

## Deutsche Telekom v. India: The Enforcement of a Swiss Investment Arbitration Award in Singapore

### Document information

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Publication:	<a href="#">ASA Bulletin</a>
Publication date:	Dec 2024
Jurisdiction:	Singapore, United States of America
Case date:	15 Dec 2023
Case number:	Civil Appeal No. 1 of 2023, Case No. 21-1070
Parties:	Claimant, The Republic of India Defendant, Deutsche Telekom AG
Bibliographic Reference:	Alexandre Schwab, 'Deutsche Telekom v. India: The Enforcement of a Swiss Investment Arbitration Award in Singapore', in Matthias Scherer (ed), ASA Bulletin, (© 2024 Kluwer Law International BV, and/or its subsidiaries, licensors, and contributors. All rights reserved, including rights for text and data mining, AI training, and similar technologies.; Kluwer Law International 2024, Volume 42, Issue 4), pp. 828 - 833
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### 1. Introduction

Deutsche Telekom AG (“**Deutsche Telekom**”), a German multinational telecommunications company, invested in a satellite communications project with the Republic of India (“**India**”). After India unilaterally annulled the underlying agreement, Deutsche Telekom initiated arbitration in 2013, alleging that India’s actions breached the bilateral investment treaty between India and Germany (the “**BIT**”).

The arbitration, seated in Geneva, Switzerland, resulted in the arbitral tribunal confirming its jurisdiction and holding India liable for breaching its obligation to accord fair and equitable treatment under the BIT. The arbitral tribunal awarded Deutsche Telekom USD 93.3 million plus interest and costs. India challenged the tribunal’s jurisdiction at multiple stages, including an unsuccessful attempt to set aside a partial award before the Swiss Federal Supreme Court. (2)

Deutsche Telekom enforced the award notably in the Republic of Singapore (“**Singapore**”) and the United States of America (the “**United States**”). In each case India tried to resist enforcement based on a contention that the arbitral tribunal lacked jurisdiction, an argument it already made unsuccessful at the previous stages. Both the Court of Appeal of Singapore (the “**Court of Appeal**”) and the District Court for the District of Columbia (the “**District Court**”) rejected India’s jurisdictional arguments. Indeed, in both instances, though based on different principles, the courts confirmed the arbitral tribunal’s power to decide on its own jurisdiction, under the control of the seat courts.

In Singapore, the Court of Appeal (3) held that India was precluded by the doctrine of transnational issue estoppel from rearguing jurisdictional challenges already dismissed by the arbitral tribunal and the Swiss Federal Supreme Court. The court also, in *obiter*, offered observations on the principle that a decision of the seat court on matters that go to the validity of the award should typically enjoy primacy in the scheme of modern international arbitration (the “**Primacy Principle**”).

In the United States, India opposed enforcement, raising its jurisdictional objections anew and invoking the Foreign Sovereign Immunities Act (“**FSIA**”). The District Court (4) rejected these arguments, stressing that the parties’ adoption of the Arbitration Rules of the United Nations Commission on International Trade Law (the “**UNCITRAL Arbitration Rules**”) reflected an agreement to defer jurisdictional determinations to the arbitral tribunal.

These proceedings highlight fundamental principles in international arbitration: the deference accorded to seat court decisions and the limitations on relitigating previously adjudicated issues. Before analysing the Singaporean and American judgments in detail, it is essential to outline the factual and procedural background of the dispute.

### 2. Factual and Procedural Background

#### a. The Dispute Between Deutsche Telekom and India

In the early 2000s, the Indian government sought to encourage private sector investments in its space industry by authorizing certain departments to commercialize portions of the S-band electromagnetic spectrum. Following negotiations, Devas Multimedia Private Limited (“**Devas**”), a company incorporated under Indian law, was established in 2004 to develop a hybrid satellite-terrestrial communications platform. Deutsche Telekom became a shareholder in Devas through its wholly owned Singaporean subsidiary.

In January 2005, Devas entered into an agreement with Antrix Corporation Limited (“**Antrix**”), an Indian state-owned company, for the lease by Devas of 70 MHz of India’s S-band spectrum. This agreement formed the basis of Deutsche Telekom’s investment. However, in February 2011, India annulled the agreement, prompting Deutsche Telekom to commence arbitration under the BIT.

