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**TRAI'S CONSULTATION PAPER ON REGISTER OF INTERCONNECTION  
AGREEMENTS (BROADCASTING AND CABLE SERVICES) REGULATIONS, 2016**

**Submissions for and on behalf of STAR India (P) Ltd.**

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# Response of Star India Private Limited to the Consultation Paper On Register Of Interconnection Agreements (Broadcasting And Cable Services) Regulations, 2016

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## **Preamble:**

At the outset, we would like to thank the Authority for initiating this consultation process. We welcome this move by the Authority to create, maintain and curate a well-defined, transparent reporting mechanism for better systemization of contractual relations amongst all players within the satellite and cable TV value chain.

Before addressing the specific issues raised under consultation we request the authority to be mindful of the fact that preserving the confidentiality of sensitive commercial information is a vital safeguard in respect of commercial contracts. This is recognized in various acts including RTI Act, Competition Act and in Anti-Dumping jurisdiction. Protection of commercially sensitive information is essential to ensure level playing field between service providers who are also rivals and competitors so that there is there is no unfair advantage or gain and to maintain the competitive edge which is vital for the growth of business.

The Supreme Court in the case of *The Institute of Chartered Accountants of India v. Shaunak H. Satya and Ors.* (2011) 8 SCC 781 has held that a proper balance is to be maintained so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient operation of public authorities and government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources. The principal was again reaffirmed in in the case of “*Sterlite Industries (India) Ltd. v. Designated Authority* 2003 (111) ECR 1018 (SC)” wherein the apex court has recognized that there is ***“need for confidentiality, as otherwise trade competitors would obtain confidential information, which they cannot otherwise get”***.

We respect the Authority’s approach to seek information so as to examine them and take appropriate action / intervene if necessary but protection of commercially sensitive information is fundamental to right to trade and promote healthy competition.

Moreover in the current scenario where the Authority is in the process of coming up a comprehensive regulatory mechanism based on the principles of transparency and non-discrimination there will be no interconnect agreement which will be de-hors the published RIOs of the service providers. Hence, the scope of differentiation between a RIO deal & negotiated deal is going to be marginal. Further if there would be any differentiation same will be only on the basis of transparent published schemes/criteria. Therefore, it is not necessary to publish all the commercial information across the value chain.

We would like to clarify that we are not in any manner advocating confidentiality to be used as a tool to frustrate the principles of non-discrimination. Our intention is clearly to ensure that the right to access and analyze such information should only lie with the Authority and such powers cannot be vested with the public at large basis unfound assumptions.

**Now proceeding to deal with questions raised in the present consultation:**

**Question 1: Why all information including commercial portion of register should not be made accessible to any interested stakeholder?**

**Response 1:**

For the reason mentioned in the preamble and the reasons stated below, all information marked as “confidential” including commercial portion of register should not be made accessible to any interested stakeholder per se. Access to such information should be on a case to case basis supported by an application to the Authority stating the reasons for such access. The Authority must then decide such application after giving an opportunity to the stakeholder whose information is being sought to justify whether such access is required or not.

Our concern towards maintaining the privacy of the commercial portion of the register stems from multiple reasons. The first concern arises from the hyper competitive market in which all stakeholders across the value chain operate. As per TRAI’s own data there are nearly 800 TV channels registered under the up-linking & downlinking guidelines. This means that even the slightest of commercial information can be of great advantage to a competing broadcaster. Though, we understand that TRAI ought to ensure transparency and non-discrimination, however, negatively

impacting the market position of a broadcaster is definitely not its aim either. In fact this applies across the value chain inter-se DPOs.

Our second concern is perhaps linked to the first one as it relates to conduct of third parties. The satellite and cable TV industry is composed of multiple stakeholders, right from the production houses/content creators, DPOs and the end consumer/viewers. There are also a number of loosely related parties like the actors, support staff etc. This creates a risk of a multitude of uninformed stakeholders drawing unfounded assumptions, without fully realizing the true context of information at hand, resulting in unnecessary chaos leading to business uncertainty.

