



STARHUB'S RESPONSE TO IDA'S CONSULTATION PAPER -

"REQUEST BY SINGAPORE TELECOMMUNICATIONS LIMITED FOR EXEMPTION FROM DOMINANT LICENSEE OBLIGATIONS WITH RESPECT TO THE INTERNATIONAL CAPACITY SERVICES MARKET PURSUANT TO SUBSECTION 2.6.1 OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES"

1. StarHub Pte Ltd ("**StarHub**") appreciates the opportunity to comment on the request by Singapore Telecommunications Ltd ("**SingTel**") for an exemption from its dominant licensee obligations with respect to the International Capacity Services ("**ICS**") market.

EXECUTIVE SUMMARY:

2. This submission is in response to IDA's invitation to comment on the request by SingTel for an exemption from its dominant licensee obligations for the "ICS" market. StarHub submits that SingTel's exemption request should be denied for the reasons set out in this submission. In summary:

- SingTel has demonstrably failed to comply with the terms of Sections 2.5.2 and 2.6.1 of the Code of Practice, and therefore SingTel's request cannot be accepted.
- SingTel is clearly dominant in the "ICS market", given its: (i) control of direct connection facilities, (ii) control of bottleneck facilities (such as cable landing stations and satellite earth stations); and (iii) high market share.
- Declaring SingTel as non-dominant for "International Capacity Services" would be detrimental to the promotion of competition amongst Licensees, and to the long-term interests of end-users in Singapore.

3. StarHub would also note that SingTel has based its request primarily on the exemption from dominance obtained by Reach Networks Hong Kong Limited in Hongkong. StarHub would highlight that substantial differences exist between Reach in Hongkong and SingTel in Singapore (including the fact that Reach does not offer domestic services in Hongkong), which invalidate the use of Hongkong as a precedent.

DOMINANCE LICENSEES & REQUESTS FOR EXEMPTIONS:

4. The procedures to be followed by a Dominant Licensee when requesting an exemption from Dominant Licensee Requirements are straightforward. Under Section 2.6.1 of the Code:

“The Dominant Licensee must demonstrate that continued application of the provision to a specific facility and/or service is not necessary to protect end users or promote and preserve effective competition amongst Licensees. The Dominant Licensee must provide verifiable data to support its request.”

5. StarHub would respectfully highlight the following points in Section 2.6.1:
- A requesting Dominant Licensee, such as SingTel, **must** provide verifiable data, and **must** demonstrate that Dominant Licensee Requirements are no longer needed. If the Dominant Licensee fails to meet these conditions, that Licensee cannot be exempted, under Section 2.6.1 of the Code, from the obligations.
 - Should the Dominant Licensee fail to supply the verifiable data set out in Section 2.6.1, the Code does not allow the IDA to consider the request for an exemption “on its merits”.
 - Implicit in Section 2.6.1 is an obligation on the Dominant Licensee to set out the services it is seeking an exemption for.

SINGTEL REQUEST FOR EXEMPTION:

6. StarHub would highlight that, despite the obligations set out in the Code, SingTel’s exemption request is devoid of verifiable data. Section 2.5.2 requires that:
- Parties seeking to demonstrate that Section 2.2.1(a) of the Code no longer holds must provide verifiable data in regard to: (i) the direct connection facilities the Licensee has deployed; (ii) the cost to a new entrant to deploy comparable facilities; (iii) the extent to which such facilities are commercially available; (iv) the extent to which there are technical, economic or regulatory obstacles to the deployment of such facilities; and (v) the extent to which competitive deployment has occurred and is likely to occur.
 - Parties seeking to demonstrate that Section 2.2.1(b) of the Code no longer holds must provide verifiable data on: (i) the relevant market for the telecommunication services; (ii) the participants in the market; (iii) the Licensee’s market share; (iv) concentration levels in the market; (v) the likelihood of increases in output (through new entry or the deployment of additional output by current market participants) in response to a “significant and non-transitory price increase by the Licensee”; and (vi) the likelihood that end users would switch suppliers in respond to that price increase.
7. However, SingTel has failed to provide **any** data about its direct connection facilities or the ability for other operators to replicate those facilities. SingTel has also failed to provide such basic data on the size of the “ICS” market, SingTel’s share of that market, concentration levels in that market, and the reaction of the market to price changes. SingTel has therefore failed to comply with Sections 2.5.2 and 2.6.1 of the Code.

