



SINGAPORE TELECOMMUNICATIONS LTD

**SUBMISSION TO THE PERSONAL DATA PROTECTION COMMISSION OF
SINGAPORE**

IN RESPONSE TO THE

**PUBLIC CONSULTATION ON PROPOSED ADVISORY GUIDELINES ON KEY
CONCEPTS IN THE PERSONAL DATA PROTECTION ACT (“ACT”)**

DATE OF SUBMISSION: 1 APRIL 2013



TABLE OF CONTENTS

1	INTRODUCTION	1
2	SUMMARY OF MAJOR POINTS	2
3	COMMENTS	4
4	CONCLUSION	21

SINGAPORE TELECOMMUNICATIONS LTD

SUBMISSION TO THE PERSONAL DATA PROTECTION COMMISSION OF SINGAPORE IN RESPONSE TO THE PUBLIC CONSULTATION ON PROPOSED ADVISORY GUIDELINES ON KEY CONCEPTS IN THE PERSONAL DATA PROTECTION ACT (“ACT”)

1 INTRODUCTION

- 1.1 Singapore Telecommunications Limited and its related companies (“**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 the Asia Pacific and beyond.
- 1.3 SingTel is also a leading Internet service provider (“**ISP**”) in Singapore and has been at the forefront of Internet innovation since 1994, being the first ISP to launch broadband services in Singapore. It is licensed to offer IPTV services under a nationwide subscription television licence granted by the Media Development Authority of Singapore (“**MDA**”).
- 1.4 Proposed Advisory Guidelines on Key Concepts (“**Proposed Advisory Guidelines on Key Concepts**”) in the Personal Data Protection Act (“**Act**”) and recognises the considerable efforts of the Personal Data Protection Commission (“**PDPC**”) in preparing guidelines for assisting organisations in understanding their obligations under the Act and how the provisions of the Act are likely to be interpreted and applied in a compliance context.
- 1.5 This submission is structured as follows:
 - (a) Introduction;
 - (b) Summary of major points;
 - (c) Comments; and
 - (d) Conclusion.

2 SUMMARY OF MAJOR POINTS

- 2.1 SingTel considers that the Proposed Advisory Guidelines are generally appropriate and provide clarity on key parts of the Act. However, SingTel also considers that certain aspects of the Proposed Advisory Guidelines on Key Concepts require further development to ensure that the key concepts and the rights and obligations of organisations and individuals can be readily understood and that internal policies and processes for ensuring compliance with the Act can be implemented effectively.
- 2.2 This submission focuses primarily on aspects of the Act and the guidelines that require further development, refinement or clarification.
- 2.3 Our suggestions include:
- (a) providing additional guidance to demonstrate how specific key concepts and operative provisions (and exceptions) of the Act are intended to operate, including through:
 - additional explanatory material that clearly sets out the reasons and justifications for positions adopted with respect to the interpretation and application of key operative provisions and exceptions under the Act;
 - more detailed case scenarios applying individual provisions and exceptions of the Act;
 - detailed fact sheets and information sheets for individuals and organisations in relation to the key issues for different industries; and
 - (b) developing “good practice” frameworks, checklists and tips for compliance for organisations to apply in implementing the new requirements under the Act. These should prioritise minimising the compliance and cost burden on organisations while facilitating the fulfilment of the rights of individuals under the Act.
- 2.4 Furthermore, SingTel has made the following points in our submission below
- (a) While the Act needs to operate extra-territorially to some extent to prevent organisations transferring personal data offshore to avoid their obligations under the Act and to also ensure the workability of binding rules of conduct and

contractual clauses, the precise extent of this reach needs to be better explained and understood by the industry. We ask that the PDPC clarify these issues so that organisations are able to understand how the act applies to their activities both in and outside of Singapore.