“Business Confidentiality” is an established principle that is respected across industries and the rationale for such wide acceptance is rather strong. In current competitive economic scenario, it would not be wrong to say that information is the most important commodity that any business possesses. Business information, just like intellectual property rights, can be extremely valuable to a company's growth and sometimes even critical for its survival. Hence, every organization has to ensure that they adequately protect their business processes, technical know-how and confidential information from competitors as the amount of information that a company possesses can directly impact the bargaining power that it holds in the market. Moreover, every business concern spends huge amount of time and resources in developing a strategy, which is nothing but the effectiveness with which it can use the data in its possession to project and survive in future. In the cable and satellite TV business, competition is intense and any part competitor's information can help a company improve its own profits manifold. Hence, protecting confidentiality of commercial information becomes even more important in this sector.

Apart from the business rationale for protecting commercial information, we must highlight that within the Indian legal scenario, guarding sensitive business information has always been held on a high pedestal. Under Indian Contract Law, business confidentiality has been given utmost importance to the extent that the protection of such information operates as an exception to general prohibition on contracts restraining trade and employment. Section 27 of the Indian Contract Act states that agreements in restraint of trade are void, the only exception being in the case of sale of goodwill of a business whereby the buyer may be refrained from carrying on a similar business,

within specified local limits, so long as the buyer, carries on a like business therein, provided such local limits are reasonable. This restriction applies on employment as well.

Even in the absence of an agreement or even a clause in an agreement, which restrains a person from breach of confidential information, there is an implied duty of fidelity towards the employer, which prevents breach of confidential information.

The above phenomenon is not limited to contract law alone, the Information Technology Act, 2000 penalizes “Cyber Contraventions” (Section 43(a) to (h)) and “Cyber Offences” (Sections 65-74). The former category includes gaining unauthorized access and downloading or extracting data stored in computer systems or networks. Such actions may result in civil prosecution. The latter category covers “serious” offences like tampering with computer source code, hacking with an intent to cause damage, and breach of confidentiality and privacy, all of which attract criminal prosecution.

Also, under Section 43A of the same Act, a body corporate which is possessing, dealing or handling any sensitive personal data or information, and is negligent in implementing and maintaining reasonable security practices resulting in wrongful loss or wrongful gain to any person, then such body corporate may be held liable to pay damages to the person so affected. Moreover, as per Section 72A, disclosure of information, knowingly and intentionally, without the consent of the person concerned and in breach of the lawful contract has been also made punishable with imprisonment for a term extending to three years and fine extending to INR 5,00,000.

Hence there is a need to balance the conflicting interests of transparency and the protection of confidentiality of commercially sensitive information. Both are in public interest.

**Question 2: If the commercial information is to be made accessible,**

- (a) In which way, out of the three ways discussed above or any other way, the commercial information should be made accessible to fulfill the objective of non-discrimination?**
- (b) Should it be accessible only to the service providers, general public or both?**
- (c) Should any condition be imposed on the information seeker to protect the commercial interests of the service providers?**

**Response 2:**

- (a) It is respectfully submitted that none of the three ways suggested by the Authority will preserve the confidentiality and prevent misuse of such information. On the contrary making access easy to commercial information will create chaos and constant disruption in the sector which will create an uncertain business environment wherein there will be no sanctity to written contracts. This will further create an environment wherein it gives an opportunity to a dishonest person to wriggle out of its contractual obligation on the basis of unfounded assumption and challenge validly concluded contracts. Hence, access to information should be made available on a case to case basis by the Authority after examining the need for such access and providing the concerned stakeholders adequate opportunity of being heard. This will ensure that principles of non-discrimination are upheld and realized in true letter and spirit.
- (b) Information should be made available only to interested service providers. It will not serve any purpose to make sensitive commercial information between two service providers to the general public as these cannot be equated with statutory documents contemplated under the provisions of the Companies Act or any other statute. Further, making the information available to one and all is not going to serve any purpose as the members of general public are never the subject matter of discrimination. It is one service provider being discriminated against one another. Hence we suggest that the information shall be made available in the manner suggested above i.e. the information shall be made available only to service provider and on request after authority applying its mind and affording reasons for providing the information.
- (c) Yes, strict confidentiality obligations should be imposed on the information seeker and non-compliance should be met with penalty and other action as per applicable law and severe penalties should be prescribed so as to deter any misuse.