#### b. The Partial and Final Awards and India’s Set-Aside and Revision Attempts

As provided for by the BIT, the arbitration was conducted under the UNCITRAL Arbitration Rules under the aegis of the Permanent Court of Arbitration (the “PCA”). As the BIT did not designate a seat, the parties agreed, upon India’s proposal, to Geneva, Switzerland.

India raised several jurisdictional objections, arguing that (i) the BIT only protects investors who have made direct investments in India, which would not be the case with Deutsche Telekom, since the German company had purposely structured its investment in the form of a contribution of funds to its Singapore subsidiary, which then invested these funds in Devas, (ii) all the activities carried out by Deutsche Telekom, via its subsidiary, had remained at the preparatory stage, so that they constituted only pre-investments not protected by the BIT and (iii) Deutsche Telekom could not rely on the substantive rules of the treaty, since the annulment of the Agreement was necessary for the protection of the state’s “essential security” interests’, reserved by the BIT.

The tribunal bifurcated the proceedings, addressing jurisdiction and liability first. In December 2017, it issued a partial award dismissing India’s jurisdictional objections and finding India liable for breaching the BIT. India unsuccessfully sought to set aside the partial award before the Swiss Federal Supreme Court, which found India’s jurisdictional arguments unfounded and untimely.

The tribunal then proceeded to the quantum phase, issuing its final award in May 2020. It ordered India to pay Deutsche Telekom USD 93.3 million plus interest and costs.

India did not seek to set aside the final award but, in May 2022, filed a revision application with the Swiss Federal Supreme Court to revise <sup>(5)</sup> and annul both awards, citing alleged new evidence. The court dismissed the application in March 2023, holding that the awards were not subject to revision and that the application was untimely. <sup>(6)</sup>

### 3. The Enforcement Proceedings

#### a. Singapore: Transnational Issue Estoppel

Deutsche Telekom obtained leave from the Singaporean courts to enforce the final award. India sought to set aside the enforcement order, arguing that the arbitral tribunal lacked jurisdiction. India’s arguments were identical to those previously rejected by arbitral tribunal and the Swiss Federal Supreme Court.

The Court of Appeal accordingly examined whether (i) the doctrine of transnational issue estoppel applies in the context of international commercial arbitration so as to preclude re-litigation before the enforcement court of issues that have already been dealt with by the seat court of international commercial arbitration, and (ii) the Primacy Principle should be recognised as part of Singapore arbitration laws, and if so, its scope and outer limits.

The Court of Appeal held that as a matter of Singapore Law the doctrine of transnational issue estoppel can and should be applied by a Singapore enforcement court in the context of international commercial arbitration when deciding whether preclusive effect should be accorded to a prior decision of a seat court regarding the validity of an award. The test for transnational issue estoppel is as follows:

1. the foreign judgment must be capable of being recognised in this jurisdiction, where issue estoppel is being invoked. Under the common law, this means that the foreign judgment must:
  - be a final and conclusive decision on the merits;
  - originate from a court of competent jurisdiction that has transnational jurisdiction over the party sought to be bound; and
  - not be subject to any defences to recognition;
2. there must be commonality of the parties to the prior proceedings and to the proceedings in which the estoppel is raised; and
3. the subject matter of the estoppel must be the same as what has been decided in the prior judgment.

Applying these criteria to the case before it, the Court of Appeal found that India had already raised its grounds for resisting enforcement previously and the same were dismissed by the arbitral tribunal and the seat court. The Court of Appeal also found that all the requirements for transnational issue estoppel were satisfied and that none of the exceptions to the doctrine applied as, after examining the Swiss law opinions filed by the parties, it held that the Swiss Federal Supreme Court’s rejection of India’s setting aside application had *res judicata* effect under Swiss law.

While unnecessary given the previous reasoning, the Court of Appeal offered, in *obiter*, some observations on the Primacy Principle. For the Court of Appeal, the Primacy Principle derives from the widely held view in international commercial arbitration that the seat court enjoys a position of primacy in the transnational framework that governs the conduct and supervision of international arbitration and the enforcement of the awards that emanate from this critically important dispute resolution process.

