IN THE MATTER OF AN ARBITRATION

UNDER THE UNCITRAL ARBITRATION RULES

DEUTSCHE TELEKOM AG

Claimant

-v-

THE REPUBLIC OF INDIA

Respondent

NOTICE OF ARBITRATION

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2 September 2013

I. INTRODUCTION AND OVERVIEW

1. Deutsche Telekom AG (***DT*** or ***Claimant***), a company incorporated under the laws of the Federal Republic of Germany (***Germany***), hereby refers to arbitration a dispute arising out of measures taken by the Republic of India (***India*** or ***Respondent***). This notice of arbitration (the ***Notice***)[1] is submitted in accordance with: (a) Article 9 of the Agreement between Germany and India for the Promotion and Protection of Investments (the ***Treaty***);[2] and (b) Article 3 of the Arbitration Rules of the United Nations Commission on International Trade Law 1976 (the ***UNCITRAL Rules***).

2. DT has made significant investments in India through Devas Multimedia Private Limited (***Devas***), a company established in India for the purpose of delivering mobile multimedia and broadband data services to the Indian market via a hybrid satellite-terrestrial communications platform (the ***Devas System***).

3. The present dispute arises from the evisceration by India of DT's investment, by means of interference in, and the purported "annulment" by India of, the contract entered into by Devas with Antrix Corporation Limited (***Antrix***) for the lease of S-band capacity on two satellites to be constructed by India (the ***Agreement***).[3] Antrix is a wholly state-owned company which acts as the commercial arm of the Indian Space Research Organization (***ISRO***), which itself falls under the auspices of the Department of Space (***DoS***). Acts of Antrix relevant to the present dispute are all attributable to India.

4. In entering into the Agreement, developing the required technology and making significant capital investments, Devas and its investors (including DT), relied on repeated assurances by Antrix, ISRO, DoS and the Space Commission (collectively the ***Indian Space Authorities***), that they were fully committed to the performance of the Agreement, the launch of the satellites and the realisation of the Devas System.

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[1] Together with this Notice, DT submits supporting documentary evidence (Exhibits **C-1** through **C-51**).

[2] The Treaty was signed on 10 July 1995 and entered into force on 13 July 1998. The Treaty, as executed in its original English language, is attached as **Exhibit C-1**.

[3] Agreement for the Lease of Space Segment Capacity on ISRO/Antrix S-Band Spacecraft by Devas Multimedia Pvt Ltd, 28 January 2005 (the ***Agreement***), **Exhibit C-6**.

5. Between 2005 and 2011, important steps were taken to perform the Agreement and launch the Devas System. The Indian Space Authorities *inter alia* obtained approval from the Union Cabinet to fund, design and build the first satellite to realise the Devas System; obtained clearances from national and international agencies for orbital slot and frequency resources that would allow the Devas System to operate; and issued licences allowing Devas to conduct experimental trials of the Devas System. Following significant capital investment by its shareholders (including DT), Devas made S-band capacity payments to Antrix under the Agreement, conducted trials of the Devas System in India, Germany and China and entered into contracts with technology vendors - including some of the world's leading technology suppliers - for the components of the Devas System. By early 2011, Devas and its investors were simply awaiting the launch of the first satellite to commence operations.

6. Despite repeated assurances to Devas and its investors, including DT, of its support for the project and the launch of the satellites on which the Devas System depended, in February 2011, suddenly and abruptly, India purported to "annul" the Agreement. The circumstances of the purported "annulment" are remarkable: the Government broadcast its intention to "annul" the Agreement in a press conference to the Indian media, without giving prior notice to Devas or its investors, and with no reference to any failure on the part of Devas being the cause of this decision.

7. The background to, and real reason for, the "annulment" emerged simultaneously in the Indian media. It became clear that Government officials had for some time (and behind closed doors) been discussing and devising ways in which to end the relationship with Devas, notwithstanding the absence of any basis for lawfully terminating the Agreement:

   (a) although outwardly still supportive of Devas's partnership with Antrix, from late 2009, the Indian Government initiated a confidential internal review of the Agreement, which had become politically unpalatable for reasons apparently linked to the public attention focused on the allocation of 2G (terrestrial) spectrum (a wholly unrelated issue to the Agreement, which deals with satellite spectrum);

(b) despite this review uncovering no evidence of wrongdoing by Devas, in July 2010, the Indian Space Commission reportedly directed that the Agreement should be "annulled". This decision was not, however, communicated to Devas at the time;

(c) instead, and without notifying Devas or its investors, the DoS requested the Additional Solicitor General to advise on how the Government could best cancel the Agreement with the least prejudice to India. The Additional Solicitor General advised that the circumstances at the time did not permit the cancellation of the Agreement under its termination provisions. However, he considered that a potential exit route existed in the form of sovereign *force majeure*. In order to support a case for *force majeure*, the Additional Solicitor General urged that the decision to terminate should not be taken by the DoS, but by the Government of India "as a matter of public policy";

(d) on 17 February 2011, the Indian Cabinet Committee on Security laid the ground for an assertion of *force majeure* by announcing a strategic "policy decision" to make S-band capacity unavailable for commercial purposes; and

(e) armed with this "policy decision", Antrix purportedly terminated the Agreement on 25 February 2011 on the grounds (*inter alia*) of *force majeure*.

8. As a result of the above conduct of India, Devas has lost its key asset and hence its business. Further, Antrix and India have since that time obstructed the pursuit by Devas of its legal rights and harassed Devas and its directors:

(a) Devas initially sought to pursue its contractual rights against Antrix through arbitration under the Rules of the International Chamber of Commerce (***ICC***) in New Delhi (the ***Delhi Arbitration***). Antrix, however, actively sought to de-rail the Delhi Arbitration by (*inter alia*) refusing to participate in, and commencing Indian court proceedings to enjoin, the arbitral proceedings. Only after the Indian Supreme Court dismissed its petition did Antrix belatedly indicate its intention to participate in the Delhi Arbitration;

(b) moreover, since attempting to exercise its contractual rights against Antrix, Devas and its directors have been subjected to a campaign of regulatory harassment by various organs of the Indian State.

9. The measures taken by India constitute breaches of the protections provided by India to DT, a German investor under the Treaty. The measures, and in particular, India's purported "annulment" of the Agreement, have substantially deprived DT of the value of its investment in Devas.

10. This Notice is structured as follows: Section II provides the details of the parties to the dispute; Section III summarises the background facts relevant to the dispute; Section IV addresses the applicable jurisdictional and admissibility requirements; Section V briefly describes India's Treaty breaches; Section VI addresses the constitution of the arbitral tribunal; and Section VII presents DT's requests for relief.

11. DT reserves the right to amend and/or supplement its claims herein.

II. THE PARTIES TO THE DISPUTE

A. THE CLAIMANT

12. The claimant in this arbitration is Deutsche Telekom AG (***DT***), a publicly listed company incorporated under the laws of Germany, with its registered office at Friedrich-Ebert-Allee 140, 53113 Bonn, Germany.[4]

13. DT is represented in this arbitration by the following legal representatives, to whom all correspondence and notices related to these proceedings should be addressed:

Karam Daulet-Singh
Platinum Partners
2nd Floor, Block-E
The Mira, Plot-1&2,
Ishwar Nagar
Mathura Road
New Delhi, India – 110 065
Email: karam.dauletsingh@platinumpartners.co.in

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[4] Articles of Incorporation of Deutsche Telekom AG as entered on the Commercial Register on 25 June 2013 (English translation), **Exhibit C-45**.

