

PCA CASE N° 2013-09

**IN THE MATTER OF AN ARBITRATION ARISING UNDER THE
AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF
MAURITIUS AND THE GOVERNMENT OF THE REPUBLIC OF INDIA FOR THE
PROMOTION AND THE PROTECTION OF INVESTMENTS ENTERING INTO
FORCE JUNE 20, 2000 AND THE ARBITRATION RULES OF THE UNITED NATIONS
COMMISSION ON INTERNATIONAL TRADE LAW (1976)**

Between:

**CC/DEVAS (MAURITIUS) LTD.
DEVAS EMPLOYEES MAURITIUS PRIVATE LIMITED and
TELCOM DEVAS MAURITIUS LIMITED**

Claimants,

and

THE REPUBLIC OF INDIA

Respondent.

WITNESS STATEMENT OF RAMACHANDRAN VISWANATHAN

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I, RAMACHANDRAN VISWANATHAN, hereby declare as follows:

1. I submit this witness statement in support of the claims made in this proceeding by Claimants CC/Devas (Mauritius) Ltd. ("CC/Devas"), Devas Employees Mauritius Private Limited ("DEMPL") and Telcom Devas Mauritius Limited ("Telcom Devas") (collectively "Claimants"). References in this statement to exhibits are to Claimants' exhibits, as indicated. The facts described herein are true and correct based on my own knowledge and recollection, which has been refreshed by certain of the exhibits referred to in this witness statement. I am willing and able to appear for testimony before the Tribunal.

I. PERSONAL BACKGROUND

2. I am the Chief Executive Officer of Devas Multimedia Private Limited ("Devas"), an Indian company in which each of the Claimants holds various equity interests. Additionally, through my participation in the Devas Employee Incentive Plan, I hold indirect ownership interests in the Second Claimant, DEMPL, a Mauritius-incorporated company that holds a minority shareholding in Devas. I am also a director of DEMPL.

3. The facts that I relate herein are based on my observations as an executive and board member of Devas, and in dealings with India that took place before and after the formation of Devas. I first briefly describe my education and work history below.

4. I received a Bachelor of Science in Electrical Engineering with a minor in Economics from the University of Maryland in 1989; a Masters of Science in Engineering from Stanford University in 1990; and a Masters in Business Administration from the Massachusetts Institute of Technology Sloan School of Management in Finance & Marketing in 1995.

5. From 1990 to 1997, I was employed at McKinsey & Company, a world leader in business consultancy. While at McKinsey, I worked on a variety of projects that included advising clients who were involved in the telecommunications and media industries.

6. I left McKinsey in 1997 to join WorldSpace, Inc. (which was a McKinsey client at the time), a pioneer in the provision of satellite digital audio radio services ("SDARS") in various parts of the world. From 1997 to 2000, I was the Vice President of Marketing and Business Development at WorldSpace. While at WorldSpace, I worked on a joint venture with American Mobile Satellite Corporation, which was then led by Gary Parsons. This joint venture led to the launch of XM Satellite Radio in the United States, which was one of the first satellite radio operators in the world using terrestrial repeaters.

7. At WorldSpace, I also worked closely with Dr. M.G. Chandrasekhar (sometimes referred to herein as "Chandra"), then the Managing Director of WorldSpace India, and Mr. D. Venugopal (sometimes referred to herein as "Venu"), the Vice President of Operations of WorldSpace India. I had not known either Chandra or Venu before I met them while working at WorldSpace, although I understood that they had known each other well from their prior work at the Indian Space Research Organization ("ISRO") where they had been, respectively, the Scientific Secretary and Deputy Director of the Satellite Communication Programme.

8. Our collaboration at WorldSpace led me to realize that, as a result of their impressive scientific backgrounds and their long careers at ISRO, they had extensive knowledge about: (1) the commercial satellite industry in India; (2) the Indian space program and its fiscal and technological limitations; (3) the technology behind building and operating communications satellites; and (4) Indian satellite market and related regulatory landscape. Later, Venu assisted me in the start-up of Devas and Chandra joined Devas as its Chairman.

9. Ultimately, my vision for WorldSpace differed from that of the CEO, Noah Samara and, in 2000, I left WorldSpace to work for Cidera, which, at the time, was an internet streaming media satellite networking company. Its investors included several venture capital firms and private equity firms, including Carlyle Ventures, New Enterprise Associates and Intel. Our expectation was that Cidera would go public. However, in late 2001 and early 2002, it became clear that Cidera would not survive the bursting of the internet stock bubble. While assisting in the dissolution of Cidera – a process that began in 2001 and ended in early 2002 – I began discussions with James Fox (sometimes referred to herein as "Jim") and Paresh Shah (sometimes referred to herein as "Paresh"), the latter of whom was the Senior Vice President of Business Development at Cidera, about establishing a boutique advisory and incubator business focusing on the telecommunications, internet, media and other sectors.

10. In early 2002, together with Jim and Paresh, I formed Forge Advisors, LLC ("Forge Advisors") as a consultancy firm. We were joined by many industry and subject matter experts including Dr. Phil Grant, who became a consultant to Forge.

11. As I explain more fully below, shortly after forming Forge Advisors, in 2003, I was introduced to Dr. Krishnaswamy Kasturirangan who, at that time, was simultaneously occupying the four most senior positions in India's space hierarchy: (1) Chairman of the Space Commission, an inter-ministerial body, (2) Secretary of the Indian Department of Space ("DOS"), (3) Chairman of ISRO, and (4) Chairman of Antrix.¹ Ultimately, following lengthy discussions with numerous DOS/ISRO/Antrix officials over a period of almost two years, including Dr. G. Madhavan Nair, who, in September 2003, succeeded Dr. Kasturirangan in all

¹ As noted below, Dr. Kasturirangan's successors, Dr. G. Madhavan Nair (2003-09) and Dr. K. Radhakrishnan (2009 onwards), also simultaneously acted as DOS Secretary and chair of Antrix, ISRO and the Space Commission.

four posts mentioned above, on January 28, 2005, Devas and Antrix executed an "Agreement for the Lease of Space Segment Capacity on ISRO/ANTRIX S-BAND Spacecraft by Devas Multimedia Pvt. Ltd." (the "Devas Agreement").²

12. Transitioning from incubating Devas as a project within Forge Advisors, I became the President & CEO of Devas in January 2005 and also a Director of Devas in January 2005 and have devoted substantially all of my working time since then to bringing Devas's services into being for the benefit of Devas's shareholders (of which I am one)³ and for the benefit of the Indian people.

II. THE CLAIMANTS' INVESTMENT: OVERVIEW

13. As described in further detail below, between 2006 and 2009, the Claimants made various equity investments in Devas. Another foreign investor, Deutsche Telekom ("DT"), also made a significant investment in Devas in 2008 through a Singapore affiliate. Like Claimants Telcom Ventures and CC/Devas, DT made a follow-on investment in Devas in 2009. Approximately 60% of the shares of Devas are presently held by CC/Devas, Telcom Devas and DT (through its Singapore affiliate.)

14. From the date of execution of the Devas Agreement in January 2005 and for almost five years thereafter, Antrix and Devas together worked intensively to develop a first-of-its-kind integrated satellite system in India. This system was and is uniquely capable of delivering state-of-the-art communications applications for (1) consumer applications, (2) rural development, (3) e-governance, (4) emergency communications, (5) remote connectivity, and (6)

² Ex. C-16.

³ I hold 9,623 Class D Equity shares in Devas. In addition, I hold an indirect equity interest in DEMPL, the Second Claimant. (*See infra* ¶ 142.)

secure and strategic services. As I advised the Prime Minister of India in a letter to him dated February 10, 2011, just weeks before our business was destroyed by the Indian Government, the following are just some of the many accomplishments that Devas had achieved by that time:

- Successfully fielded a management team that included high-level and well-regarded experts in satellite systems, mobile technologies, multi-mode terminals, and application/service development;
- Filed several patents to secure its intellectual property rights, including patents on systems, portable terminals and integrated satellite architecture;
- Successfully secured key ISP and IPTV licenses from the Department of Telecommunications;
- Coordinated the design and development of terminals, including creating reference designs for miniaturized mobile terminals, and also entered into contracts with vendors for the creation of necessary ground infrastructure and content/applications;
- Secured third party investment, allowing it to make the installment payments to ISRO for both the first and second satellites contemplated by the Devas Agreement;
- Successfully worked closely with members of the WPC, DOS and ISRO to coordinate the (1) necessary orbital slot filings with the International Telecommunications Union ("ITU"); and (2) protect the higher PFD limits, which would have allowed the Devas system to operate fully;
- Refined its systems architecture to work with a hybrid satellite system;
- Conducted a Preliminary Design Review of the satellites with ISRO;
- Conducted end-to-end field trials in Bangalore in cooperation with ISRO and demonstrated to senior ISRO/Antrix executives the capabilities of the Devas System; and
- Conducted proof of concept technical trials of its entire system, including terminals, with DOS/ISRO and large industrial partners such as Alcatel Lucent.⁴

15. Many of these milestones had been achieved with the full cooperation and assurance of DOS/ISRO/Antrix officials. The Indian space hierarchy's support of the Devas Agreement made sense, since DOS/ISRO benefited significantly by advancing its own

⁴ Ex. C-129.

capabilities, including the development of the highest power commercial satellite ever built in India (which used an innovative ground segment) and constituent technologies as described below.

16. Throughout the 2006-10 time period, first Dr. Madhavan Nair, and later Dr. K. Radhakrishnan, who succeeded Dr. Nair as Secretary of DOS and Chairman of ISRO/Antrix in November 2009, personally assured Claimants as well as DT that the Indian government was fully behind the Devas Agreement. Those assurances caused the Claimants and DT to invest over \$130 million in cash and to devote countless man-hours of intellectual capital in the project over five years.

17. It now appears to me that, while DOS/ISRO/Antrix's assurances regarding the project were genuine when given by Dr. Nair, starting almost immediately after Dr. Radhakrishnan succeeded Dr. Nair as Secretary DOS and Chairman of ISRO and Antrix in November 2009 and onwards, the continued assurances provided by Dr. Radhakrishnan and other senior management of DOS/ISRO/Antrix were misleading.

18. In this regard, it has now been revealed that almost immediately after taking office, *in December 2009*, Dr. Radhakrishnan commissioned a one-person committee to investigate all aspects of the Devas Agreement. That committee of one, comprised of B.N. Suresh, issued a report in May 2010, that found no wrongdoing by Devas.

19. Later, Dr. Radhakrishnan sought a formal opinion from the Additional Solicitor-General as to how Antrix could try to extricate itself from the Devas Agreement.⁵ In an opinion dated *July 12, 2010*, which was later published by the Hindu newspaper in February 2011, the

⁵ Ex. C-131.

Additional Solicitor-General advised Dr. Radhakrishnan that, *because the termination provisions of the contract were not available to Antrix*, DOS should seek to engineer a *force majeure* event to try to take advantage of the *force majeure* provisions of the Devas Agreement. Specifically, the Additional Solicitor General advised that

[i]n my view, instead of the Department of Space directing Antrix to terminate the contract, it will be advisable from a legal perspective that the direction comes from the Department of Space on the basis of a governmental policy decision, as indicated above.⁶

20. This is precisely what transpired. Following a reported decision by the Cabinet Committee on Security directing Antrix to annul the Devas Agreement,⁷ on February 25, 2011 Antrix sent a notice to Devas purporting to terminate the Devas Agreement.⁸ Dr. Radhakrishnan's actions in the orchestrated destruction of Devas's business are all the more remarkable for the fact that while the Additional Solicitor-General advised him that the termination provisions of the contract were *not* available to Antrix, Antrix nevertheless invoked those provisions in its bad faith termination notice.⁹

21. But for Antrix's multiple failures to live up to its contractual obligations, the actions of the Space Commission, the Cabinet Committee on Security, and the bad faith actions of Dr. Radhakrishnan as Secretary of DOS and Chairman of ISRO and Antrix in manufacturing the so-called *force majeure* event later invoked in bad faith by Antrix, the integrated satellite system described below would now be operational and providing much needed satellite-terrestrial communications services in India. These services, the roll-out of which was to occur

⁶ *Id.*

⁷ Ex. C-134.

⁸ Ex. C-135.

⁹ *Id.*

over time, would have provided much needed connectivity to the remote and inaccessible areas, like Indian border areas as well as rural parts of the country, which continue to suffer poor connectivity despite the roll out of 2G and 3G mobile technologies elsewhere. They also would have resulted in state of the art multimedia and broadband services becoming immediately available in the major cities in India.

22. The loss and destruction of Devas's business has resulted in a total loss of value to its investors, including Claimants.

III. THE TECHNOLOGY BEHIND THE DEVAS SYSTEM

A. Coordination of Spectrum Allocation by the International Telecommunications Union, a United Nations Agency

23. The International Telecommunications Union ("ITU"), a United Nations agency, coordinates both (1) allocation of the electromagnetic radio spectrum and (2) orbital slots (the specific place in space where a satellite will reside) between the nations of the world. The ITU also coordinates the deployment of all satellites in Earth's orbit to ensure that they do not interfere with each other's operations.

24. Once the ITU allocates certain parts of the electromagnetic spectrum and/or orbital slots to its Member States, including India, each Member State is free to distribute its internationally-coordinated spectrum in accordance with its own national laws.

25. For the last three decades, India has, successfully, globally coordinated and recorded in the MIFR of the ITU, the frequency assignments and associated orbital slots for its use in 2.5 GHz frequency band of the electromagnetic spectrum, or around 2500-2690 MHz, which is commonly referred to as the "S-band," for satellite services from the following orbital slots: 74°E, 83°E and 93.5°E with due ITU recognition and associated protection.

B. The Indian Government Assigns the S-Band to DOS

26. In the 1970s, the Indian government assigned its internationally-coordinated S-band to DOS for use in space applications and services, both commercial and governmental. During my meetings with DOS/ISRO officials prior to signing the Devas Agreement, they told me that, in 2001, due to the fact that DOS had not efficiently used (and had no plans to efficiently use) its allocation of S-band spectrum, the Indian government caused DOS to give up 40 MHz of the allocated spectrum and reassigned that spectrum to the Indian Department of Telecommunications ("DOT"), which subsequently licensed the spectrum for use in the provision of terrestrial broadband wireless services.

27. These same DOS/ISRO officials told me that DOS/ISRO needed to use the remaining fallow satellite S-band spectrum that DOS still had or face the possibility that the Indian government would take back even more S-band spectrum and reallocate that spectrum for terrestrial use. Given that the S-band in India was the last remaining frequency coordinated with the ITU for use in mobile satellite communications, the further diminution of the band was not tenable from DOS/ISRO's perspective.

28. India's SATCOM (satellite communications) policy and National Frequency Allocation Plan ("NFAP") around the time confirmed that the S-band in India was to be used for *satellite-based* communication services. Specifically, the SATCOM policy called upon DOS/ISRO to build and lease satellite capacity for both public and private usage.¹⁰ The SATCOM policy expressly encouraged DOS/ISRO to lease space segment capacity on its satellites to private and non-governmental actors, in order to allow private industry to develop

¹⁰ Ex. C-3.

space-based technologies for the benefit of the Indian economy and public; advocated large-scale private investment in the building and operating of Indian-designed and launched satellites; specifically provided for a role for foreign direct investment in India's satellite program; and, as required, advocated for the leasing of bandwidth on Indian satellites by third-party investors.

29. Further, we at Devas had worked with DOS in connection with an amendment to the NFAP. The services contemplated by the Devas Agreement were reflected in NFAP 2008 and thereafter.

