Singtel

SINGAPORE TELECOMMUNICATIONS LIMITED

SUBMISSION TO THE PERSONAL DATA PROTECTION COMMISSION

IN RESPONSE TO THE

PUBLIC CONSULTATION FOR MANAGING UNSOLICITED COMMERCIAL MESSAGES AND THE PROVISION OF GUIDANCE TO SUPPORT INNOVATION IN THE DIGITAL ECONOMY

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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 products that includes voice and data services over fixed, wireless and Internet platforms. Singtel provides services to 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 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 also licensed to offer IPTV services under a nationwide subscription television licence.

1.4. Singtel refers to the Public Consultation Paper for Managing Unsolicited Commercial Messages and the Provision of Guidance to Support Innovation in the Digital Economy issued by the Personal Data Protection Commission (**PDPC**) on 27 April 2018 (**Consultation**).

1.5. Singtel welcomes the opportunity to make this submission on the Consultation Paper and would be pleased to clarify any of the views and comments made in this submission, as appropriate.

1.6. This submission is structured as follows:
Section 2 – Executive Summary;
Section 3 – Specific Comments; and
Section 4 – Conclusion.

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2. EXECUTIVE SUMMARY

2.1. The PDPC has proposed a number of changes, namely (a) merging the Do Not Call (**DNC**) provisions under the Personal Data Protection Act (**PDPA**) with the Spam Control Act (**SCA**) provisions; and (b) introducing an Enhanced Practical Guidance (**EPG**) framework. Under the Consultation, the PDPC has also sought feedback on the consent exceptions in the Second, Third and Fourth Schedules to the PDPA.

2.2. Singtel is generally supportive of the proposed changes to the DNC and SCA provisions – having a single piece of legislation (the **New Act**) would simplify the administrative process for organisations and reduce the number of overlapping obligations. Further, organisations should be given an opportunity to review and comment on the proposed New Act. The PDPC should also ensure that it provides a sufficient lead time for organisations to review, revise and/or implement processes in order to comply with the New Act.

2.3. Singtel welcomes the introduction of the EPG as an additional means of providing organisations with the assurance that their processes comply with the PDPA and looks forward to further guidance from the PDPC on the operational aspects of the EPG framework such as the application process and costs.

3. SPECIFIC COMMENTS

Question 1
What are your views on the proposed scope and applicability of the DNC Provisions and the Spam Control Provisions?

3.1. Under the existing framework, the DNC provisions require persons to check the relevant Do Not Call Register (**DNCR**) before sending a specified message to a Singapore telephone number unless clear and unambiguous consent has been obtained or there is an ongoing relationship with the individual. The DNC provisions are intended to cover any specified messages sent in the form of text, fax or voice calls. The existing SCA deals with unsolicited commercial electronic messages sent in bulk.

3.2. The PDPC is proposing to merge both the DNC provisions and SCA provisions into one legislation governing all unsolicited commercial messages. With the single piece of legislation, the PDPC has proposed the following:

a. DNC provisions (for messages sent to Singapore telephone numbers)
   i. Continues to apply to specified[1] voice, text and fax messages
   ii. Will apply to unsolicited[2] marketing text messages, regardless of whether they are sent in bulk[3]
b. SCA provisions (for messages sent in bulk)
   i. Continues to apply to unsolicited commercial[4] emails
   ii. Will apply to unsolicited commercial text messages addressed to IM identifiers[5]

3.3. Singtel submits that with the consolidation of the legislation into the New Act, the PDPC should use this opportunity to align the language used across the DNC provisions and SCA provisions. For example, it is not clear how a marketing text message differs from a commercial text message. Further, within the DNC provisions itself, the definition of specified messages and marketing messages are largely similar except that marketing messages include messages sent for the purpose of dishonest gains or deception. The PDPC has also stated it will not be proposing any change to the coverage of messages relating to dishonest gains or deception under the DNC provisions and the SCA provisions under the New Act[6]. Therefore if a user received a text message advertising goods and services (unrelated to dishonest gains or deception), would that message be considered a specified text message or a marketing text message for the purposes of the DNC provisions?