Samuel Wordsworth QC
Essex Court Chambers
24 Lincoln's Inn Fields
London WC2A 3EG United Kingdom
Email: swordsworth@essexcourt.net

B. THE RESPONDENT

14. The respondent in this arbitration is the Republic of India.

15. This Notice of Arbitration is being delivered to:

His Excellency the President of the Republic of India,
Shri Pranab Mukherjee,
Rashtrapati Bhavan,
New Delhi, India – 110 004

His Excellency the Prime Minister of the Republic of India,
Shri Dr Manmohan Singh,
South Block, Raisina Hill,
New Delhi, India – 110 011

16. A copy will also be sent to:

Minister of Law and Justice,
Shri Kapil Sibal,
Ministry of Law and Justice, 4th Floor,
A-Wing, Shastri Bhawan,
New Delhi, India – 110 001

Minister of Finance,
Shri P. Chidambaram,
Ministry of Finance,
North Block,
New Delhi, India – 110 001

Minister of External Affairs,
Shri Salman Khurshid,
Ministry of External Affairs,
Jawaharlal Nehru Bhawan,
New Delhi, India – 110 011

National Security Advisor,
Shri Shivshankar Menon,
National Security Advisor,
Prime Minister's Office,
South Block, Raisina Hill,
New Delhi, India – 110 011

17. Until such time as India informs DT of details of its legal representatives, DT will continue to address notices and correspondence in these proceedings to their excellencies, the President and the Prime Minister of India, with a copy sent to the persons listed in paragraph 16.

III. FACTS RELEVANT TO THE DISPUTE

A. DEVAS'S AGREEMENT WITH THE INDIAN SPACE AUTHORITIES

18. In 2003, the founders of Devas[5] - US and Indian investors with significant expertise in satellite technology - proposed to the Indian Space Authorities a collaboration to deploy the unutilised S-band satellite spectrum that had been allocated to India by the International Telecommunications Union (***ITU***).

19. Devas's proposal was to use its innovative hybrid satellite-terrestrial technology to provide mobile multimedia and broadband data services to both the urban and rural population across India – including those in remote and previously underserved areas, which could only be accessed via satellite. This proposal, and the unique technology driving it, was attractive to the Indian Space Authorities as a means to promote India's satellite industry and to implement the Government's policy objective of connectivity in rural areas.[6]

20. During 2003 and 2004, Devas's founders negotiated with the relevant Indian authorities regarding the collaboration. The key players on the Indian side were:

    (a) Antrix, a wholly state-owned company, which is the commercial and marketing arm of the DoS. Antrix was established in 1992[7] to promote the commercial exploitation of space products and technologies developed by

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[5] Devas's founders included Mr Ramachandran Viswanathan, Mr James Fox and Mr Paresh Shah, the principals of Forge Advisors LLC, a US consultancy.

[6] As recognised by former ISRO and Antrix Chairman, Dr. Kasturirangan: "[the] Devas technology is the outcome of a consortium of top designers of communication systems across the world. Don't think this is something which is done in the Indian laboratory. It is a very unique technology which has been contributed to by some of the best peers in the field". Transcript of ISRO Press Conference, CNN-IBN, 8 February 2011, **Exhibit C-26**.

[7] Articles of Association of Antrix Corporation Limited, 28 September 1992, **Exhibit C-2**.

ISRO.[8] Antrix's directors are appointed by the President of India and include representatives of the DoS/ ISRO;[9]

(b) ISRO, a state entity which also forms part of the DoS and, amongst other functions, is responsible for building, launching and operating Indian satellites;[10]

(c) the DoS, the government department which oversees India's space programmes, as well as the design and development of spacecraft, and research and development in space technologies.[11] The minister in charge of the DoS is the Prime Minister;

(d) the Space Commission, an executive body which sits above the DoS in the Indian hierarchy, and is responsible for formulating space policy and overseeing the implementation of the Indian space programme;[12] and

(e) Dr K Kasturirangan, who served in four roles simultaneously, namely Chair of the Space Commission, Secretary of DoS, Chair of ISRO and Chair of Antrix, from 1994 until August 2003, and his successors in these (concurrent) posts, Dr G. Madhavan Nair (from September 2003 to October 2009) and Dr K. Radhakrishnan (from 31 October 2009 to the present date).[13]

21. Initially, a joint venture was favoured by the Indian Space Authorities to realise the Devas System. However, ultimately it was agreed that Devas would lease S-Band satellite capacity from Antrix, consistent with past practice of DOS/ISRO/Antrix

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8 See Antrix website, *About Us*, available at http://www.antrix.gov.in/aboutus.html, extract attached as **Exhibit C-48**. (All references to internet pages are valid on 2 September 2013).

9 Articles of Association of Antrix Corporation Limited, 28 September 1992, **Exhibit C-2**, Art. 63(1). Pursuant to Art 1 (iii), the President acts through the Secretary of DoS.

10 See ISRO website, *About Us*, available at http://www.isro.org/scripts/Aboutus.aspx, extract attached as **Exhibit C-49**.

11 See DoS website, *About Us*, available at http://dos.gov.in/about-dos.aspx, extract attached as **Exhibit C-50**.

12 See ISRO website, *About us* and organisation chart of Indian Space Authorities, http://www.isro.org/scripts/Aboutus.aspx, extracts attached as **Exhibit C-49**. The members of the Space Commission include the Secretary of DoS, the Minister of State, the National Security Advisor, the Principal Secretary to the Prime Minister and the Cabinet Secretary.

13 See ISRO website, *Present and Former Chairmen*, http://www.isro.org/Ourchairman/Present/chairman.aspx#, extracts attached as **Exhibit C-49**.

(which had previously leased transponders on ISRO satellites to private users on a first come first served basis).[14]

22. During the negotiations, a High Power Government Committee was constituted to review the technical feasibility, commercial, financial and other aspects of the Devas proposal, including alternate uses for the space segment. The Committee was chaired by Dr K.N. Shankara, the Director of the Space Application Centre, and included specialists from ISRO and DoS (the ***Shankara Committee***). Based on its review, the Shankhara Committee concluded that the contemplated Devas System was both technically sound and attractive for India, and advised on the appropriate pricing of the lease of the transponders.[15]

23. On the recommendation of the Shankara Committee, and after briefing the Technical Advisory Group of the INSAT Coordination Committee, the Antrix Board of Directors proceeded in December 2004 to approve a draft agreement with Devas.[16]

24. Devas was incorporated on 17 December 2004[17] specifically for the purpose of entering into the Agreement for the Lease of Space Segment Capacity on ISRO/Antrix S-Band Spacecraft, concluded with Antrix on 28 January 2005.[18]

25. Pursuant to the terms of the Agreement, Antrix agreed to lease five C X S transponders, each of 8.1 MHz capacity, and five S X C transponders, each of 2.7 MHz capacity, to Devas on a new satellite known as "PS-1", to be manufactured and launched by ISRO.[19] Devas was also granted the option to lease additional capacity on a second satellite, "PS-2". The initial lease period was 12 years.[20]

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14 B Suresh, *Report on GSAT-6* (May 2010) as submitted to Chairman ISRO/Secretary DoS (the ***Suresh Report***) – redacted version obtained from the Central Public Information Office further to an RTI request, **Exhibit C-23**, p 9; Policy framework for satellite communication in India as approved by the Government of India in 1997, http://www.isro.gov.in/news/pdf/satcom-policy.pdf, **Exhibit C-4**.