C. Developments In Satellite Technology Make a State-of-the-Art Integrated Satellite System Commercially Feasible in India

30. Generally, satellite-only communications systems require that the user on the ground have a direct line of sight to the satellite. Without this line of sight, it is not possible for the satellite to transmit signals to, and receive signals from, a ground-based user.

31. When the satellite's line of sight is obstructed, the satellite signals become degraded and, in the worst cases, unusable. This signal degradation is a large problem in developed urban landscapes, where tall buildings and foliage may block the line of sight between the satellite and the user. As a consequence, stand-alone mobile satellite communications systems were restricted to niche enterprise market segments and were generally not commercially viable for mass consumer markets prior to 2000.

32. Starting in the late 1990s, however, various individuals began to explore ways to overcome the problems of satellite signal degradation through the development of hybrid satellite-terrestrial communications systems.

33. Dr. Rajendra ("Raj") Singh and Gary Parsons (both future investors in Devas and members of its Board of Directors), among others, pioneered "interference mitigation"

techniques that would allow both satellite *and* terrestrial communications components to coordinate with each other efficiently using the same frequencies in space and on the earth's surface and, therefore, be part of an integrated satellite telecommunications architecture. This would permit users in dense urban environments to receive satellite signals in a commercially-feasible manner.

34. An integrated satellite system ("ISS"), such as the system that Devas developed in conjunction with ISRO/Antrix over the course of five years, depends on the allocation of a frequency, such as the S-band, that will be used for satellite communications *and re-used terrestrially*. In these circumstances, it is not possible for a different terrestrial operator to use any of the frequency already being used by the satellite-based hybrid system. This is because, in an integrated system, the same entity *must* control and coordinate the frequencies used by both the satellite and ground components; if one mobile satellite communications entity attempts to use the satellite spectrum and another entity attempts to use that same spectrum terrestrially without coordination, there would be too much interference for either entity to be viable.

IV. NEGOTIATIONS WITH DOS/ISRO/ANTRIX LEAD TO THE EXECUTION OF THE DEVAS AGREEMENT

A. Early Discussions With DOS/ISRO/Antrix

35. After I left WorldSpace, I remained in contact with Dr. Chandrasekhar and Mr. Venugopal. Chandra had moved to the United States when he was promoted to COO of WorldSpace and had relocated to Washington, D.C., where I also worked, and so we would see each other from time to time.

36. During one of my conversations with Dr. Chandrasekhar, he informed me that DOS/ISRO was seeking new ways to commercialize its resources. I was also informed that

Antrix, a private company wholly owned by the Government of India and set up as a commercial arm of DOS, was exploring ways to expand their commercial opportunities through continued development of INSAT, IRS, PSLV, and GSLV mission capabilities by ISRO/DOS. I thought that Forge Advisors might be able to assist DOS/ISRO by providing consulting and advisory services to them.

37. In early 2003, Dr. Chandrasekhar introduced me to Dr. Kasturirangan, who was then serving as the Chairman of the Space Commission, Secretary of DOS and Chairman of ISRO/Antrix. (Throughout my dealings with the Indian government, the same person always occupied these four posts simultaneously.)

38. I subsequently had a number of meetings and discussions with Dr. Kasturirangan and other senior officials from DOS/ISRO/Antrix, as well as other officials within the Indian government. Those discussions led to Forge Advisors, on the one hand, and ISRO and Antrix, on the other, signing a non-binding Memorandum of Understanding on July 28, 2003.¹¹

39. Between August 2003 and March 2004, Forge Advisors spent significant time exploring possible strategic options for ISRO/Antrix. Among many other initiatives, I oversaw a study of the Indian market place in order to assess potential consumer demand for mobile multimedia services in India. I also coordinated a review of the technical and financial requirements of such a system, along with identifying the best possible commercial applications, partners and relationships for DOS/ISRO to use the S-band spectrum.

¹¹ Ex. C-6.

B. Forge Advisors Proposes Forming a Joint Venture With ISRO/Antrix That Would Be Called Devas

40. In March 2004, I made a presentation to ISRO/Antrix officials entitled "Proposal for Indian Joint Venture to Launch DEVAS."¹² As set out in my presentation, I proposed a joint venture between Forge Advisors and ISRO/Antrix in which we would provide satellite-derived video, audio, information and telematic services in a mobile environment.¹³

41. I followed up my presentation with an April 15, 2004 letter to Mr. K.R. Sridhara Murthi, then Executive Director of Antrix ("Mr. Murthi"), and Mr. A. Bhaskaranarayana, the Director of the Satellite Communications Program Office at ISRO, expressing my hope that, "[a]s a culmination of the dialogue between ISRO & Antrix and Forge Advisors over the past few months," ISRO/Antrix would consider "form[ing] a strategic partnership to launch DEVAS, a new service that delivers video, multimedia and information services via satellite to mobile receivers in vehicles and mobile phones across India."¹⁴ The basic idea that we put forward (only after these parties had agreed to keep it confidential) envisioned ISRO building and launching a state-of-the-art communications satellite capable of delivering those services while Forge Advisors took responsibility for the construction and operation of the DEVAS system at the terrestrial level, including all aspects of commercialization of the services to consumers in India and development of requisite technologies. In the presentation attached to the letter, we noted that the product to be developed included offering "high speed data download capability at 384 kbps per beam which can [be] used for downloads of select information services and web

¹² Ex. C-7.

¹³ *Id.*, slide 28.

¹⁴ Ex. C-8.

sites, messaging and paging services."¹⁵ At the time, broadband services were in their infancy in India and "broadband" was considered to be achieved if a data download speed of 256 kbps or greater were achieved.

42. Thus, among the matters that we discussed was the ability of the satellite-terrestrial system to be scaled up as relevant technologies evolved. Indeed, in preparing a business model in connection with this proposal, I noted that I was being conservative by not including revenues that we thought we might earn later as we scaled the business to take advantage of evolving technologies.

43. I followed up on my April 15, 2004 letter by engaging in a series of meetings with various representatives of DOS/ISRO/Antrix in Bangalore, India, in May 2004. I attended three meetings – one on May 6, 2004; one on May 21, 2004; and one on May 24, 2004 – reflected in meeting minutes I prepared at the time.¹⁶

44. The highest-ranking officials at DOS/ISRO/Antrix attended these meetings, including Dr. G. Madhavan Nair ("Dr. Nair"), who had succeeded Dr. Kasturirangan as the Chairman of the Space Commission, Secretary of DOS, and Chairman of ISRO/Antrix. In addition to Dr. Nair, I met with:

- **Mr. S.K. Das**, Additional Secretary for DOS, and at that time Member (Finance) of the Space Commission;
- **Mr. S.V. Ranganath**, Joint Secretary, DOS, at that time Additional Secretary, DOS;

¹⁵ *Id.* at 18.

¹⁶ Ex. C-9. These minutes were prepared by me at the end of May 2004 in order to record the discussions we had so that all of us could move forward from a common understanding. That is why I concluded the document with a section entitled "Next Steps." At around the same time I provided a copy of this document to the DOS/ISRO/Antrix officials with whom I had met.

- **Mr. R.G. Nadadur**, Joint Secretary, DOS, at that time Additional Secretary, DOS;
- **Mr. Murthi**, who was, as previously noted, Antrix Executive Director (later its Managing Director);
- **Dr. K.N. Shankara**, Director of the Space Applications Centre, ISRO;
- **Mr. Appanna Bhaskarnaryana**, who was then Scientific Secretary, ISRO and is now the Director SCP/FMO, ISRO;
- **Mr. V.R. Katti**, Program Director of GEOSTAT, ISRO (who, as noted, was to become a Devas board member appointed by Antrix);
- **Mr. M.Y.S. Prasad**, Director of the Master Control Facility, ISRO;
- **Mr. M.N. Sathyanarayana**, Executive Director of Space Industry Development, ISRO;
- **Mr. P.S. Datta**, Manager – Business Development, Antrix; and
- **Mr. S. B. Iyer**, Director – Contract Management and Legal Services, ISRO and Director – Contracts, Antrix.

45. In these May meetings, DEVAS was proposed as a joint venture between ISRO and Antrix, on the one hand, and Forge Advisors, on the other. Each side would assume certain responsibilities for the project, based largely on its core competencies. At these meetings, all participating individuals understood that the "system architecture" would include "space segment, ground segment and receiver segment," *i.e.*, would be a hybrid satellite-terrestrial system.

46. On June 18, 2004, I sent a letter to Antrix's Executive Director, Mr. Murthi, offering new terms for the proposed DEVAS project that I thought, based on our prior discussions, might be acceptable to Antrix.¹⁷ As outlined in the June 18, 2004 proposal, ISRO/Antrix would receive 10% equity in the joint venture, on a fully-diluted basis, and would have the option to acquire an additional 10% of the equity at a discount to terms offered to the

¹⁷ Ex. C-10.

first round of institutional investors. In addition, I proposed that a new company be established ("Devas Pvt. Ltd.") that would pay a lease fee of US\$9 million a year for the use of the satellite and three milestone payments totaling US\$10 million.

C. ISRO/Antrix Reject the Concept of a Joint Venture and Instead Negotiate a Lease Agreement

47. Ultimately, ISRO/Antrix indicated that they were not interested in a joint venture arrangement. Senior members of ISRO/Antrix – including the Chairman Dr. Nair – clearly stated that, instead of a joint venture arrangement, they wanted a straight transponder lease agreement, similar to other leasing arrangements for VSAT and DTH that ISRO/Antrix had entered into, but with higher up-front capacity reservation fees.

48. In a September 20, 2004 letter sent by me to the Indian government representatives, I advised that Forge Advisors had formed a limited liability company in the United States named Devas LLC, and that we contemplated entering into a binding relationship with Antrix/ISRO in two stages: first, Devas LLC would sign a binding term sheet with Antrix; and, second, a "definitive agreement" would be signed with a soon-to-be set up Indian entity named Devas Multimedia India, Pvt. Ltd.¹⁸ The letter envisioned signing the binding term sheet would be concluded on October 2, 2004.¹⁹

49. ISRO/Antrix did not agree to the terms we proposed, even though I believed those terms were consistent with the parties' discussions to that date. To the contrary, India's representation began what I felt was a renegotiation of agreed points. As a result, on September

¹⁸ Ex. C-11 at 2. This letter was addressed to Mr. Murthi and Mr. A. Bhaskarnarayana, with copies to Dr. Nair and Mr. S.K. Das.

¹⁹ *Id.* at 1.

27, 2004, I wrote a strident letter to ISRO/Antrix reminding them of how far we had come, that I did not believe they were acting properly, and that we needed to get negotiations back on track.²⁰

50. On October 2, 2004, in Vancouver, Canada, I made a further presentation to Dr. Nair entitled "Progress Update on Devas."²¹ Among many other things, the presentation noted that a "Hybrid Satellite/Terrestrial Network Like Devas Is Ideal."²² It further noted that "[c]ost-effective content delivery and nationwide coverage . . . are critical to [the] success of multimedia services in mobile systems. Only S-DBM [sic] architecture can achieve this."²³ In my presentation I noted the rapid evolution of the satellite-terrestrial architecture such that in Europe MAESTRO was already using an S-DMB architecture to overlay 3G platforms and beyond. I too believed that, at some point as technology evolved, our satellite-terrestrial architecture could be scaled in similar fashion. Indeed, in my discussions with ISRO/Antrix it was understood that the goals of both parties were to develop a cutting-edge satellite communications system that would show the world how far India's space program had come. This was an important aspect of the win-win discussions in which we were engaged.

51. Negotiations over the lease agreement with ISRO/Antrix continued through October and November 2004. In fact, for two solid weeks in October and November of 2004, myself, along with Paresh Shah, James Fox, and others engaged in daily negotiation sessions with high-level ISRO officials, including the Chairman. Mr. Venugopal worked on all aspects of the specifications needed for the communications satellites and his work was critical to the

²⁰ Ex. C-12.

²¹ Ex. C-13.

²² *Id.*, slide 19; *see also id.*, slide 31 (envisioning Devas system that will use both direct-from-satellite signals, and "[m]obile [h]ub[s]" and a "[t]errestrial repeater network.").

²³ *Id.*, slide 19.

outcome. At several points in time during these final negotiations, I felt that the parties would not reach a signed contract. However, we were finally informed that ISRO/Antrix had agreed to final terms and that they were going to submit the Devas Agreement for their internal approval.

D. Devas Is Formed

52. On December 17, 2004, Devas was registered as an Indian company in the State of Karnataka.²⁴ The initial subscribers of Devas were D. Venugopal, who was allocated 9,000 equity shares (Mr. Venugopal was later to become Devas's Chief Technology Officer), and M. Umesh, who was allocated 1,000 equity shares. As both of these gentlemen were resident in India, they were responsible for establishing the company on behalf of the principals of Forge Advisors. They agreed that once the Devas Agreement was signed, the company would issue shares to each of the Forge Advisors' principals: Jim, Paresh and me. This occurred on September 15, 2005, when the Devas Board of Directors authorized the allotment of 9,800 equity shares to myself, Paresh and Jim.²⁵

53. As set forth in the Board Minutes of the Company, on January 15, 2005, Devas held its first official meeting of the Board of Directors.²⁶ The initial acts of the Board included the appointment of the following individuals to manage the company:

- Myself as President and CEO;
- Paresh Shah as Chief Marketing and Business Development Officer;
- James F. Fox as Chief Financial Officer; and
- D. Venugopal as Chief Technology Officer.

²⁴ Ex. C-14.

²⁵ Ex. C-18. Mr. Venugopal was allotted an additional 800 shares as co-founder.

²⁶ Ex. C-15.

E. The Antrix Board Approves the Devas Agreement

54. In December 2004, Antrix's management approved a final deal with Devas. Based on conversations at the time, I understood that this had been done through the whole of the Antrix Board of Directors. Antrix's Board of Directors at that time, amongst others, included the following representatives of the Indian government: (1) Dr. Nair, the Secretary of DOS; and (2) Mr. Meenakshisundaram, the Additional Secretary of DOS.

55. It was my understanding that DOS approved the Devas Agreement, including all its commercial and legal provisions.

V. THE TERMS OF THE DEVAS AGREEMENT

56. On January 28, 2005, Devas and Antrix executed the Devas Agreement.²⁷

57. The Devas Agreement provides that "Antrix shall lease to DEVAS" 5 C x S transponders of 8.1 MHz capacity and 5 S x C transponders of 2.7 MHz capacity "on the Primary Satellite 1 (PS1) with technical performance and other specifications defined in Exhibit A," which were to be used as provided in the Devas Agreement.²⁸ Exhibit A specified that 70 MHz of the DOS/ISRO controlled S-band would be used by these transponders.²⁹ This 70 MHz falls within the satellite services portion of the S-band that remained with DOS/ISRO. Devas's allocation of satellite spectrum does not interfere with any terrestrial services that were previously allocated in the S-band. Notably, compared with Direct-to-Home ("DTH") operators,

²⁷ Ex. C-16.

²⁸ *Id.* at 2 § 2.

²⁹ *Id.*, Ex. A.

each of whom has 250-500 MHz of satellite transponder capacity allocated based on leases directly from DOS/ISRO/Antrix, or indirectly through other commercial satellite operators, the 70 MHz of satellite spectrum allocated to Devas is much more modest.

58. Antrix agreed that "the Leased Capacity shall be a Non-Preemptible service, except as specifically provided for in Article 7."³⁰ In other words, the space segment capacity provided by Antrix could not be utilized or repurposed for use by another party during the life of the satellite unless Devas was in default of its obligations under the Devas Agreement.

