Summary of final rebuttal arguments advanced by A. Raja in 2G case before the O.P Saini court on 25/04/17.

I was remained of the story of the elephant and the four visually-challenged persons on completion of this trial. once four visually challenged persons went to see an elephant. one of them touched the ear of the elephant and said the elephant was like a grain-chaffer. another one touched the body of the elephant to say the elephant was like a wall. The third person touched the elephants trunk to declare that the elephant was like a pillar. The lost of those visually challenged persons touched the tail of the elephants to proclaim the elephant to be like rope. Similarly, the "2G elephant" was touched by the CVC, CAG, JPC and CBI without proper understanding and on the basis of their own inference drawn by them, this case has been foisted against me. Having examined hundreds of witnesses and marked about more than ten thousand pages of documents as exhibits, ultimately the real elephant has to be identified and disclosed by this Honorable court. I had concluded my arguments in a little span of ten days where as the CBI had done a marathon argument many months together. In spite of its efforts CBI is not only able to prove its case but on the contrary it is proved that the case framed by the CBI is non-est in terms of assessment of facts and interpretation of law/policy.

1.1.1 It is often said that the object of a trial is to bring out the truth. However, this trial has ended with more questions than answers. Specifically, the following questions remain unanswered at the end of this trial:

1. Why would Swan and Unitech conspire together, when their interests are opposed?

2. Why would the Minister conspire with Swan to change the existing procedures of the DoT (from sequential to simultaneous allotment of LoIs), when the change is to its detriment?

3. When, under the past practice of DoT, applicants were allowed to satisfy the eligibility criteria much after the date of application, why would the Minister direct that eligibility on the date of application is to be seen, which is the basis of the case against Swan and Unitech?

4. When, under the existing policy itself, the applications of Unitech could be accommodated and UASL as well as spectrum could have been allocated and entire process stopped thereafter, why resort to a process of cut-off date at all?

5. Why would the Minister involve outsiders in the decision-making process (such as the Hon'ble Prime Minister, Law Minister, Finance Minister, External Affairs Minister, and the Solicitor General), if there was a conspiracy?

6. What sort of conspiracy is it when every single proposed action of DoT is known to the world at large through the media and all applicants – conspirators and non-conspirators – are placed at a level playing field and given equal opportunity to comply with LOI conditions?

7. When every single operator (old/ new/ dual) is given spectrum simultaneously (wherever possible) and at any rate within one year in 21 out of 22 circles, what really turns on seniority? (Particularly when the earlier practice was to wait for nearly two years for spectrum.) It emerges from the record, as explained in the preceding Chapter on FCFS, that even in Delhi sufficient spectrum was made available. Where then is the question of acting to anyone's detriment and corresponding favour to another?

8. When the decision to maintain the entry fee and not auction spectrum is defended by the Prime Minister in Parliament, can it be 'abuse of power' by the Minister concerned?

9. In the case of Swan, what sort of bribe is it, when there is no evidence that the bribe-taker (that is A-1) is even aware of the payment?

10. In the case of Unitech, what possible motive did the Minister have to help them?

1.2. What the Evidence Shows

1.2.1 The facts as they unfolded during the trial demonstrate that the manner of registration of RC in this case itself was faulty, by naming two companies (Swan and Unitech), when the identical procedure was followed for eight other companies. This procedure in turn was the same as had been followed by the DoT since 2003, with the only change in circumstances being the number of applications, which was duly taken care of by simultaneous grant of LoIs and grant of spectrum either simultaneously or within a short period. By trying to portray as if Swan and Unitech had received some undue benefit, the CBI has compromised its position and failed in its duty as the premier investigating agency in India.

1.2.2 As the proceedings before this Hon'ble Court have shown, the facts pertaining to the grant of licenses and allocation of spectrum can be appreciated only after taking into account the huge number of records and documents along with the oral testimonies of the hundreds of persons involved. At the end of the day, however, the story is simple: an effective and affordable nation-wide telecommunication system is crucial for the development of the country as a whole. Successive governments have realised this and thereby treated telecom as an infrastructure item. We have also realised that a properly regulated market-based approach was the best way to let the sector grow.

1.2.3 Accordingly, the primary aim of the government in the telecom sector was not to earn revenue, but to ensure effective and affordable services to the whole country. The idea was to keep entry barriers low and encourage more players to enter the sector. As the players competed with each other to add subscribers, teledensity increased and tariffs fell. At the same time, income to the Government, based on the revenue-share model, exponentially increased with an in-built indexation. This was a situation to the benefit of all stakeholders.

1.2.4 Spectrum is the core resource on which the entire wireless industry is built. A certain amount of spectrum had to be given to every operator, so that he could conduct his operations. At the same time, there had to be an efficient regulatory system that ensured that the operator used the allotted spectrum optimally, and the industry did not fall prey to spectrum hoarding. A-1 attempted to achieve this by tightening the subscriber base criteria for allocation of spectrum over and above start-up spectrum. After tremendous opposition from the COAI, these criteria are now in place and are forcing the operators to use spectrum efficiently.

1.2.5 The unfortunate fact is that prior to the tenure of A-1, there was no transparency in disclosure of spectrum availability and allocation. This acted as a major barrier to entry of new

operators and the GSM segment was virtually cartelised by the COAI. It is only as a result of the efforts of A-1 that DoT was able to introduce new players and allocate spectrum to them by coordinating spectrum which was earlier lying unused. *It is worth reiterating that not even 1 MHz of spectrum allotted in the tenure of A-1 came from the Defence Services or any other source: it was simply lying without being coordinated; a waste of a national resource*. Why was it kept this way, and why new players were not allowed earlier? Why did companies that got licenses in December 2006 have to wait till January 2008 to get spectrum?