15 Suresh Report, **Exhibit C-23**, p 8.

16 Ibid, p 7.

17 Devas Certificate of Incorporation, 17 December 2004, **Exhibit C-5**.

18 Agreement, **Exhibit C-6**.

19 Ibid at Art. 2.

20 Ibid at Art. 3a.

26. The Agreement required Devas to pay Antrix: (i) an upfront capacity reservation fee of US$ 20 million (to be paid in instalments) in respect of each of PS-1 and PS-2;[21] (ii) lease fees in the amount of US$ 9 million per year (increased, at the suggestion of the Shankara Committee, to US$ 11.25 million per year once Devas became cash positive);[22] and (iii) critical component acquisition fees.[23]

27. Antrix, for its part, undertook to "make/build, manufacture, launch and operate the [s]atellites, and provide the [l]eased [c]apacity"[24] and *inter alia* to obtain all clearances for orbit slot and frequency resources from national and international agencies to operate the Devas System.[25] The parties agreed to "discharge their obligations in utmost good faith."[26]

B. DEVAS'S (CURTAILED) OPERATIONS IN INDIA

28. Following the signing of the Agreement, Devas's management met regularly with Dr Madhavan Nair, who, as noted above, acted simultaneously as Chair of the Space Commission, Secretary of DoS, Chair of ISRO and Chair of Antrix. Both Dr Nair, and later his successor, Dr Radhakrishnan, repeatedly affirmed the Government's commitment to Devas and its investors to the launch of the satellites and lease of S-band capacity required to operate the Devas System. Thus, Devas and its investors understood - and were encouraged to understand - that the Agreement and the Devas project had the full backing of the Indian Space Authorities.

29. Indeed, the Indian Space Authorities took significant steps to perform the Agreement and realise the Devas System.

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21 Ibid at Art. 4 and Exhibit B, Clause 2.1.1. Pursuant to Clause 1.1 of Exhibit B, all US dollar amounts were to be paid in Indian rupees at the exchange rate prevailing at the date of signature of the Agreement. Pursuant to a subsequent letter agreement dated 24 June 2006, **Exhibit C-10**, the prevailing exchange was US$1=Rs 43.78.

22 Ibid at Art. 4 and Exhibit B, Clauses 2.1.2.B and 2.1.2.1. The ISRO Background Note on Agreement between M/s Antrix Corporation and M/s Devas Multimedia Pvt. Ltd regarding lease of space segment capacity in S-Band spectrum on ISRO's Satellites GSAT-6 and GSAT-6A, **Exhibit C-47**, p 2, noted that "the amount payable by Devas is US$ 300 million over a period of 12 years."

23 Ibid at Exhibit B, Arts. 3.0 and 3.2.1.

24 Agreement, Art. 12(a)(iii).

25 Ibid at Art. 3(c) and Art. 12(a)(ii).

26 Ibid at Art. 21.

30. In December 2005, the Space Commission and the Union Cabinet approved the design, development and launch of a satellite called GSAT-6/INSAT4-E, a multimedia mobile satellite system, which matched the Agreement's specifications for PS-1.[27] The press release announcing the Cabinet approval noted that "[t]he successful accomplishment of the Project would also enable ISRO/DOS to become a leader in this growing worldwide satellite digital multimedia broadcasting (S-DMB) services to mobile vehicles and cellular phones and thus provide India access to these markets globally".[28]

31. On 2 February 2006, Antrix confirmed that it had obtained all necessary approvals (in coordination with DoS, ISRO and the ITU) for the construction and launch of the (first) satellite and lease of S-band capacity to Devas.[29] Thus, the Agreement fully entered into force, pursuant to Article 27.[30]

32. In reliance on the actions and representations of the Indian Space Authorities, Devas took steps to perform its side of the contractual bargain and realise the Devas System.

33. In March 2006, Devas secured an initial round of venture capital funding from CC/Devas Mauritius Limited (***CC/Devas***) and Telcom Devas Mauritius Limited (***Telcom Devas***),[31] the proceeds of which were used to pay Antrix the first instalment of the upfront capacity reservation fee of Rs 29,18,67,000 (approximately US$ 7 million) for the first satellite, PS1.[32]

34. In June 2007, Devas exercised its option to secure additional leased capacity on the second satellite, through payment of the first instalment of the upfront capacity

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[27] "Multimedia mobile s-band satellite mission (GSAT-6/INSAT4-E)", Press Information Bureau, Government of India, Cabinet, 1 December 2005, **Exhibit C-7**.

[28] Ibid.

[29] Letter from Antrix (Mr Murthi) to Devas (Mr Viswanathan), 2 February 2006, **Exhibit C-8**.

[30] Agreement, **Exhibit C-6**, Art. 27.

[31] CC/Devas and Telcom Devas are owned by Columbia Capital LLC and Telcom Ventures LLC, respectively.

[32] See letter from Devas to Antrix and enclosed cheque, 21 June 2006, **Exhibit C-9**.

reservation fee (again, of Rs 29,18,67,000, or approximately US$ 7 million) for PS2, following a further capital injection from CC/Devas and Telcom Devas.[33]

35. Between 2007 and 2010, with the benefit of financial and technical contributions from DT as from 2008 (outlined below), Devas forged ahead with its business, expending significant time, effort and resources, at all times with the (apparent) support of the Indian Space Authorities. In particular, Devas:

(a) applied for and obtained an internet service provider licence from the Indian Government in May 2008;

(b) conducted, in conjunction with Antrix, a series of design reviews of the Devas System from 2008 to 2010;

(c) secured licences from various Indian Government ministries to conduct experimental trials of the Devas System in 2008 and 2009;

(d) conducted successful technical trials of the Devas System (in 2009 and 2010) in India, Germany and China. Trials in India were witnessed by officials from the Indian Space Authorities, including Dr Radhakrishnan; and

(e) encouraged by the results of these trials, entered into binding contracts with a number of third party vendors over 2009 and 2010, including Alcatel Lucent and Ericsson, for the provision of technology and related services.

36. In short, Devas was standing ready to roll out its services from late 2009, awaiting only the launch of the first satellite by ISRO, which had been contractually scheduled for June 2009.

C. DT'S INVESTMENTS IN INDIA, THROUGH DEVAS

37. Over the course of 2008 and 2009, DT acquired a significant stake in Devas through its wholly-owned Singaporean subsidiary, Deutsche Telekom Asia Pte Ltd (***DT Asia***).[34]

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[33] See letter from Devas to Antrix and enclosed cheque, 18 June 2007, **Exhibit C-11**.