3.4. Singtel also seeks confirmation that the SCA provisions only apply to two scenarios, i.e. bulk emails and bulk messages sent using IM identifiers.

[1] Refer to section 37 of the PDPA.
[2] Refer to section 5 of the SCA.
[3] Refer to paragraph 3.5a of the Consultation.
[4] Refer to section 3 of the SCA.
[5] Refer to paragraph 3.5b of the Consultation.
[6] Refer to paragraph 3.24 of the Consultation Paper.

3.5. Finally, Singtel would request clarification as to whether PDPC would now have jurisdiction and authority over spam control in addition to DNCR matters.

Question 2
What are your views on including commercial text messages sent using IM identifiers under the Spam Control Provisions?

3.6. The PDPC is proposing to introduce a new category of messages that will be subject to the SCA provisions, i.e. commercial text messages sent via IM identifiers in bulk. The PDPC intends to treat IM identifiers similarly to email addresses, requiring organisations to maintain unsubscribe lists of IM identifiers. Organisations will therefore be required to comply with the requirements set out in the Second Schedule of the current SCA.

3.7. Singtel submits that the scope of IM identifiers is not clear, and more guidance from the PDPC is required. The PDPC has provided two examples of IM platforms through which organisations might reach out to customers, e.g. Facebook and WeChat. From the Consultation Paper, it appears that IM identifiers refer to user-created account or login IDs. It is unclear whether the scope of IM identifiers is intended to cover all social media apps in which instant messaging is supported, e.g. Telegram, Instagram and Snapchat.

3.8. Additionally, Singtel seeks confirmation that mobile applications which are not intended for social media or instant message purposes (e.g. service provider's application which providers subscription information, video streaming applications, etc.) but which allow the following types of communication to a user-created account will not fall within the bounds of the New Act:

a. applications that allow communication between the customer and service provider for the purpose of providing customer support; and/or
b. in-app push notifications for alerts and reminders on service-related information, customer rewards, new content, etc.

Question 3
What are your views on the proposed reduction of the period for effecting withdrawal of consent to 10 business days, in line with the period to effect an unsubscribe request under the Spam Control Provisions?

3.9. Currently, organisations are allowed 30 days[7] to effect a request for withdrawal of consent for the sending of specified messages under the PDPA. Under the SCA, organisations are required to stop sending unsolicited messages after 10 business days[8] upon submission of an unsubscribe request. The PDPC proposes to reduce the period for effecting withdrawal of consent to 10 business days, aligning this with the current requirements under the SCA, as well as citing reasons of minimising potential confusion and compliance costs.

3.10. Singtel does not support the proposed reduction of the period for effecting withdrawal of consent. An organisation's obligations under the DNC provisions are two-fold. Apart from effecting withdrawal of consent within 30 days, the organisation is required to check the DNCR to determine if the particular Singapore telephone number is listed in the register; numbers would generally be submitted to DNCR for washing every 3 calendar weeks and results are valid for 30 days from the date of the check. By reducing the period for effecting a withdrawal of consent to 10 business days i.e. 2 calendar weeks, organisations would operationally be required to check the DNCR every week, which is costly and administratively burdensome.

3.11. The proposed reduction also gives rise to increased confusion surrounding the fulfilling of DNC obligations. DNCR results are valid for 30 days from the day of checking, but if the Singapore telephone number is subsequently registered with the DNCR during this 30 day period (thereby constituting a withdrawal of consent to receiving specified messages), is the organisation in breach of the 10 business days period to effect the withdrawal of consent if the organisation sends a specified message to the number within the 30 day period?

3.12. In view of the above, Singtel submits that it is not practical to reduce the period for effecting withdrawal of consent and the PDPC should instead align the timelines to 30 days instead.

[7] Refer to section 17(b) of the Personal Data Protection (Do Not Call Registry) Regulations 2013.
[8] Refer to section 2(7) of the Second Schedule of SCA.