59. The parties also agreed that a part of Primary Satellite 1 ("PS1") would be available for use by ISRO for its own purposes, provided that such use did not interfere with or compete with Devas Services.³¹

60. The Devas Agreement contemplated that, at Devas's option, Antrix would also lease capacity on a second satellite ("PS2") to Devas.³² The technical specifications of PS1 and PS2 were defined in Exhibit A to the Devas Agreement. These specifications had been developed by Mr. Venugopal, who, together with his counterparts at ISRO, was responsible for describing the hybrid satellite-terrestrial architecture and the satellite specifications needed to bring the Devas Services, as defined in the Devas Agreement, into being. After the initial 12-year lease period ended, the parties agreed that it would be "put up for renewal . . . at Lease Fees

³⁰ *Id.* at 2 § 2.

³¹ *Id.* at 3 § 3(e).

³² *Id.* at 1 (Recitals), *id.* at 4 § 4(a), *id.* Ex. B.

to be mutually agreed upon."³³ Through a subsequently-signed amendment, the parties agreed that any renewal would be at "*reasonable*" lease fees.³⁴

61. The Devas Agreement also provided that "ANTRIX [would] be responsible for obtaining all necessary Governmental and Regulatory Approvals relating to orbital slot and frequency clearances, and funding for the satellite to facilitate DEVAS services[,] and would "provide appropriate technical assistance to DEVAS on a best effort basis for obtaining required operating licenses and Regulatory Approvals from various ministries so as to deliver DEVAS services via satellite and terrestrial networks."³⁵

62. The Devas Agreement was to become effective only after Antrix notified Devas in writing that Antrix had obtained the required approvals for the Devas system.³⁶

63. Relatedly, the Devas Agreement also provides that Antrix "through ISRO/DOS" was to obtain clearances from national and international agencies, including the WPC and ITU, for the orbital slot and frequency resources, in order to, as required, "provide the Leased Capacity."³⁷ Just as importantly, given the close strategic partnership between these parties, both sides agreed to "discharge their obligations in utmost good faith" (as well as to try to resolve any differences by discussion).³⁸

³³ *Id.* at 4 § 3(l).

³⁴ Ex. C-37 (emphasis in original).

³⁵ Ex. C-16 at 2 § 3(c).

³⁶ *Id.* at 17 § 27.

³⁷ *Id.* at 9 § 12(a).

³⁸ *Id.* at 15 § 21.

64. In consideration for the Leased Capacity, Devas was obligated to pay to Antrix Upfront Capacity Reservation Fees of the INR equivalent of US\$20 million for PS1 and an equivalent of US\$20 million for PS2 (if Devas exercised the option to gain additional capacity on PS2), followed by a fee of the INR equivalent of US\$9 million per annum, rising to US\$11.25 million per annum when Devas became cash flow positive, for the lease of the space segment capacity on the satellite(s).³⁹ Thus, DOS/ISRO/Antrix would have received over \$300 million from Devas over the life of the lease. These fees, on a per transponder basis or per MHz of capacity utilized basis, would be one of the highest revenue earners for DOS/ISRO/Antrix.

65. Under the Devas Agreement, Antrix was to maintain regular reports on ISRO's progress in building the satellites. In addition, Antrix was to make sure that Devas had input into the design of the satellite "to ensure compatibility between the satellite(s) and the ground system."⁴⁰ Over the course of four years, ISRO/Antrix provided regular reports to Devas, all of which suggested that, while the contemplated satellites presented design and construction challenges, ISRO was capable of building satellites that would be compatible with the ground systems that Devas had developed.

66. Antrix was also given the right to appoint a senior officer to the Devas Board of Directors to act as an observer without voting rights.⁴¹ Antrix appointed Mr. V.R. Katti as its nominee to the Devas Board and thus was well aware of all material developments as Devas built out its business as described below. In addition, Devas regularly briefed the senior management of DOS/ISRO/Antrix on the progress of the project and coordinated salient aspects of its

³⁹ *Id.* at 4 § 4 & Ex. B.

⁴⁰ *Id.* at 3 § 3(g).

⁴¹ *Id.* at 8 § 10.

development of the ground systems, including technology development and improvements, with DOS/ISRO/Antrix's development of the satellites.

67. The Devas Agreement also contained certain provisions regarding where the satellites would be located once launched into space. Among other things, Antrix agreed that PS1 would be located at the 83 degree East orbital location during the term of the lease.⁴² Antrix further stated that it "believes that the proposed use of the Leased Capacity by DEVAS will not present any coordination problems."⁴³

VI. DEVAS AND THE INDIAN GOVERNMENT PERFORM THE DEVAS AGREEMENT

A. Devas Builds Its Business Organization and Begins Development of the Contemplated Hybrid Satellite System

68. Once the Devas Agreement was signed, Devas began building a business infrastructure to carry out the terms of the Devas Agreement. In the months following the execution of the Devas Agreement, Devas successfully (1) finalized its core management team, which now included Dr. Chandrasekhar, who we lured away from GeoEye; (2) developed a U.S.- and Indian-based staff; (3) established a company infrastructure, including offices in Bangalore; and (4) most significantly, secured investors. In total, the Devas team would come to include individuals with over 450 combined years of experience in the satellite industry that had launched or operated over 60 satellite systems.

⁴² *Id.*, Ex. A.

⁴³ *Id.* at 12, § 14(a)(vi).

B. The Indian Cabinet Approves the Production of GSAT-6/INSAT-4E

69. The Union Cabinet gave its approval to undertake design, develop and launch GSAT-6/INSAT-4E on December 1, 2005.⁴⁴ The Government of India's Press Information Bureau released a statement on behalf of the Union Cabinet that summarized the key specifications of GSAT-6/INSAT-4E as well as the benefits that the implementation of this satellite system would provide India, including providing coverage to the whole of India. Some of the specifications for GSAT-6/INSAT-4E, as outlined in the press release, included, *inter alia*: (1) GSAT-6/INSAT-4E's ability to offer a Satellite Digital Multimedia Broadcasting ("S-DMB") service via mobile phones and mobile receivers in vehicles to the entire population of India; (2) the satellite's five C x S transponders each of 9 MHz bandwidth and five S x C transponders each of 2.7 MHz bandwidth; (3) the ability of such a system to program content effectively through five satellite spot beams; and (4) the capacity to deliver over ten video channels and ten audio channels in each beam through the downlink component of the system, including such services as weather information and disaster warning.⁴⁵

70. These specifications and uses match those of the Devas satellite and thus, by approving the GSAT-6/INSAT-4E satellite, the Union Cabinet was approving the very satellite described in Article 2 and Exhibit A of the Devas Agreement. Importantly, the press release also recognized that the satellite would utilize India's S-band spectrum allocation in accordance with the ITU spectrum allocation and National Frequency Allocation Plan.⁴⁶

⁴⁴ Ex. C-19.

⁴⁵ *Id.*

⁴⁶ *See id.*

71. Finally, the press release 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."⁴⁷ Thus, ISRO clearly understood that this program would bring credibility to ISRO's space program and establish it as a world leader. This again confirmed the win-win situation for both parties under the Devas Agreement.

C. The Indian Government Makes a Modified Filing With the ITU Specifically to Enable Devas to Offer the Devas Services

72. In addition to approving the construction of PS1 (now named GSAT-6), the Indian government took other actions during this time that I believe confirmed its commitment to the Devas Agreement. In particular, in December 2005, the Indian government made a modified filing with the ITU for the 83 degree East orbital slot allowing it to operate a satellite using the five spot beam configuration unique to PS1 and PS2.⁴⁸ At the time, Venu informed me that such a filing was being made and I viewed it as a natural step towards performance of the Devas Agreement.

D. Antrix Confirms That the Devas Agreement is Effective

73. On February 2, 2006, Antrix's Executive Director, Mr. Murthi, wrote to Devas stating that "Antrix Corporation is pleased to inform you that it has received the necessary approval for building, launching, and leasing the capacity of S-band satellite, henceforth officially designated as INSAT-4E."⁴⁹ Mr. Murthi also confirmed that "Antrix is now in a

⁴⁷ *Id.*

⁴⁸ Ex. C-21.

⁴⁹ Ex. C-24.

position to go ahead with the building and launch of the INSAT-4E spacecraft and lease the capacity on the same to Devas Multimedia Pvt. Ltd."⁵⁰ In accordance with Article 27 of the Devas Agreement, the letter served as written confirmation that the Devas Agreement was fully binding and effective on the parties.

E. Devas Secures Initial Series A Investments From Columbia Capital and Telcom Ventures, Both Experienced Venture Capital Investors

74. While DOS/ISRO was obtaining Cabinet approval to build and launch the satellite contemplated by the Devas Agreement, and was making its modified filing with the ITU, I was busy looking for potential investors for the business. This endeavor, in fact, had been underway even before the Devas Agreement was signed but could crystallize only upon its execution and receipt of the associated Government approvals for building and launching of the satellite.

75. Broadly speaking, Devas sought investments from three categories of investors. First, we approached large private equity firms, such as The Carlyle Group, Apollo, and Blackstone, which were interested in India and also had experience in the telecommunications industry. Second, we sought out venture capital firms, such as Columbia Capital, New Enterprise Associates and Eagle River, who, although less able to contribute major capital, had a deeper and more concentrated level of experience investing in satellite and telecommunications ventures. Finally, we also sought out strategic players, such as SK-Telecom and its joint venture vehicle TU Media (a Japanese-Korean joint venture) and SES, which would have the business acumen and experience necessary to build out the Devas system.

76. Ultimately, Jim Fleming and Arun Gupta, partners at Columbia Capital, whom I had known for many years, were very excited about the opportunity. Jim and Arun informed me

⁵⁰ *Id.*

that Columbia Capital often invested alongside a company called Telcom Ventures and they, therefore, wanted to introduce me to Dr. Raj Singh, the principal of Telcom Ventures. Although I was aware of Raj's pioneering work in the field of integrated satellite systems, I had not previously met him.

77. Subsequently, I made presentations to Jim, Arun and Raj jointly, after which they confirmed that they were interested in the opportunity of investing in Devas. Thereafter, I made a presentation to the entire Columbia Capital partnership so that they could collectively decide whether to proceed with an investment in Devas. In a presentation I made to the Columbia Capital partnership on December 19, 2005,⁵¹ I highlighted, among other things, the following key terms of the Devas Agreement:

- **Bundled spectrum and satellite** – ISRO is providing Devas the use of the required S-band frequency spectrum (space and terrestrial) to deliver services along with the satellite(s)
- **High performance and low cost** – Less than half the total life-cycle cost of similar high-power satellites
- **Low capital outlay** – Capital lease for life of satellite(s) versus outright buy (\$10.8 million/year base rate lease payments inclusive of service taxes and spectrum monitoring charges [FN: "Includes service taxes; rates increase based on an agreed inflation index"], \$13.3 million in prelaunch progress payments, \$6.7 million payment upon pre-shipment review acceptance)
- **Target Delivery Date for Satellite 1** – 30 months with 6 months grace period and early/late delivery provisions
- **Relaunch guarantee** – construction and relaunch of ground spare satellite in the event of launch failure
- **Additional satellites** – attractive financial terms for second satellite with potential for third satellite

⁵¹ Ex. C-22, slide 11.

- **Board seat** – ISRO Chairman will have a seat on the Devas board
- **Assignment** – Contract may be assigned, transferred, sold with 60 days notification – no approval needed

78. Both Columbia Capital and Telcom Ventures agreed that they or their affiliates would invest in Devas around January 2006. However, they insisted that, before signing a binding Share Subscription Agreement with Devas, they receive confirmation directly from the Indian government that it stood behind the Devas Agreement and was fully supportive of the Devas Agreement. I, therefore, arranged meetings in India between Arun and Jim (representing Columbia Capital) and Raj (representing Telcom Ventures) and the senior DOS/ISRO/Antrix officials with whom Devas was doing business.

79. On our trip, we met with approximately 15 high-level representatives of ISRO/Antrix, including Dr. Nair, several members of the Space Commission, and other high-level officials from the Indian government including Mr. S.K. Das. Each of these individuals assured Arun, Jim and Raj (and Devas) that the Indian government was indeed committed to the Devas project. They reiterated their belief at that time that the satellites would be built and launched on schedule and that they would assist Devas in securing all requisite licenses to operate the Integrated Satellite System we envisioned to provide cutting-edge telecommunications services throughout India.

80. On March 14, 2006, at the ISRO Headquarters in Bangalore, I made a presentation to Dr. Nair, called "Mobile Multimedia for the Millions."⁵² Among other items, further detailed below, I explained that Devas had "[c]onducted [a] 3 month investment road show" and "[s]ecured [an] investment term sheet from Columbia Capital and Telcom Ventures

⁵² Ex. C-29.

on January 15, 2006."⁵³ In addition, I noted that Devas was finalizing investment agreements with these entities and had filed a request for permission to have foreign investors invest in Devas with the Foreign Investment Promotion Board ("FIPB").⁵⁴ This presentation also included a discussion of the full hybrid architecture of the Devas system, which included terrestrial wireless, satellite wireless, and wired components that would be supported, in part, by the Devas satellite.⁵⁵ Dr. Nair and the other ISRO officials understood the benefits of Devas's proposals and agreed that it was important for ISRO to be on the cutting edge of satellite-terrestrial infrastructure developments.

81. On March 16, 2006, two days after the presentation in Bangalore, Devas and its founders signed a Share Subscription Agreement (the "March 2006 SSA") with the First Claimant, CC/Devas and Third Claimant, Telcom Devas, two Mauritius-based special purpose investment vehicles that were established and owned by Columbia Capital and Telcom Ventures, respectively, for purposes of investing in Devas.⁵⁶

82. Under that agreement, CC/Devas and Telcom Devas each agreed to invest US\$ 7.5 million in return for 15,730 Series A Preference Shares each (which amounted to 19.001% of all Devas shares), as well as one equity share. Among other attributes, the Series A Preference Shares were entitled to (1) preferential payback and dividends; and (2) could be converted to equity shares.

⁵³ *Id.*, slide 2.

⁵⁴ *Id.*

⁵⁵ *Id.*, slides 15-20, 24-25.

⁵⁶ Ex. C-31.

83. The Devas Board approved the March 2006 SSA on March 16, 2006.⁵⁷

84. The investment closed on May 11, 2006 at which point CC/Devas and Telcom Devas became preference shareholders in Devas with voting rights. The FIPB approved the investment by CC/Devas and Telcom Devas.⁵⁸ The FIPB conditionally approved CC/Devas and Telcom Devas and the foreign Founders to own up to 100% of paid up share capital in Devas, but also required that Devas's foreign shareholding (including the foreign Founders) would be reduced to 74% of paid up share capital within a period of time⁵⁹ – a condition that was subsequently met.

85. The March 2006 SSA also required that, at closing, there be a shareholders' agreement with the five "Founders" (me, Jim, Paresh, Venu and Chandra) and other agreements that would, among other things, restrict the Founders' shares during a defined period (to ensure they remained working full-time with Devas), and grant CC/Devas and Telcom Devas the right to purchase a combined total of 828 shares from each Founder. Thus, a Shareholders Agreement between and among CC/Devas, Telcom Devas, the Founders and Devas was executed on May 11, 2006.⁶⁰

86. On June 24, 2006, we made a further presentation to the Chairman of ISRO.⁶¹ This presentation included the FIPB approval referenced above and noted that Devas would soon

⁵⁷ Ex. C-30.

⁵⁸ Ex. C-33.

⁵⁹ *Id.* at 2.

⁶⁰ Ex. C-32. By purchasing these Founders' shares, CC/Devas and Telcom Devas each acquired 2,070 shares in 2007.