38. In 2007, Devas had sought an established strategic and technical partner with the know-how and experience to implement the roll-out of its terrestrial network. DT met these criteria. In turn, an investment in India through Devas constituted an interesting business proposition for DT, complementing its own strategic objective of using alternative mobile access technologies to enter emerging markets.

39. The commitment of the Indian Space Authorities to the Devas business was naturally key to DT. Having carefully reviewed the Agreement with Antrix, which was the key asset of Devas, and reviewed the confirmation by Antrix in February 2006 that it had received all the necessary approvals from the relevant authorities to lease the agreed S-band capacity to Devas, before making a decision to invest in Devas, DT wished to hear directly from the Indian Government that it was committed to the performance of the Agreement, the launch of the satellites and the realisation of the Devas System.

40. Consequently, Devas's management set up a series of meetings in India with Antrix/ISRO and other Indian Government officials. During meetings in Bangalore in December 2007, the Indian Space Authorities affirmed to DT their commitment to the partnership with Devas and strong support for the Devas System, which they viewed as a means to promote India's satellite industry and implement the Government's policy to supply broadband access to rural areas. DT was satisfied that the Indian Space Authorities had both the drive and the technical capabilities to deliver their side of the bargain, in terms of building, launching and operating the satellites required for the lease of the S-band spectrum under the Agreement.

41. Following completion of its due diligence and in light of the positive outcome of that process – in particular, the positive affirmations that had been received from the Indian Space Authorities - DT took the decision to invest in Devas through DT Asia.

[34] DT Asia Memorandum and Articles of Association, 8 July 1993, **Exhibit C-3**; DT Asia Share Certificates issued on 14 August 2008 and 23 September 2009, **Exhibits C-14** and **C-18**; Register of Members and Share Ledger of DT Asia, 25 June 2013, **Exhibit C-46**.

42. DT, through DT Asia, agreed to make an initial investment in Devas of approximately US$ 75 million in March 2008.[35] On closing, in August 2008, DT Asia acquired 28,349 equity shares in Devas.[36] On 7 August 2008 and 21 October 2008, India's Foreign Investment and Promotion Board (***FIPB***) approved this investment.[37]

43. In September 2009, an additional capital injection was made by Devas's shareholders. DT subscribed for a further 8,400 equity shares in Devas, in exchange for approximately US$ 22 million.[38] Again, the FIPB approved the investment.[39]

44. In addition to providing capital, DT also acted as a "technical and strategic partner", contributing substantial operational experience and know-how to Devas. As a world leader in telecoms, DT provided invaluable technical assistance to Devas in anticipation of a successful satellite launch. Over a period of more than two years, a team of DT engineers and technical specialists worked closely with Devas personnel to plan the roll-out of the auxiliary terrestrial component of the network. DT also assisted Devas with identifying, pricing and procuring components needed for its network and provided Devas with access to its extensive network of suppliers. DT's personnel also played a leading role in developing and updating Devas's business plan, and in conducting experimental trials of the Devas System in Germany and elsewhere from 2009 to 2010.

45. As of today's date, DT, through DT Asia, continues to own 36,749 equity shares in Devas which amounts to approximately 20% of Devas's issued share capital. DT is the largest shareholder in Devas, with the greatest amount of capital invested in the

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[35] Share Subscription Agreement between Devas and DT Asia, 19 March 2008 (without exhibits and schedules), **Exhibit C-12**.

[36] DT Asia Board Resolution approving investment in Devas, 18 August 2008, **Exhibit C-15**; Devas Share Certificate for 28,349 Class "C" Equity Shares, 18 August 2008, **Exhibit C-16**.

[37] Letters from FIPB (Mr R Prasad) to Devas, 7 August 2008 and 21 October 2008, **Exhibits C-13** and **C-17**.

[38] DT Asia Board Resolution approving further investment in Devas, 29 September 2009, **Exhibit C-19**; Share Subscription Agreement among Devas Devas, CC/Devas, Telcom Devas and DT Asia, 29 September 2009, (without exhibits and schedules), **Exhibit C-20**; Devas Share Certificate for 8,400 Class "C" Equity Shares, 29 September 2009, **Exhibit C-21**.

[39] Letter from FIPB (Mr P Saxena) to Devas, 29 September 2009, **Exhibit C-22**.

business. Other foreign investors in Devas include CC/ Devas, Telcom Devas and Devas Employees Mauritius Private Limited (***DEMPL***).[40]

D. INDIA'S PURPORTED "ANNULMENT" OF THE AGREEMENT

46. Despite remaining outwardly supportive of Devas through 2010, it is now clear that in late 2009 a "sea change" occurred in the perception of the Devas System amongst certain Indian Government officials. This change of heart, which the Government did not communicate to Devas until over a year later, ultimately resulted in the purported "annulment" of the Agreement by India, which substantially deprived DT of the value of its investment in Devas.

47. In December 2009, unbeknownst to Devas or its investors, Dr Radhakrishnan, the newly appointed Chair of Antrix, ISRO and the Space Commission and Secretary of DoS, initiated a "comprehensive review" of the Agreement.[41] That review, chaired by B.N. Suresh who reported back in May 2010 (the ***Suresh Report***), found no wrongdoing on the part of Devas, and confirmed (*inter alia*) that the lease of the transponder capacity on the ISRO satellites to Devas had been concluded in accordance with the established procedures of Antrix, as recommended by the Shankara Committee which reviewed the Agreement at the time. However, the Suresh Report advised the Government to "re-visit" the Agreement in light of, *inter alia*, the financial penalties payable on late delivery of the satellite and the potential need for the Government to preserve S-band spectrum for "strategic" uses.[42]

48. From May 2010, the Indian media ran stories (without foundation) to the effect that the Indian Space Authorities had granted Devas preferential treatment and were

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[40] A separate arbitration has been brought against India by the Mauritian investors in Devas (CC/ Devas, Telcom Devas and DEMPL) under the Agreement between the Government of the Republic of Mauritius and the Government of the Republic of India for the Promotion and Protection of Investments, certain details of which are stated on the website of the Permanent Court of Arbitration at http://www.pca-cpa.org/showpage.asp?pag_id=1511, attached as **Exhibit C-51**.

[41] Transcript of ISRO Press Conference, CNN-IBN, 8 February 2011, **Exhibit C-26**.

[42] Suresh Report, **Exhibit C-23,** pp 16-17. The Report also made observations regarding the guidelines applicable to Antrix, the requirement that transponder leases should be "non-exclusive", and the utilisation of S-band spectrum allocation going forward.

under-selling valuable national spectrum resources.[43] So portrayed, the Devas-Antrix deal became associated with the (unrelated) unfolding scandal regarding the past allocation by the Department of Telecommunications of 2G (terrestrial) spectrum, and the highly profitable contemporaneous auction of 3G (terrestrial) spectrum, which resulted in the resignation and subsequent arrest of the Minister of Telecommunications.

