



Devas-Antrix Deal

For Prelims: Antrix Corporation, S-band transponders, International Telecommunication Union, ICC, NCLAT, NCLT.

For Mains: Growth of Communication Systems.

Why in News

The controversial deal between Indian Department of Space's commercial entity [Antrix](#) and Bengaluru-based startup Devas Multimedia has been under the scanner for more than a decade now.

HOW IT UNFOLDED		
<p>▶ Jan 2005: Agreement between Antrix and Devas for former to launch two satellites and lease 90% of S-band to Devas</p>	<p>▶ Sept 2017: International Chamber of Commerce awards Devas compensation worth \$1.3 billion</p>	<p>liquidate Devas</p>
<p>▶ 2011: UPA govt cancels deal on 'security' grounds after allegations of corruption</p>	<p>▶ Oct 2020: A United States Federal Court confirms ICC's award</p>	<p>▶ Dec 2021-Jan 2022: A Canadian court allows seizing of Air India assets by Devas after latter alleges that India breached bilateral treaty with Mauritius. Antrix-Devas deal was signed under this treaty</p>
<p>▶ Aug 2016: CBI charge-sheets former ISRO chief G Madhavan Nair and other officials</p>	<p>▶ Jan 2021: Govt approaches NCLT to begin liquidation proceedings of Devas. NCLT admits case and appoints liquidator</p>	<p>▶ Jan 2022: Supreme Court upholds NCLT decision, orders liquidation of Devas. Liquidator takes over Devas</p>
	<p>▶ Sept 2021: NCLAT upholds NCLT order to</p>	

Key Points

- **Allocation of Spectrum:** The [International Telecommunication Union](#) granted India **S-band spectrum** in the **1970s**.
- **Handing Over of Spectrum to ISRO:** By 2003, there was a fear that the spectrum would be lost if not used effectively;
 - 40 MHz of S-band was given to the **Department of Telecom (DoT)** for terrestrial use.
 - 70 MHz was to be put to efficiently used by the **Department of Space (DoS)** or in effect to be used by [Indian Space Research Organisation \(ISRO\)](#).
- **Global Negotiations for Growth of Communication Systems:** Initially, an MoU was signed by Forge (a US Consultancy) and **Antrix in July 2003** for use of the **satellite spectrum for the growth of communication systems in India**, but later a start-up was envisaged, and Devas

Multimedia was floated.

- Following this, Devas Multimedia was able to attract foreign investors.
- **Signing of the Deal:** In 2005, the deal was signed to provide multimedia services to mobile users using the leased S-band satellite spectrum.
 - Under the deal, ISRO would lease to Devas two communication **satellites (GSAT-6 and 6A)** for 12 years.
 - In return, Devas would provide multimedia services to mobile platforms in India using S-band transponders on the satellites.
 - As a result of the deal, Devas introduced and utilised technologies like never before and was a huge revenue generator for Antrix.
- **Scrapping of the Deal:** The deal was cancelled in 2011 on the ground that the auction of the broadband spectrum was **mired in fraud**.
 - The decision was taken in the midst of the **2G scam** and allegations that the Devas deal involved the **handing over of communication spectrum valued at nearly Rs 2 lakh crore** for a pittance.
 - The government also held that it needed the S-band satellite spectrum for national security and other social purposes.
- **Filing of Corruption Charges:** Meanwhile, in August 2016, the [Central Bureau of Investigation \(CBI\)](#) filed a charge sheet against officials from Devas, ISRO and Antrix linked to the deal for **“being party to a criminal conspiracy”**.
 - Amongst them, were the **former ISRO chairman G Madhavan Nair** and former Antrix executive director K R Sridharamurthi.
- **International Tribunal Arbitration:** Devas Multimedia initiated arbitration against the annulment at the **International Chambers of Commerce (ICC)**.
 - Two separate arbitrations were also initiated under the [Bilateral Investment Treaty \(BIT\)](#) by Mauritius investors in Devas Multimedia under the India-Mauritius BIT and by Deutsche Telekom -- a German company -- under the India- Germany BIT.
 - **India lost all three disputes** and has to pay a total of USD 1.29 billion in damages.
- **Aftermath of Tribunal Award:** Due to the Indian Government not paying the compensation, **a French court has recently ordered the freezing of Indian government property in Paris**, to enforce a USD 1.3 billion arbitration award.
- **Indian Arbitration Scenario:** Recently, the Supreme Court reiterated the Government’s 2011 stance and directed the winding up of Devas Multimedia business in India.
 - The Supreme Court also upheld the previous award by the [National Company Law Appellate Tribunal \(NCLAT\) and National Company Law Tribunal \(NCLT\)](#).
 - Antrix filed a plea in the NCLT in January 2021 for the liquidation of Devas in India, which it said was incorporated in a fraudulent manner.
 - These tribunals directed the winding up of Devas Multimedia and appointed a **provisional liquidator for the purpose**.