⁶¹ Ex. C-36.

be ordering a second S-band satellite from ISRO/Antrix (*i.e.*, PS2), after it had received the applicable ISP service licenses.⁶²

87. The subscription of shares by CC/Devas and Telcom Devas, as noted above, involved a substantial cash injection. The cash served many essential functions, including that it provided Devas with the capital necessary to make the first payment of the Upfront Capacity Reservation Fee for PS1 under the Devas Agreement. Thus, on June 21, 2006, Devas paid the first installment of the Upfront Capacity Reservation Fee of Rs 29,18,67,000 (approximately US\$ 7 million) for GSAT-6 that was called for under the Devas Agreement by sending a check for that amount to Antrix.⁶³ Once this payment was made, ISRO/Antrix had a maximum of three years to launch PS1.

88. CC/Devas's and Telcom Devas's purchase of share capital in Devas, and their key new role as shareholders, also enabled Devas to leverage the expertise of highly-experienced satellite and wireless telecommunication firms that would help shape and bring to fruition the services contemplated by the Devas Agreement. Indeed, Arun, Jim and Raj assumed an active role in managing CC/Devas and Telcom Devas's respective interests, and thus immediately began to provide invaluable insight as to how best to execute on Devas's business plan. At the same time, the founders (me, Chandra, Venu, Paresh, and Jim)⁶⁴ retained management control of Devas as well as the majority equity interest in Devas.

⁶² *Id.*, slide 3.

⁶³ Ex. C-35.

⁶⁴ Jim Fox resigned from Devas in mid-2006, with the consequence that 4,793 of his "non-vested" shares became subject to an option entitling CC/Devas, Telcom Devas and the Founders to acquire those shares on a pro rata basis. Thus, in 2007, I and other shareholders acquired additional shares in Devas.

89. On July 27, 2006, Devas and Antrix signed an amendment to the Devas Agreement, which stated that the renewal of the satellite lease after the initial 12-year period would occur at "a reasonable" lease fee.⁶⁵ By agreeing to this modification, we viewed the Indian government as having provided Devas, and its investors, including CC/Devas and Telcom Devas, with further assurance that it fully supported the Devas Agreement and intended to have a long-term arrangement with Devas.

F. Devas Continues to Develop the Integrated Satellite System and Adds Additional Operational Experts to Its Board

90. On September 5, 2006, in an effort to seek his input and support, Devas made a presentation to Professor U.R. Rao, who had preceded Dr. Kasturirangan as the Chairman of the Space Commission, Secretary of DOS and Chairman of ISRO.⁶⁶ Professor Rao had been responsible for the formation of Antrix as the marketing arm of those entities. That presentation detailed how, by September 5, 2006, Devas already had:

- Built an American- and Indian-based management and technology team;
- Completed satellite system design and commenced construction of satellite infrastructure";
- Designed and developed the core aspects of the underlying system architecture & receiver technology"; and
- Filed for an ISP license to provide the full range of Devas services.⁶⁷

91. Also in late 2006 and early 2007, largely assisted by Raj Singh's and Jim Fleming's contacts, we considered expanding the Board of Devas to include senior personnel with major telecom and satellite operating expertise. Raj introduced me to Larry Babbio, who

⁶⁵ Ex. C-37 (emphasis in the original).

⁶⁶ Ex. C-38.

⁶⁷ *Id.*, slide 2.

was the Vice Chairman of Verizon Communications Inc., and Jim Fleming reconnected me to Gary Parsons, the founder of XM radio. Following a number of meetings and discussions, these gentlemen agreed to join the Board and were provided with an equity stake in business. They also personally invested \$500,000 each.

92. The addition of seasoned wireless and satellite telecommunications operators to the Board was significant. Between them, Larry and Gary had rolled out highly successful wireless communications systems in the United States: Larry with Bell Atlantic and later Verizon and Gary as the founder of XM Satellite Radio. Among many other things they contributed to the enterprise, they were able to ensure that management of Devas secured entrees to the major network manufacturers and handheld suppliers in the world.

93. For example, Larry's contacts at Lucent (later Alcatel-Lucent) proved invaluable, as Lucent became a major network supplier with whom Devas contracted to supply network gear for the experimental trials of the Devas System. Without Larry's deep relationships at Lucent, it is unlikely Lucent would have devoted the resources necessary to understand the Devas concept or otherwise seek to be a network provider to Devas. Gary Parsons also got involved on the receiver side and provided Devas with access to executives at Qualcomm and other terminal manufacturers.

G. The Indian Government Protects India's S-Band Spectrum

94. At the 2007 World Radio Conference ("WRC"), which was held in Geneva, Member States discussed lowering the permissible Power Flux Density ("PFD") limits for satellites operating in the S-band. The Indian government was one of the few countries that resisted a change in the existing PFD limits, which would have rendered the contemplated services from the GSAT-6 and GSAT-6A satellites ineffective. R.N. Agarwal, a senior advisor

to Devas and former WPC Chairman, accompanied the Indian delegation to the ITU meetings, including the WRC in 2007. In addition, Venu was closely involved in the WRC process, specifically to protect the Devas system by preserving India's right to use higher PFD limits.

95. India, against strong resistance from other member states of the ITU, secured the continued use of the enhanced PFDs, which again, like the earlier 5-spot beam ITU filing, was Devas-specific. In my view, this demonstrated the Indian government's continued commitment to the Devas Agreement.

H. Devas Secures a Further Round of Funding From Columbia Capital and Telcom Ventures

96. As a result of continued progress by both Devas and Antrix/ISRO towards a final deployment of a commercially-feasible system, there was a further round of investment in Devas by CC/Devas and Telcom Devas.

97. By mid-2007, Devas had secured, through its indirect acquisition of Manipal Software, a nationwide ISP license issued by DOT for provision of IP-based services including digital interactive multimedia services via landline, wireless, and satellite delivery methods. In addition, Devas had informed Antrix that it would be electing to lease additional capacity on PS2.

98. Accordingly, on June 11, 2007, Devas, the Devas founders and CC/Devas and Telcom Devas entered into a further Share Subscription Agreement ("June 2007 SSA"), which closed on the same day.⁶⁸ Pursuant to the June 2007 SSA, CC/Devas and Telcom Devas each invested an additional \$7,499,715.67 in exchange for 11,978 Series B Preference Shares each.

⁶⁸ Ex. C-39.

99. The infusion of additional capital allowed Devas to pay Antrix the Upfront Capacity Reservation Fee of Rs 29,18,67,000 (approximately US\$ 7 million) for PS 2/GSAT-6A.⁶⁹ As a result of this payment, Devas effectively exercised its option, pursuant to the Devas Agreement, to order a second satellite from Antrix and ISRO. Antrix/ISRO thus became obligated to build, launch and lease a second satellite for Devas.

I. Devas Approaches Deutsche Telekom About Becoming a Major Strategic Investor in Devas

100. Having secured further capital injections by CC/Devas and Telcom Devas, and with our now-expanded Board of Directors in place, we began to consider the next phase of our development. We all recognized that Devas needed to secure a strategic partner who could assist in the roll-out of the Devas Services throughout India.

101. After discussion among the Board members, it was decided we should approach major cellular companies that had skill in rolling out terrestrial networks, as it had become clear to us by that time that the Devas technology should enable us to reuse the satellite spectrum terrestrially in a manner that would not interfere with the satellite signal and would maximize spectral efficiency to provide a full portfolio of services. As a consequence of that conclusion, Devas, along with its existing investors, developed a business model that reflected our intention to have a broadband wireless access business delivered through the Devas integrated satellite system as a major element of our overall business plan.

102. We agreed that Raj would approach T-Mobile, a subsidiary of Deutsche Telekom ("DT"), a world leader in the wireless telecommunications industry, to determine whether it would be interested in making an equity investment in Devas, as well as contributing its

⁶⁹ Ex. C-40.

expertise in rolling out terrestrial broadband based wireless telecommunications networks to Devas.

103. In October 2007, Raj arranged for me to meet Hamid Akhavan, then-Chief Executive Officer of T-Mobile International AG (and later Chief Operating Officer of Deutsche Telekom Group), while he was attending a business meeting in the United States. In turn, I introduced Mr. Akhavan to the Devas management, business and expectations. Mr. Akhavan indicated that DT likely would be interested in exploring the idea and, several days later, Kim Larsen (then Senior Executive Vice President, DT Director of Technology Services & International Network Economics), Kevin Copp (then Senior Executive Vice President, DT Head of Mergers & Acquisitions), Francis Deprez (then Senior Vice President of DT's Group Strategy & Policy) and Wolfgang Kaiser (then DT's Senior Legal Counsel for M&A and JVs), met with me, Paresh and Chandra in Washington, DC to discuss the business.

J. Deutsche Telekom Evaluates the Devas Business Plan and Model

104. Later that month, after sending certain requested information to DT, Kim and Axel Scheuermann (from DT's Mergers & Acquisitions group) traveled to Washington, DC to review Devas's business plan. At my direction, Paresh Shah worked with them for about a week to refine the business model, and to ensure that the specifics of the Indian market had been taken into account in the model to DT's satisfaction. Among other things, DT examined the modeled cost of building out the terrestrial network, including, in particular, forecasting the amount of bandwidth and the number of terrestrial towers that would be needed to handle high-traffic demands on the system, and scrutinized the modeled cost of operating and maintaining the network, including ensuring the replacement of network hardware necessary to maintain the system (at least every five years).

K. Deutsche Telekom Visits India

105. After working on our model, DT was very interested in investing in Devas. Before it would do so, however, it wanted further assurances that Devas had a viable and secure partnership with DOS/ISRO/Antrix.

106. On December 2 through 6, 2007, I along with, among others, Chandra, Venu, Paresh and Ron Olexa (of Devas); Mr. Larsen, Mr. Copp, Mr. Deprez, Mr. Kaiser, Mr. Scheuermann, and Stefan Wilhelm (DT's Vice President, Strategic Planning) (all of DT); along with Arun Gupta and Jim Fleming (representing CC/Devas) met with representatives from Antrix and ISRO, including the Chairman of DOS, Dr. Nair, in both Bangalore and New Delhi. I remember the date of these trips quite well: on December 3, my brother-in-law in the United States had a heart attack, and, therefore, I had to cut short my time with the DT representatives in order to attend to a family emergency. As a consequence, I was not able to accompany this group on its visit to Delhi to meet with Mr. Garg, who was the head of the WPC at the time. However, I was present during the meetings in Bangalore (except for the last day), where ISRO representatives showed us its satellite construction facilities and the progress it had made towards launching the satellites. While in Bangalore, we again discussed Devas's financial business model with DT.⁷⁰

L. Devas Shares Its "Go to Market Plan" With Deutsche Telekom

107. After DT's team returned to Germany, they asked to see Devas's "go-to-market" plan, that is, how we would position Devas's products in the Indian marketplace (upscale, mid-market or down-market) and our strategy for reaching Indian customers (through advertising,

⁷⁰ Ex. C-41.

retail distribution, etc.). On December 20, 2007, with my approval, Paresh sent DT the "go-to-market" presentation.⁷¹

M. Deutsche Telekom Agrees to Make a Sizeable Investment in Devas

108. Ultimately, DT agreed to make a sizeable investment – in cash as well as in kind – in Devas. Thus, DT made clear that it would bring to Devas its experience and expertise with planning, building, and operating communications networks around the world, its personnel who have experience with the same, and its purchasing power with vendors and suppliers, which, in 2008 and 2009, gave DT some of the best supplier pricing in the telecommunications industry.

109. In order to accommodate DT's investment in Devas, we had to engage in a major capital restructuring of the company. This included the signing by the shareholders of a Second Amended and Restated Shareholders' Agreement (and the agreement's subsequent adoption by the Devas Board on March 14, 2008),⁷² pursuant to which the then-current shareholders of Devas – namely, certain individual shareholders⁷³ and CC/Devas and Telcom Devas – agreed to the creation of four classes of Devas shares: Class A Shares, Class B Shares, Class D Shares and Class E Shares. This structure established, as described below, the final share structure of Devas.

110. Through this restructuring, Series A Preference Shares held by CC/Devas and Telcom Devas were reclassified as Class A Equity Shares, and the Series B Preference Shares held by CC/Devas and Telcom Devas were reclassified as Class B Equity Shares. In anticipation of the DT round of investment, a new category of "Class C" Equity Shares was created. Equity

⁷¹ Ex. C-42.

⁷² Ex. C-44.

⁷³ *E.g.*, Chandra, James Fox, Venu and me.

shares held by the Founders, CC/Devas, Telkom Devas and others were re-classified as Class D Equity Shares, and an additional share category (Class E Equity Shares) also was created. Each of Class A, Class B and Class C Equity Shares would have priority rights in the event of dividend distribution or liquidation.

111. The Registrar of Companies took on record the forms relating to the above restructuring.

112. In the interim, on March 19, 2008, Devas and Deutsche Telekom Asia Pte Ltd. ("DT Asia"), a DT-affiliated special investment vehicle incorporated and based in Singapore, entered into a Class C Share Subscription Agreement (the "March 2008 SSA") pursuant to which DT subscribed for Class C Equity Shares in Devas on the terms and conditions set forth therein.⁷⁴ We had submitted to DT prior to the transaction the financial model that we had worked on jointly and which DT found to be a reasonable and conservative reflection of Devas's business prospects. The set of agreed cash flow projections for Devas that we had finalized with DT is set forth in the 8-year Business Plan that is appended to the March 2008 SSA.⁷⁵

113. When the March 2008 SSA closed, DT invested \$75 million in Devas and was issued 28,349 Class C Shares. At that time, the Devas shareholders (including DT Asia) entered into a Third Amended and Restated Shareholders' Agreement, which provided the conditions under which DT Asia would hold the Class C Equity Shares, and also re-established the rights and duties of the shareholders as to various share classes.⁷⁶

⁷⁴ Ex. C-54.

⁷⁵ *Id.* at 55-56.

⁷⁶ Ex. C-52.

114. Pursuant to the Third Amended and Restated Shareholders' Agreement, DT appointed Augusto Pellarini, a long-time financial specialist at DT, as Chief Financial Officer ("CFO") of Devas.

115. The changes in Devas's capital structure also were approved by the FIPB.⁷⁷

N. Devas Keeps ISRO/Antrix Apprised of Devas's Progress

116. The success of the Devas project to this point was demonstrated in a presentation I gave to Mr. A. Bhaskarnarayana of ISRO and Antrix's Mr. Murthi in Paris, France on December 15, 2008.⁷⁸ The presentation detailed how Devas had successfully partnered with DT, thereby gaining access to a first tranche of funding of \$75 million, or enough to pay for "2 satellites through launch, technical trials, and CPE development, and 2 test bed cities."⁷⁹

117. The presentation to ISRO and Antrix also noted that Devas was engaged in discussions with a number of vendors that could provide services related to the upcoming experimental trials.⁸⁰ As I note below,⁸¹ these experimental trials ultimately were successfully conducted in Bangalore in June through September 2009.

118. The presentation further noted that DT was willing to invest more money based on the successful completion of certain additional milestones, including a successful technical trial, provision of an operating license from WPC and the first satellite launch by ISRO.⁸² At

⁷⁷ See Exs. C-51 & C-55.

⁷⁸ Ex. C-57.

⁷⁹ *Id.*, slide 2.

⁸⁰ *Id.*, slide 3.

⁸¹ See *infra* ¶¶ 130-33.

⁸² Ex. C-57, slide 2.

this point, I believed that, with the cooperation of ISRO/Antrix, which they had contractually agreed to provide, all of these milestones would be met. In particular, I understood that the WPC would issue all necessary licenses that ISRO/Antrix supported and that ISRO/Antrix had agreed in the Devas Agreement to support our license applications.

119. A similar presentation was made by Venu to the Technical Advisory Group of the INSAT Coordination Committee on December 26, 2008 in Bangalore, India,⁸³ and on January 6, 2009 at New Delhi, India,⁸⁴ which described and provided technical details about the Devas system. The Devas architecture for an Integrated Satellite System and the technical parameters of the satellite, terrestrial, and terminal aspects of the ISS were presented and discussed.