49. Against that political and commercial backdrop, it has now emerged that (following receipt by the DoS of the Suresh Report, and at the behest of the DoS) on 2 July 2010, the Space Commission decided to "annul" the Agreement on the basis that "there [was] high priority for the country's strategic requirements and the societal applications which have be to met using the S-band spectrum that is in the possession of ISRO." This decision was taken in secret, but later became public.[44]

50. Further to the Space Commission's decision to "annul" the Agreement, the DoS initiated "extensive consultations with the concerned agencies in government…Department of Telecommunications, Department of Law and Justice, all included" to determine how to terminate the Agreement "without causing much of embarrassment and damage and financial loss to the government".[45]

51. As part of this consultation process, in July 2010, the DoS sought advice from the Additional Solicitor General of India as to

> whether Antrix-Devas contract can be annulled by invoking any of the provisions of the contract in order to (i) preserve precious S band spectrum for strategic requirements of the nation and (ii) to

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[43] For example, "Devas gets preferential allocation of ISRO's spectrum", *The Hindu Business Line*, 30 May 2010 and 'Another spectrum sold on the quiet', *The Hindu Business Line*, 1 June 2010 submitted together as **Exhibit C-24**.

[44] Transcript of ISRO Press Conference, CNN-IBN, 8 February 2011, **Exhibit C-26**, p 4. See also Background Note on Agreement between M/s Antrix Corporation and M/s Devas Multimedia Pvt. Ltd regarding lease of space segment capacity in S-Band spectrum on ISRO's Satellites GSAT-6 and GSAT-6A, **Exhibit C-47**, p 4 and copy of the decisions/ recommendations of the Space Commission in its meeting of July 2, 2010, **Exhibit C-25**.

[45] Transcript of ISRO Press Conference, CNN-IBN, 8 February 2011, **Exhibit C-26**, p 4.

> ensure a level playing field for other service providers using terrestrial spectrum.[46]

52. As to this, the Additional Solicitor General advised that there was no lawful basis on which Antrix could invoke the termination provisions of Article 7 of the Agreement:

> The modus of termination has been specified in the agreement in clause 7. But I am afraid that the conditions stipulated in this clause cannot be invoked at this stage for the purpose of terminating the contract.[47]

53. However, and despite noting that, under the terms of the Agreement, a *force majeure* event had to be "beyond the reasonable control of the party affected", the Additional Solicitor General advised that DoS/Antrix could rely on the "sea change" in government policies on spectrum allocation, as an event of *force majeure*. He further advised, adding "one note of caution" that "greater legal sanctity" could be achieved through a specific policy decision impacting the Agreement:

> It is always advisable that in the present case, instead of the Department of Space taking a decision to terminate, it would be more prudent that a decision is taken by the Government of India, as a matter of policy, in exercise of its executive power or in other words, a policy decision having the seal and approval of the Cabinet and duly gazetted as per the Business Rules of the Government of India. That would give greater legal sanctity to the decision to terminate the contract in as much as the contractual provisions expressly stipulate that for the force majeure event, to disable one of the parties to perform its obligations under the contract, the act must be an act by the government authority acting in its sovereign capacity.[48]

54. Devas and its investors knew nothing of this decision at the time. The first Government "communication" to this effect came in the form of a press conference by Dr Radhakrishnan on 8 February 2011, during which he announced that the Indian Space Authorities had decided to annul the Agreement to "ensure that the G-Sat and GSAT 6A satellites are made and then used to meet the strategic requirements."[49]

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[46] "Additional Solicitor General's Opinion on Devas-Antrix deal", *The Hindu*, 11 February 2011, **Exhibit C-29**.

[47] Ibid.

[48] Ibid.

[49] Transcript of ISRO Press Conference, CNN-IBN, 8 February 2011, **Exhibit C-26**, p 4.

55. In the months leading up to the purported "annulment" of the Agreement in February 2011, the Indian Space Authorities had neither voiced to Devas any concerns in relation to the Devas System, nor indicated that the Government was considering cancelling the Agreement for reasons of national strategic requirements or otherwise. On the contrary, over the course of 2009 and 2010, representatives of Devas were repeatedly reassured by senior officials from Antrix, ISRO and DoS at numerous meetings (most attended by Dr Radhakrishnan personally) that ongoing delays to the launch of the first satellite were attributable to technical problems, that all efforts were being made to secure the earliest launch of the satellite and that the Indian Space Authorities continued to support the Devas System and the Agreement.

56. On hearing of the Government's decision, Devas wrote immediately to the Prime Minister and Dr Radhakrishnan, expressing its dismay at the conduct of the Indian Space Authorities and urging them to reconsider the decision announced in the media and to honour the Agreement - but to no avail.[50]

57. On 16 February 2011, the Prime Minister of India explained in a press conference that the Government had decided it "should take a sovereign policy decision regarding the utilization of Space Band capacity which uses S band spectrum having regard to the country's strategic requirements," adding that there was "no question of diluting in any way the recommendations of the Space Commission."[51]

58. On 17 February 2011, further to a request made by the DoS, the Cabinet Committee on Security duly issued a "policy" decision in order to justify (*ex post facto*) the "annulment" of the Agreement, apparently following - to the letter - the advice of the Additional Solicitor General. The then Law Minister, M. Veerappa Moily, issued the following statement on behalf of the Cabinet office:

> Taking note of the fact that Government policies with regard to allocation of spectrum have undergone a change in the last few years and there has been an increased demand for allocation of spectrum for national needs, including for the needs of defence,

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50 See, e.g., Letter from Devas (Mr Viswanathan) to the Prime Minister of India (His Excellency Dr Manmohan Singh), 10 February 2011, **Exhibit C-27**; Letter from Devas (Mr Viswanathan) to Antrix (Dr Radhakrishnan), 11 February 2011, **Exhibit C-28**.

51 Prime Minister of India's Press Release, 16 February 2011, **Exhibit C-30**.

> para-military forces, railways and other public utility services as well as for societal needs, and having regard to the needs of the country's strategic requirements, the Government will not be able to provide orbit slot in S band to Antrix for commercial activities, including for those which are the subject matter of existing contractual obligations for S band.
>
> In light of this policy of not providing orbit slot in S Band to Antrix for commercial activities, the "Agreement for the lease of space segment capacity on ISRO/Antrix S-Band spacecraft by Devas Multimedia Pvt. Ltd" entered into between Antrix Corporation and Devas Multimedia Pvt. Ltd. on 28th January, 2005 shall be annulled forthwith.[52]

59. Belatedly, on 25 February 2011, Antrix sent Devas formal notification of the purported termination of the Agreement – the first communication sent directly to Devas in relation to a contractual review started 15 months previously.[53]

60. In its letter, Antrix noted the communication by the Central Government "acting in its sovereign capacity" of its "policy decision" not to provide orbital slot in S-Band to Antrix for commercial activities, including those under the Agreement. On this basis, Antrix sought to terminate the Agreement by reference to the termination provisions of Article 7(c) and an indefinite *force majeure* event under Article 11(b)(v). This was despite the Additional Solicitor General's view that the Agreement could not be terminated under Article 7, and the fact that under Article 11(g) only the party "unaffected" by the *force majeure*, that is Devas, had the right to terminate.