- (b) The PDPC should provide specific guidance for organisations in relation to dealing with the rights of individuals located outside of Singapore and their ability to enforce those rights under the Act.
- (c) We propose that the IDA exempts the telecommunication licensees from the Act where they are to collect, use or disclose any personal data for interconnect and international roaming services and network service providers (like ISPs) who cache data. Alternatively, either the IDA or the PDPC should clarify that telecommunication licensees are at most data intermediaries under the Act in the case of international roaming services, as it is processing personal data on behalf of another organisation (eg the overseas operators).
- (d) We seek confirmation that in the case of telecommunication licensees and broadcast licensees who are permitted, under Section 3.2.6 of the Telecom Competition Code and 3.6.2 of the Media Market Conduct Code, to use their end-user service information (“EUSI”) for purposes as set out in Section 3.2.6 (a) of the Telecom Competition Code and 3.6.2 (a) of the Media Market Conduct Code need not then comply with the Consent Obligation in the PDPC.
- (e) We seek confirmation that where such generic information is collected, used or disclosed without the identifiers of an individual, such collection, use and disclosure can be done so without the need to comply with the provisions of the Act.
- (f) Organisations will typically require their customers to confirm, as part of the contracting process, to confirm that information provided is true and accurate. Please confirm that when a company then collects, uses or discloses the information supplied under such circumstances, the company cannot be regarded as having contravened the Act on grounds that it has not complied with the Accuracy Obligation and has used and disclosed misleading or inaccurate information to another party.

- (g) We ask that for the purposes of the Act, the party supplying 3rd person information should be required to confirm that it has obtained the consent from the 3rd person information and is in a capacity to do supply the 3rd person information.
- (h) It is not clear what is envisaged by the term ‘a record’ in relation to personal data contained in records for more than 100 years.
- (i) Organisations require more prescriptive guidance from the PDPC in relation to the Purpose Limitation Obligation
- (j) The PDPC should issue guidelines, with additional and more detailed scenarios to illustrate each element necessary, on how to establish valid consent so that organisations are able to tailor their processes accordingly.
- (k) We seek clarity from the PDPC in relation to use of the personal data collected before the appointed day
- (l) Organisations will require guidance and further explanation from the PDPC regarding the means by which they can comply with the Access Obligation and the Accuracy Obligation.
- (m) The PDPC should issue guidance regarding the types of matters and minimum information which should be included in the Data Protection Policy.
- (n) The PDPC should issue additional guidance, or regulations, to assist organisation in understanding whether or not a message is considered to be a specified message.

3 COMMENTS

Organisations and extra-territoriality (Ref p 5.3 – 5.6)

- 3.1 SingTel notes that the original requirement that personal data has a “Singapore link” has been removed and that the Act now applies to any “organisation” whether or not the organisation is formed or recognised under a law of Singapore or whether the organisation is resident or has an office or place of business in Singapore.
- 3.2 The extent to which the Act will have extra-territorial operation remains unclear as the reasons for the removal of the Singapore link requirement are not explained in the

Proposed Advisory Guidelines.

- 3.3 On a plain reading, neither the Act nor the regulations are intended to impose any territorial limits on the organisations that will be subject to the Act. Paragraph 6.3 of the Proposed Advisory Guidelines on Key Concepts states that “every organisation is required to comply with the Act *in respect of activities relating to the collection, use and disclosure of personal data in Singapore...*”.¹
- 3.4 SingTel considers that it would be useful for the PDPC to clarify whether, and if so, the extent to which, the Act is intended to apply to an organisation’s activities outside of Singapore. Presumably, the intention of the Act is that it should only impose obligations on “organisations” (as defined in the Act) in relation to personal data that emanates from, or which otherwise has a link with, Singapore. Without imposing such a limitation, the geographic reach of the Act would be unusually and arguably unjustifiably broad.
- 3.5 The EU data protection regime is controversial in its extra-territorial application to data processors not established in the European Union which are subject to regulation where they offer goods or services to data subjects residing in the European Union or monitor behaviour of those data subjects. On a plain reading, the possible reach of the Act is even greater than the EU regime, as neither the Act nor the regulations imposes any geographic limit on the individuals which are afforded the protection of the Act.
- 3.6 While SingTel appreciates that the Act needs to operate extra-territorially to some extent to prevent organisations transferring personal data offshore to avoid their obligations under the Act and to also ensure the workability of binding rules of conduct and contractual clauses, the precise extent of this reach needs to be better explained and understood by the industry.
- 3.7 It is critical that the PDPC clarify these issues so that organisations are able to understand how the act applies to their activities both in and outside of Singapore. SingTel submits that additional requirements clarifying the extra-territorial application of the Act ought to be given legal effect in the regulations and supported by further guidance by the PDPC in the form of guidelines and fact sheets.

