

<b>Case Reference</b>	R/E/I/036
<b>Title</b>	SingTel's ISDN2 Offer to StarHub
<b>Case Opened</b>	30 January 2003
<b>Case Closed</b>	12 December 2003
<b>Complainant</b>	StarHub Pte Ltd ("StarHub")
<b>Respondent</b>	Singapore Telecommunications Ltd ("SingTel")
<b>Case Summary</b>	<p>SingTel and StarHub entered into an agreement in August 2000 where SingTel supplied ISDN2 services to StarHub under a customised scheme to facilitate StarHub's rollout and provision of interactive payphone services ("2000 Agreement"). Prior to the expiry of the 2000 Agreement, the parties commenced negotiations to conclude a new agreement but were unable to agree on the relevant prices, terms and conditions ("ISDN2 Offer").</p> <p>Subsequently, StarHub filed an enforcement request alleging that SingTel had contravened the following provisions in the Telecom Competition Code ("Code"):</p> <ul style="list-style-type: none"> <li>(a) Subsection 5.8.1 - for not permitting StarHub to resell SingTel's ISDN2 services supplied to StarHub;</li> <li>(b) Subsection 5.8.3 – for failing to file a tariff for the supply of its ISDN2 services to StarHub;</li> <li>(c) Subsection 7.2.1 – for engaging in a price abuse; and</li> <li>(d) Subsection 7.2.1.2 – for engaging in a price squeeze.</li> </ul> <p>In the course of IDA's investigation, the 2000 Agreement expired. To avoid service disruption, the parties voluntarily entered into an interim agreement in May 2003 where SingTel continued to supply ISDN2 services to StarHub for its payphone service on the same customised prices, terms and conditions as those of the 2000 Agreement ("Interim Agreement").</p>
<b>IDA's Determination</b>	<p>In the course of IDA's investigation, IDA considered whether SingTel had breached the Code in relation to the 2000 Agreement, the Interim Agreement and the ISDN2 Offer.</p> <p>As the 2000 Agreement was entered into before the effective date of the Code, the Agreement was not subject to the requirements of the Code.</p> <p>However, IDA determined that the Interim Agreement is governed by the Code because it was signed in May 2003.</p> <p>In relation to the ISDN2 Offer, StarHub had requested for an enforcement action during the process of commercial negotiations with SingTel. IDA generally does not accept enforcement requests in relation to service offerings when the parties are still in the process of commercial negotiations. This is to ensure that the parties have the necessary incentives to commercially negotiate an outcome. However, it noted that both SingTel and StarHub had been in discussion for more than one year but failed to reach any</p>

agreement as SingTel had continued to make the same offer to StarHub. It would be unreasonable to require StarHub to accept the ISDN2 Offer before it may request for enforcement action. As such, IDA accepted the request to consider whether SingTel's ISDN2 Offer to StarHub had contravened the Code.

IDA's determination of StarHub's enforcement request is as follows:

- (a) IDA did not find SingTel in breach of Subsection 5.8.1 of the Code because that provision only applies to services made available to "End Users". The ISDN2 service offered by SingTel under the Interim Agreement and the ISDN2 Offer is a wholesale service and not a retail "End User" service.
- (b) In relation to the ISDN2 Offer, IDA did not find SingTel in breach of Subsection 5.8.3 of the Code because SingTel has expressly qualified that the offer is subject to IDA's prior approval. However, in relation to the Interim Agreement, IDA found SingTel in breach of Subsection 5.8.3 of the Code for failure to submit a tariff prior to providing service.
- (c) IDA found SingTel in breach of Subsection 7.2.1 of the Code by pricing its ISDN2 services under the Interim Agreement and the ISDN2 Offer that was likely to unreasonably restrict competition. IDA was satisfied that SingTel's pricing for the ISDN2 services under the Interim Agreement and the ISDN2 Offer was discriminatory as the prices were much higher than those charged to retail customers without objective reasons for the difference.
- (d) IDA did not find SingTel in breach of Subsection 7.2.1.2 of the Code because StarHub failed to provide any evidence to substantiate how the ISDN2 prices charged by SingTel contributed to StarHub's inability to profitably provide its interactive payphone services.

Taking into consideration the strong mitigating circumstances under which SingTel entered into the Interim Agreement in order to avoid service disruption to StarHub for the latter's provision of interactive payphone services, and the need to maintain commercial incentives for licensees to voluntarily offer wholesale services, IDA directed SingTel to file a tariff with IDA for approval and to revise its prices for the ISDN2 services offered to StarHub for its provision of payphone service such that the prices are no higher than SingTel's existing prices for its retail ISDN2 service. In addition, should SingTel decide not to voluntarily offer wholesale ISDN2 services to StarHub, IDA directed SingTel to allow StarHub to acquire its retail ISDN2 services pursuant to Subsection 5.8.1 of the Code for StarHub's provision of its interactive payphone services.

SingTel has since filed and sought approval for a proposed scheme comprising of the relevant tariffs and conditions applicable where StarHub wishes to take up the ISDN2 service in order to provide its payphone services. SingTel has provided the new scheme to StarHub for their consideration.