Seizure of Property by Foreign Countries

- The state and its property are protected against legal proceedings in the courts of other countries.
 - This emanates from a well-established principle of international law, referred to as **State immunity**.
 - This covers immunity from both jurisdiction and execution.
- However, there is no international legal instrument in force dealing with state immunity in the municipal legal systems of different countries.
 - This has created an international void.
 - Consequently, countries have filled this void through their national legislations and domestic judicial practices on state immunity.
- Countries like France, follow the **concept of restrictive immunity** (a foreign State is immune only for sovereign functions) and not absolute immunity (total immunity from all legal proceedings in a foreign court).
- In the context of the execution of BIT awards, it implies that state property serving **sovereign functions** (diplomatic mission buildings, central bank assets, etc.) **cannot be attached**.
- However, properties **servicing commercial functions are available for seizure**.

S-band Spectrum

- The S-band spectrum, which is part of the **Devas-ISRO deal**, is **extremely valuable for mobile broadband services**, in terms of usage as well as money.
- The frequency, also known as **2.5 Ghz band**, is globally used for providing mobile broadband services using **fourth generation technologies such as WiMax and Long Term Evolution (LTE)**.
- This frequency band is unique because it has a substantial amount of spectrum (190 MHz) that can be put to use for mobile services.

Bilateral Investment Treaty

- **An agreement made between two countries containing reciprocal undertakings for the promotion and protection of private investments** made by nationals of the signatories in each other's territories.
- BITs **provide protection against illegal nationalisation and expropriation of foreign assets** and other actions by a signatory of the BIT that may undermine the ownership or economic interest of a national of the other signatory.
- One of the main protections under a BIT is that it **allows foreign investors to sue states directly by submitting claims for breach of the BIT to arbitration** rather than to local courts.

Antrix Corporation Limited

- Antrix Corporation Limited (ACL), Bengaluru is a **wholly owned Government of India Company** under the **administrative control of the Department of Space**.
- It was **incorporated as a private limited company owned by Government of India** in September 1992.
- It is a **marketing arm of ISRO** for promotion and **commercial exploitation of space products, technical consultancy services** and transfer of technologies developed by ISRO.
- Another major objective is to **facilitate development of space related industrial capabilities in India**.

International Telecommunication Union

- It is the **United Nations specialized agency** for information and communication technologies – ICTs.
- It is the oldest among all the 15 specialized agencies of the UN.
- **Founded in 1865** to facilitate **international connectivity** in communications networks, it allocates global radio spectrum and satellite orbits, develops the technical standards that ensure networks and technologies seamlessly interconnect, and strives to improve access to ICTs to underserved communities worldwide.
- **Based in Geneva, Switzerland**, it is also a member of the **United Nations Development Group** and has 12 regional and area offices in the world.
- Its membership includes **193 Member States and around 800 public and private sector companies and academic institutions** as well as international and regional telecommunication entities.
- Recently, India got elected as a member of **ITU Council for another 4-year term - from 2019 to 2022**. India has remained a regular member since 1952.

International Chamber of Commerce (ICC)

- ICC is the **world's largest business organization** working to promote international trade and responsible business conduct.
- It has been helping to **resolve difficulties in international commercial and business disputes** to support trade and investment since 1923.
- ICC headquarters is in **Paris, France**.

[Source: IE](#)

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