**Question 3: If the commercial information is not made accessible to stakeholders, then in what form the provisions under clause (vii) and (viii) of Section 11 (1) (b) of TRAI Act be implemented in broadcasting and cable sector so that the objective of non-discrimination is also met simultaneously?**

### **Response 3:**

As has been explained above the Authority can meet the objective of non-discrimination by intervention on a case to case basis. Given that the Authority has access to the commercial information at all times, the Authority can ensure that the objective of non-discrimination is achieved in the following suggested manner through due process:

- (i) **Suo-moto intervention :** If the Authority on the basis of scrutiny of contracts filed with it is of the view that such contracts are discriminatory, it may initiate appropriate proceedings against the concerned stake-holders and take appropriate action after providing an opportunity of being heard to the concerned parties.
- (ii) **Basis specific complaint :** If the Authority receives any specific complaint from stakeholders alleging discrimination, it may in that case initiate appropriate proceeding and take corrective action after providing the parties an opportunity of being heard.

Additionally, the service providers always have the option of approaching the Hon'ble TDSAT for reliefs.

We would like to reiterate that an RTI like situation is unfeasible with respect to inter-se commercial contracts between service providers as every sector, especially broadcast, satellite and cable, has its own economic peculiarities which may not be fully appreciated by the public in general.

As per Section 11 (1) (b) and specifically clauses (vii) and (viii) of the TRAI Act, it is mentioned that TRAI shall maintain the register of interconnect agreements and keep the register maintained open for inspection to any member of public on payment of such fee and compliance of such other requirement as may be provided in the regulations.

In this regard, the Regulations clearly define that the register will be divided into two parts i.e. Part A and Part B. As per the Regulations Part B of the register will contain information which the Authority may direct to be kept confidential and it shall not be open to inspection by the public.

Further, while the Regulations state that TRAI will keep the register open for inspection, it does not make it mandatory for TRAI to also provide the general public at large access to the confidential information contained in Part B and the Regulations. It further states that only if an interested party

to an interconnect agreement requests for information, TRAI is to evaluate whether it is necessary to provide the required information.

In this context it will be useful to refer to the provisions of Indian Competition Act and regulations framed thereunder which contemplates restriction on disclosure of information in section 57 “***No information relating to any enterprise, being an information which has been obtained by or on behalf of [the Commission or the Appellate Tribunal] for the purposes of this Act, shall, without the previous permission in writing of the enterprise, be disclosed otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force***”.

Further in General Regulation framed under the aforesaid Act i.e. **The Competition Commission of India (General) Regulations, 2009** extant procedure is prescribed under regulation 35 to maintain confidentiality:

**35. Confidentiality. –**

- (1) The Commission shall maintain confidentiality of the identity of an informant on a request made to it in writing.
- (2) Any party may submit a request in writing to the Commission or the Director General, as the case may be, that a document or documents, or a part or parts thereof, be treated confidential.
- (3) A request under sub-regulation (2) may be made only if making the document or documents or a part or parts thereof public will result in disclosure of trade secrets or destruction or appreciable diminution of the commercial value of any information or can be reasonably expected to cause serious injury.
- (4) A request under sub-regulation (2) shall be accompanied with a statement setting out cogent reasons for such treatment and to the extent possible the date on which such confidential treatment shall expire.
- (5) Where such document or documents, or a part or parts thereof, form part of the party’s written submissions, the party shall file a complete version with the words “restriction of publication claimed” in red ink on top of the first page and the word ‘confidential’ clearly and legibly marked in red ink near the top on each page together with a public version, which shall not contain such document or documents or part or parts thereof.