8. SingTel’s approach can be contrasted with that followed by Reach Networks Hong Kong Limited (“Reach”) in its application of 31 May 2001 for Declaration of Non-Dominance in External Bandwidth Services. In that application, the range of data provided by Reach included:

- Reach’s share of the total available capacity landing in Hong Kong;
- Reach’s share of the total available capacity across the intra-Asia routes;
- Movements in prices for external bandwidth services;
- Reach’s share of those planned submarine cables that will land in Hong Kong in the near-future (the total available capacity landing in Hong Kong, and the total available capacity across the intra-Asia routes); and
- Reach’s percentage shareholdings in the various cable consortia, including: APCN, APCN-2, and SMW-3.

It is unclear why SingTel was unable to provide similar data for its request.

9. StarHub would also highlight that SingTel has failed to define the services covered in its request. SingTel states in page 1 of its request that the ICS which its request relates to: “***includes but is not limited to*** [Emphasis added] *the following SingTel international capacity services*

- (i) *International Private Leased Circuits;*
- (ii) *International Frame Relay;*
- (iii) *International ATM;*
- (iv) *International IP VPN;*
- (v) *Domestic Backhaul;*
- (vi) *Satellite TV Uplink/Downlink;*
- (vii) *Very Small Aperture Terminal (VSAT) Service;*
- (viii) *Digital Video Broadcast (DVB) IP;*
- (ix) *Leased Satellite Bandwidth;*
- (x) *IP Transit services”*

10. It is clear from this statement that SingTel’s definition of “International Capacity Services” is wider than just the ten services set out above. But at no point in its request does SingTel set out its definition of “International Capacity Services”. StarHub would highlight that the list of services in SingTel request is very wide-ranging, covering a

range of services to end-users and operators. StarHub would submit that these services do not constitute a single market, and must be considered on a service-by service basis.

11. StarHub would again contrast SingTel’s request with Reach’s application in Hongkong. As part of the Reach application, the description of external bandwidth services was set out in detail. It should be noted that managed network services and switched circuits such as Internet Protocol and Asynchronous Transfer Mode (“ATM”) technologies were specifically **excluded** from the service definition in the Reach application.

12. As SingTel has failed to define the services it is seeking an exemption for, and has failed to provide the required verifiable data, SingTel has failed to comply with Sections 2.5.2 and 2.6.1 of the Code. StarHub would therefore respectfully suggest that SingTel’s request for an exemption from its Dominant Licensee obligations must be declined.

DEFINITION OF MARKETS:

13. In its request for an exemption, SingTel makes a number of statements in regard to the substitutability of products in the international market. StarHub would respectfully suggest that these statements need to be challenged, and would highlight the following SingTel statements (in particular):

➔ *“Satellite capacity and submarine cable capacity are substitutable” (s4.13)*

StarHub would note that satellite and submarine cable capacity have very different latency and reliability characteristics. Satellite and cable services are also used for very different applications, for different customer sets, with different tariffs, with different demand and supply conditions. As noted by Ofta in its consideration of the Reach application: *“to certain external destinations, or for certain point-to-multipoint or broadcasting applications, submarine cable capacity may not be a viable substitute for satellite capacity. Conversely, for certain applications which require large capacity or low propagation delays, satellite capacity would not be substitutes for submarine cables.”*¹ StarHub does not agree with SingTel’s statement that Satellite capacity and submarine cable capacity are substitutable.

➔ *“IPLCs also compete with IRU capacity and hence IRU capacity should be considered to be part of the same product market” (s4.6)*

This statement overlooks the fact that IRU capacity and IPLCs have different technical characteristics, different pricing structures, different service attributes, different demand levels, and different target markets. StarHub does not believe that IPLCs and IRUs can be considered part of the same product market.