Question 4
What are your views on prohibiting the use of dictionary attack and address harvesting software for sending of commercial messages to all telephone numbers, IM identifiers and email addresses?

3.13. Singtel understands that the proposal is intended to prevent automated means of obtaining telephone numbers, IM identifiers and email addresses. If an organisation employs a third-party agent to search for information and the agency uses such tools to obtain the information, Singtel seeks clarification on whether the organisation would be liable for the actions of the third-party agent. Singtel seeks further clarification as how the provisions will be enforced under an administrative regime.

Question 5
Should B2B marketing messages be subject to the requirements under the DNC Provisions, in alignment with the coverage under the Spam Control Provisions?

3.14. Singtel does not support this proposal. As the PDPC has already pointed out, organisations would be required to check the DNCR before sending B2B messages. This does not streamline processes; rather, having to comply with additional requirements such as the washing of additional business numbers is administratively burdensome and will increase compliance costs. Such costs would naturally flow on to the end user to their detriment. Unlike individuals, businesses are organised into structured departments with clearly delineated roles, which allows for a more targeted marketing approach for legitimate B2B marketing. Businesses have the ability to evaluate all available options and services available to them and offer their staff corporate lines or a mobile subscription subsidy; the burden of checking the DNCR before sending B2B messages should not be passed on to organisations conducting legitimate B2B marketing in favour of protecting individual consumers choosing to use their personal line for work-related purposes.

3.15. Additionally, it is the individual's prerogative whether to use their personal line for work-related purposes. Where a user whose mobile number is registered to a business wishes to opt-out from receiving B2B messages, the user may contact Singtel to do so. Hence, the additional steps of checking the DNCR are unnecessary and redundant.

Question 6
What are your views on the proposal for the DNC Provisions to be enforced under an administrative regime?

3.16. Singtel notes that all criminal offences under the DNC provisions are proposed to be enforced under an administrative regime instead. Singtel is supportive of this proposal.

Question 7
What are your views on the proposed obligation to communicate accurate DNCR results, and liability on third-party checkers for any infringements of the DNC Provisions resulting from inaccurate information they provided?

3.17. Singtel is generally supportive of the proposed liability of third-party DNC checkers. However, Singtel submits that there should be a dispensation for related companies (as defined under the Companies Act) where, for example, the parent company may check the DNCR on behalf of its subsidiaries.

Question 8
What are your views on the proposed prohibition of resale of results of telephone numbers checked with the DNCR?

3.18. Singtel is supportive of the proposal. We have no specific comments on this.

Question 9
What are your views on the proposed deeming provision?

3.19. The PDPC has proposed to introduce a deeming provision that would presume the subscriber of the Singapore telephone number sent the specified message unless proven otherwise. Singtel is generally supportive of the proposal however we seek confirmation from the PDPC that the proposed deeming provision would not apply to delivery platforms that allow merchants to send bulk SMS to their customers.

3.20. On such platforms, merchants input their own messages and desired list of recipients, and are responsible for checking their recipient list against the DNCR. A recipient who wishes to unsubscribe from receiving such messages will need to unsubscribe directly

from the merchant(s). In this instance, though Singtel is the subscriber of the shortcode used to send the specific message, there is no active input from Singtel apart from providing the delivery platform to enable specific messages to be sent, and therefore Singtel should not be considered to have sent the specific message.

Question 10
What are your views on the proposed Enhanced Practical Guidance framework?

3.21. Singtel is generally supportive of the establishment of the proposed EPG framework. We submit that the PDPC further consult the industry on the practical implementation aspects of the EPG framework such as costs, should the EPG framework be established.

Solicitation of feedback on exception to consent

3.22. Singtel has no comments on this section.

4. CONCLUSION

4.1. Singtel appreciates the opportunity to contribute to the consultation process on this important area of public policy.

4.2. Singtel generally supports the proposals made by the PDPC and would encourage it to further develop the proposed single legislation and EPG framework. The industry should be given an opportunity to further review and comment on the proposals thereafter.

4.3. We look forward to engaging further with the PDPC on the above proposals.