(6) The public version of such written submissions shall be an exact copy of the confidential version with the omissions of the confidential information being indicated in a conspicuous manner, as stipulated in sub-regulation (5).

Hence transparency is never elevated to a level where it acts as a hurdle or becomes a disrupter. All legislations have vested the power with statutory authority which inter-alia balances various competing factors rather than making all information public in the first instance and leaving it to the judgment of individuals making their own unfounded assumptions. The Authority should adapt to similar measures as prescribed under various other legislation like filing with competition commission of India (CCI) as enumerated above.

It is further suggested that information so obtained by any service provided shall be subject to :

- i. Service provider to be kept informed about the information seeker.
- ii. The information should be used for internal use only and on “Need to Know” basis.
- iii. In case of any misuse of the information other than what is stated should be made punishable.

In-light of the above, we feel that TRAI is in a position to successfully adhere to its obligations under the TRAI Act. This will effectively equip the authority to ascertain in a given circumstance as to whether any discrimination is actually effected or the information is asked to cause mischief with same.

**Question 4: Please provide suggestions on regulation 5 of the draft regulations regarding periodicity, authentication etc.**

**Response 4:**

**Periodicity :** Given the dynamic nature of the industry the periodicity of the report should continue in the same manner as it is i.e. once a year. At best the periodicity can be changed to twice a year for all service providers. Increasing the periodicity beyond twice a year will make the process very cumbersome and ineffective.

**Authentication :** Information should to be authenticated by Company Secretary, General Counsel or Chief Legal Officer of the Reporting Entity.

**Question 5: Please provide comments on how to ensure that service providers report accurate details in compliance of regulations?**

**Response 5:**

TRAI should ensure scrutiny of reports for adherence in terms of the format and also the data contained therein. Reports which are non-compliant should be returned to the service providers and an obligation should be placed on service providers to re-submit reports within 10 days, failing which TRAI should take appropriate action.

**Question 6: Please provide comments on digitally signed method of reporting the information.**

**Response 6:**

Given the shift towards technology and the volumes of signatures that are required when reports are submitted, digital signatures should be allowed.

**Question 7: Please provide suggestions on regulation 6 of draft regulations and also the formats given in schedules? Stakeholders can also suggest modified format for reporting to make it simple and easy to file.**

**Response 7:**

At the outset, it is submitted that in order to ensure uniformity in reporting all the nomenclatures provided in the formats they must be clearly defined and must reflect all the data disclosed by the DPO's to the Broadcasters in terms of their respective interconnect agreements. . For example – (i) definition of name of area may be interpreted differently by stakeholders' and hence the area of operation must be aligned to the areas as defined in MIB and TRAI Notifications or alternatively by census Primary key (ii) to ensure justifiable incentives based on subscribers, stakeholders' will require information pertaining to universe and number of active subscribers. To avoid different interpretation of active subscribers, TRAI should consider defining active subscribers as those

existing on every month end date for the reporting period rather than leaving it to stakeholders' disparate definitions.

This will ensure that all stakeholders understand the purpose and objectives of providing such information and enable reporting in letter and spirit. This will also enable Authority to analyze data in a meaningful manner.

We are enclosing herewith the revised schedules of formats for reporting which broadly proposes the following changes:

- Include area wise segregation and the number of active and inactive subscribers of the DPOs. .
- Control Key should be added in all format to link between various reports
- Subscriber Numbers should be sought from DTH / IPTV customers while reporting to broadcasters in schedule III and from MSO / HITS while reporting to LCO in schedule II.
- The reports to be submitted by the MSO/HITS operators vis-a-vis their LCOs must also reflect (i) the bouquet/a-la-carte offering along with the respective price/rate and (ii) the subscriber information should be reflecting a-la-carte as well as bouquet count.
- Delete the information with respect to Discount of subscription fee as same will keep on varying on month on month basis depending on DPO business model.