1.2.6 The DoT was supposed to have been following the FCFS system, but nowhere was it defined as to how FCFS would operate when there were two sets of licenses and two sets of applications. Both the AS Wing and the WPC Wing have separately followed FCFS. This is what A-1 explained to the Hon'ble PM in his letter of 26.12.2007: "*The first come first serve policy is also applicable for grant of wireless license to the UAS Licensee*". The nuances of how the FCFS system would operate never became an issue earlier, since the DoT was processing only one application at a time – and since the applicants were all mostly COAI members, nobody protested against this method. This sequential processing obviously could not be done when a large number of new applications arrived, and A-1 approved the DoT proposal to issue LOIs simultaneously. After LOIs had been issued, it was also duly informed to him that they had been issued simultaneously.

1.2.7 Once LOIs had been issued simultaneously, there is no procedure, and really there cannot be a procedure, to refuse to accept the LOI compliances from an LOI holder and ask him to wait till some other LOI holder gave his compliances. The same has been so opined by the then Ld Solicitor General in his note to the Hon'ble External Affairs Minister. The only logical and transparent method is to fix priority in order of receipt of compliances, which is what was done. This is what had been done in the past also. All the applicants did in fact submit compliances on the same day or the next day, and none was prejudiced by this method. DoT further ensured this by the method of simultaneous allocation of spectrum, as far as possible. Thus, seniority became a non-issue and that is why no operator raised any grievance.

1.2.8 The decision to process applications received till 25.09.2007 and the issue of dual technology are relatively smaller issues. A-1 approved the proposal to process applications received till 25.09.2007 because it was consistent with a harmonious reading of NTP-99, UASL Guidelines and TRAI Recommendations, considered along with the likely number of eligible applicants, likely availability of spectrum (including possibility of spectrum

vacation), and past precedent of licensees waiting for spectrum allocation. A-1 was in fact open to processing all the pending applications, but the then S(T) was not in favour of this and hence this decision was taken. Insofar as dual technology was concerned, the Tata file was cleared as soon as they furnished the required No Dues Certificate and was not delayed for any reason. The question of their inter se priority with new applicants was never referred to A-1 for a decision and was handled by the WPC internally.

1.2.9 The earlier procedure followed by the DoT was to allow several extensions of time to applicants to comply with eligibility conditions till issuance of LOI, and in some cases even after issuance of LOI. There is no power in the UASL Guidelines or anywhere else for this to be done, but it was being done. On what basis? After A-1 took charge, he stopped this practice and directed that eligibility had to checked at the time of application and not subsequently. It is on the basis of this decision that the CBI has charged Swan Telecom and Unitech Group as being ineligible – and the twist in the tale is that A-1 is supposed to have conspired with them! It is really absurd.

1.2.10 The so-called theory of conspiracy between A-1 and some private operators has fallen flat after the combined investigation of CBI, ED and Income Tax Departments could not identify a single rupee of any bribe with A-1 or even his extended family. They then came up with the fantastic theory of connecting A-1 with some transaction of KTV, but could not even prove that A-1 was even aware that such a transaction had taken place, far from proving 'demand' or 'obtainment' under s.7 PCA.

1.2.11 A-1 took no unilateral decisions. Every major decision of his was taken after consultation first with the DoT officers and thereafter with the Hon'ble PM, FM and EAM. All issues including entry fee, non-auction of spectrum, FCFS, processing of applications till 25.09.2007, etc., were personally discussed by him with the Hon'ble PM and the DoT proceeded only thereafter.

1.2.12 On several issues in this case, one can have the view that the decision is a matter of opinion. Different options were available, and the DoT chose a particular option. A-1 also accepts that some other authority may have a different opinion. For instance, the Planning Commission says that telecom should not be seen as a source of revenue, but the CAG is concerned only with maximising revenue. These sort of institutional differences should be left to be determined by the Executive, which is of course answerable to Parliament. Instead, the CBI, and various other bodies started imposing their opinions, leading to this current situation.

1.2.13 In conclusion, it is respectfully submitted that the prosecution has miserably failed to establish 'dishonest intention' and 'abuse of power' on the part of A-1, which form the core of all the charges framed in this case, whether under PCA or the IPC. They have been unable to even prove most of the alleged circumstances, and the circumstances that have been proved do not form a chain that leads conclusively to the guilt of A-1. He is therefore entitled for acquittal. On the other hand, it is submitted on behalf of A-1 that it has been established that every decision that he took was in public interest. It introduced new players, increased teledensity, and brought down the tariff. There was no personal benefit to him or even to his extended family.

1.2.14 In its reply dated 27.07.2010 to the CAG [Ex PW 60/DB-14], the DoT had concluded as under:

> ***Therefore, the conclusion of the audit regarding issuance of licenses in 2008 at 2001 prices, issuance of licenses on FCFS policy to the applicants who applied till 25.09.2007, implementation of dual technology and allotment of spectrum thereof is misconstrued and based on little knowledge of the policies of the government and without going into detail and understanding the various recommendations of TRAI and the entire telecom scenario in the country.***

1.2.15 At the conclusion of this trial, it is clear that the above observations apply equally to the CBI also.

1.2.16 In view of all of the above, it is prayed that this Hon'ble Court conclude that no offence has been proved against A-1 and that rather he has acted bona fide and in public interest throughout.

A. Raja (A-1)

Date: 25.04.2017
Place: New Delhi