¹ Emphasis added.

Rights of individuals – enforcement and extra-territoriality

- 3.8 Further to our comments above, the PDPC should provide specific guidance for organisations in relation to dealing with the rights of individuals located outside of Singapore and their ability to enforce those rights under the Act.
- 3.9 The term “individual” is defined in the Act to be “*a natural person, whether living or deceased*”. Without any indication to the contrary, it appears that the protections afforded to individuals with respect to their personal data apply equally to all individuals anywhere in the world, regardless of the nature of the individual’s link with the relevant organisation in Singapore. This issue requires further consideration by the PDPC as it is a key part of the extra-territorial reach of the Act.
- 3.10 In particular, SingTel considers that special guidance is required with respect to access and correction rights, complaints handling and how the rights of individuals located outside of Singapore will be able to be enforced. Practices for dealing with these issues ought to balance the interests in minimising the cost burden on local organisations and delivering an effective and enforceable personal data protection regime.
- 3.11 For example, the application of the Act to individuals to whom SingTel and other local mobile operators supply international roaming services is currently unclear. In the case of international roaming services, the provider of roaming services does not have a direct contractual relationship with the end-user (i.e. the contractual relationship exists at a wholesale level with the mobile carrier that provides mobile services to the end-user in their home country). Therefore, even though it is the roaming provider that supports the provision of telephony, messaging and data services to the end user while they are present in Singapore, there is no legal relationship that exists between the roaming provider and the end-user. Further, any information that may be pertinent to the end-user (e.g. call records) would be transferred from the roaming provider to the overseas operator and be available from the overseas operator.
- 3.12 PDPC ought to provide guidance on these issues as part of its guidance regarding the extra-territorial application of the Act.

International roaming and interconnect services to be dealt with separately by the IDA

- 3.13 Telecommunication licensees provide interconnect services to each other as compliance with regulatory obligations outlined in the Telecom Competition Code set up by the Info-communications Development Authority of Singapore (“IDA”). The supply of interconnect services, like international roaming services, requires that the telecommunication licensees have to provide some data relating to the end-user to the other party for the purpose of enabling the services. The data is not used, collected or disclosed for any commercial purposes. To put in simply, if the licensees do not provide the data, the services would not work.
- 3.14 It is not efficient for the telecommunication licensees to be subject to the Act under such circumstances. We propose that the IDA exempts the telecommunication licensees from the Act where they are to collect, use or disclose any personal data for interconnect and international roaming services. Alternatively, either the IDA or the PDPC should clarify that telecommunication licensees are at most data intermediaries under the Act in the case of international roaming services, as it is processing personal data on behalf of another organisation (eg the overseas operators). The effect of this clarification is that the telecommunication licensees’ obligations will be able to limited to protecting the personal data and destroying identifiers associated with the data.

Network service providers cacheing data

- 3.15 A similar situation involves network service providers (like Internet Service Providers, ISPs) who in the course of providing internet services may cache data in relation to internet sites. The act of cacheing data may involve personal data of persons who may have placed their personal data on those sites. From a plain reading of the Act, it would appear that ISPs are therefore subject to the Act. Again, this is not efficient, for the same reasons we hav pointed out above.
- 3.16 We ask that the IDA and the PDPC also address these separately and carve these out for separate treatment and /or exemption.

Personal Data (Ref p. 5.6)

- 3.17 The example in paragraph 5.6 of the Proposed Advisory Guidelines would mean that generic information when combined with personal data that can identify an individual also falls within the definition of ‘personal data’. We are concerned that where such

generic information is collected, used or disclosed without the identifiers of an individual, such collection, use and disclosure can be done so without the need to comply with the provisions of the Act. For example, it is possible for a company to review its cross-marketing plans with other parties by first exploring the demographics of its customer base. To do that, it only needs to know how many of its customers prefer to use smart phones vs non – smartphones, the split between age groups, gender etc.

- 3.18 SingTel is concerned that without a proper limitation on the understanding of personal data, it would not be practical to expect compliance with the Act.

True and personal data (Ref p.5.7)

- 3.19 Organisations will typically require their customers to confirm, as part of the contracting process, to confirm that information provided is true and accurate. Please confirm that when a company then collects, uses or discloses the information supplied under such circumstances, the company cannot be regarded as having contravened the Act on grounds that it has not complied with the Accuracy Obligation and has used and disclosed misleading or inaccurate information to another party.

