

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DEUTSCHE TELEKOM AG,

Petitioner,

vs.

AIR INDIA, LTD,

Respondent.

Civil Action No.

**DECLARATION OF JAMES H. BOYKIN
IN SUPPORT OF PETITION TO CONFIRM FOREIGN ARBITRAL AWARD AND
COMPLAINT FOR DECLARATORY JUDGMENT**

Pursuant to 28 U.S.C. § 1746, I, JAMES H. BOYKIN declare as follows:

1. I am a member of the bar of this Court and a partner of the law firm of Hughes Hubbard & Reed LLP, counsel for petitioner Deutsche Telekom AG. I respectfully submit this declaration in support of Petitioner’s Petition to Confirm Arbitration Award and Complaint for Declaratory Judgment.

2. Attached hereto as Exhibit 1 is a true and correct certified copy of the final arbitral award rendered on May 27, 2020 in PCA Case No. 2014-10 (“Award”).

3. Attached hereto as Exhibit 2 is a true and correct copy of the Agreement between India and Germany, entitled the Agreement between the Federal Republic of Germany and the Republic of India for the Promotion and Protection of Investments, signed on July 10, 1995 (“Treaty”). Article 9(2) of the Treaty contains India’s standing offer to arbitrate the underlying dispute. Exhibit 2 includes both the signed, authoritative version of the Treaty, and the unsigned versions that are held by the U.N. Treaty Series Depository (2071 U.N.T.S. 121).¹

¹ Under the Vienna Convention on the Law of Treaties of May 23, 1969, 1155 U.N.T.S. 331, the text of a treaty is established as authentic and definitive by the signatures of the states parties to the treaty. Here, there are no differences between the signed text of the Treaty and the unsigned text at the U.N. Treaty Series Depository.

4. Attached hereto as Exhibit 3 is a true and correct certified copy of the interim arbitral award rendered on December 13, 2017 in PCA Case No. 2014-10 (“Interim Award”).

5. Attached hereto as Exhibit 4 is a true and correct copy of the Swiss Federal Supreme Court Decision in Case No. 4A_65/2018 rendered on December 11, 2018 and English language translation, in which the Swiss Court rejected India’s request to set-aside the Interim Award. The English language translation is available from the website Swiss International Arbitration Decisions (<https://www.swissarbitrationdecisions.com/>), which “is operated jointly by Dr. Charles Poncet and Dr. Despina Mavromati. The site features 308 translations of the opinions of the Swiss Supreme Court (Federal Tribunal) in international arbitration since 2008. The originals are in French, German or Italian. The Readers may download and use the translations as they wish at no charge. They are made available as a service to the international arbitration community.”

6. Attached hereto as Exhibit 5 is a true and correct copy of the certificate issued by the Civil Court for the Republic and Canton of Geneva dated August 20, 2020, declaring the Final Award enforceable.

7. Attached hereto are Exhibits 6-17, which are true and correct copies of publicly available newspaper articles and documents available on websites of various agencies of the Government of India:

- Exhibit 6: a newspaper article dated September 21, 2021 from The Economic Times, entitled *Power Ministry recommends Maharatna status to Power Grid*;
- Exhibit 7: a webpage from the Government of India’s Press Information Bureau describing Ratna Status to Central Public Sector Enterprises;
- Exhibit 8: a newspaper article dated February 28, 2011 from India Today,

entitled *Air India's COO Capt Gustav Baldauf Resigns*;

- Exhibit 9: Fourth Report of the Committee on Public Undertakings, dated 2000–2001, accessed from the Parliament of India's Lok Sabha Digital Library;
- Exhibit 10: chart dated September 21, 2021 of the number of flight and passengers flown as part of the Vande Bharat mission, accessed from the Government of India's Ministry of Civil Aviation website.
- Exhibit 11: schedule dated September 9, 2021 of the evacuation schedule for Phase 13 of the Vande Bharat mission;
- Exhibit 12: newspaper article dated February 5, 2021 in the Hindustan Times entitled *Centre Owes Air India Nearly Rs 500 Crore for VVIP Flights*;
- Exhibit 13: Tata Sons Press release, dated October 8, 2021, titled "Tata Group to Acquire 100% in Air India";
- Exhibit 14: newspaper article dated September 24, 2021 in Business Today entitled *Cairn, Devas lawsuits not to impact Air India Divestment: Govt.*;
- Exhibit 15: newspaper article dated October 1, 2021 in India Today entitled *Air India disinvestment: Tata Sons wins bid for national carrier*;
- Exhibit 16: newspaper article dated October 8, 2021 in The Guardian entitled *Air India: Tata Sons conglomerate seals \$2.4bn takeover deal*;
- Exhibit 17: newspaper article dated October 8, 2021 entitled *Tata regains control of troubled Air India with a \$2.4 billion bid*.