O. Devas Prepares to Conduct Experimental Trials of Its Proposed System

120. Under the Devas Agreement, Devas was required to conduct experimental field trials in order to demonstrate the feasibility of its contemplated hybrid satellite terrestrial system.

121. To this end, on August 20, 2008, Devas submitted an application for an experimental license to the WPC.⁸⁵ The application requested a temporary experimental license to allow Devas to "[d]esign, develop[] [and] test[]" the wireless apparatus that was a central component of the Devas system.⁸⁶

122. ISRO fully and unconditionally supported Devas's application for an experimental license. Among other things, our application was supported by a letter dated April 24, 2008,

⁸³ Ex. C-58.

⁸⁴ Ex. C-60.

⁸⁵ Ex. C-53.

⁸⁶ *Id.* at 2.

from Dr. S.V. Kibe, Program Director of SATNAV at ISRO, to the Wireless Advisor of the Government of India, as well as to the WPC.⁸⁷

123. ISRO/Antrix's interest in the success of the Devas trials was confirmed in a November 17, 2008 letter to me from Antrix's Executive Director, Mr. Murthi.⁸⁸ In the letter, Mr. Murthi stated that he was "glad . . . [Devas was] preparing to conduct technical field trials of the Devas hybrid satellite terrestrial system in Bangalore during February – March 2009 . . . and multiple technologies vendors will be testing their equipments [sic] on the Devas system."⁸⁹ Mr. Murthi promised "to support" Devas's attempts to gain "specific frequency allocation associated with the temporary space segment."⁹⁰ While the trials originally had been scheduled for February and March 2009, as Mr. Murthi stated, they were delayed by the need to detail precisely what Devas was testing, the need to use INSAT 3C capacity and other matters, including delays in the import of some of the terrestrial equipment needed for the trials.

124. On May 7, 2009, the WPC granted Devas a license to conduct a short-term "Experiment/Trial of wireless equipment at Bangalore,"⁹¹ which allowed Devas to use all parts of its system, including terrestrial reuse of spectrum. On July 15, 2009, Devas's experimental license was extended through September 30, 2009.⁹² WPC charged minimal fees in connection

⁸⁷ Ex. C-47.

⁸⁸ Ex. C-56.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Ex. C-65.

⁹² Ex. C-69.

with the issuance of these experimental licenses, as we had expected given that the applications were supported by ISRO and were in furtherance of the Devas Agreement.

125. Prior to the trials, Devas also received an import license, dated March 26, 2009, which allowed Devas to import CGC and terminal equipment for the trials.⁹³ In addition, the Standing Advisory Committee for Frequency Allocation ("SACFA"), a section of the WPC, granted Devas approvals dated March 30, 2009, June 2, 2009, and July 13, 2009 to use terrestrial mobile towers for mounting CGC base station equipment for the trials.⁹⁴

126. Clause 2.2(i) of Devas's ISP license provides that the licensee can provide IPTV service if its net worth is in excess of INR 1000 million, consistent with other applicable operational and content guidelines.⁹⁵ Devas's net worth met this threshold and, therefore, it applied to DOT for permission to provide IPTV services under its ISP license.⁹⁶ In a letter dated March 31, 2009, DOT granted permission to Devas to provide IPTV services.⁹⁷

P. ISRO Officials Tour Hybrid Satellite Operators

127. Before the trials began, in May 2009, Devas arranged visits for members of the ISRO team to view satellite communication companies that were already using ATC/CGC so that they could see the systems and services in full operation.

128. In the United States, Gary Parsons arranged meetings with Sirius XM, SkyTerra, Hughes Networks and Qualcomm. We also met with ICO North America for a demonstration of

⁹³ Ex. C-61.

⁹⁴ Exs. C-62, C-66 & C-68.

⁹⁵ Ex. C-48 at 9.

⁹⁶ Ex. C-59.

⁹⁷ Ex. C-63.

its hybrid satellite-terrestrial system and how the ATC re-use worked in areas that necessitated the use of ATC to receive clear reception.

129. In Europe, Alcatel Lucent arranged for a visit to Turin, Italy to demonstrate other relevant technologies for multimedia services. Thereafter we debated with ISRO the proper system architecture, technologies, and services that Devas would use to launch operations.

Q. The Bangalore Experimental Trials

130. The experimental trials were extremely successful and showed that once a satellite was launched and brought into use, Devas was well-positioned to roll out service to customers according to its business plan.

131. In connection with the trials, numerous DOS/ISRO officials visited the conference rooms in Devas's offices in Bangalore. We demonstrated the receipt of the signal in the laptop computer terminals that we had set up in the offices. In the areas surrounding the office, we had a vehicle/car equipped with a receiver that also captured the signal.⁹⁸

132. The DOS/ISRO/Antrix officials attending the test included Dr. Radhakrishnan (who was pictured observing the result of our test),⁹⁹ Dr. Nair and Dr. T.K. Alex.

133. Around this same time, Devas had a reception to celebrate the opening of its new office in Bangalore and the success of the trials. Both Dr. Nair and Dr. Radhakrishnan, respectively, were present at the reception and when I spoke with them, both confirmed to me their excitement over both the successful trials and the possibilities for the Devas system.

⁹⁸ See Ex. C-80 (description of the technical tests carried in our office).

⁹⁹ Exs. C-70 to C-75.

R. Deutsche Telekom Further Assists in Refining Devas's Business Model

134. In or around May 2009, I directed Paresh Shah and David Dodson to work with DT to update Devas's financial model. As we had done in late 2007 and early 2008, in updating our model, we drew heavily on Kim Larsen of DT's expertise with network technology and topography to model, among other things, the capital expenditures (*e.g.*, cost to build towers, hubs, data centers, etc.) necessary to build a ground network and the cost to operate it. Discussions with DT about the model continued throughout June and July 2009, and culminated in a meeting that Augusto Pellarini and I attended at DT's headquarters in Bonn, Germany at the end of July 2009. No further changes were made to the model after this time.

S. Devas Requests Additional Investment From DT Asia, CC/Devas and Telcom Devas

135. In July 2009, as the CEO of Devas, I informed our shareholders, including CC/Devas, Telcom Devas and DT Asia, that, due to predicted delays in the satellite launch, which I discuss more fully below,¹⁰⁰ I was recommending a capital call so that the business would have sufficient capital on hand when the satellites were launched to more quickly roll out the contemplated business.

136. The investors and their parent companies agreed that they would answer a capital call. As a result, on September 14, 2009, Devas sought approval for a new round of investment from the FIPB;¹⁰¹ this approval was granted on September 17, 2009.¹⁰²

¹⁰⁰ See *infra* ¶¶ 153-61.

¹⁰¹ Ex. C-77.

¹⁰² *Id.*

137. On that same day, each of CC/Devas, Telcom Devas, and DT Asia entered into a Share Subscription Agreement with Devas (the "September 2009 SSA", informally known as the "Class C+ Share Subscription Agreement").¹⁰³ Pursuant to this agreement, each of CC/Devas and Telcom Devas agreed to subscribe to 525 Class C Shares for \$1,388,951.24, and DT Asia agreed to subscribe to 8,400 Class C shares for \$22,223,219.76. The September 2009 SSA duplicated both the price per share and terms of the March 2008 SSA.¹⁰⁴

T. DEMPL Invests in Devas

138. As the Devas integrated satellite system neared the launch date, we took steps to create a management compensation structure in line with comparable Indian companies. As part of this, and with the assistance and guidance of our professional tax and legal advisors, we created a form of equity incentive package for key employees. This reached fruition in 2008, when the Board approved an "Equity Incentive Plan."

139. Because the plan involved the purchase of shares in an Indian company by a foreign entity (DEMPL), DEMPL's purchase of DMPL shares required the approval of the FIPB. To save having to go back to the FIPB multiple times, we applied for approval for DEMPL to purchase up to 10,000 Class D shares. An application to the FIPB was duly made on June 11, 2009, and the purchase was approved on September 29, 2009.¹⁰⁵

140. With approval in hand, the Equity Incentive Plan was implemented, and DEMPL proceeded to purchase Class D shares. On September 2, 2009, DEMPL entered into a share subscription agreement with Devas under which DEMPL subscribed to 4,511 of Devas's Class D

¹⁰³ Ex. C-83.

¹⁰⁴ *Id.*

¹⁰⁵ Ex. C-82.

Equity Shares for an aggregate of Rs. 3,16,78,948.60 (equivalent to US\$658,606 at then-prevailing exchange rates), representing a subscription price of Rs.10/- per share and a premium of Rs.7,012.60 per share.¹⁰⁶

141. In 2010, two new senior employees, R. Mahajan and V. Sanmugalingam, became eligible to participate in the Equity Incentive Plan. Thus, on June 15, 2010, by a further subscription agreement with Devas,¹⁰⁷ DEMPL subscribed for an additional 1,891 of Devas's Class D Equity Shares, for an aggregate of Rs. 3,64,03,641.00 (equivalent to US\$782,874.00 at then-prevailing exchange rates), representing a subscription price of Rs.10/- per share and a premium of Rs. 19,241.00 per share.

142. The employees and directors who participated in the Equity Incentive Plan (and who thus acquired indirect equity interests in DEMPL) were:

Name	Units in DEF
Ramachandran Viswanathan	2,633
Paresh Shah	100
Kari Lehtinen	248
Gary Parsons	1,395
Lawrence T. Babbio Jr.	1,116
George R. Olexa	248
Ramanaryan V Potarazu	166
Rajiv Mahajan	248
Vignaraj Sanmugalingam	248
TOTAL	6,402

143. As a result of these transactions, as from June 2010 onwards, DEMPL owned 6,402 Class D shares, representing 3.47% of Devas's share capital.

¹⁰⁶ Ex. C-76.

¹⁰⁷ Ex. C-96.

U. By the End of 2009, Devas Had Successfully Accomplished Almost All Necessary Milestones

144. As things stood at the end of 2009, I was optimistic that Devas's business would be up and running in the first half of 2010. Specifically, by the end of 2009, Devas had successfully:

- a. obtained third party investors;
- b. paid both Upfront Capacity Reservation Fees, which, in turn, guaranteed Devas the Leased Capacity on both GSAT-6 and 6A;
- c. successfully secured, with the active participation of ISRO/Antrix, all necessary licenses to that point, including a free-standing Category A ISP license with IPTV, as well as the licenses needed to conduct experiments of the Devas system;
- d. secured DT as a major strategic investor, together with its know-how and expertise in bringing wireless mobile communications to new markets;
- e. secured the participation of the world's leading technology vendors, such as Alcatel Lucent; and
- f. conducted highly successful experiments demonstrating the efficacy of the hybrid system.

145. With respect to item (e) above, over the course of the project, I personally, along with my team, spent a great deal of time securing technology vendors for all of the components of Devas's integrated satellite system, including network equipment, handsets, security software, and content for Devas's AV service. Steffen Schwartz, DT's Senior Vice President of Procurement, also was heavily involved.

146. During the 2009-2010 time period, we entered into contracts with various vendors, including with DibCom to purchase 10,000 chipsets that go into handsets and other user terminals; with Electrobit to manufacture AccessPorts (the device containing both an antenna and a WiFi router that turns any WiFi-enabled device into a receiver for Devas multimedia content); with Quantum for multimedia receivers; with Alcatel-Lucent Deutschland AG ("ALU") for certain services in relation to an LTE interference study and turnkey DVB-SH installation for

Devas's multimedia service soft launch and, separately, to test the efficacy of certain technology for Devas's commercial operations; and with Nagra to encrypt multimedia, so that it cannot be accessed by non-subscribers.

147. The minutes from Devas's board meeting on March 31, 2010,¹⁰⁸ reflect that the following report was given on the progress Devas had made in building out its ecosystem at that moment in time:

The following updates in relation to the procurement activities of the Company were presented to the Board:

- Alcatel-Lucent has been selected to conduct a trial demonstrating their TD-LTE and DVB-SH ecosystem in Stuttgart, Germany as part of Devas's Phase II Trials
- Huawei Technologies has been selected to conduct a trial demonstrating their TD-LTE and CMMB ecosystem China as part of Devas's Phase II Trials
- Alcatel-Lucent has been selected for DVB-SH soft launch deployment (DVB-SH hardware/software, integration, installation and multimedia head-end)
- Alcatel-Lucent has been selected for TD-LTE/DVB-SH co-existence study and associated technical analysis
- Accessport: Technology Collaboration & Equipment Supply Agreements with Elektrobit (EB) have been formulated and are to be executed April
- Vehicular Receiver: Equipment Supply Agreements with Quantum have been formulated and are to be executed April
- BSS-OSS: Business requirements finalized and issued to ALU, P1 and Suntec for COTS solution. Vendor responses expected by second week of April; evaluations/selections to be completed by April end
- 2-way MSS system: RFP released to RunComm, ALU, Ericsson, Sasken for MSS system including terminals. Award to be made after conclusion of system design and commercial terms
- TD-LTE radio access and core infrastructure evaluation is underway with shortlisted vendors ALU, Huawei and NSN

¹⁰⁸ Ex. C-90.

- Tower procurement for approximately up to 15 towers in Bangalore for soft launch is underway with existing tower companies
- Backhaul procurement for approximately up to 15 towers in Bangalore for soft launch is underway with existing backhaul providers
- Satellite uplink contract negotiations are underway with Antrix
- Contract negotiations are underway with Irdeto, Nagra, and NDS for DRM and CAS¹⁰⁹

148. At or about this same time, I, along with Chandra and Venu, also met with several Indian governmental agencies to discuss how Devas's integrated satellite system could be used for rural development and connectivity, security and emergency communications, disaster warning and response, mass transportation infotainment, and logistics management. Three initiatives Devas was prepared to implement are: (1) collaboration with Indian Railways (offering a mobile TV product in trains across India); (2) e-governance applications for India's North East Region (customized applications for rural development, e-governance, emergency communications, remote connectivity, and strategic services); and (3) meteorological applications (customized solutions for the Indian Meteorological Department ("IMD")).¹¹⁰

V. Devas's Application to the WPC for Frequency Authorization and Operating License

149. In line with the parties' expectations, WPC had granted Devas all the necessary licenses to conduct the technical trials, including for import of the necessary equipment to carry out those trials. In addition, DOT had granted Devas an all-India ISP License and IPTV license. Having proven the concepts of the Devas Services in the trials, we fully expected that WPC would grant Devas its full operating license as soon as the first satellite was launched.

¹⁰⁹ *Id.*, ¶ 7.

¹¹⁰ Exs. C-194 to C-196.

Accordingly, we targeted submitting our application for frequency authorization and operating license as soon as we had a firm launch date and identified launch vehicle in hand.

150. After the Phase I trials in Bangalore were successfully completed, we began to work on our WPC application. R.N Agarwal, a former head of the WPC, Jai Singh, former head Satellite Communications Programmes and first Programme Director of INSAT, DOS/ISRO, and Mr. K. Narayanan, former head Satellite Communications Programme Office, DOS/ISRO, both of whom were senior advisors to Devas, worked with Venu on the submission. The first significant draft of the WPC application was attached to a July 20, 2010 letter from Devas to Antrix.¹¹¹

151. Thereafter, Venu, R.N. Agarwal, and K. Narayanan held extensive reviews with DOS/ISRO personnel regarding the application. These discussions involved several rounds of meetings with representatives of Frequency Management Office ("FMO") at ISRO headquarters working under the direct supervision of Mr. Neelakanatan, then the Director of the Satellite Communication Programme Office at ISRO and Mr. Madhusudan, who became Executive Director of Antrix.

