



SINGAPORE TELECOMMUNICATIONS LTD

SUBMISSION TO THE PERSONAL DATA PROTECTION COMMISSION

IN RESPONSE TO THE

**PUBLIC CONSULTATION ON REVIEW OF THE PERSONAL DATA
PROTECTION ACT 2012 – PROPOSED DATA PORTABILITY AND DATA
INNOVATION PROVISIONS**

DATE OF SUBMISSION: 17 JULY 2019



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1. INTRODUCTION

- 1.1. Singapore Telecommunications Limited and its subsidiaries (collectively **Singtel**) are licensed to provide info-communications services in Singapore. Singtel is committed to the provision of state-of-the-art info-communications technologies and services in Singapore.
- 1.2. Singtel has a comprehensive portfolio of services that includes voice and data services over fixed, wireless and Internet platforms. Singtel services both corporate and residential customers and is committed to bringing the best of global info-communications to its customers in Asia Pacific and beyond.
- 1.3. Singtel welcomes the opportunity to make this submission on the Public Consultation on Review of the Personal Data Protection Act 2012 – Proposed Data Portability and Data Innovation Provisions issued by the Personal Data Protection Commission (**PDPC**) (**Consultation Paper**).
- 1.4. Singtel would be pleased to clarify any of the views and comments made in this submission, as appropriate.
- 1.5. This submission is structured as follows:
Section 2 – Executive Summary;
Section 3 – Specific Comments; and
Section 4 – Conclusion.

2. EXECUTIVE SUMMARY

- 2.1. The PDPC has proposed two main changes, namely (a) the introduction of a data portability obligation; and (b) the introduction of data innovation provisions.
- 2.2. Singtel is generally supportive of the data innovation proposal raised by the PDPC. With the move towards a data-driven economy, the proposals are a necessary update to the existing framework. However, Singtel does not support the introduction of a data portability obligation as it will create onerous operational and compliance responsibilities on both the porting and receiving organisations.
- 2.3. Without prejudice to the above, Singtel is of the view that should the data portability obligation be introduced, organisations will require more time to implement the framework required under the data portability obligation, as this involves reviewing the feasibility of integrating data porting requirements into existing systems, and/or the implementation of new systems to allow for data porting to take place. Singtel submits that the industry should be given an opportunity to further review and comment on the technical and operational aspects of the data portability obligation such as interoperability and costs.

3. SPECIFIC COMMENTS

Question 1

What are your views on the impact of data portability, specifically on consumers, market and economy?

- 3.1. The PDPC has stated that data portability allows consumers to move from one service provider to another without losing past records and important histories built-up with the previous service provider. This assumes that the new service provider would use the consumer's histories to offer something more attractive.
- 3.2. In this regard, it is unclear how the example in paragraph 2.7 demonstrates the need for data portability. Overseas mobile phone usage has no bearing on the customer's travel history other than the country(s) visited. It would not be reasonable for the travel agency to review the customer's overseas mobile phone usage (e.g. calls made/ received while overseas, data roaming package subscribed, etc.) merely to determine where the customer has travelled in order to develop customised travel services and

recommendations. The customer can simply inform the travel service provider their travel history, frequented places and preferred travel destinations without having to pay for the unnecessary additional step of requiring the telecommunication service provider to data port the customer's overseas mobile phone usage records to the travel service provider. Singtel submits that data porting overseas mobile phone usage for the purpose of customising travel services or providing travel recommendations is an overreach as a potential use case and should fall under the proposed exception to the data portability obligation as a request that is disproportionate to the individual's interests.

- 3.3. Furthermore, nothing stops the new service provider from offering attractive packages to entice new sign-ups based on current market considerations, or treating the consumer as a new customer with no loyalty perks – it is highly unlikely that a service provider would consider transactions with a competing service provider to constitute loyalty to itself. The consumer's history with another service provider thus becomes irrelevant in the consumer's relationship with the new service provider.
- 3.4. There are also potential problems that may arise from the introduction of the data portability obligation. It is beyond the ability and the responsibility of the porting organisation to determine the veracity of the data porting request. The customer may have fallen for a data harvesting scam and is requesting data porting to an organisation that intends to misuse the data. The PDPC should introduce safeguards against the misuse of the data portability obligation through educating the public on the reasonable purpose(s) of data porting.
- 3.5. The PDPC should also ensure that organisations do not take advantage of the data porting obligation by requiring that an individual port their data in order to purchase the organisation's products and/or services.

