



July 2, 2019

Personal Data Protection Commission
10 Pasir Panjang Road
#03-01 Mapletree Business City
Singapore 11743

Dear Commissioner Tan Kiat How,

On behalf of the Center for Data Innovation (datainnovation.org), we are pleased to submit comments in response Singapore's Personal Data Protection Committee's (PDPC) public consultation on proposed data portability and data innovation provisions.¹ The PDPC is proposing several amendments to the Personal Data Protection Act (PDPA) of 2012, which governs how organizations treat personal data in Singapore. These provisions include several provisions to promote data-driven innovation, focusing on how organizations manage, use, and retain user data as well as the Data Portability Obligation (DPO), which would require organizations in Singapore to, at the request of an individual, transfer his or her data to another organization in Singapore in a common, machine readable format.

The Center for Data Innovation is the leading think tank studying the intersection of data, technology, and public policy. With staff in Washington, D.C., and Brussels, the Center formulates and promotes pragmatic public policies designed to maximize the benefits of data-driven innovation in the public and private sectors. It educates policymakers and the public about the opportunities and challenges associated with data, as well as important data-related technology trends. The Center is a non-profit, non-partisan research institute affiliated with the Information Technology and Innovation Foundation.

DATA INNOVATION PROVISIONS FOSTER DATA USE

This public consultation introduces new provisions under PDPA designed to encourage data-driven innovation by making it clear that organizations can use personal data for appropriate business purposes. Most notably, the PDPC intends to introduce a provision to clarify how organizations can use legally collected personal data for "business innovation purposes," which include to improve operational efficiency and service, develop products and services, and learn more about customers. This provision would also clarify that organizations may use personal data for business innovation

¹ "Public Consultation on review of the Personal Data Protection Act of 2012 – Proposed Data Portability and Data Innovation Requirements," Singapore Personal Data Protection Commission, May 22, 2019, [https://www.pdpc.gov.sg/-/media/Files/PDPC/PDF-Files/Legislation-and-Guidelines/PDPC-Public-Consultation-Paper-on-Data-Portability-and-Data-Innovation-Provisions-\(220519\).pdf](https://www.pdpc.gov.sg/-/media/Files/PDPC/PDF-Files/Legislation-and-Guidelines/PDPC-Public-Consultation-Paper-on-Data-Portability-and-Data-Innovation-Provisions-(220519).pdf).



purposes without notifying and seeking consent from individuals. Importantly, notification and consent are still required for the collection and disclosure of personal data, and business innovation purposes do not include direct marketing. Additionally, organizations may continue to use personal data for business innovation purposes when individual withdraw consent for the use of their personal data for the purposes for which an organization originally requested consent.

These proposed provisions are welcome and should serve as model policies for other nations to rethink limitations on data use that may exist in their data protection laws.

DATA PORTABILITY PROMOTES INNOVATION

A prerequisite for data-driven innovation is the ability of organizations to have access to data. One way to ensure consumer access to data is through data portability provisions. Data portability provisions provide consumers a right to obtain data from organizations that may hold their personal information. It is important to design data portability requirements correctly. If they are too broad, they may impose high costs on organizations, expose proprietary information, and provide a low return on investment. However, if designed correctly, they can empower consumers, increase competition, and unlock new value from data. The proposed DPO is well-balanced. It would be a boon to Singapore's economy and consumers alike and, if refined, could be a model for data portability laws in other countries.

The public consultation paper correctly identifies the net positive impact of data portability. For consumers, data portability would give consumers more choice and control, incentivize competition, reduce provider lock-in, and enable faster service delivery. For the data economy more broadly, data portability would enable the linkage of disparate data, help break down data silos, and reduce barriers to entry for organizations that rely on data access but may not be able to initially afford the necessary infrastructure to do so.

Under the DPO, at the request of an individual, an organization must transmit the individual's data that they possess to another organization in a common, machine-readable format. The proposed DPO would apply to any organization that collects, uses, or discloses personal data in Singapore, with the exception of public agencies and organizations acting on behalf of public agencies, as well as intermediaries. The DPO would only apply to user-provided data (i.e. data provided to the organization by the user) and user activity data (i.e. data generated by the individual's usage of a product or service). It would also only apply to data that organizations hold in an electronic format.

Notably, the PDPC would exempt from the DPO data that, if disclosed, would reveal confidential business information that could harm an organization's competitiveness. Similarly, the DPO would not apply to derived data—new data elements created by processing user data. These are



appropriate limitations because they protect proprietary data which may be inappropriate to reveal to a company's competitors.

Additionally, as the DPO will have compliance costs, it allows for organizations to charge "reasonable" fees to cover the cost of porting their data, to be paid by either the requesting individual or receiving organization, provided they disclose the cost of these fees in advance. This is an appropriate accommodation, however the PDPC should provide guidance about what constitutes a reasonable, as opposed to an unreasonable, fee, as well as provide information about best practices for porting data so as to minimize the costs of compliance (and thus related fees).

DATA PORTABILITY REQUIREMENT SHOULD NOT BE LIMITED TO SINGAPORE

The proposed DPO is commendable, but there is one troubling provision that should be modified. The DPO applies to all organizations that collect, use, or disclose data in Singapore, but it does not apply if the receiving organization, i.e. the organization to which the consumer wants to send the data, unless that organization is based in Singapore. Though it does not prohibit organizations from transferring this data voluntarily, given that the DPO will have some compliance costs, it seems possible that many organizations might not honor these non-mandatory requests. Indeed, organizations in other parts of the world have engaged in data blocking behavior when it is not in their self-interest.² This exemption appears explicitly designed to ensure the benefits of data portability flow to domestic firms, rather than to all. The PDPC should amend this provision to ensure organizations are obligated to transfer an individual's data to any organization of their choosing regardless of where it is located.

Another opportunity for improvement would be to make exemptions for sensitive commercial data more explicit. The PDPC's proposed exemption for data that could harm a company's competitiveness if disclosed is welcome, as companies are less likely to invest in data-driven innovation if they are required to immediately share proprietary data that undermines the competitive advantage of their investments. However, the PDPC also proposes that any such exemption would be temporary. The PDPC is right to acknowledge the need for this exemption to incentivize innovation yet fails to recognize that if certain data is so important for a company's competitiveness, forcing it to share that data eventually, though not immediately, will still reduce the competitive incentives for that company to innovate. The PDPC should move forward with this proposed exemption but allow it to apply to sensitive commercial data indefinitely.

² Daniel Castro and Michael Steinberg, "Blocked: Why Some Companies Restrict Data Access to Reduce Competition and How Open APIs Can Help" (Center for Data Innovation, November 2017), <http://www2.datainnovation.org/2017-open-apis.pdf>.



Sincerely,

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