Personal data relating to more than one individual (Ref p. 5.15 and 6.8)

- 3.20 The example given by the PDPC in paragraphs 5.15 and 6.8 is disturbing as it leaves companies and organisations in situations where they may accidentally or inadvertently breach the Act for reasons not within its control. In the specific example of 5.15, a contact person information (ie 3rd person information) was asked for and in 6.8, the information was supplied by a party in relation to third parties. However, clearly the party supplying such information will not be the actual contact party (3rd person information) itself. For the company / organisation to have to comply with the Act for the contact person would not be reasonable. For that matter, if the organisation was to contact the 3rd person information to request consent, it could be regarded as a breach of the Act in itself. We ask that the PDPC considers that in such cases, the organisation should not require consent. Rather, for the purposes of the Act, the party supplying the 3rd person information should be required to confirm that it has obtained the consent from the 3rd person information and is in a capacity to do supply the 3rd person information.

Personal data of deceased individuals, individuals whose personal data is contained in records for more than 100 years

- 3.21 Section 4(4) (a) of the Act says that the Act does not apply in relation to the personal data of an individual that is contained in a record that has been in existence for at least 100 years. It is not clear what is envisaged by the term ‘a record’. For example, does the PDPC mean publicly available records, or any record of the individual that the organisation may have access to, including its own records (eg its own contracts with the individual).

The Consent Obligation and Existing Rights (Ref p. 11.3)

- 3.22 Paragraph 11.3 of the Proposed Advisory Guidelines indicate that the Act does not affect existing regulatory requirements that organisations have to comply with; Section 4(6)(a) and (b) of the Act provides that the Data Protection Provisions will not affect rights granted by other law and the provisions of other written law shall prevail over the Data Protection Provisions to the extent that any Data Protection Provision is inconsistent with the provisions of the other written law.
- 3.23 Please confirm that in the case of telecommunication licensees and broadcast licensees who are permitted, under Section 3.2.6 of the Telecom Competition Code and 3.6.2 of the Media Market Conduct Code, to use their EUSI for purposes as set out in Section 3.2.6 (a) of the Telecom Competition Code and 3.6.2 (a) of the Media Market Conduct Code need not then comply with the Consent Obligation in the PDPC. This means that a telecommunication & broadcast licensees can make use of their end-user information for these purposes in the respective sections of the Codes without the need to seek consent for such purposes.

The Purpose Limitation Obligation (Ref p 12.1 – 12.4)

- 3.24 Section 18 of the Act provides that an organisation may collect, use or disclose personal data about an individual only for purposes:
- (a) that a reasonable person would consider appropriate in the circumstances; and
 - (b) where applicable, that the individual has been informed of by the organisation (pursuant to the Notification Obligation).

- 3.25 SingTel understands that the first requirement is intended to provide an objective standard. However, SingTel submits that organisations require more prescriptive guidance from the PDPC to be able to apply this requirement. In particular, SingTel considers that the PDPC needs to provide greater clarity on the following points:
- (a) how the PDPC defines the concept of “a reasonable person”;
 - (b) how the concept of a “reasonable person” is to be applied for the purpose of determining whether it is appropriate for an organisation to collect, use or disclose personal data;
 - (c) whether the test takes account of the particular relationship between the organisation and the individual; and
 - (d) whether it is possible for an organisation to assume that a reasonable person would have particular expectations of certain kinds of organisations (e.g. based on the services that they provide).
- 3.26 In addition, SingTel notes that the example provided in paragraph 12.4 of the Proposed Advisory Guidelines on Key Concepts indicates that an organisation that notifies an individual that its purposes include “any other purpose that it deems fit” would not be considered reasonable. This appears to be a misapplication of the test set out in Section 18(a) of the Act. The test prescribed is whether or not a reasonable person would consider the purpose to be appropriate, not whether the purpose is reasonable.
- 3.27 SingTel believes that an organisation’s purposes of collection, use and disclosure should be able to be broadly stated as appropriate to the relationship between the organisation and the individual. For instance, any purpose that is necessary to the organisation’s duties or functions in context of the relationship with the individual ought to be considered appropriate by the reasonable person. As well, a purpose that is directly related to, or necessary for, the fulfilment of the primary purpose as notified to the individual by the organisation ought to be considered to be appropriate by a reasonable person. SingTel notes that it would not be efficient that an organization has to obtain consent from a customer in order to use, collect and disclose personal data even where such use, collection and disclosure is clearly critical to / necessary to the delivery of the service or the normal operations of a business , eg to bill, to protect an organization from fraudulent activities, to check the identity of a person before permitting entry to the building (for building owners), to carry out

preliminary internal investigations into theft or unauthorized entry to buildings and /or facilities (including hardware, software and building facilities) before police investigations are requested .