Question 2

What are your views on the proposed Data Portability Obligation, specifically –
(a) scope of organisations covered; and
(b) scope of data covered?

- 3.6. The PDPC is proposing that under the data portability obligation, an organisation must, at the request of the individual, provide the individual's data that is in the organisation's

possession or under its control, to be transmitted to another organisation in a commonly used machine-readable format.¹

- 3.7. The PDPC has proposed that any individual, regardless of whether the individual is in Singapore, may make a data portability request to an organisation covered by the data portability obligation.² Singtel submits that requests for data porting should be restricted only to the registered subscriber of the service, and exclude users of the service except where the latter has obtained authorisation from the registered subscriber. For example, the mobile service is registered to person A, but is used by person B. In such a situation, only person A should be allowed to make the data portability request, unless person A has authorised person B to make the application, in which case a letter of authorisation and other relevant identification documents should be produced for verification.
- 3.8. Singtel agrees that the data portability obligation should only apply to data in the possession or control of organisations that is held in electronic form. Where the data does not exist or cannot be found (e.g. the data has already been disposed of), the data portability obligation should not apply.
- 3.9. The PDPC has proposed limiting data subject to the data portability obligation to two types, namely user provided data, and user activity data.³ The PDPC has cited email messages and social media posts as part of user provided data subject to the data portability obligation.
 - a. With reference to the ‘Social media platform’ example in Table 1 of the Consultation Paper, Singtel seeks confirmation that the data porting obligation would only apply to the organisation providing the platform and not to the organisation whose social media page the customer is posting on ie, where the customer posts a message on an organisation’s Facebook page, the post will not be subject to the data portability obligation for data porting requests made to the organisation; the posts will be subject to the data portability obligation for data porting requests made to, for example, Facebook. It is difficult to imagine that complaints or compliments by the individual that are posted onto the organisation’s Facebook page for example, were intended to be captured and subject to data portability.

¹ Refer to paragraph 2.14 of the Consultation Paper.

² Refer to paragraph 2.19 of the Consultation Paper.

³ Refer to paragraph 2.24 of the Consultation Paper.

- b. As an email and SMS service provider, Singtel does not have access to the content of any emails or SMS sent and received by the customer to maintain customer privacy. In this respect, emails and SMS cannot be data ported to another organisation and should not be subject to the data portability obligation. Where the customer wishes to provide emails and SMS to another organisation, the customer should transfer this data themselves.
- 3.10. Singtel submits that the scope of data subject to the data portability obligations has the potential to be far too excessive. The scope of user provided data and user generated data that are subject to the data portability obligation should be restricted to data that is available to the customer today ie, data that is readily available and is/ can be provided in the customer's itemised bill including aggregated data, voice and SMS usage. However, detailed information on user activity data that requires extensive data extraction and processing such as location information (based on base stations that the customer was connected to) and where and when a particular call or SMS was made, should not be subject to the data portability obligation. Ordinarily, such information is not shared with the customer or other parties and is used for the purpose of network troubleshooting. Location data may also be commercially sensitive and could harm the competitive position of the organisation if disclosed. Additionally, the requesting individual should only be allowed to request up to the last 12 months of billing information from the date of the request. The porting organisation should not be required to provide historical billing information later than this 12 month period.
- 3.11. In terms of user provided data, there already exists the MyInfo service which enables citizens and residents to carry-out certain online transactions using their personal data. Singtel submits that by leveraging on the data already captured under MyInfo, there is no need to send the same information to the receiving organisation separately under the data portability obligations.
- 3.12. Furthermore, it is also not clear what the treatment should be for personal data required to be collected by law. In the PDPC's example of personal data of casino patrons and the patron's transactional data, such data would not be required to be ported as collection of the data is required/ authorised under the Casino Control Act. Telecommunication service providers are required as part of the licence obligations⁴ to collect personal data (e.g. name, address, identification number, etc.) and usage data (e.g. call detail records) for selected services, however, this is appears not to be what

⁴ Telecommunication licences are issued under the Telecommunications Act

the PDPC intended to exclude from the scope of the data portability obligation therefore greater clarity is needed on the scope of the data that is subject to the data portability obligation.