152. By January 2011, ISRO/Antrix senior officials had signed off on Devas's draft application to the WPC, including Mr. Neelakanatan and Mr. Madhusudan. We were ready to submit the application as soon as a specific launch date and launch vehicle were identified for us by ISRO. We had every expectation that our license application would be favorably received by the WPC just as the WPC had granted us our earlier experimental license for a nominal fee where that application similarly had been supported by ISRO/Antrix.

¹¹¹ Ex. C-98.

W. ISRO Delays the Satellite Launch

153. The Devas Agreement provides that, with a six-month grace period, Antrix/ISRO must launch the primary satellite within 36 months of Devas's payment of the first installment of the Up-Front Capacity Reservation Fee.¹¹² As noted above, Devas had paid the first installment of the Up-Front Capacity Reservation Fee on June 21, 2006.¹¹³ As a result, the Devas Agreement contemplated that PS1 should be launched by the end of June 2009 at the latest. After that time, Antrix would become liable for "Delay Damages" under the Devas Agreement.¹¹⁴

154. In accordance with the Devas Agreement, ISRO provided status updates to Devas as to the progress it was making on delivery of the satellites. Many of these status updates took place at ISRO headquarters and were attended by Chandra, Venu and, occasionally, me on behalf of Devas. If I did not attend, I would receive reports from them on what occurred at these review meetings.

155. On April 11, 2009, as Devas was preparing for the experimental trials, a review meeting was held between ISRO/Antrix and Devas. Venu and Chandra attended for Devas.¹¹⁵ As noted in the minutes, which were prepared by ISRO, Antrix's Executive Director, Mr. Murthi, highlighted:

that GSAT 6 satellite scores over other satellites in many ways like adaptation of I2K bus, providing satellite terrestrial hybrid system for multimedia services with payload configuration being very unique making GSAT 6 a significant project

¹¹² Ex. C-16 at 2 § 3(b).

¹¹³ See *supra* ¶ 87; Ex C-35.

¹¹⁴ Ex. C-16, Ex. B at B3 § 2.1.2.2.

¹¹⁵ See Ex. C-64 (copy minutes of this meeting, including a list of participants present at the meeting).

adding a feather in the cap of ISRO. He stressed that the satellite has to be launched in early 2010 for which efforts should be increased and concentrated to ready the satellite by year end. He also remarked that the S-Band frequency spectrum was very important and there was a time limit to the allotted spectrum and hence, all efforts are to be put to retain our right over this important asset by launching the satellite in time.¹¹⁶

156. At this juncture, though the June 2009 contractual date for the launch was not going to be satisfied, Devas was satisfied that GSAT-6 would be launched in early 2010, shortly after the conclusions of the experimental trials. Accordingly, even though we would have been entitled to Delay Damages as a result of the failure to timely launch the satellite, because we expected that the delay at this stage was going to be for a relatively short period of time, we elected not to seek Devas Damages at that time. However, I suggested a capital call limited to \$25 million on the basis that the satellite would be launched in early 2010. Had I known the satellite launch would be materially delayed beyond the second quarter of 2010, I would have suggested a more sizeable capital call.

157. Shortly after the experimental trials had concluded, on November 11 and 12, 2009, another joint status review meeting was held with ISRO/Antrix at the ISRO Space Application Centre in Ahmedabad, India and ISRO Satellite Centre in Bangalore, India, respectively. Despite significant progress being made on GSAT-6, due to certain technical issues, the launch date for GSAT-6 was now projected for June 19, 2010.¹¹⁷

158. The continued pushing back of the launch date for GSAT-6 became a significant concern for me and the Devas investors and a topic of discussion at our Board meeting on

¹¹⁶ *Id.* at 1.

¹¹⁷ Ex. C-85.

December 4, 2009.¹¹⁸ Among other conclusions at the Board meeting, we determined: (1) to form a committee to interface with Antrix/ISRO on a regular basis with regard to the progress of GSAT-6; and (2) to send a letter to Antrix/ISRO demanding a meeting with the new Chairman, Dr. Radhakrishnan. Following this discussion, Gary Parsons headed a Board committee that also included Kiran Karnik, for the purpose of regularly reviewing the status of the satellite with ISRO.

159. In addition, on December 23, 2009, I sent a letter to Messrs. Murthi and Bhaskarnarayana noting our concern regarding the "delays on the delivery schedule of the satellite system" and "ISRO & Antrix's prioritization of the Devas satellite system and the requisite resource allocation required to launch the satellites expeditiously."¹¹⁹ Having further noted "Devas[']s] . . . significant investments over the past four years [in] technology development, ground systems development, terminal development, technical trials, and preparation for commercial operations," I concluded by noting that "[t]he Devas senior management along with the investor consortium request to meet with Chairman ISRO [Dr. Radhakrishnan], Dr. A. Bhaskarnarayana and you in 4th week January or 1st week of February of 2010 to review the progress & schedule of the satellite system as well as discuss plans for initiation of commercial services. Please let us know suitable dates for a meeting in Bangalore."¹²⁰ This request to meet with Dr. Radhakrishnan was driven by our desire to ensure that the most senior executive at DOS/ISRO/Antrix, who had just succeeded Dr. Nair, was aware of our concerns and that he would press forward personally to ensure no further delays occurred.

¹¹⁸ Ex. C-86.

¹¹⁹ Ex. C-87.

¹²⁰ *Id.*

160. I received an almost immediate response to my letter, including confirmation that Dr. Radhakrishnan would meet with us in early February. Thus, in a letter dated December 30, 2009, Mr. Murthi reassured me that "Antrix/ISRO is putting all efforts to meet the launch schedule of July 2010."¹²¹ Antrix also conveyed that (1) all sub-systems were at advanced stages of readiness; (2) space craft structure was under assembly at HAL (Hindustan Aeronautics Limited, a state-owned aerospace company) and was expected to arrive shortly at ISITE (ISRO Satellite Integration and Test Establishment); and (3) north and south payload panels had already been realized at HAL and were expected to be dispatched shortly.¹²² I informed the investors of Mr. Murthi's response, and, in particular, that Dr. Radhakrishnan, the Chairman of ISRO, had arranged to meet with us on relatively short notice.

161. On or about February 4, 2010, I, together with Chandra, Arun Gupta, Kevin Copp, Gary Parsons, Jai Singh, R.N. Agarwal, and Kiran Karnik met with Dr. Radhakrishnan at ISRO Headquarters in Bangalore. At that meeting, I made a presentation at which I stressed that the "[c]ompletion and launch of GSAT 6 & 6A at the earliest" was vitally important, and had to be achieved "no later than August 2010,"¹²³ a date which we, in our independent opinion, had believed feasible notwithstanding the delays that had occurred to that date. Dr. Radhakrishnan, however, would not commit to a July or August launch date. Instead, he indicated that the new deadline was September 1, 2010. This was very concerning and we determined to continue to monitor the situation closely.

¹²¹ Ex. C-88.

¹²² *Id.*

¹²³ Ex. C-89, slide 13.

X. Devas Successfully Completes Phase II Trials In Stuttgart, Germany and China

162. In the summer of 2010, various Devas representatives, including Paresh Shah and Kari Leithnen, attended the Phase II technical trials conducted by Devas and its vendors in Germany and China, respectively. The trials in Germany were conducted on a DT platform in Stuttgart. During the trials, ALU demonstrated its TD-LTE and DVB-SH ecosystem. Separately, at the trials held in China, Huawei Technologies demonstrated its TD-LTE and CMMB ecosystem. Paresh and Kari kept me informed of the progress of these trials. Like the Phase I trials in Bangalore, the Phase II trials were successful. These trials demonstrated the proof of concept for the TD-LTE ecosystem and its maturity and readiness for Devas's launch in India. By the end of the summer of 2010, Devas had decided to employ TD-LTE technology in its broadband wireless access business as TD-LTE had, by that time, become the standard around which most BWA service providers had converged.

163. On April 21, 2010, Devas made a presentation in Bangalore, India to the Director of the Satellite Communication and Navigation Programmes ("SCNP") at ISRO titled "ISRO-Devas Partnership"¹²⁴ in which we confirmed the progress Devas had made in bringing the Devas system to fruition. The presentation detailed Devas's partnerships and alliances to date, which included its relationship with Telcom Ventures and Columbia Capital; strategic partners, such as ISRO/Antrix as well as DT; and 24 other members of its "[i]ndustry [e]cosystem" dealing with "Chipsets," "Content," "CGC infrastructure," "Handsets" and "Technology & system integrators."¹²⁵ The presentation also noted that, with "ISRO and DT support," Devas

¹²⁴ Ex. C-93.

¹²⁵ *Id.*, slide 16.

had successfully (1) filed patents concerning the hybrid system; (2) conducted Phase I trials; (3) adapted 4G LTE standards to its frequencies; and (4) designed and tested translator and embedded terminals.¹²⁶ The presentation also noted that, to that date, Devas had successfully secured numerous approvals, including FIPB approval for its foreign investments; a National Category A ISP License and an IPTV license from DOT; WPC and SACFA trial licenses; and an import license from WPC.¹²⁷

164. By not launching GSAT-6 by July 1, 2010, Antrix was in material breach of the Devas Agreement.

VII. THE PRESS BEGINS MISREPORTING ABOUT THE DEVAS AGREEMENT, RESULTING IN MY SEEKING TO EDUCATE GOVERNMENT MINISTRIES ABOUT DEVAS AND THE DEVAS AGREEMENT

165. Beginning in late May 2010, the Indian press began to publish recklessly erroneous allegations about Devas and the Devas Agreement. At the same time, the launch delays continued and significant and mounting concerns were expressed by Devas's shareholders, including CC/Devas and Telcom Devas, to me.

166. At the urging of those shareholders, beginning in June 2010 and continuing through the end of January 2011, we scheduled and attended over a dozen meetings with numerous Indian governmental ministries to educate them about the benefits that the Devas System would bring to India. At these meetings, I and/or other Devas executives reiterated (1) the history of the Devas Agreement; (2) Devas's subsequent efforts to launch the Devas system;

¹²⁶ *Id.*, slide 17.

¹²⁷ *Id.*, slide 18.

and (3) the role the Devas system could play to further the interests of the Indian government and people.¹²⁸

167. At none of the meetings did any agency or person, including the Law Minister (whose department had been quoted by the press, in August 2010, as describing the Devas Agreement as "illegal")¹²⁹ express any concern that the Devas system would interfere with the goals of the Indian government. To the contrary, they expressed positive interest in the Devas system and how it could support and augment their individual goals. In fact, when the Indian press interviewed me I confirmed that "[o]n the government side, we are in talks with organisations including the railways and Sam Pitroda's smart grid taskforce for providing satellite-based communications and connectivity."¹³⁰

168. On June 10, 2010, in Chicago, I met with Sam Pitroda, the Advisor to the Prime Minister of India on Public Information Infrastructure & Innovations and Special Advisor to the Government on Telecommunications and Spectrum.¹³¹

169. We briefed Mr. Pitroda on the Devas project: the Devas Agreement, Devas's investors, progress to date, hybrid satellite terrestrial system with ATC/CGC spectrum reuse, portfolio of services including broadband services, and unique applications including railways, remote connectivity, and secure communications. Mr. Pitroda appreciated the Devas project and

¹²⁸ For representative copies of the presentations we made at this time, *see* Exs. C-95, C-99, C-105, C-109 to C-111, C-115 to C-117, C-119 & C-120.

¹²⁹ Ex. C-100.

¹³⁰ Ex. C-102.

¹³¹ Ex. C-95.

made introductions to the Indian Railways and the Universal Service Obligation Fund ("USO"), urging us to leverage our unique system for national uses.

170. On June 22, 2010, I had an appointment at the Prime Minister's Offices to meet Mr. Shiv Shankar Menon, the National Security Advisor to the Prime Minister, and provide a briefing on Devas. We briefed Mr. Menon on the Devas project. He also appreciated the merits of the project and said that the Government should promote further such innovative private-public partnerships and investments in the space sector. Additionally, recognizing the importance and value of the unique services and technologies that we had developed, he said he would make an introduction to the National Security Council ("NSC") and urged us to brief them on how Devas services could be used by the various user agencies represented in the NSC. Based on this, my team followed up and made a presentation to the NSC on August 6, 2010.

VIII. DR. RADHAKRISHNAN REFUSES TO MEET US

171. On July 20, 2010, I sent a letter to Mr. Murthi, who was, by then, the Managing Director of Antrix, requesting that he confirm the October 2010 shipment deadline supplied to Devas as well as confirmation that DOS/ISRO/Antrix would "coordinate . . . submittal of Devas operating license application to WPC."¹³² The letter made reference to the many steps already taken towards the completion of the Devas system to date and reminded Antrix and ISRO of their prior representations that the satellite launches would be slated for expedited delivery.

¹³² Ex. C-98.

172. As the press continued to focus on the Devas Agreement, at the next status review on August 5, 2010, ISRO/Antrix merely confirmed the shipment and delivery date for GSAT-6 as December 10, 2010.¹³³

173. In a letter to Dr. Radhakrishnan dated August 20, 2010,¹³⁴ I expressed my concern that Antrix/ISRO had stopped even noting a potential launch date and requested an urgent meeting between Antrix/ISRO and Devas's senior management, Board of Directors, and investors of Devas during the week of August 23, 2010.

174. I hoped that Dr. Radhakrishnan would schedule a meeting with us at his earliest convenience. Disappointingly, in a reply dated August 25, 2010 from Antrix, I was instead instructed to seek a meeting with Mr. Murthi.¹³⁵ At this point, I considered that Dr. Radhakrishnan, and by extension DOS/ISRO/Antrix, no longer was willing to commit to the project. We determined at this time that it was necessary to engage legal representation to advise us concerning the mounting hurdles that appeared to be placed in our way to realization of our rights under the Devas Agreement. I also determined that it was likely we would have to go around Dr. Radhakrishnan if we were to achieve a successful launch.

IX. ADDITIONAL MEETINGS WITH GOVERNMENT MINISTERS

175. On August 27, 2010, I had an appointment to meet Mr. T.K. Nair, the Principal Secretary to the Prime Minister, and provide a briefing on the Devas project.¹³⁶ Upon arrival at

¹³³ Ex. C-101.

¹³⁴ Ex. C-103.

¹³⁵ Ex. C-104.

¹³⁶ Ex. C-105.

the Prime Minister's office, I along with Chandra and Mr. Kiran Karnik, was told that Mr. Nair had just left for an urgent meeting and that his deputy, Mr. Pankaj Saran, Joint Secretary PMO, would meet us instead. We briefed Mr. Saran on the Devas project. We requested that he brief the Principal Secretary to the Prime Minister and seek his support in completing the launch of GSAT-6. Mr. Saran said he would do that and inquire in case any further clarifications were required. At no point in the discussion did he state that the Devas Agreement was cancelled or about to be cancelled by the Space Commission.

176. On September 2, 2010, I wrote to all the members of the Space Commission to emphasize how important the Devas System was to India.¹³⁷ As I explained in my letter, at the time the Devas Agreement was signed, India only had 30 million customers on its 2G system, and 3G/BWA was not even planned by DOT or TRAI; rather the Indian telecom sector was confined to transponder leasing for basic applications and DTH. I also summarized the many accomplishments of the Devas-Antrix partnership and expressed Devas's commitment to moving the project forward. In closing, I asked for a meeting with the members of the Space Commission in order that we could provide them with additional details on the Devas project and how it would assist in achieving critical policy objectives and serving the needs of Indian citizens.