61. No attempt was made by Antrix to mitigate the obvious damage caused to Devas by the alleged event of *force majeure*. The Indian Space Authorities never sought to consult with Devas as to whether the Government's alleged "strategic" spectrum needs could potentially have been reconciled with the pre-existing contractual arrangements without the need to resort to termination.[54] Rather, the Indian Space Authorities actions only exacerbated the damage, by encouraging Devas and its

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52 Press Release, Press Information Bureau, Government of India, Cabinet Office, "CCS Decides to Annul Devas-Antrix Deal", 17 February 2011, **Exhibit C-31**.

53 Letter from Antrix (Mr Madhusudhan) to Devas, 25 February 2011, **Exhibit C-32**.

54 Indeed, so far as DT is aware, the 70 MhZ of S-band spectrum allocated to Devas has not been re-allocated to any Indian government agency (for "national security" or any other use) and remains, to date, unutilised.

investors to continue to invest time and money into performing a contract which was formally under review and which the Government planned to "annul".

62. On 28 February 2011, Devas wrote to Antrix rejecting this purported termination, for which there was no lawful justification under the terms of the Agreement, and demanding that Antrix honour its obligations.[55]

63. On 15 April 2011, and pursuant to its purported termination of the Agreement, Antrix presented Devas with a cheque for Rs 58,37,34,000 by way of "reimbursement" of the upfront capacity reservation fee instalments paid by Devas.[56] Devas naturally rejected the improper tender of this cheque, just as it had rejected the improper termination of the Agreement, and reiterated that the Agreement remained binding.[57]

64. After Antrix proved unwilling to resolve the contractual dispute through management negotiations, in June 2011, Devas commenced the Delhi Arbitration against Antrix before the ICC in accordance with Article 20 of the Agreement, requesting specific performance of the Agreement or, in the alternative, damages of US$ 1.6 billion.

65. Antrix, however, refused to participate in the Delhi Arbitration on a variety of spurious grounds, and took concrete steps to frustrate Devas's contractual remedy.[58] In August 2011, Antrix commenced proceedings in the Indian courts to enjoin the Delhi Arbitration, successfully obtaining a stay from the Indian Supreme Court in April 2012, just three days before the hearing in the Delhi Arbitration was due to take place.[59] That stay remained in place until 10 May 2013, when the Supreme Court eventually dismissed Antrix's petition.[60] Antrix submitted a petition to review the Supreme Court decision, which was also dismissed on 29 August 2013. Antrix has recently announced its (belated) decision to participate in the Delhi Arbitration.

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55 Letter from Devas (Mr Viswanathan) to Antrix (Dr Radhakrishnan & Mr Madhusudhan), 28 February 2011, **Exhibit C-33**.

56 Letter from Antrix (Mr Madhusudhana) to Devas, 15 April 2011, **Exhibit C-34**.

57 Letter from Devas (Mr Viswanathan) to Antrix (Mr Madhusudhan), 18 April 2011, **Exhibit C-35**.

58 Letter from Antrix (Mr Hedge) to Devas, 30 July 2011, **Exhibit C-36**.

59 Supreme Court of India Order in Arbitration Petition 20 of 2011, 9 April 2012, **Exhibit C-37**.

60 Supreme Court of India Judgment in Arbitration Petition 20 of 2011, 10 May 2013, **Exhibit C-43**.

66. In view of (*inter alia*) the protracted delays to the Delhi Arbitration caused by Antrix, Devas abandoned its claim for specific performance in June 2013, electing instead to accept Antrix's repudiation of the Agreement and claim only damages.[61]

67. Since initiating arbitration against Antrix, Devas has been the target of numerous civil investigations by a variety of state regulators, including the Ministry of Corporate Affairs, the Registry of Companies, the Enforcement Directorate and the Income Tax Authorities. By their nature and timing, it would appear that these investigations constitute an attempt by the Government to harass Devas, its directors, and its shareholders, in order to discourage them from pursuing their legal rights.

IV. JURISDICTION/ADMISSIBILITY

A. THE TEMPORAL SCOPE OF THE TREATY

68. The Treaty was signed on 10 July 1995, and entered into force on 13 July 1998. DT made its initial investment in India in August 2008 and India committed its first Treaty breach in February 2011.[62] Accordingly, the Treaty's *ratione temporis* requirements are fully satisfied.

B. DT'S STATUS AS AN "INVESTOR" UNDER THE TREATY

69. The Treaty defines "Investors" as (*inter alia*) "companies of a Contracting Party who have effected or are effecting investment in the territory of the other Contracting Party."[63] The Treaty, in turn, defines "companies" to include "juridical persons as well as commercial or other companies or associations with or without legal personality having their seat in the territory of the Federal Republic of Germany".[64]

70. DT is a company constituted in accordance with German laws, with its head office and seat in Bonn, Germany.[65] As a result, DT qualifies as an "Investor" protected under the Treaty.

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[61] Letter from Devas (Mr Viswanathan) to Antrix, 13 June 2013, **Exhibit C-44**.

[62] See *supra* Section III.D.

[63] Treaty, **Exhibit C-1**, Article 1(c).

[64] Ibid, Article 1(a)(ii).

[65] Articles of Incorporation of Deutsche Telekom AG as entered on the Commercial Register on 25 June 2013 (English translation), **Exhibit C-45**.

C. DT'S "INVESTMENT" UNDER THE TREATY

71. The Treaty defines "Investment" broadly, as follows:

> "Investment" means every kind of asset invested in accordance with the national laws of the Contracting Party where the investment is made and, in particular, though not exclusively, includes:
>
> (i) movable and immovable property as well as other rights such as mortgages, liens, or pledges;
>
> (ii) shares in, and stock and debentures of, a company, and any other forms of such interests in a company;
>
> (iii) right to money or to any performance under contract having a financial value;
>
> (iv) intellectual property rights, including patents, copyrights, registered designs, trade marks, trade names, technical processes, know-how and goodwill in accordance with the relevant laws of the respective Contracting Party;
>
> (v) business concessions conferred by law or under contract, including concessions for mining and oil exploration.[66]

72. At all relevant times (*i.e.*, from before the commencement of India's measures in February 2011, through to the date of filing this Notice), DT has held an investment in India, *inter alia*, in the form of an indirect shareholding in Devas.[67] Consequently, DT has a protected investment in India, as that term is defined in the Treaty.

D. THE PARTIES' CONSENT TO UNCITRAL ARBITRATION

73. India's consent to submit disputes with German investors (including this dispute with DT) to UNCITRAL arbitration is provided by Article 9 of the Treaty (India's standing offer to resolve this dispute through arbitration), as follows:

> (1) Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the

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[66] Treaty, Article 1(b).

[67] See *supra* fn 34-38.

> parties to the dispute. The party intending to resolve such dispute through negotiations shall give notice to the other of its intentions.
>
> (2) If the dispute cannot be thus resolved as provided in paragraph 1 of this Article within six months from the date of notice given thereunder, then the dispute may be referred to conciliation in accordance with the United Nations Commission on International Trade Law Rules on Conciliation, 1980, if both parties agree. If either party does not agree to conciliation or if conciliation fails, either party may refer such dispute to arbitration in accordance with the United Nations Commission on International Trade Law Rules on Arbitration, 1976, subject to the following provisions:
>
> […][68]

74. Article 9 of the Treaty establishes a number of requirements for jurisdiction/admissibility, all of which are satisfied in this case:

(a) a dispute exists between DT and India in connection with an investment made by DT in the territory of India (the ***Dispute***);

(b) on 15 May 2012, DT formally notified India of the existence of the Dispute and India's breaches of the Treaty, pursuant to Article 9 of the Treaty;[69]

(c) DT initially sought to resolve the Dispute amicably, through letters and offers of its availability to meet in-person with India's representatives.[70] However, no satisfactory response or agreement to engage in amicable negotiations was ever received from the Indian Government;[71] and

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[68] The procedural provisions of Article 9 of the Treaty are set out at paragraph 92 below.