- 3.13. As business contact information (**BCI**) is not subject to the data protection provisions of the PDPA, the BCI should likewise be excluded from the data portability obligation. It is not relevant for the porting organisation to link a customer's data for consumer services to their BCI. For example, a customer subscribes to consumer services with organisation ABC and is also a business point of contact for organisation DEF, which the customer works for and which subscribes to business services from organisation ABC. In this instance, the BCI will not be included in a data porting request by the customer in relation to their user provided data and user activity data.
- 3.14. Singtel urges PDPC to reconsider allowing the data porting obligation to extend to the personal data of third parties. While the personal data of third parties may constitute part of an individual's user provided data, the data may include highly personal and/or sensitive information that the third parties would not want to share with another organisation for any purpose other than the original intent. Take the PDPC's example of the personal data of an individual's travelling companions provided for a flight booking which would include full names, passport numbers, passport expiry, etc. These are confidential information that the third parties may not want to share with another organisation without their consent and without knowing the purpose of sharing such information. It would be unconscionable to allow an individual to share another's personal data without their knowledge or consent. The porting organisation cannot be responsible for the actions of the individual or for any consequences that arise as a result of the data porting of the personal data of third parties. However, porting organisations could potentially be exposed to claims of unauthorised disclosure of these third parties' personal data.

Question 3

What are your views on the proposed exceptions to the Data Portability Obligation, specifically –

- (a) the proposed exception relating to commercial confidential information that could harm the competitive position of the organisation, to strike a balance between consumer interests and preserving the incentive for first movers' business innovation; and*
- (b) the proposed exception for "derived data"?*

- 3.15. The PDPC should clarify what is meant by confidential commercial information that could harm the competitive position of the organisation and how the exception is intended to apply. What kind of standard is used to determine if information is considered commercial confidential information? Would organisations be required to prove that they are indeed a first mover in the market, and show evidence to the PDPC to this effect in order to rely on the exception? Or would it be sufficient that any information that the organisation deems to be commercially confidential would satisfy the exception, without needing to be a first mover?
- 3.16. Singtel agrees that derived data should not be subject to the data portability obligation. However, it is not clear whether this is sufficient grounds for rejecting a data portability request, and to what extent an organisation would need to show the PDPC that the information is derived data in order to rely on the exception.

Question 4

What are your views on the proposed requirements for handling data portability requests?

- 3.17. The PDPC has set out several onerous responsibilities of the porting organisation in receiving and responding to a data porting request.⁵ Singtel provides its comments as follows:
- a. Receiving the request – if the individual submitting a request for data porting fails to provide sufficient details on the data requested, the porting organisation should have the right to reject the porting request. Organisations will require more time to review their system capabilities to see how best to implement an avenue for submission of data porting requests. The PDPC should consult the industry again on the technical aspects of data porting.
 - b. Verifying the request – organisations will require time to implement a means to verify the data porting request.
 - c. Verifying the data to be ported – providing a sample of the various data to be ported and allowing the individual to remove data that he does not wish to port

⁵ Refer to paragraph 2.37 of the Consultation Paper.

is not feasible and creates a lot of unnecessary work for the porting organisation. Singtel recommends the following:

- The porting organisations should not be required to provide the requesting individual with a sample of the data requested. Reviewing this sample will not be reflective of the actual data that is subsequently provided to the requesting individual.
- The porting organisation should only be required to provide the requested data according to the request form and should not have to remove any data; allowing the requesting individual to manipulate the data compromises the integrity of the data and places undue burden on the porting organisation.
- Data should only be ported to the requesting individual instead of a receiving organisation. The individual can review the data extracted from the porting organisation, decide the scope of the data they wish to provide to the receiving organisation and send the data to the receiving organisation directly. Where required or mandated information is removed by the requesting individual during review, and there is subsequent rejection of the data by the receiving organisation, the porting organisation should be deemed to have fulfilled its data portability obligations.
- Organisations should be allowed to charge a fee that it deems appropriate for data porting requests in order to recover any administrative costs of complying with the request and the fee should be paid upfront before the data porting request is processed to deter frivolous requests. It is not clear why the requesting individual is allowed to request the PDPC to review the fees charged by the porting organisation. This is and should remain a commercial decision.
- The PDPC has stated that fees may be paid by the requesting individual or the receiving organisation.⁶ By giving such an option, there is no certainty as to who is ultimately responsible for payment of the data porting request and can give rise to disputes about payment which creates unnecessary delays in carrying out the data porting request. Singtel submits that in line with the recommendation to only port data to the requesting individual, the requesting individual should be wholly responsible for the applicable fees.