8. In my professional experience, I have become familiar with the provisions of Swiss law that apply to petitions to the Swiss Federal Supreme Court (the "FSC") to set aside or

annul an arbitration award, specifically Chapter Twelve of the Swiss Private International Law Act (the “PILA”) and Articles 58 and 77 of the Swiss Federal Supreme Court Act. I gained this knowledge from my experience assisting Swiss counsel with the defense of two international arbitration awards against two annulment actions brought by the Russian Federation before the FSC.

9. From my experience, I learned that Swiss law, specifically Article 77 of the Swiss Federal Supreme Court Act, sets a deadline of thirty days for making an application to the FSC to set aside or annul an arbitration award. (As of January 1, 2021, that thirty day limitations period was copied from Article 77 of the Swiss Federal Supreme Court Act to Article 190(4) of the PILA.) Typically, a party may upon request obtain one extension of that deadline.

10. Through my experience in Switzerland, I also learned that, while most cases before the FSC are decided based only on written submissions, Article 58(1) of the Swiss Federal Supreme Court Act provides for something the Swiss call “public oral deliberations,” among the judges if the presiding judge orders it, if the judges are not unanimous, or if one of the five judge division requests it. The FSC held public oral deliberations on India’s application to annul the Interim Award on December 11, 2018. It was only the third occasion since 1989 on which the court held public oral deliberations in connection with an application to annul an international arbitration award.

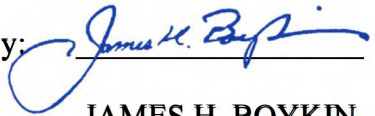
11. Public oral deliberations pursuant to Article 58(1) of the Swiss Federal Supreme are a unique feature of Swiss law for which there is no ready analogy in United States procedure. I was not involved in the defense of the Interim Award against India before the Swiss Federal Supreme Court. However, two months before its public oral deliberations on India’s application to annul the Interim Award, the Swiss Federal Supreme Court held a public oral deliberation in

both of the two cases in which I was assisting with the defense of annulment actions brought by the Russian Federation. I attended those public oral deliberations and am familiar with the process. Because there is no ready analogy in United States practice to the FSC's public oral deliberations, I thought it might be helpful to describe public oral deliberations before the Swiss Federal Supreme Court.

12. In a case in which the FSC decides to hold public oral deliberations, the five judges of the Court division to which the case was assigned (in Petitioner's case, the Court's First Civil Division) will deliberate in open court, but they will not hear argument from the parties. The parties and their lawyers may attend, but they are not given any opportunity to speak or otherwise address the FSC. Custom requires that the lawyers for the parties in attendance dress in all black. No transcript of such oral deliberations is made. Each judge then casts a vote and cannot abstain. The FSC reaches its decision by a majority vote and will inform the parties immediately thereafter of the operative part of its collective decision.

13. After the public oral deliberations and the announcement of its decisions, the FSC issues one reasoned written decision, which is the decision of the entire Court and does not include any divergent views that some of the judges might have expressed during the public deliberation. In fact, in the written reasoned decision, any judges who did not vote with the majority may not criticize the decision of the majority. Dissenting opinions do not exist in Swiss judicial practice. To the extent that any of the five judges may have expressed disagreement with their colleagues during the oral public deliberations, such statements will not be recorded or otherwise reflected in the FSC's final decision. Private notes summarizing views expressed by judges during public deliberations have no judicial value and cannot be relied upon as legal authorities.

Executed on November 4, 2021
Washington, D.C., United States of America.

By: 
JAMES H. BOYKIN