¹ See *“Application for a Declaration of Non-Dominance in the Market for External Bandwidth Services – Industry Consultation Paper”*, 19 October 2001, p16.

- *“SingTel also submits that internet connectivity is substitutable for IPLCs and/or satellite services” (s4.17)*

StarHub would submit that for the overwhelming majority of customers, IPLCs and internet connectivity are not substitutes. If a customer wants an IPLC (because of the reliability, quality of service, and robustness of IPLCs), they are extremely unlikely to accept internet connectivity as a substitute. Rather than being a “substitute” for internet connectivity, IPLCs are frequently an essential input to the provision of internet connectivity services.

- *“In relation to the substitutability between IPLCs and other managed services, SingTel submits that each is substitutable for the other” (s4.16)*

Again, StarHub would note that “managed services” covers a broad range of services with differing technical characteristics, quality of service, target markets, and pricing structures. StarHub would respectfully suggest that these services cannot simply be lumped together with IPLCs and be considered “substitutes”, particularly as IPLCs are frequently an essential input into the provision of managed services (such as Frame Relay and ATM).

- *“Backhaul should be considered as part of the ICS market because backhaul is bundled or clustered with international capacity” (s4.9)*

StarHub disagrees with this statement, and believes that backhaul is a domestic service. Backhaul is fundamentally a stand-alone product, and the supplier of the backhaul and the supplier of the IRU may well be different parties. Backhaul is certainly an input that can be used in the provision of an international service, but so is a local leased circuit. StarHub therefore believes that backhaul must be considered separately from the “ICS” market.

14. StarHub would submit that, in reviewing SingTel’s request:

- Satellite capacity and cable capacity must be seen as separate markets;
- IPLCs and IRUs must be seen as belonging to different markets.
- Interconnect connectivity and IPLCs are separate markets.
- IPLCs and managed services are in different markets (and that there are separate and definable markets for ATM and Frame Relay).
- Backhaul must be seen as a separate market from the market for international services.

StarHub would therefore respectfully suggest that it is not possible to consider SingTel’s request in the context of the “ICS” market. Rather, SingTel’s request for an exemption should be analysed on a market-by-market assessment of each individual service or facility.

SINGTEL’S CONTROL OF DIRECT CONNECTION FACILITIES:

15. Under Section 2.2.1 of the Code, Dominant Licensees are defined as those who control “facilities that provide a direct connection to end users within Singapore,, and:

- (a) *the facilities are sufficiently costly or difficult to replicate that requiring new entrants to do so would create a significant barrier to rapid and successful entry by an efficient competitor; or*
- (b) *the Licensee has the ability to restrict output or raise prices above competitive levels for telecommunication services provided to end users over those facilities.”*

As set out below, SingTel continues to meet this definition for the 10 services set out in its exemption request.

16. In reviewing SingTel’s request for exemption, it is necessary for IDA’s analysis to take into account the critical role of the “direct connection” to the end-user. Services such as International Private Leased Circuits, International Frame Relay, International ATM, and International IP VPN all depend on direct connection facilities (almost always Local Leased Circuits – “LLCs”) to link the international capacity to the end-user in Singapore. However, as has been noted by the IDA:

- *“the full conditions for effective and sustainable competition in the Retail LLC market, as a whole, are not yet present”;*
- *“SingTel continues to be the main LLC supplier and retains a substantial share of this market”;*
- *“The Wholesale LLC market is not competitive. SingTel is the main LLC supplier to operators and it retains a substantial share of this market”;* and
- *“entry barriers for competitive operators in the Retail and Wholesale LLC markets are high due to the significant upfront investments and extensive lead-time necessary to build the network.”²*

17. In summary, SingTel controls the facilities (the LLCs) that provide the direct connection to end users in Singapore for international services. It is not possible for new other operators to replicate those facilities, as IDA has itself noted. Therefore, for those services that require direct connection to end-users in Singapore³, SingTel continues to be a Dominant Licensee, under the definition set out in the Code. It would therefore be inappropriate for the IDA to accept SingTel’s exemption request.