⁶ Refer to paragraph 2.37(d)(i) of the Consultation Paper.

- Should the requesting individual request another copy of the data that has been ported, the porting organisation should be allowed to levy a separate fee for the copy of the data.
 - The PDPC has proposed a period of 7 calendar days upon confirmation of the data for the porting to take place. This is inflexible and does not take into account the reality that some requests may take a longer time for extraction depending on the complexity of the request. The timeline should be based on business days instead of calendar days and should only commence from the point that payment is received from the requesting individual.
- d. Porting the data – porting organisations should not be subjected to requests by receiving organisations to transmit data in non-open data formats. Organisations will require time to review its current systems (whether existing systems, applications etc. are able to support an added functionality of data porting) and/or test and implement new systems to allow for data porting.
- e. Informing the individual of a rejection – Singtel agrees that the requesting individual should be notified as soon as practicable where the organisation rejects a data porting request.

Annex B of the Consultation Paper defines the proposed exceptions to the data portability obligation and includes any request “for information that is trivial; or that is otherwise frivolous or vexatious”. Singtel requests that PDPC provide further guidance on requests for data porting that would fall within these exceptions.

- f. Preserving the data – for rejections, the 30 days should be calculated from the date where the porting organisation communicates the rejection, and not the date where the requesting individual acknowledges the rejection.
- g. Withdrawal of request – where the porting organisation has already commenced extraction of the data, and the requesting individual subsequently withdraws the request, the porting organisation should be allowed to charge a fee for the effort incurred in extracting the partial data.

- 3.18. Regarding checking that the data has been received by the receiving organisation,⁷ the porting organisation's responsibilities should end when the requested data is sent. Porting organisations should not be subjected to providing additional assistance if the receiving organisation is facing its own technical issues receiving the files. The PDPC has also stated that the receiving organisation should verify the completeness of the data transmitted to it by the porting organisation.⁸ There are conflicting duties here between the receiving organisation and the requesting individual. It would not be reasonable to expect the receiving organisation to be able to verify the completeness of the data, if the requesting individual is able to cherry-pick and remove data before the data is transmitted to the receiving organisation. The receiving organisation would not know the extent of information it should expect to receive from the porting organisation.
- 3.19. In relation to the receiving organisation's responsibilities, Singtel provides the following comments:
- a. Where data received is irrelevant or excessive – the PDPC has proposed that the receiving organisation may choose not to accept the data or retain partial data. This places an additional obligation on the receiving organisation to screen the data being ported over, since the ported data will become part of the data collected by the receiving organisation and the receiving organisation will be required to obtain consent from the requesting individual that such data has been received. However, as the requesting individual had specified the data to be ported over, the porting organisation accordingly ports the requested data fields. The receiving organisation should be allowed to rely on this authorisation from the requesting individual to receive all data transmitted to it as part of the data porting request.
 - b. Issues with transmission of data – it is not clear what the consequences are if the porting organisation and receiving organisation's system are incompatible with each other despite using open data formats.
- 3.20. As a matter of good governance, since data is being transferred between organisations pursuant to the data portability obligation, there should be some form of overarching agreement between the porting organisation and the receiving organisation as to the warranties and limitation of liabilities before any transfer of data takes place. Would the porting organisation be required to port the data to any receiving organisation

⁷ Refer to paragraph 2.38 of the Consultation Paper.

⁸ Refer to paragraph 2.39 of the Consultation Paper.

irrespective of the adequacy of security the receiving organisation may have ? Would the porting organisation be required to verify the receiving organisation before transmitting the data? All this will add to the large compliance costs and risks that organisations will face should a data portability obligation be introduced.