- 3.28 SingTel submits that the PDPC should provide greater clarity and guidance on these matters for organisations.

Stating purposes and obtaining consent (Ref p 13.8- 13.15)

- 3.29 Section 14(1) of the Act provides that an individual has not given consent for a particular collection, use or disclosure of the individual’s personal data unless the individual has been notified of the purpose for which the personal data will be collected, used or disclosed and has given consent for that purpose.
- 3.30 Section 14(2)(a) limits an organisation’s ability to require consent as a condition of providing a product or service to the individual to where it is reasonable. The organisation also must not obtain consent by providing false or misleading information or by using deceptive or misleading practices (Section 14(2)(b) of the Act). However, the term “consent” is not defined in the Act. Although a number of example scenarios are provided in the Proposed Advisory Guidelines on Key Concepts, the reasons that the consent is valid in each case are not explained in sufficient detail.
- 3.31 Other personal data protection regimes, such as in the EU, have described the main elements of consent as being: (a) freely given; (b) informed; (c) specific; (d) unambiguous and, where the personal data is sensitive, explicit. SingTel considers that the PDPC should define the concept of “consent” by reference to each of these elements and provide more clarity on how various scenarios or examples satisfy or do not satisfy each of these elements.
- 3.32 SingTel submits that while the matters mentioned at (a) – (c) seem to be inherent requirements of the consent provisions under the Act, it is currently unclear whether the consent obtained by an organisation under the Act would also need to be unambiguous and explicit (in the case of sensitive personal data).
- 3.33 For example, the first scenario provided in paragraph 13.10 of the Proposed Advisory Guidelines on Key Concepts suggests that the consent must be unambiguous, but not necessarily explicit. In that scenario, multiple purposes are contained within the terms and conditions (informed and specific) and Sarah has clicked the “Accept” button (which satisfies the requirement that the consent should

be unambiguous) but has not expressed consent to each individual purpose (i.e. the consent is not explicit). However, the actual reasons that the consent is valid in this scenario are unclear as they have not been expressly explained in the Proposed Advisory Guidelines.

- 3.34 SingTel notes that opt-out mechanisms are commonly used by organisations to obtain consent from customers. If, for example, in the scenario above, the terms and conditions contained a pre-filled check box to indicate consent to be sent marketing materials, by Sarah clicking “Accept” would the organisation obtain valid consent from Sarah to send her marketing materials? Or would the organisation need to show that Sarah actually completed the check box herself to ensure that the consent is unambiguous?
- 3.35 Alternatively, could the organisation simply draw the customer’s attention to the fact that the purposes are contained in a separate document (eg the Data Protection Policy) or are contained in the terms and conditions which the customer would have to read; that is, where the customer was to sign on a contract where terms and conditions or a separate document given was to identify the purposes, would that suffice as consent?
- 3.36 In cases where applications for services are actually completed electronically, eg through an application downloaded onto a mobile phone and the customer simply ticks the relevant boxes. How would the PDPC assess whether consent was validly obtained and given? What kind of proof would the PDPC require for such cases?
- 3.37 The precise meaning of consent is further complicated by the defence requirement in the Do Not Call Provisions that the person charged prove that person “gave clear and unambiguous consent” (Section 43(a) of the Act). Therefore, in the case of the Do Not Call Provisions, it would be arguable that the consent would be satisfied if such consent met the two stated requirements only (i.e. that it should be “clear” and “unambiguous”).
- 3.38 Any differences in what is required to establish consent in respect of the Do Not Call Provisions and other parts of the Act will require clear explanation in guidelines to avoid confusion on the part of organisations as to their obligations under the Act. Such guidelines will need to include additional and more detailed scenarios to illustrate each element necessary to establish valid consent so that organisations are able to tailor their processes accordingly.