[69] Letter from DT (Dr Balz & Dr Junker) to Prime Minister's Office (His Excellency Dr. Manmohan Singh), 15 May 2012, **Exhibit C-38**. By this time, India was well aware of a dispute surrounding Devas, as the subject had been raised in extensive correspondence sent by Devas and certain of its (other) foreign investors since the purported termination of the Agreement. See paragraphs 56 and 62 and fn 40 above.

[70] Letter from DT (Dr Balz & Dr Junker) to the Prime Minister of India (His Excellency Dr Manmohan Singh) and others, 15 May 2012, **Exhibit C-38**; Letter from DT (Dr Kremer & Mr Cazzonelli) to the Prime Minister of India (His Excellency Dr Manmohan Singh), 15 February 2013, **Exhibit C-40**.

[71] DT received only a cursory response from the Additional Secretary of DoS stating that since a contractual dispute between Devas and Antrix was "*sub judice*", DT's notification under the Treaty was "premature." Letter from DoS (Mr Srinivasan) to DT, 19 December 2012 (received 14 January 2013), **Exhibit C-39**. DT's response was set out in a letter from Dr Kremer & Mr Cazzonelli to DoS (Mr Srinivasan), 18 February 2013, **Exhibit C-41**. DoS responded on 21 March 2013, denying the existence of an investment dispute under the Treaty, **Exhibit C-42**.

(d) more than six months have now elapsed since DT notified India of the existence of the Dispute, and the Dispute remains extant.

V. INDIA'S TREATY BREACHES

75. The Treaty imposes obligations on all organs (executive, legislative and judicial) and emanations of the Indian state, including, without limitation, the Union Cabinet, the Cabinet Committee on Security, the Space Commission, the DoS, ISRO, Antrix, the Indian courts, and all their employees, agents, officials and representatives.

76. India's measures, as set out above, violated its obligations under the Treaty, including but not limited to its obligations: (a) not to subject DT's investment to expropriation, nationalisation or measures having equivalent effect; (b) to accord DT's investment fair and equitable treatment; (c) to afford full protection and security to DT's investment; and (d) to encourage and create favourable investment conditions for DT. Each of these Treaty breaches is considered briefly, in turn.

A. UNLAWFUL EXPROPRIATION

77. Article 5 of the Treaty provides:

> (1) Investments of investors of either Contracting Party shall not be expropriated, nationalised or subjected to measures having effect equivalent to nationalisation or expropriation in the territory of the other Contracting Party except in public interest, authorised by the laws of that Party, on a non-discriminatory basis and against compensation which shall be equivalent to the value of the expropriated or nationalised investment immediately before the date on which such expropriation or nationalisation became publicly known. Such compensation shall be effectively realisable without undue delay and shall be freely convertible and transferable. Interest shall be paid in a fair and equitable manner for the period between the date of expropriation or nationalisation and the date of actual payment of compensation.
>
> (2) An investor whose investment is expropriated or nationalised may, under the laws of the Contracting Party making the expropriation or nationalisation, seek review of expropriation or nationalisation measures by a judicial or other independent authority of that Contracting Party.
>
> (3) Where a Contracting Party expropriates the assets of a company in its own territory, in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraphs 1 and 2 of this Article are applied in the same manner

> to provide compensation in respect of the investment of such investors of the other Contracting Party who are owners of those shares.

78. India's decision to "annul" the Agreement, which was taken at the highest level by the Union Cabinet (as described in Section III.D above), was (a) motivated not by any public interest, but by commercial, financial and political considerations, (b) not authorised by Indian laws and not in accordance with due process, (c) discriminatory against Devas, and (d) not against proper compensation (the offer of Antrix to "reimburse" Devas's upfront capacity fees being wholly inadequate). The "annulment" of the Agreement by India deprived Devas of its key asset and destroyed the value of its business; in doing so, it substantially deprived DT of its investment in Devas.

79. Through its unlawful and politically-motivated "annulment" of the Agreement, and in breach of Article 5(1) and/or 5(3) of the Treaty, India has indirectly expropriated DT's investment (its shares in Devas) and/or has directly expropriated the key asset (the Agreement) of Devas, an Indian company in which DT owns shares.

B. FAIR AND EQUITABLE TREATMENT

80. Article 3(2) of the Treaty provides:

> Each Contracting Party shall accord to investments as well as to investors in respect of such investments at all times fair and equitable treatment […]

81. India has failed to accord DT's investment fair and equitable treatment by treating this investment in a manner (as described in Section III.D above) which is unfair and inequitable:

    (a) India's conduct, in contriving a sovereign "policy decision" targeting Devas in order to evade Antrix's contractual obligations, was unjustified and arbitrary. The Government's actions were motivated by political, commercial and financial considerations, wholly unconnected with any non-performance on the part of Devas.

    (b) India acted in a manner which was non-transparent, a breach of due process and lacking in good faith. India conducted its review of the Agreement

behind closed doors, without notifying Devas or offering it any opportunity to participate, and instead encouraged Devas to continue to perform the Agreement, eventually announcing the purported "annulment" of the Agreement in a press conference, as a *fait accompli*.

(c) India's conduct was contrary to DT's legitimate expectations that having through Antrix or otherwise: (i) concluded the Agreement, (ii) confirmed on 2 February 2006 that it had obtained all necessary approvals from the Indian Space Authorities to lease the S-band capacity to Devas, and (iii) represented to both DT and Devas that it was committed to the launch of the satellites and the Devas System, India would not withdraw the relevant approvals or seek to "annul" or otherwise interfere with Devas's contractual rights (save in the case of non-performance by Devas, and in accordance with the Agreement). Further, India failed to provide DT with a stable and predictable legal and regulatory framework for its investment in Devas.

(d) India's conduct was also disproportionate. In the context of any concerns surrounding the "strategic" use of spectrum, the proportionate response would have been to consult with Devas regarding its alleged spectrum needs. No attempt was made by India to determine whether these alleged needs could have been reconciled with the pre-existing contractual arrangements with Devas, without the need to resort to a draconian "annulment".

82. In short, India has failed to accord DT and its investment in Devas fair and equitable treatment, in breach of Article 3(2) of the Treaty.

C. FULL PROTECTION AND SECURITY

83. Article 3(2) of the Treaty provides:

> Each Contracting Party shall accord to investments as well as to investors in respect of such investments at all times […] full protection and security in its territory.

84. By its conduct described in Section III.D above above, India has also breached Article 3(2) of the Treaty, by denying full protection and security to DT's investment, which includes the obligation to provide a stable and predictable legal and regulatory framework for investors and their investments.

