify for a limited waiver), the sharing of the privileged communications with the third-parties must be shown to have been for the purpose of providing or obtaining legal advice. This can not be a broad, blanket assertion but specifically demonstrated for each confidential communication shared with the third-party. (PO 6, Annex A, page 41, Section 3).</p> <p>In its letter of January 27, 2019, GTH claims that “UBS was engaged to solicit and interact with potential buyers of GTH’s interest in Wind Mobile and then to correspond with Bennett</p> |

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| | | | | | | | | | | <p>Jones so that Bennett Jones could provide legal advice to GTH and VimpelCom in relation to the terms being contemplated. Certain correspondence involving UBS and Bennett Jones was for the purposes of the provision of legal advice by Bennett Jones in relation to the sale, and all such correspondence is accordingly privileged. The parties clearly expected that this correspondence would be treated as privileged and confidential and some of this correspondence is expressly marked as such. GTH respectfully submits that this correspondence is privileged and there has been no waiver of such privilege. These documents should accordingly be treated as privileged.” (Page 6).</p> <p>It is not clear from the email or from the two attached documents how the business advice of UBS was specifically needed in order to provide the legal advice reflected in the documents.</p> <p>GTH should disclose the email with the attachments.</p> |
| GTH-68 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-68 is an email from an external lawyer to a group of internal and external lawyers. Representatives from UBS have been included in the email. The email also contains two attached documents that are marked confidential.</p> <p>The reasoning noted in regards to GTH-67 also applies to GTH-68. A review of the documents does not indicate the role of or necessity for UBS to share confidential and potentially privileged communications in order for the provision of legal advice. It is not apparent from the review whether UBS shared the</p> |

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| | | | [REDACTED] | | | | | | | communications to provide business advice or specially contributed to enabling the legal team to provide legal advice. GTH should disclose the document, including the two attachments. |
| GTH-69 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-69 is an email chain from internal counsel to external counsel and [REDACTED] of Earncliffe and copied to a group of external and internal lawyers and other Earncliffe persons. As noted in the reasoning relating to the privilege determinations of documents that have shared confidential legal communications with Earncliffe persons, it is necessary that it be shown that the third-party sharing was specifically related to the securing or providing legal advice. GTH-69 does not demonstrate that sharing the communications with Earncliffe was to enable the lawyers to provide legal advice rather than to provide general government relations insights that may have been peripheral to the legal advice and may not have required sharing confidential communications. GTH should disclose the document. |
| GTH-70 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-70 is an email from internal counsel to a group of external and internal counsel, but also included Earncliffe persons. The email also contains an attached document. |

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| | | | [REDACTED] | [REDACTED] | | | | | | <p>The reasoning indicated in earlier allegedly privileged documents shared with Earncliffe, the privilege will not be created or if pre-existing, will be destroyed by sharing the confidential communications with a non-privileged party. The documents do not demonstrate the role of Earncliffe persons in the securing or providing legal advice.</p> <p>GTH should disclose the document, including the attachment.</p> |
| GTH-71 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-71 is an email from [REDACTED] of Earncliffe to an internal lawyer for Vimplecom and to another Earncliffe person, and copied to a group of external lawyers.</p> <p>A third-party cannot create a legal privilege by sending an email to a lawyer who enjoys privileged communications with a client. It must be shown that the third-party was sharing confidential communications for the securing or providing legal advice, which has not been shown in regards to this document.</p> <p>GTH should disclose the document.</p> |
| GTH-72 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-72 is an email from an internal lawyer to external and internal lawyers, as well as Earncliffe persons. The email contains an attached document.</p> <p>The reasoning expressed in regards to other communications shared with Earncliffe also applies to this communication and its attachment. The sharing of the allegedly confidential legal communications with Earncliffe have not been shown to specifically relate to the provision of legal</p> |

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| | | | | | | | | | | <p>advice. Consequently, the limited waiver doctrine cannot apply.</p> <p>GTH should disclose the document, with the attachment.</p> |
| GTH-73 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-73 is an email from an internal lawyer to an external lawyer, which was copied to other external and internal lawyers, as well as Earncliffe persons. The email contains an attached document.</p> <p>The reasoning expressed in regards to other communications shared with Earncliffe also applies to this communication and its attachment. The sharing of the allegedly confidential legal communications with Earncliffe have not been shown to specifically relate to the provision of legal advice. Consequently, the limited waiver doctrine cannot apply.</p> <p>GTH should disclose the document, with the attachment.</p> |
| GTH-74 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | <p>GTH-74 is an email from an internal lawyer to an external lawyer, as well as three Earncliffe persons. It was copied to another internal counsel and a client representative. The email contains an attached document.</p> <p>The reasoning expressed in regards to other communications shared with Earncliffe also applies to this communication and its attachment. The sharing of the allegedly confidential legal communications with Earncliffe have not been shown to specifically relate to the provision of legal advice. Consequently, the</p> |

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| | | | | | | | | | | limited waiver doctrine cannot apply. GTH should disclose the document, with the attachment. |
| GTH-75 | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | GTH-75 is an email from [REDACTED] (UBS) to VimpleCom internal counsel and three other UBS persons. It contains three attached documents. The review of the email chain, together with the review of the attached documents, leads to the determination that the purpose and content of the communication was focused on commercial, business and market information rather than for the provision of legal advice. GTH should disclose the document with the attachments. |

2. Documents Produced in Redacted Form

| Doc No | Description | Date | Document | National Law | Relevant Tribunal's Order | Relevant Legal Arguments Relied on by GTH | Decision of Third Party Expert |
|-------------------------|---|----------------|--|----------------------------|---------------------------|---|--|
| GTH-76A | Unredacted | 3 October 2014 | VimpelCom, Supervisory Board meeting, 3 October 2014 | Canada / USA / New Zealand | | | GTH-A, GTH-B, and GTH-C are different versions of the same document as follows: a. GTH-76A (the document in completely unredacted form) b. GTH-76B (the document as redacted by GTH for privilege and which has been produced to Canada) c. GTH-76C (for your reference, the originally disputed version previously produced to |
| GTH-76B | As produced with <u>revised</u> redactions | | | | | | |
| GTH-76C | For your reference, as initially produced with redactions | | | | | | |

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| | | | | | | | <p>Canada that has now been superseded by GTH-76B)</p> <p>This privilege-contested document was added to the document review by the expert on 8 March 2019 as the Parties had not agreed on the redactions relating to the alleged legal privilege.</p> <p>Following a review of the document, it is determined that redacted version of GTH-76B contains appropriate redactions to protect legally privileged communications that meet the requirements for the privilege.</p> <p>GTH should only be required to disclose the document labeled GTH-75B.</p> |
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