Withdrawal of consent (Ref p11.39)

- 3.39 Section 16 of the Act provides that an organisation cannot prevent an individual from withdrawing consent except that this does not affect legal consequences arising from the withdrawal. We had in an earlier section identified that it would not be efficient that an organization has to obtain consent from a customer in order to use, collect and disclose personal data even where such use, collection and disclosure is clearly critical to / necessary to the delivery of the service.
- 3.40 Similarly, it does not seem logical that where an individual refuses to give consent to the organisation to use, collect or disclose information for purposes essential to the delivery of services, then the organization would still need to provide the service but subsequently inform the individual that the contract cannot be serviced, and then terminate the service. A related example would be where an building owner has to ask visitors for their name, contact details before permitting entry to the building for security purposes. Under such circumstances, requiring the building owner to seek consent (and then permit withdrawal of consent and refusal of entry subsequent to withdrawal of consent) is clearly inefficient.
- 3.41 We believe that the PDPC should put in place clearer guidelines on this.

Use of personal data before the appointed day

- 3.42 Section 19 of the Act implies that an organisation that continues to collect, use and /or disclose the personal data of an individual collected before the appointed day (for the same purposes as notified before the appointed day) will breach the Act. In other words, no matter whether the organisation had provided notification of purposes and obtained consent for the collection, use and disclosure before the appointed day, that consent is not valid for ongoing collection and disclosure after the appointed date even for the same purposes. We seek clarity from the PDPC on this.

The Access Obligation (Ref p 14.1 – 14.12)

- 3.43 Section 21(1) of the Act provides that organisations must provide the individual with:
- (a) personal data about the individual that is in the possession or under the control of the organisation; and

- (b) information about the ways in which the individual's personal data has been or may have been used or disclosed in the one year before the individual's request.
- 3.44 Organisations will require guidance from the PDPC regarding the means by which they can comply with those requirements. Large organisations, such as SingTel, will likely develop standard processes for providing access to personal data when requested by individuals and the development of these processes will have certain development lead-times. It is important for the PDPC to provide guidance to organisations upfront if it has any views in relation to the means by which organisations are expected to comply with these requirements.
- 3.45 With that said, SingTel believes that organisations should be able to choose the manner in which they process access requests and provide the personal data requested by individuals, and they should not be obliged to provide access in any manner requested by the individual especially where the organisation has established standard processes for providing access.
- 3.46 SingTel considers that appropriate means of providing access to personal data would ordinarily include:
 - (a) allowing the individual to view and/or download statements of their personal data via their online customer account;
 - (b) providing an electronic or hard copy of the actual record containing the personal data to the individual; or
 - (c) providing an extract of the record containing the personal data of the individual.
- 3.47 SingTel also queries the level of detail that an organisation is required to provide when informing individuals about the ways in which the individual's personal data has been, or may have been, used or disclosed. SingTel believes that requiring organisations to provide highly granular, or overly detailed explanations of actual or possible disclosures regardless of the circumstances would be unreasonably onerous, as most organisations do not have the ability and processes in place to keep records of each and every use and disclosure of personal data. Rather, SingTel believes that organisations should be able to satisfy this obligation by referring to the purposes of use and disclosure as previously notified to the individual in accordance with the Act. For example, this could be achieved by referring the individual to the notifications

provided in the organisation's data protection policy.

- 3.48 In some cases, organisations may even find that they have destroyed the personal data in the past one (1) year which renders it difficult to comply with the requirement in Section 21 (1)(b) of the Act which requires that organisations tell the individual of the ways the information has been used or disclosed in the past one (1) year.
- 3.49 Section 21 (3) of the Act states that an organisation shall not provide an individual with the individual's personal data or other information under required under Section 21 (1) if the provision can be reasonably expected to satisfy Section 21 (3) (a) to (e). Furthermore, Section 21 (5) says that if an organisation can provide personal data without the personal data that is meant to be excluded in Sections 21 (2), (3) and (4), then it should do so. It is not clear how an organisation is expected to have even reasonable knowledge of when a situation entails threatening the safety, physical or mental health of an individual other than the person who made the request, harm the individual who makes the request or even be contrary to national interest (ie the exclusions in Section 21 (3)). Similarly, it is not clear how an organisation is able to know whether the same information is an exclusion under the 5th Schedule and does not need to be provided according to Section 21 (2). We ask that the PDPC provides guidelines on this.
- 3.50 Section 21 (3) (e) of the Act imposes an obligation on the organisation in that the organisation shall not provide an individual with access to its own personal data under certain circumstances (exceptions). However, there is no guidance as to how an organisation can arrive at the conclusion that the exceptions apply. For example, how would an organisation be able to conclude that providing the access will threaten the safety or physical or mental health of another individual or be contrary to the national interest.
- 3.51 We note that the need for guidance in this respect is critical on grounds that organisations can be unfairly found to have breached Section 21 (3). We also ask that the PDPC considers that where an organisation has made attempts to make a reasonable assessment that the exceptions have not applied and is subsequently proven wrong by any other third party, that should be regarded as mitigation points in the event of a complaint.