The formats with suggested changes are annexed herewith as Annexure A. The modifications are highlighted in the respective formats for easy reference.

**Question 8: Any other suggestions relevant to the draft regulations**

**Response 8:**

1. It is submitted that all the obligations contained in these Regulations must be made applicable to all the service providers across the value chain in order to effectively achieve the principles of non-discrimination and transparency.
2. The Authority needs to clarify that the entire regulatory framework is applicable only for licensed satellite television channels distributed via cable, DTH, HITS, IPTV in keeping with

the existing uplinking /downlinking guidelines of the Ministry of Information and Broadcasting, and specifically excludes all internet, intranet, Over the Top, Edge, mobile and any other similar delivery technologies.

## Annexure A

Part A Table A1

Name of the broadcaster Period  
 Name, address, contact details of authorized person:

Control Key (Unique code to identify a customer)	Name of distributor with whom the broadcaster has signed agreement	Registration License number of distributor	Agreement Number	Name of the area for which agreement is signed	Date of signing of agreement	Validity period of the agreement	
						From	To
1	2	3	4	5	6	7	8

Part A Table A2

Control Key (Unique code to identify a customer)	Bouquet Code/A-la-carte	Name of bouquet offered if any/ A-la-carte	Name of constituent channels of the bouquet	Name of the broadcaster having down linking permission for the channel
1	2	3	4	5

Note 1: Incentive based on group of channels shall not be construed as a bouquet

Part B

Control Key (Unique code to identify a customer)	Agreement Number	A-la-carte / Bouquet	Name of channels offered (A-la-Carte / Bouquet)	RIO price of A-la-Carte / Bouquet	Subscription fee of A-la-Carte / Bouquet agreed in Rs.		Unit of subscription fee		Discount of subscription fee-in-Rs.		Remarks
					Fixed	Variable	Fixed	Variable	Fixed	Variable	
1	2	3	4	5	6	7	8	9	10	11	12

Column 2 format:

Name of pay broadcaster	Type of distributor	Year of signing of contract	Unique number of the contract
1	2	3	4

**Schedule - II**

**Part - A**

Name of as per Registration Licence with MIB: \_\_\_\_\_  
 Type: \_\_\_\_\_ (MSO / DTH) **Period:** \_\_\_\_\_  
 Name, Address, Contract Details of Authorized person: \_\_\_\_\_

**Table - A1: MSO or DTH to LCO Interconnection Details**

Control Key (Unique code for identification)	Name of LCO with whom the MSO / HITS has signed agreement	Registration Number of LCO	Agreement number #	Name of the Area(s)* which agreement is signed	Date of signing of agreeme nt	Validity period of agreement		Subscriber Numbers (Active)	Subscrib er Numbers (Inactive)	Bouquet / A-la- carte	Name of channels offered (A-la- Carte / Bouquet)	Rate / Price
						From	To					
1	2	3	4	5	6	7	8	9	10	11	12	13

**Part - A**

Name of as per Registration Licence with MIB: \_\_\_\_\_  
 Type: \_\_\_\_\_ (MSO / DTH) **Period:** \_\_\_\_\_  
 Name, Address, Contract Details of Authorized person: \_\_\_\_\_

**Table - A1: DTH & IPTV Interconnection Details with the Broadcaster**

Control Key (Unique code for identification)	Name of Broadcaster with whom the DTH / IPTV operator has signed agreement	Registration Number of Broadcaster	Agreement number #	Name of the Area(s)* which agreement is signed	Date of signing of agreeme nt	Validity period of agreement		Subscriber Numbers (Active)	Subscrib er Numbers (Inactive)	Universe	Bouquet / A-la- carte	Name of channels offered (A-la- Carte / Bouquet)	Rate / Price
						From 7	To 8						
1	2	3	4	5	6	7	8	9	9	10	11	12	13