²See “Explanatory Memorandum issued by Info-Communications Development Authority of Singapore, Designation of Singapore Telecommunications Limited’s Local Leased Circuits as a Mandated Wholesale Service”, 16 December 2003, page 3.

³ Such as International Private Leased Circuits, International Frame Relay, International ATM, and International IP VPN.

SINGTEL’S CONTROL OF BOTTLENECK FACILITIES (CABLE):

18. In addition to controlling the direct connection to end-users in Singapore, SingTel also controls essential bottleneck facilities needed in the supply of many of the “International Capacity Services”. StarHub would particularly highlight the issues related to back-haul services and international cable stations.

19. In order to provide backhaul services⁴, it is necessary for StarHub to have access to the international cable stations where the international capacity lands. These cable stations are true “bottlenecks”:

- The cable stations cannot be economically replicated;
- All cable stations in Singapore (except one) are owned by SingTel;
- SingTel is also the cable administrator for many of the cable systems into Singapore (including APCN and SMW3)⁵; and
- The cable stations remain under SingTel’s ownership solely as a legacy of SingTel’s monopoly past.

20. The problems that StarHub has encountered in accessing SingTel’s cable stations, include:

- (i) StarHub has sought access to SingTel’s i2i and C2C cable stations for the purpose of providing backhaul services to our customers, but has been denied access by SingTel. StarHub has raised this matter with SingTel and IDA, but has yet to see any resolution of this matter. StarHub understand that other operators have also been blocked from entering SingTel’s cable stations.
- (ii) Even where we have been able to obtain access to SingTel’s cable stations, we have encountered a number of restrictions on our operations, including:
 - ➔ An obligation to give SingTel 30 business days (i.e. 6 calendar weeks) notice of any links or capacity that we wish to have activated in that cable landing station. We believe that the actual time needed to carry out this activation is considerably less than 6 weeks.

⁴ “Backhaul” has been defined by Ofta in Hongkong as *“the circuits (usually high-capacity fibres) connecting the point of landing of the external circuits (which may be a cable landing station, a satellite earth station or a terrestrial radio link station) to a point of interconnection with a local network (usually the external operator’s ‘external gateway’ or ‘Point-of-Presence’).”*

⁵ In addition, SingTel also own 50% (or more) of two of the major cable systems landing in Singapore, and is likely to be the cable administration for the new cable systems such as TIS (which is in service) and SMW4 (which is under construction).

- ➔ Difficulties with the process by which new cable stations are added to the list of “eligible” systems, which is slow and open to misinterpretation.
- ➔ Restrictions on the capacity StarHub is able to bring into SingTel cable landing stations.
- ➔ Delays in fault status reports (and the absence of service level agreements) for those parts of the service under SingTel’s control.
- ➔ Restrictions on the space allocated to StarHub, and on changes to that space.
- ➔ Restrictions on dual access paths into SingTel’s cable landing stations (which we have sought for redundancy and resiliency purposes).

21. Through its control of cable stations, SingTel is able to (and does) restrict the provision (and hence output) of services such as backhaul. SingTel therefore falls within the ambit of Section 2.2.1(b), and must be considered Dominant in the provision of backhaul services.

SINGTEL’S CONTROL OF BOTTLENECK FACILITIES (SATELLITE):

22. StarHub would also highlight SingTel’s control over the satellite earth stations at Sentosa, Telepark, Seletar, and Bukit Timah. Again, StarHub has encountered difficulties accessing SingTel satellite earth stations, particular in regard to providing backhaul and transit services to customers using SingTel’s satellite earth stations.

23. StarHub believes that the RIO provisions for earth stations need to be amended in the following areas:

- (i) The list of collocation sites needed to be expanded, to allow new satellite earth stations to be included automatically into the RIO;
- (ii) Provisions need to be included to allow operators occupying collocation space in a SingTel earth station to directly connect to the equipment of their customers, when it is housed on-site; and
- (iii) The RIO should be expanded to include connection services for access the Satellite Earth Station Connection Services.