177. During September/October/November 2010, several members of the Space Commission, including Mr. Rodham Narsimma, met with the Devas team in response to my September 2, 2010 letter. After these meetings, because ISRO/Antrix seemed paralyzed with respect to the Devas project, due primarily to the political situation in India, I sent a second letter

¹³⁷ Ex. C-106 (example of letter sent).

dated October 29, 2010 to Mr. T.K. Alex, the Director of ISAC and a Member of the Space Commission, as well as the Chairman and all other Members of Space Commission.¹³⁸ Attached to my letter was a series of Clarifications, which were meant to address any misconceptions or concerns on the part of the Members of the Space Commission. To this end, the Clarifications made clear that:

- The appointment of any former ISRO officials as Devas managers or promoters was based on their extensive experience in satellite technology, and was in full compliance with the Government of India's rules;
- The Devas team, which had over 450 man-years of experience in the satellite industry, and had been involved in 60 satellite systems, was a credible, valuable resource especially in relation to the deployment of "next generation mobile satellite systems" to India;
- Other entities had signed Memorandums of Understanding with ISRO/Antrix, but that only Devas had entered into a definitive agreement;
- Many entities, including domestic companies with no satellite experience, had approached ISRO about providing Direct to Home TV ("DTV") as well as Very Small Aperture Terminal Services ("VSAT"), which was in full compliance with the 1999 SatCom policy;
- Devas owned or developed substantial intellectual property to be used to construct a cutting-edge satellite system;
- The Devas project would comply with ITU rules, and the failure to move forward with the Devas program might work to deny India its current allocation of S-band for Mobile Satellite Services;
- Devas was in full compliance with all required regulations, including those of DOT, WPC and the FIPB, and also had the approval of the Space Commission;
- Devas had successfully partnered with DT Asia, CC/Devas and Telcom Devas, thereby gathering a commitment of over US\$250 million for its project, as well as a vital strategic partner in DT;
- Devas's allocation was in keeping with the redistribution of S-band services under the most recent NFAPs; Devas's use of the S-band does not interfere with current terrestrial operators, including the Ministry of Defense; and that currently DTH operators hold 4-7 times the spectrum or capacity allocated to Devas; and

¹³⁸ Ex. C-112.

- The terms of the Devas Agreement "favourab[ly] compared with other DOS/ISRO/Antrix satellite capacity leasing agreements"; and that a comparison to terrestrial licenses was not appropriate because, among other things, satellite spectrum is not regularly auctioned off, whether in India or around the world, and because the satellites provide greater coverage than terrestrial systems.¹³⁹

178. On September 14, 2010, I had a meeting with the Executive Director of Antrix during which he stated that ISRO was doing its best to resolve the launch delay. At this meeting, Devas again made a presentation that contained (i) clarifications concerning Devas's value and spectrum allocation; and (ii) confirmation that the Devas Agreement had received all of the requisite approvals it needed from all necessary GOI entities, including the DOS/ISRO/Antrix High Level Committee, the Antrix Board of Directors, and the personal approval of the DOS Additional Secretary and Joint Secretary, as well as the DOS Secretary/Chairman.¹⁴⁰

179. At the conclusion of my presentation, Mr. Murthi assured me that GSAT-6 would be finished in one to two months.¹⁴¹ This 2-month time period for finishing GSAT-6 was not reassuring as: (i) I, along with the Devas investors, had been told that GSAT-6 was in its final stages of construction at the beginning of 2010, and (ii) even assuming that GSAT-6 could be completed by December 2010, Mr. Murthi could not provide me with a launch date – or any launch date for that matter – before the ITU mandated December 10, 2010 date for bringing GSAT-6 into use expired.

180. At or about this same time, I was informed by Mr. Ed Kozell, CTIO of Deutsche Telekom and Mr. Thomas Matussek, the German Ambassador to India, that in October 2010, Mr. Guido Westerwelle, the German Foreign Minister, expressed the German Government's concerns

¹³⁹ *Id.*, Annexure 1.

¹⁴⁰ Ex. C-107.

¹⁴¹ *See* Ex. C-108 at 2.

to the Prime Minister of India and the External Affairs Minister of India. I was informed by Mr. Blair Hall, Minister-Counselor, Economic, Environment, Science & Technology Affairs at the U.S. Embassy in India, that the concerns of the United States were also highlighted to GOI officials in late 2010 by U.S. State Department delegations. In addition, some of Devas's advisors, including former U.S. Secretary of State Madeline Albright, former U.S. National Security Advisor Sandy Berger, and Chairman of the U.S. Chamber of Commerce, Thomas Donohue Sr., also expressed their concerns. During these meetings, GOI officials continued to express support for the Devas Agreement, and never provided any indication that Indian government had any intention of attempting to cancel the Devas Agreement, let alone that DOS already had received legal advice from the Additional Solicitor-General as to how to manufacture a *force majeure* event.

X. EFFORTS TO RE-ENGAGE ISRO/ANTRIX

181. On October 11, 2010, I sent a letter to Dr. Radhakrishnan.¹⁴² I, again, recapped our prior meetings with ISRO/Antrix concerning the satellite launch, including the assurance from Mr. Murthi that the satellite would be finished shortly. I then also outlined what I believed to be the appropriate next steps in the ISRO/Antrix and Devas relationship, namely:

- An expedited Critical Design Review ("CDR") meeting regarding the satellite, including space and ground compatibility tests;
- That the satellite launch be prioritized by use of a Russian cryogenic engine;
- That ISRO/Antrix continue to coordinate ITU filings to preserve the Devas System;
- That ISRO/Antrix support and provide assistance with Devas's application to the WPC; and

¹⁴² Ex. C-108.

- That Antrix establish a contract to secure uplink services from ISRO.¹⁴³

182. Thereafter, on October 27, 2010, I met with Mr. Madhusudhan, the new Executive Director of Antrix. I briefed him on the history of the Devas Agreement and the progress on the project to date, most of which he was familiar with already. I asked Mr. Madhusudhan for his support in getting GSAT 6 completed and launched. He said he would apply his energies in getting ISRO Satellite Center to meet stated milestones and assist in exploring launch solutions.

**XI. MY MEETING WITH THE MINISTER OF STATE IN THE
PRIME MINISTER'S OFFICE, MR. PRITHVARAJ CHAVAN**

183. In October 2010, I met with Mr. Prithviraj Chavan, the Minister of State in the Prime Minister's Office and a Member of the Space Commission, and Mr. Raghu Raman, the Chief Executive Officer of the National Intelligence Grid Project, Ministry of Home Affairs.¹⁴⁴

184. I specifically recall my meeting with Mr. Chavan in an office adjacent to Prime Minister Manmohan Singh's office. At the meeting, which I attended with Edward Kozel, the CTIO and Member of the Management Board of DT, Mr. Kozel and I provided a comprehensive briefing to the Minister on the Devas project. I provided a deck of slides to Mr. Chavan,¹⁴⁵ which encapsulated some of the matters we discussed and I took him through some of these slides. We sought the Minister's support and requested that, in his capacity as Space Commission Member, he prioritize the completion and launch of GSAT-6 so that the benefits of

¹⁴³ *Id.* at 2-3.

¹⁴⁴ Exs. C-110 & C-111.

¹⁴⁵ Ex. C-110.

the Devas system could be secured for the nation. The Minister said he would discuss the matter with DOS/ISRO. At no point in the discussion did the Minister state that the Space Commission already had decided to annul the Devas Agreement.

XII. AS A RESULT OF ISRO'S CONTINUED INACTION ON THE LAUNCH VEHICLE, DEVAS SUGGESTS A THIRD-PARTY LAUNCH SOLUTION

185. Despite our efforts, Antrix and ISRO continued to fail to deliver the satellites for launch. In a letter to Mr. H.N. Madhusudhan, the new Executive Director of Antrix, dated December 15, 2010, I suggested that, to expedite launch of the satellite, ISRO/Antrix consider (1) launching on a domestic geosynchronous launch vehicle ("GSLV") with a Russian cryogenic engine; or (2) launch in a third-party, *i.e.* Russian or French, launch vehicle.¹⁴⁶ In this letter, I suggested these steps because, on Devas's side, the entire Devas system was ready to be deployed: the only hold up was the launch of the satellite.

186. Thereafter, on January 10, 2011, I met with Mr. Madhusudhan, who stated (again) that GSAT-6 was 3 to 4 months away from completion. Upon hearing this 3-4 month time frame reiterated by Mr. Madhusudhan, a time frame that Mr. Murthi, the prior Antrix Executive Director had guaranteed on several occasions throughout 2010, there was little doubt that ISRO had stopped working on GSAT-6.

187. I followed-up these meetings by giving presentations to each of the following individuals:

- **Dr. Kasturirangan**, head of GSLV Programme Review and Strategy Formulation Committee, Member (Science), Planning Commission of India (and former Secretary DOS), seeking to prioritize GSAT-6 launch through a third-party launch vehicle;

¹⁴⁶ Ex. C-118.

- **V.V. Bhat**, Secretary and Member Finance, DOS and Member, Space Commission; and
- **Dr. P.S. Goel**, Chairman, Recruitment and Assessment Centre (RAC), DRDO, (and former Director (ISRO Satellite Centre) and Member, Space Commission).

188. In a letter dated January 24, 2011, I wrote to Dr. Radhakrishnan again and asked him to recommit to the launch of the GSAT-6 satellite, including the use of a third-party launch vehicle.¹⁴⁷ I received no reply.

189. Recognizing again that ISRO/Antrix were politically paralyzed, on February 4, 2011, based on the advice of Dr. Kasturirangan, I again wrote to members of the Space Commission.¹⁴⁸ I explained that Devas had met with various ministries including the National Security Council, Indian Railways, and the Ministry of Information Technology, all of which expressed their strong support for the Devas System. I urged the Space Commission to push ISRO for an early procured launch in 2011. I also reiterated that Devas would be willing to explore all options (despite our clear contractual rights), and absorb all commercial implications that might ensue, in order to launch GSAT-6.

190. On that same day, I also wrote to Mr. H.N. Madhusudhan, and requested that, pursuant to a pending request for launch of the GSAT-6, (1) that Antrix appoint a point person for GSAT launch issues; (2) that Antrix and Devas complete the Critical Design Review of GSAT-6 by late February or early March 2011; and (3) that Antrix appoint a representative to discuss the Devas system with other Indian government ministries.¹⁴⁹

¹⁴⁷ Ex. C-121.

¹⁴⁸ Ex. C-124.

¹⁴⁹ Ex. C-123.

XIII. DR. RADHAKRISHNAN'S CHARADE COMES TO AN END

191. On February 8, 2011, Dr. Radhakrishnan gave a press conference in which he stated that in December 2009, DOS had ordered "a comprehensive review on the Antrix-Devas contract."¹⁵⁰ According to Dr. Radhakrishnan, one of the results of that review was that the Space Commission in July 2010 "decided to take actions to annul the contract that we had entered, that Antrix had entered with Messrs. Devas Multimedia and also to ensure that the GSAT and GSAT 6A satellites are made and then used to meet the strategic requirements."¹⁵¹

192. In a letter dated February 10, 2011, I wrote to the Prime Minister (who also is the Minister of Space).¹⁵² In the letter, I reassured the Prime Minister that the Devas Agreement was a lawful and binding contract that Devas fully expected to comply with. In my letter I related that Devas was an Indian company, with a world-class management team, that had executed an agreement with Antrix/ISRO/DOS after two years of intense negotiations. I further noted that the Devas Agreement was in compliance with the SATCOM policy, and that the spectrum allocated to Devas could be deployed for both commercial and Government usage. I further pointed out that, after five years of development and input, including substantial foreign investment, the Devas system was ready to launch (and had successfully received most of its required licenses and approvals). I also documented the diplomatic representations made by the German and American governments, which sought to protect the sanctity of the Devas Agreement. I therefore requested that the Prime Minister uphold the contract and, in addition, requested a meeting with the Prime Minister to address any concerns he might have.

¹⁵⁰ Ex. C-125.

¹⁵¹ *Id.* at 4.

¹⁵² Ex. C-129.

193. No meeting was arranged. Instead, much to our continued consternation, early on February 17, 2011, the Cabinet Committee on Security ("CCS") stated that it had decided to "annul" the Devas Agreement.¹⁵³ The Law Minister, M. Veerappa Moily, made the following statement:

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, para-military forces, railways and other public utility services as well as 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 [Devas Agreement] shall be annulled forthwith.***¹⁵⁴

194. While the CCS statement is taken almost verbatim from the Additional Solicitor General Opinion, interestingly, one of the more significant lines from the Opinion that was not included in the "official" reason for annulment above is the statement by the Additional Solicitor General that terrestrial operators are clamoring for more spectrum.

195. An equally surprising aspect of this announcement is the fact that several of the agencies identified by CCS as needing S-band – including Railways – had just weeks earlier assured me that the Devas System was the only system that could realistically serve their needs throughout the country and do so in a secure manner.

196. Indeed, no one from the Indian government ever mentioned to me a national need for the S-band or requested that Devas accommodate such need. Moreover, to the extent that the Indian government has tried to justify the annulment of the contract because of a purported need

¹⁵³ Ex. C-134.

¹⁵⁴ *Id.* (emphasis added).

to have all of India's internationally coordinated S-Band available for defence requirements, that does not make sense to me either. Among other things:

- a. the 10% capacity available on GSAT-6 and GSAT-6A satellite to ISRO could have been utilized for DOS's immediate requirements in addition to the services already being provided by INSAT-3C and India could have asked Devas for additional accommodation beyond the 10% already allocated to it;
- b. the Space Commission approved the manufacture of GSAT-6A in October 2009: plainly the Space Commission was comfortable that such a satellite posed no threat to any planned satellite system for defence purposes;
- c. Gary Parsons and Venu had met with ISRO officials concerning the possible development of a state-of-the-art satellite system for defense and had noted how such system could work alongside the Devas System; and
- d. it recently has been reported in India that Sam Pitroda, a senior advisor of the Prime Minister, has recommended that the S-Band be licensed to commercial terrestrial operators. Therefore, it appears clear that the Indian government knows full well that the entirety of the S-Band is not actually needed for the purposes specified in the CCS decision but rather can and will be available for commercial purposes after all.

197. In a letter dated February 25, 2011, Antrix finally ended the Indian government's charade by sending Devas a letter purportedly terminating the Devas Agreement.¹⁵⁵

¹⁵⁵ Ex. C-135.

XIV. DEVAS REJECTS ANTRIX'S POSITION AND SEEKS TO HOLD SENIOR MANAGEMENT DISCUSSIONS TO DISCUSS THE PARTIES' DISPUTE

198. By letter dated February 28, 2011, Devas replied to Antrix denying that the Devas Agreement had been validly terminated.¹⁵⁶ Devas also informed Antrix that, in accordance with Article 20(a) of the Devas Agreement, Devas was "referring all disputes arising from or under the [Devas] Agreement, including [Antrix's February 25, 2011 letter], to senior management of both parties" and nominated me, Chandra, Venu, Mr. D. Nataraj and Mr. A.A. Bokil as its senior management representatives.¹⁵⁷ Devas invited Antrix to:

immediately inform us . . . of the members of the Senior Management of Antrix with whom discussions are to be held in terms of Article 20(a) of the [Devas] Agreement and immediately appoint a venue and time for the meeting, failing which Devas will refer all disputes and differences arising from or in relation to the [Devas] Agreement, including those arising from [Antrix's 25 February 2011 letter], to be resolved by arbitration.¹⁵⁸

199. Antrix did not appoint the senior management representatives required by Clause 20(a) of the Devas Agreement. In fact, disregarding the 21-day negotiation period agreed by the parties in Article 20(a) of the Devas Agreement, Antrix did not even respond to Devas's letter until over six weeks later.