3.52 Section 21 (4) of the Act indicate that an organisation need not notify an individual (when asked, pursuant to Section 21 (1) of the Act) that its information has been disclosed to a prescribed law enforcement agency. It is not clear whether the law enforcement agencies include statutory boards that are empowered by legislation to require / request information of individuals, eg Department of Statistics, IDA, MDA or even agencies referred to the organisation by the IDA (eg various Ministries) etc. We seek confirmation that such statutory and /or regulatory agencies are considered law enforcement agencies for the purpose of Section 21 (4) of the Act.

3.53 It is important that the PDPC consider these issues and provide further guidance for both organisations and individuals regarding the manner and form of requesting and obtaining access to personal data to ensure a common understanding and avoid unnecessary disagreement as to their rights and obligations under the Access Obligation.

The Accuracy Obligation (Ref p. 15)

3.54 Whilst the PDPC has indicated in paragraph 15.5 that the organisation makes a reasonable effort to ensure accuracy of the information, it does not explain what recourses the organisation has in the event that an individual disputes accuracy of the information.

3.55 To cite an example, if an organisation has reasonably ensured that the information collected is accurate in that it had asked the individual to check before releasing, for example, its mobile phone number, and then uses the same information to send marketing messages to the individual (in compliance with the provisions of the Act for the Do-Not-Call Registry (“DNCR”)), how would the PDPC review a dispute where the mobile phone number was stated wrongly such that the organisation had contacted another individual instead (and consequently could have been technically in breach of the DNCR requirements).

3.56 We ask that the PDPC provides clarity on this.

The Openness Obligation (Ref p 19.1 – 19.7)

- 3.57 SingTel notes that Data Protection Provisions require organisations to develop and implement policies and practices which are necessary for the organisation to meet its obligations under the Act, including developing a complaints process, communicating information to staff and making information available on request about its policies, practices and complaints process (Section 12 of the Act).
- 3.58 Large organisations, such as SingTel, will likely develop comprehensive policies dealing with the prescribed matters under the Act and will make these policies generally available to their customers, for example, via the organisation's website.
- 3.59 SingTel believes that organisations should be able to satisfy the requirement to make information available regarding an organisation's policies and practices in this manner, and organisations that do so should not also be obliged to respond to individual requests for information where the information requested is dealt with adequately in the policy it makes available. The PDPC ought to clarify whether this will be the case in practice.
- 3.60 To assist organisations in developing their data protection policies, the PDPC should issue guidance regarding the types of matters and minimum information which should be included. SingTel believes that providing openness through a data protection policy is important for minimising complaints from individuals about data handling practices, and this will be most effective where supported by guidance from the PDPC as to what constitutes good practice. SingTel believes that good practice ought to entail an organisation including the following minimum information in its data protection policy:
- (a) the kinds of personal data that the organisation collects and holds;
 - (b) the purposes for which the entity collects, uses and discloses the personal data;
 - (c) how an individual may access their personal data held by the organisation and seek correction of such personal data;
 - (d) how an individual may complain about a contravention of the Act and how the organisation will deal with such a complaint;
 - (e) the persons to whom the organisation may disclose personal data, and if such persons are located outside of Singapore, the countries in which they are

located; and

- (f) where appropriate, the business contact details of a person designated by the organisation for answering customer questions regarding the organisation's collection, use and disclosure of personal data under the Act.