24. In addition, StarHub notes that in IDA’s “First Triennial Review of the Code of Practice for Competition in the Provision of Telecommunication Services”, IDA has proposed to eliminate the obligation for SingTel to allow co-location at satellite earth stations. If SingTel is released from such obligations, it will clearly exacerbate problem of access to SingTel satellite earth stations.

25. StarHub believes that until sustainable new competition develops for satellite earth stations, SingTel must be considered Dominant in the provision of satellite-based services in the “ICS” market.

SINGTEL'S MARKET SHARE:

26. As noted above, Section 2.6.1 of the Code clearly requires SingTel to provide “verifiable data to support its request”, and SingTel has failed to comply with this obligation. StarHub believes that it would be unreasonable to expect the other operators to provide data *proving* SingTel’s dominance. Nevertheless, StarHub does hold some market share data, and believes that it is useful (as part of this exercise) to illustrate SingTel’s share of key international markets.

27. StarHub’s market share data was prepared by third-party consultants as part of a general analysis of the Singapore market, rather than for any specific regulatory purposes. The data covers (*inter alia*) ATM, Frame Relay, International Private Leased Circuits, and IP-VPN services. This information is commercially confidential to StarHub, and so cannot be disclosed to third parties.

28. But in summary, as of the date on which the information was collected, SingTel’s share of the ATM, Frame Relay, International Private Leased Circuits, and IP-VPN markets ranged from over 40% to over 70%. StarHub believes that these figures establish a presumption of dominance on SingTel.⁶

29. StarHub acknowledges that there are a number of FBO and SBO licensees currently in operation in Singapore. However, StarHub would highlight that a large number of licensees in Singapore are simply SBOs reselling SingTel services. In addition, many of the remaining FBOs are dependent on SingTel for the provision of essential facilities (such as LLCs and access to cable landing stations) in order to provide services to end-users. The number of FBOs who can provide international services in Singapore, without relying on essential facilities from SingTel is extremely low (if such operators exist at all).

30. The market share figures described above highlight the impact of SingTel’s dominance on the “ICS” market. While the “ICS” market for is notionally open to competitive entry, SingTel’s control over direct connection (and other bottleneck) facilities, has constrained the development of effective competition. On this basis, StarHub believes that SingTel’s exemption request must be declined.

REACH COMPARISONS:

31. In its request for an exemption, SingTel has made numerous references to the Application for Declaration of Non-Dominance in External Bandwidth Services granted to Reach in Hongkong. The suggestion in these references is that if Reach was considered non-dominant in Hongkong, then SingTel should also be considered non-dominant in Singapore. But before this suggestion is accepted, StarHub believes that it is necessary to closely examine the Hongkong example, and to review the differences that exist between Reach and SingTel.

⁶ StarHub would also highlight that the September 2002 Gartner Report has identified SingTel as one of the leading IP Backbone Operators in the Asia-Pacific region, reinforcing SingTel’s dominance in the IP Transit market.

32. StarHub would respectfully highlight the following differences between Reach's request for a declaration of non-dominance in external bandwidth services in Hongkong and SingTel's request for an exemption from Dominant Licensee obligations with respect to "ICS" in Singapore:

- (i) Reach and SingTel are structured very differently. Reach does not own or operate local loop facilities, and is focused solely on international services. SingTel is vertically integrated across all areas of the telecommunications sector, domestic and international.
- (ii) Because Reach has no control over direct connection (or "last-mile") services, it is not in a position to leverage on its international services to restrict competition.
- (iii) Reach's request for a declaration of non-dominance was focused solely on external bandwidth services (with managed network services and switched circuits such as Internet Protocol and ATM technologies specifically excluded). SingTel's request for exemption covers a range of managed network, switched circuit, international and domestic, cable and satellite services, which are only loosely related.
- (iv) The Reach application was concerned solely with the *"supply at the wholesale level of the 'external bandwidth services' market"* and so Ofta consideration was *"not necessarily at the retail level of the market."*⁷ SingTel's request appears to cover both retail and wholesale services.
- (v) Reach provided a range of verifiable data in its application (including market share information, market sizing data, and pricing information). SingTel did not provide any data in its request.
- (vi) Reach was able to demonstrate to Ofta's satisfaction that Reach had a small (and non-dominant) share of the external bandwidth market in Hongkong. SingTel has not been able to demonstrate a non-dominant market share for the "ICS" market in Singapore.
- (vii) Ofta did not give Reach a "blanket" approval. Rather, Ofta gave Reach a 12-month "probationary" approval, and required the provision of detailed monitoring information from Reach during this period.