D. NATIONAL AND MOST FAVOURED NATION TREATMENT

85. Article 4 of the Treaty (the national and most favoured nation (***MFN***) provision) provides that:

> (1) Each Contracting Party shall accord to investments of investors of the other Contracting Party, including their operation, management, maintenance, use, enjoyment or disposal by such investors, treatment which shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State.
>
> (2) The provisions of paragraph 1 shall not relate to privileges which either Contracting Party accords to investors of third States on account of its membership of, or association with, a customs or economic union, a common market or a free trade area.
>
> (3) The provisions of paragraph 1 shall also not relate to advantages which either Contracting Party accords to its own investors or to investors of third States by virtue of an agreement, legislation, or arrangements consequent to such legislation regarding matters of taxation, including an agreement on the avoidance of double taxation.

86. DT reserves all of its rights to rely on the above MFN provision to benefit from any more favourable treatment, whether of a procedural or substantive nature, available in any other investment treaty concluded by India.

E. ENCOURAGEMENT AND CREATION OF FAVOURABLE CONDITIONS FOR INVESTORS

87. Article 3(1) of the Treaty provides, *inter alia*, that "Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party." India has breached its promise to create favourable conditions for DT's investments through the measures described above.

F. COMPENSATION PAYABLE TO DT UNDER THE TREATY

88. India's measures in breach of the Treaty protections outlined above have substantially deprived DT of the value of its investment in Devas. In accordance with well settled principles of international law, DT seeks full reparation for its losses, in the form of monetary compensation sufficient to wipe out all the

consequences of India's wrongful acts.[72] Such compensation should be paid without undue delay, be freely convertible and transferable, and bear interest at a compound rate sufficient fully to compensate DT for the loss of the use of this capital as from the date of India's measures.

89. The award of damages and interest should be made net of all Indian taxes; India should not tax, or attempt to tax, the payment of the award and, to the extent that it does, DT should be indemnified accordingly. DT also seeks an indemnity from India in respect of the imposition of any double taxation liability by the German (or other) tax authorities that would not have arisen but for India's measures.

90. For the purposes of Article 3(e) of the UNCITRAL Rules, while DT has yet to quantify the loss arising from India's breaches of the Treaty with respect to its 20% stake in Devas, DT notes that, in the Delhi Arbitration, Devas claimed (as of February 2012) that it had suffered a loss of US$ 1.6 billion as a result of India's purported annulment of the Agreement and consequent destruction of its business.

91. DT reserves all its rights in relation to further claims that may arise as a result of the ongoing or future actions of India targeting and/or frustrating the rights of Devas and its shareholders.

VI. CONSTITUTION OF THE ARBITRAL TRIBUNAL

92. So far as concerns constitution of an arbitral tribunal, Article 9(2)(b) of the Treaty states the following in respect of UNCITRAL arbitration proceedings commenced under the Treaty:

> (i) The arbitral tribunal shall consist of three arbitrators. Each party shall select an arbitrator. These two arbitrators shall appoint by mutual agreement a Chairman who shall be a national of a third State which has diplomatic relations with the Governments of the parties to the dispute. The arbitrators shall be appointed within two months from the date on which one of the parties to the dispute informs the other of its intention to submit the dispute to arbitration;

[72] DT does not seek double recovery in relation to its investment, and would take appropriate steps to ensure it is not compensated twice in the event that any damages were ever to be paid by Antrix to Devas pursuant to the Delhi Arbitration.

(ii) The arbitral award shall be made in accordance with the provisions of this Agreement, the relevant national laws including the rules on the conflict of laws of the Contracting Party where the investment dispute arises as well as the generally recognised principles of international law;

(iii) If the necessary appointments are not made within the period specified in paragraph (2)(b)(i), either party may, in the absence of any other agreement, request the Secretary General of the International Centre for the Settlement of Investment Disputes to make the necessary appointments;

(iv) The tribunal shall reach its decision by a majority of votes;

(v) The decision of the arbitral tribunal shall be final and binding and the parties shall abide by and comply with the terms of its award. The award shall be enforced in accordance with national laws of the Contracting Party where the investment has been made;

(vi) The arbitral tribunal shall state the basis of its decision and state reasons upon the request of either party;

(vii) Each party concerned shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining costs of the tribunal shall be borne equally by the parties concerned. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two parties, and this award shall be binding on both parties;

[…]

93. Pursuant to Article 9(2)(b)(i) of the Treaty, and Articles 3(4)(b) and 7(1) of the UNCITRAL Rules, DT hereby selects Mr Daniel M. Price as its party-appointed arbitrator. To the best of DT's knowledge and belief, Mr Price is independent and impartial of the parties. His contact information is as follows:

Daniel M. Price
Daniel M. Price PLLC
1401 Eye Street, NW, Suite 1120
Washington, DC 20005
+1 (202) 903-0619
Email: dmprice@danielmpricepllc.com

94. DT invites India to select its party-appointed arbitrator in accordance with Article 9(2)(b)(i) of the Treaty. Failing timely appointment by India, DT reserves its right to request the Secretary General of the International Centre for the Settlement of Investment Disputes to make the necessary appointment.

VII. CLAIMANT'S REQUEST FOR RELIEF

95. On the basis of the foregoing, without limitation and expressly reserving its right to supplement this request for relief in light of additional facts or further action that may be taken by India in relation to Devas, its directors and/or its shareholders, DT respectfully requests that a Tribunal appointed as described in Section VI above:

(a) DECLARE that India is in breach of its obligations under Articles 3 and 5 of the Treaty;

(b) ORDER India to compensate DT fully for its losses resulting from India's breaches of the Treaty and international law, in an amount to be determined at a later stage in these proceedings; such compensation to be paid without undue delay, be freely convertible and transferable, and bear (pre and post award) interest at a compound rate sufficient fully to compensate DT for the loss of the use of this capital as from the date of India's breaches of the Treaty;

(c) DECLARE that:

(i) the award of damages and interest in (b) be made net of all Indian taxes; and

(ii) India may not deduct taxes in respect of the payment of the award of damages and interest in (b);

(d) ORDER India to indemnify the Claimant:

(i) for any taxes India assesses on the award of damages and interest in (b); and

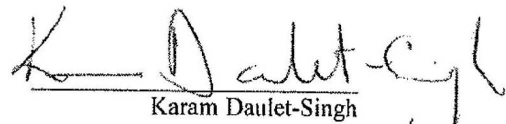
(ii) in respect of any double taxation liability that would arise in Germany or elsewhere that would not have arisen but for India's adverse measures;

(e) AWARD such further or other relief as the Tribunal considers appropriate; and

(f) ORDER India to pay all of the costs and expenses of this arbitration, including DT's legal and expert fees, the fees and expenses of the Tribunal, the fees and expenses of any appointing or administering authority, the fees and expenses of any experts appointed by the Tribunal, plus interest, pursuant to the discretion granted under Article 9(2)(b)(vii) of the Treaty and Article 40 of the UNCITRAL Rules.

2 September 2013

Respectfully submitted



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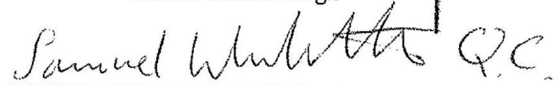

Samuel Wordsworth QC

for the Claimant