200. After over six weeks of silence, Antrix finally wrote to Devas on April 15, 2011.¹⁵⁹ Antrix's letter referred to Devas's February 28, 2011 letter in its subject line, but did not address any of the issues raised by Devas in that letter. Instead, Antrix referred to its earlier letter of February 25, 2011 purportedly "terminating the . . . [Devas] Agreement under Article

¹⁵⁶ Ex. C-136.

¹⁵⁷ *Id.* at 3.

¹⁵⁸ *Id.*

¹⁵⁹ Ex. C-138.

7(c) and the notice of *force majeure* as defined in Article 11" and enclosed a check in the sum of Rs.58,37,34,000 (Rupees Fifty Eight Crore, Thirty Seven Lakhs and thirty four thousand) (approximately US\$13 million), purportedly as "reimbursement" of the prior Upfront Capacity Reservation Fees previously paid by Devas. The letter further stated that this was "without any prejudice to the rights and contentions arising out of the [Devas] Agreement which include resolution by discussions by Senior Management of both parties."¹⁶⁰ Antrix did not appoint any senior management representatives to negotiate with Devas in its April 15, 2011 letter or otherwise.

201. By letter dated April 18, 2011, Devas reiterated to Antrix the issues set forth in its February 28, 2011 letter, including that Antrix had failed to state a proper basis for terminating the Devas Agreement pursuant to Article 7(c) and that, as a matter of law, Antrix was not entitled to claim *force majeure*, because, among other things, the events supposedly giving rise to the *force majeure* were clearly self-induced.¹⁶¹ Devas also returned the check to Antrix, and explained its reasons for rejecting Antrix's tender of payment:

Your offer to reimburse the Upfront Capacity Reservation Fee is also rejected and your cheque bearing No. 994684 dated April 15, 2011 for Rs.58,37,34,000 (Rupees Fifty Eight Crore, thirty seven lakhs and thirty four thousand only) drawn on State Bank of India, Dollar Colony branch is hereby returned to you, duly cancelled, under cover of this letter. Devas reiterates that the [Devas] Agreement is subsisting and all obligations therein remain binding, notwithstanding the relevant attempts by the Government to avoid the [Devas] Agreement.¹⁶²

202. Devas also noted that "Article 20(a) of the [Devas] Agreement mandates that 'any dispute or difference between the Parties . . . shall be referred to the senior management of both

¹⁶⁰ *Id.*

¹⁶¹ Ex. C-140.

¹⁶² *Id.* at 1.

Parties to resolve within three (3) weeks . . ." and that "Antrix failed even to respond to our letter until well after the three week period for discussions had expired."¹⁶³

203. Antrix did not respond to that letter. Therefore, Devas again wrote to Antrix on May 30, 2011, restating the position taken in its letter of April 18, 2011 that the three-week discussion period required by Article 20(a) had already passed but confirming, without prejudice to that position and in light of Article 21's obligation on the parties to act in "utmost good faith," its continued willingness to meet with Antrix seek to resolve the parties' dispute.¹⁶⁴

204. Antrix responded on June 15, 2011 and, without "admitting the existence of any dispute which could be referred to dispute resolution mechanism provided under the [Devas Agreement]," claimed to be "agreeable to refer the matter to Senior Management in terms of Article 20A of the [Devas Agreement]," and nominated five members of Antrix and ISRO for that purpose.¹⁶⁵

205. As Antrix continued to deny even the existence of a dispute and otherwise had not shown itself to be acting in good faith, Devas determined to commence an ICC arbitration and invited Antrix to hold meetings with it in the context of the commenced proceedings.

206. Subsequently, in August 2011, a meeting was convened between Antrix representatives and Devas representatives (without prejudice to our position that the meeting requirement in Clause 20 had already been discharged). The meeting was held in Bangalore, and both Mr. Babbio and I attended on behalf of Devas. No resolution was reached.

¹⁶³ *Id.* at 2.

¹⁶⁴ Ex. C-141.

¹⁶⁵ Ex. C-142.

207. The Devas Agreement provided for arbitration of disputes. Clause 20(c) in particular specified that "[t]he arbitration proceedings shall be held in accordance with the rules and procedures of the International Chamber of Commerce or UNCITRAL." On June 29, 2011, Devas exercised its right to commence ICC arbitration against Antrix, claiming specific performance and damages. Devas appointed V.V. Veeder, Q.C. of the United Kingdom as its arbitrator. The case was registered with the ICC as *Devas Multimedia Pvt Ltd v. Antrix Corp. Ltd.* and was duly assigned the reference no. 18051/CYK.

208. While I will not recite the "blow-by-blow" history of the events in the ICC arbitration over the next few months, I think it is fair to describe Antrix's conduct with regard to the ICC arbitration as "obstructionist." As but a few examples, simply within the confines of the ICC case:

- when notified of the ICC claim, Antrix took the position that Article 20 of the Devas Agreement did not actually constitute a binding consent to ICC arbitration¹⁶⁶ – a position that it continued to espouse in the subsequent litigation that I describe below;
- Antrix also took the view that the ICC case was invalid because we had failed to have a meeting of managers under Article 20(a) of the Devas Agreement (ignoring we had attempted to conduct such a meeting, only to be ignored by Antrix);¹⁶⁷
- Antrix refused to appoint an arbitrator, eventually necessitating an appointment by the ICC to fill the resulting vacancy on the tribunal;
- On July 30, 2011, Antrix tried to commence a "rival" arbitration, naming Mrs. Justice Sujata V. Manohar, a retired Indian judge, as arbitrator;¹⁶⁸
- Antrix repeatedly demanded that the ICC Secretariat suspend the ICC arbitration;¹⁶⁹

¹⁶⁶ Ex. C-145.

¹⁶⁷ *Id.* at 2-4. As noted above, a meeting of managers eventually occurred (without prejudice to Devas's rights) in August 2011, but failed to resolve matters.

¹⁶⁸ Ex. C-146. The "rival" arbitration seemed to be a tactical maneuver, and Devas replied to the supposed "notice" of arbitration (with a copy to the PCA), explaining why it was unfounded, and reserving all rights with respect to the ICC arbitration.

- when the ICC Secretariat informed Antrix that it lacked the power to suspend the proceedings, Antrix wrote several inflammatory letters to the ICC accusing it of "bias";¹⁷⁰
- when Professor Michael Pryles was appointed chairman, Antrix continued its boycott of the proceedings, while claiming that Professor Pryles had some form of "conflict of interest."¹⁷¹

209. In August 2011, Antrix took the matter to the Indian courts, applying to the Supreme Court of India for injunctive relief to restrain the ICC Arbitration and furthermore seeking an order that the Supreme Court of India appoint two new arbitrators to the "rival" arbitration Antrix had commenced. It did not, during 2011, obtain any injunction to restrain the ICC arbitration. The Supreme Court proceedings, however, were in the background throughout 2011 and early 2012.

210. By November 2011, a full ICC tribunal had been constituted, comprised of Professor Michael Pryles (as ICC-appointed Chair), V.V. Veeder, Q.C. (appointed by Devas), and Dr. Justice Anand (an Indian national appointed by the ICC in default of Antrix appointing a second arbitrator).

211. On January 10, 2012, a preliminary teleconference in the ICC proceeding took place – which Antrix boycotted. At that conference, a briefing schedule was established, with a final hearing on April 12 to 13, 2012. Fallback dates for the end of July were also set forth in the event Antrix appeared.

(cont'd from previous page)

¹⁶⁹ See, e.g., Exs. C-149 to C-153, C-155, C-158, C-161.

¹⁷⁰ See, e.g., Exs. C-153, C-155, C-158, C-161.

¹⁷¹ Ex. C-161.

212. On February 20, 2012, Devas made its submissions in the ICC arbitration, with witness statements (including one from me) and expert reports supporting its claim for specific performance of the Devas Agreement or, in the alternative, damages of \$1.6 billion.

213. I flew to New Delhi in early April, expecting to attend and testify at the final hearing scheduled for April 12/13, 2012. On April 9, 2012, however, at the urging of Antrix's counsel, the Supreme Court of India granted an order staying the ICC arbitration, pending argument on Antrix's application for a final injunction staying the ICC arbitration.

214. The injunction continued until on May 10, 2013, when, in a decision by Chief Justice Altamas Kabir, the Supreme Court of India rejected Antrix's application, holding that Antrix's interpretation of Clause 20 was without merit and that Devas had validly invoked ICC arbitration pursuant to that clause.

215. Given that the Supreme Court of India's injunction led to the cancellation of the hearings before the Tribunal, and thus removed any prospect of getting a prompt specific performance order in the ICC arbitration during 2012 or the first three quarters of 2013, on June 13, 2013, Devas wrote a letter to Antrix and noted that there is "clearly no basis for [Antrix] to terminate the [Devas] Agreement" and that "Antrix also has obstructed the expeditious determination of the arbitration proceedings commenced by Devas."¹⁷² Devas further noted that "Antrix continues to be in repudiatory breach of the [Devas] Agreement even today and has clearly evinced its intention not to perform the [Devas] Agreement." Devas then notified Antrix

¹⁷² Ex. C-191.

that it "has elected to, and does hereby, accept Antrix's repudiatory breach of the [Devas] Agreement, bringing the Agreement to an end as a result of Antrix's wrongful actions."¹⁷³

XV. OTHER FORMS OF GOVERNMENTAL INTERFERENCE AND HARASSMENT

A. Harassment by the Office of the Registrar of Companies

216. In the last two years, in obvious retaliation both for Devas contesting the legality of Antrix's actions and for Claimants asserting their treaty rights, the Indian government has engaged in a campaign of harassment against Devas, utilizing a variety of government departments.

217. For example on August 11, 2011, a month after Devas had filed an ICC claim against Antrix, the Office of the Registrar of Companies ("ROC") notified Devas that "per the instructions of the Ministry [of Corporate Affairs]," Devas was required to make its books and records available for inspection.¹⁷⁴ The notice contained numerous categories of documents that Devas was required to provide, and, in addition, demanded that Devas answer a range of questions, and allow inspection of its books and records, on topics often having nothing to do with the incorporation status of Devas, *e.g.*, an inquiry about "[e]fforts made by the company in investing in development of hand-held hybrid technology equipment which were part of contract."¹⁷⁵ Devas complied with the request for inspection of books, while reserving its position that the ROC's requests exceeded its statutory powers under the Indian Companies Act. The ROC continued to make further "urgent" demands for new categories of documents

¹⁷³ *Id.*

¹⁷⁴ Ex. C-147.

¹⁷⁵ *Id.*

throughout 2011,¹⁷⁶ and informed Devas that it was investigating supposed violations of the Companies Act by Devas. The ROC did not disclose the grounds, nature, or scope of the investigation, despite formal requests for this information. It attempted to make the investigations as onerous as possible, requesting, for example, that the directors of Devas (who were listed on the notice at their home addresses, including in Germany and the United States) somehow "be present" at the inspection in India "to offer clarifications on issues that may arise during the course of inspection."¹⁷⁷

218. Devas brought proceedings before the Delhi High Court challenging the investigations as being unlawful and *ultra vires*. On December 7, 2011 the Delhi High Court issued an interim order enjoining the ROC from taking any coercive steps against Devas.¹⁷⁸ However, on May 7, 2012, in clear disregard of the Delhi High Court's order, the ROC issued *eight* new notices to Devas and its directors, former directors and company secretary requiring them to show cause within 10 days why, among other things, *Devas's certificate of incorporation should not be cancelled and penal action be initiated against the company and the individuals.*¹⁷⁹

219. Devas called on the ROC to withdraw the notices but when that did not happen, Devas once again sought relief from the Delhi High Court. On May 29, 2012, the High Court

¹⁷⁶ See, e.g., Ex. C-154.

¹⁷⁷ Ex. C-162.

¹⁷⁸ See, e.g., Ex. C-164.

¹⁷⁹ Ex. C-174.

issued another interim order restraining the ROC.¹⁸⁰ The matter is now scheduled to be heard on September 12, 2013.¹⁸¹

B. Harassment by the Enforcement Directorate

220. Within several months of Devas initiating the ICC arbitration, another totally separate kind of harassment began, this one perpetrated by the Directorate of Enforcement, Ministry of Finance, Department of Revenue ("Enforcement Directorate"). Between December 2011 and March 2013, the Enforcement Directorate issued a series of summonses to various present and former Devas directors as part of a purported investigation under the Foreign Exchange Management Act, 1999 ("FEMA").¹⁸² The summonses demanded personal tax and banking information, various company documents, *and* a personal appearance by the directors but, remarkably, did not specify any alleged violations or reason for the investigation. On July 31, 2012, the Enforcement Directorate demanded from Devas information about its employees, details of the beneficial owners of DEMPL, and all share subscription agreements between the company and its foreign investors, among other things.¹⁸³ Devas has asked the Enforcement Directorate to specify, as is Devas's right, the nature of its investigation – but to no avail. Devas remains extremely concerned at the conduct of the Enforcement Directorate, especially since it obviously forms part of a pattern.

¹⁸⁰ Ex. C-175.

¹⁸¹ Ex. C-188.

¹⁸² *See, e.g.*, Exs. C-163, C-168, C-169, C-171, C-173, C-176 and C-183.

¹⁸³ Ex. C-177.

C. Harassment by Income Tax Authorities

221. Devas has also been subject to a series of harassing actions from the Indian income tax authorities ("ITA"), who have aggressively questioned whether Devas had the right to pay fees to its arbitration counsel,¹⁸⁴ and has also sought to attack the payments made by Devas under its May 11, 2006 services agreement with its US subsidiary Devas Multimedia America Inc. ("DMAI") by claiming that these payments were not on arm's length terms and must be subject to income tax.¹⁸⁵ Like the Enforcement Directorate, the ITA's intelligence division has without adequate explanation, on separate occasions, demanded details of investments by investors in Devas as well as information regarding the allotment, sale and purchase of Devas shares.¹⁸⁶ Once again, this appears to be an after-the-fact campaign to intimidate Devas and impose additional costs on Devas.

222. Even more recently the ITA has claimed, absurdly, that given Antrix's purported termination of the Devas Agreement, Devas is not an operating business and is thus ineligible to claim business expenses as tax deductions. Consequently, the ITA has ordered Devas to pay an additional Rs.34,575,701 in taxes for assessment year 2009-10 by an order dated March 15, 2013. This amount is likely to be compounded as the ITA is reviewing Devas's tax deductions for other assessment years as well. In connection with this issue, the ITA has also initiated penalty proceedings against Devas – the quantum of which is yet to be determined. Devas has appealed this decision, as well as the tax imposed on payments made to DMAI, before the appellate Dispute Resolution Panel on April 16, 2013.

¹⁸⁴ See e.g., Exs. C-156 & C-159.

¹⁸⁵ See e.g., Ex. C-143.

¹⁸⁶ See e.g., Exs. C-180, C- 182 & C-185.

223. The harassment pattern is so consistent and widespread that I must infer that the campaign is being directed from high levels of the Indian Government.

XVI. ATTEMPTS TO RESOLVE THE INVESTMENT DISPUTE

224. On December 12, 2011, DEMPL wrote to a number of Indian government officials, including the Prime Minister and Minister for Law of Justice, giving notice of the existence of a dispute under the Mauritius-India Bilateral Investment Treaty, and inviting the Government of India to engage in discussion to resolve that dispute.¹⁸⁷ The other two Claimants made similar attempts by letters sent at around the same time.¹⁸⁸

225. On July 3, 2012, having received no response to its earlier letter, DEMPL commenced the present arbitration along with the other Claimants.

¹⁸⁷ Ex. C-165.

¹⁸⁸ Exs. C-166 & C-167.

I affirm that the facts stated in this witness statement are true and correct to the best of my knowledge.

Dated: June 29, 2013

R. Viswanathan
Ramachandran Viswanathan