In summary, for the Court of Appeal, the Primacy Principle may be understood as follows, subject to further elaboration as the law develops:

1. An enforcement court will act upon a presumption that it should regard a prior decision of the seat court on matters pertaining to the validity of an arbitral award as determinative of those matters.
2. The presumption may be displaced (subject to further development):
  - by public policy considerations applicable in the jurisdiction of the enforcement court;
  - by demonstration
    - of procedural deficiencies in the decision making of the seat court;
    - or that to uphold the seat court’s decision would be repugnant to fundamental notions of what the enforcement court considers to be just;
3. where it appears to the enforcement court that the decision of the seat court was plainly wrong. The latter criterion is not satisfied by mere disagreement with a decision on which reasonable minds may differ. (As to where in the range between those two extremes, an enforcement court may land on, is something we leave open for development.)

## b. United States: Arbitrability Under UNCITRAL Rules

In the United States, Deutsche Telekom sought confirmation of the award under the New York Convention. India opposed, citing the doctrine of *forum non conveniens* and the FSIA.

The District Courts rejected the *forum non conveniens* argument, noting that American courts alone could attach India's commercial assets within the United States. The District Courts also dismissed India's immunity defence under the FISA, holding that the arbitration exception under 28 U.S.C. § 1605(a)(6) applied, as the award arose under a treaty governed by the New York Convention.

India's jurisdictional objections were similarly rejected. The court held that by adopting the UNCITRAL Rules, the parties had agreed to arbitrate arbitrability, requiring deference to the tribunal's jurisdictional determinations. The court emphasized that allowing India to relitigate these issues would undermine the parties' agreement and the integrity of the arbitral process.

Finally, the court denied India's request to assert new defences under Article V of the New York Convention, reasoning that India had already had ample opportunity to present these arguments before the arbitral tribunal, the Swiss Federal Supreme Court, and the District Court.

## 4. Conclusion

The enforcement of the Deutsche Telekom v. India arbitral award illustrates again the robustness of international arbitration frameworks in Singapore and the United States.

The Singapore Court of Appeal's recognition of transnational issue estoppel reinforces the preclusive effect of seat court decisions, while its endorsement of the Primacy Principle underscores the importance of the seat court's supervisory role.

The District Court's approach in the United States demonstrates the protections afforded to arbitral awards under American law, particularly where parties have adopted the UNCITRAL Arbitration Rules. By deferring to the arbitral tribunal's jurisdictional determinations, the court upheld the parties' contractual commitments and reinforced the credibility of international arbitration.

These cases highlight the critical role of seat court decisions, the constraints on relitigation, and the practical implications of choosing a seat and arbitration rules. For practitioners, they underscore the importance of drafting arbitration clauses with care to ensure predictability and enforceability across jurisdictions.

### References

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Disclosure: The author's firm assisted Deutsche Telekom in the Enforcement Proceedings. All errors and omissions are the author's alone.

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Article 190(2) of the Swiss Private International Law Act ("PILA") provides the exclusive grounds on which an arbitral award rendered in Switzerland may be set aside. These grounds are narrowly construed. Swiss courts generally adopt a deferential approach to arbitral decisions, emphasizing party autonomy and the finality of awards.

[3\)](#)

The Court of appeal of the Republic of Singapore, [2023] SGCA(I) 10, Judgment of 15 December 2023, The Republic of India v. Deutsche Telekom AG, Sundaresh Menon, Chief Justice, Judith Prakash Justice of the Court of Appeal, Steven Chong Justice of the Court of Appeal and Robert French International Judge, ASA Bull. 4/2024, p. 834.

[4\)](#)

United States District Court for the District Court, 1:21-cv-01070-RJL, Order of 27 March 2024, Richard J. Leon, United States District Judge, ASA Bull. 4/2024, p. 849.

[5\)](#)

Article 190a PILA provides for the revision of arbitral awards under specific, exceptional circumstances. Revision proceedings are distinct from setting aside proceedings under Article 190(2) PILA, as they address issues arising after the conclusion of arbitration.

[6\)](#)

Swiss Federal Supreme Court, Ire Cour de droit civil, 4A\_184/2022, Judgment of 8 March 2023, The Republic of India v. Deutsche Telekom AG, Federal judges Jametti, presiding, Hohl, Kiss, Rüedi, and May Canellas, clerk Mr. Leemann, ASA Bull. 2/2023, p. 367.

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