3.61 SingTel also considers that including the above matters in a data protection policy and making it publically available ought to give the organisation a reasonable degree of certainty that it will be considered to comply with its obligations under clause 12 of the Act. These issues ought to be considered by the PDPC and explained in further guidance.

Meaning of specified messages (Ref p 31.1 – 31.4)

3.62 The term “specified message” for the purpose of the Do Not Call Provisions in the Act appears to be intended to capture messages that are sent with a commercial purpose, regardless of whether that purpose is the primary, secondary or ancillary purpose. Accordingly, it follows that a message sent for informational purposes only should not fall within the meaning of “specified message”.

3.63 However, SingTel believes that further clarity is required from the PDPC to allow organisations to appropriately determine whether a particular communication (or type of communication) will constitute a “specified message” or whether that communication is for an informational purpose only.

3.64 A “specified message” is defined in the Act to mean a message:

“where having regard to:

- (a) *the content of the message;*
- (b) *the presentational aspects of the message;*
- (c) *the content that can be obtained using the numbers, URLs or contact information (if any) mentioned in the message; and*
- (d) *if the telephone number from which the message is made is disclosed to the recipient (whether by calling line identity or otherwise), the content (if any) that can be obtained by calling than number,*

it would be concluded that the purpose, or one of the purposes, of the message is:

- (e) *to offer to supply goods or services;*
- (f) *to advertise or promote goods or services;*
- (g) *to advertise or promote a supplier, or prospective suppliers, of goods or services;*
- (h) *[etc...]*”

3.65 SingTel submits that the PDPC ought to issue additional guidance, or regulations, to assist organisation in understanding whether or not a message is considered to be a specified message. For example, SingTel considers that greater clarity is needed as to whether the following types of communications will constitute a “specified message”:

- (a) a communication where the sole purpose is informational;
- (b) a communication in which the primary purpose is informational but the secondary purpose is arguably a commercial one;
- (c) a communication in relation to a product or service that is free or without charge; and
- (d) a communication which is required by law or regulation (e.g. as part of a consumer protection initiative).

3.66 Further, while SingTel understands that messages designed to directly promote or advertise products or services would be caught by the definition of “specified message”, the issue of what constitutes “promotion” or “advertisement” requires clarification. SingTel believes that messages sent for information purposes – for example, welcome messages to end-users that obtain international roaming services not be considered as specified messages, although they may refer the individual to a particular product or service.

3.67 In addition, SingTel has historically sent various types of product and service related messages to its customers and prospective customers, including as part of the information that such customers are entitled to receive pursuant to their existing contract of service. This includes:

- (a) roaming alerts sent to a customer that their service usage has reached a specific level and to reduce costs by taking up a the right price plan;
- (b) reminder messages sent to local telephone customers before they travel to ensure they have picked the right data roaming plan to reduce or mitigate costs;
- (c) welcome messages to customers when they arrive at their overseas destination reminding them to use the correct international access service in order to reduce their international call charges;
- (d) messages informing customers that their content subscription will end soon and reminding them to renew the subscription;
- (e) messages inviting or reminding the customer to opt-in or actively subscribe, for example, when a free trial for a service or product ends.

3.68 SingTel considers that where the customer is entitled to receive such messages (which are intended to enable the individual to obtain the most value out of their services) should fall within the exception specified under Section 1(d)(iii) of the Eighth Schedule to the Act – that is, a message the sole purpose of which is to deliver a message that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to with the sender. This ought to be clarified in guidelines by the PDPC.

Other comments

3.69 We also raise for clarification other comments in relation to the applicability of the Act to data intermediaries. We note for example, that data centre operators, providers of cloud computing services, cloud storage services and even broadcast SMS services may be in positions where they house personal data or use personal data to transmit services. Data centre operators and cloud / storage computing providers actually provide storage of their corporate customers' information (which may contain personal data of the corporate customers' employees or their own end-users); similarly, telcos currently provide broadcast SMS services where they may be asked to send SMSes to their corporate customers' end-users. In most cases, the data centre operators, telcos and /or cloud computing / storage providers do not make use of the personal data involved except to store or to transmit the necessary information to the end-users involved. We seek clarification that these parties need not comply with the Act.



4 CONCLUSION

- 4.1 SingTel kindly requests that the PDPC take account of our comments as it works to produce the final guidelines.