Question 5

What are your views on the proposed powers for PDPC to review an organisation's refusal to port data, failure to port data within a reasonable time, and fees for porting data?

- 3.21. The PDPC has proposed for PDPC's powers to review an organisation's (i) refusal to port data; (ii) failure to port data within a reasonable time; and (iii) fees for porting data, pursuant to an individual's data portability request.⁹ Similar to the access obligation, the timeframe to port data should be aligned to 30 days instead of 7 days. If the porting organisation is unable to respond to the request within 30 days, the organisation should inform the individual in writing within 30 days of the time by which it will be able to respond to the request. As mentioned above, fees for porting data should be left to the organisation to determine as a matter of commercial decision. Notwithstanding this, Singtel seeks clarification as to the grounds on which the PDPC will deem fees to be unreasonable.

Question 6

What are your views on the proposed binding codes of practices that set out specific requirements and standards for the porting of data in specific clusters or sectors?

- 3.22. While Singtel acknowledges that having codes of practices will provide organisations some degree of clarity on how to comply with the data portability obligations, Singtel submits that the PDPC should consult the industry on what the proposed binding codes of practices would entail before making a decision on whether to implement these binding codes of practices. Organisations would first need to consider if they would be able to comply with the proposed codes of practices, before considering the consequences and impact if these codes of practices were legally binding and organisations were unable to comply with them. Singtel submits that the PDPC should issue advisory guidelines instead of binding codes of practices.

⁹ Refer to paragraph 2.47 of the Consultation Paper.

- 3.23. The PDPC should also clarify which clusters or sectors would need to adhere to these proposed binding codes of practices, and how these clusters or sectors are supposed to operate cross-industry with other organisations that do not fall within the identified clusters or sectors and are held to a different standard of compliance.

Question 7

What are your views on the proposed approach for organisations to use personal data for the specified business innovation purposes, without the requirement to notify and seek consent to use the personal data for these purpose?

- 3.24. The PDPC has proposed to introduce provisions that will allow organisations to use personal data for the business innovation purposes of (i) operational efficiency and service improvements, (ii) product and service development, and (iii) knowing customers better.¹⁰ The PDPC has stated that organisations may use personal data for business innovation purposes without needing to notify individuals of and seek consent to use their data for such purposes. However, the consent and notification obligations still apply for collection and disclosure of personal data for business innovation purposes.
- 3.25. Singtel seeks clarification on how sections 14, 18 and 20 of the PDPA will operate in light of the above, given that an organisation would necessarily have to notify and seek consent from individuals to the collection of personal data for the purposes of, *inter alia*, using it for business innovation purposes. If the notification and consent obligations are waived for use of personal data for business innovation purposes, the same should apply for collection of personal data for the same purpose. Singtel also seeks clarification on how the proposed business innovation purposes will interact with the proposed legal or business purpose exception proposed in a prior consultation.

Question 8

What are your views on the proposed definition of “derived data”?

- 3.26. Singtel has no specific comments on the proposed definition of derived data.

¹⁰ Refer to paragraph 3.3 of the Consultation Paper.

Question 9

What are your views on the proposal for the Access, Correction and proposed Data Portability Obligations not to apply to derived personal data?

- 3.27. Singtel supports the proposal that derived personal data will not be subject to the access, correction and proposed data portability obligations under the PDPA.
- 3.28. However it is not clear how the accuracy obligation will operate, i.e. ensuring that the derived personal data is accurate and complete, if organisations are not required to correct derived personal data about an individual. Singtel submits that the accuracy obligations also not apply to derived personal data.

4. CONCLUSION

- 4.1. Singtel appreciates the opportunity to contribute to the consultation process on this important area of public policy.
- 4.2. The proposed data portability obligations impose onerous operational and compliance responsibilities on both the porting and receiving organisations. Organisations will face numerous difficulties and will likely incur significant costs to comply with the proposed data portability obligations. Singtel encourages the PDPC to reconsider the proposals and provide further detail to organisations on the technical and operational aspects of the proposals such as interoperability and costs. Organisations should also be given sufficient time to review the changes required to existing systems should the proposals be implemented.
- 4.3. We look forward to engaging further with the PDPC on this matter.