⁷ "Application by Reach Limited for Declaration of Non-Dominance in the Market for External Bandwidth Services, Statement of the Telecommunications Authority, 15 March 2002, Page 14.

33. This list of differences between Reach and SingTel is intended to be illustrative rather than comprehensive. Nevertheless we believe that the fundamental differences between Reach and SingTel clearly invalidate the use of Reach as a precedent for SingTel's request for an exemption.

PROCESS:

34. StarHub notes that IDA has yet to set out its own views on SingTel's exemption request. StarHub would respectfully suggest that, in the interests of transparency and open decision-making, IDA releases a further consultation paper (setting out its proposed position on this issue), with a further round of comments from interested parties, prior to making any final decisions. This would enable all the involved parties to comment on the full facts of the request, and input into IDA's final decision.

CONCLUSIONS:

35. Given that SingTel: (i) has failed to provide the data necessary for a request under Sections 2.5.2 and 2.6.1 of the Code; (ii) must still be considered "Dominant" in the provision of "ICS" under the definitions set out in the Code; (iii) controls bottleneck facilities such as the cable landing stations and satellite earth stations; and (iv) has a very high market share for "ICS" services; StarHub believes that SingTel's request for an exemption must be denied.

36. StarHub also believes that it is necessary for IDA to carefully consider the likely implications of exempting SingTel from Dominant Licensee obligations with respect to "ICS". Relieved of any obligation to act in a non-discriminatory manner, SingTel would be free to discriminate against its competitors, restricting their ability to provide services to end-users in Singapore. SingTel would also be free to cross-subsidise areas of the market where competition is developing with revenues from areas where competition has yet to develop. In such an event, with the competitive safeguards removed, it is likely that there would be a net reduction in competition for IP-VPN, IPLC, backhaul, ATM, Frame Relay and related services. Customer choice would be lessened, and Singapore's international competitiveness could be impaired.

37. In Section 6.2 of its request, SingTel states that "*despite the removal of the Dominant Licensee obligations currently applicable to SingTel in the ICS market, SingTel will remain subject to regulatory oversight. Granting the exemption sought will not affect the IDA's current powers to intervene in instances of anti-competitive conduct under the Code*". StarHub respectfully suggests that this statement should be subject to close scrutiny. SingTel's request specifically seeks exemptions from (*inter alia*) the obligation to allow resale, the obligation to make wholesales services available, the obligation to provide service on just and reasonable terms, the obligation to provide service on a non-discriminatory basis, the prohibition on predatory pricing, the prohibition of cross-subsidies, the prohibition of discrimination, and the prohibition on predatory network alteration. Granting SingTel exemption from Dominant Licensee Obligations would remove the vast majority of regulatory safeguards that exist in the international market.

38. StarHub therefore considers that granting SingTel's request for an exemption, at such an early stage in the deregulation process, could significantly harm Singapore's position as an info-communications hub. For this reason, and the reasons set out above,

we believe that SingTel's request for an exemption from Dominant Licensee obligations should be denied.

39. StarHub believes that the issue of SingTel's dominance in the telecommunications market is critical to the development of effective competition in Singapore. We therefore welcome the opportunity to take part in this review, and are open to any requests by IDA for explanations or elaborations on any of the points made in this submission.

StarHub Pte Ltd
14 April 2004

**"SingTel will continue to focus on its vision to be Asia's dominant
and leading-edge info-communications carrier"**

**Brigadier General Lee Hsien Yang,
President and CEO of SingTel,
SingTel Press Release, 29 February 2000**