

3 July 2019

Personal Data Protection Commission
10 Pasir Panjang Road
#03-01 Mapletree Business City
Singapore 117438

Dear Sirs,

PUBLIC CONSULTATION ON PROPOSED DATA PORTABILITY AND DATA INNOVATION PROVISIONS

We refer to the Public Consultation on Review of The Personal Data Protection Act 2012 – Proposed Data Portability and Data Innovation Provisions, issued on 22 May 2019 by PDPC (“Consultation Document”).

2 Changi Airport Group (Singapore) Pte Ltd (“CAG”) supports PDPC’s aim to strengthen accountability among organisations and consumer trust in the management of personal data by proposing to introduce these provisions. We share PDPC’s beliefs that these provisions will encourage the development of innovative products and services that can benefit consumers and Singapore’s economy. However, we have concerns in relation to the implementation of these provisions and outline them below for your consideration.

Proposed Data Portability Provision

3 Our comments on the proposed data portability provision are as follows:

Definition of user activity data should be more narrowly defined

3.1 We note that the proposed data portability obligation would apply to ‘user-provided data’ and ‘user activity data’. We are concerned that the current definition of user activity data¹ is prone to a catch-all interpretation. If so, this can prove to be extremely burdensome for any given organisation, including CAG, without commensurate benefits to the consumer or the economy. We recommend that the scope of ‘user activity data’ be contextualised and more narrowly defined. We believe that prescribing the scope of ‘user activity data’ so that it is relevant to the policy objectives will create greater consistency and transparency while balancing regulatory burden.

¹ Data that is generated by the individual’s activities in using the organisation’s product or service

3.2 As an example, CAG has invested substantially into technologies that include intra-building geo-location and wayfinding capabilities. However, it is difficult to see how these airport-specific, non-standard data could be useful to individuals and receiving organisations. We would be happy to work with PDPC to propose a relevant scope of data that the airport industry can be subject to under the data portability obligation. This could be akin to PDPC's proposal to introduce sectoral code of practices, except that we hope that it will lay out comprehensive requirements rather than just minimum requirements.

3.3 The Consultation Document appears to assume that all personal data provided by the individual whether through explicit consent or through interactions with the organisation should generally be treated as portable data. But at the same time, it provides that data held by data intermediaries are exempt. There are instances when CAG receives passenger-related data from airlines. We would like to confirm our understanding of the provisions in the Consultation Document that such passenger-related data would be exempt from the data portability requirements.

3.4 CAG also notes that the proposed data portability obligation is intended to apply only to data held in electronic form. It is suggested that clarification should be given to confirm that data in 'electronic form' does not include paper forms which have been transformed into PDF format. Such formats do not have the qualities of being easily searchable, extractable and convertible, and could substantially increase the burden of organisations who are required to port the requested data in an accessible format.

It would be desirable to specify how the 'reasonability' of fees would be judged

3.5 While organisations will be allowed to charge a reasonable fee to recover the cost of providing the service to port the requested data, it is still unclear as to how reasonability will be assessed, and this would likely to be highly subjective between porting organisations, receiving organisations and requesting individuals.

3.6 The same request from an individual when put forth to two organisations with different cost structures would face different fees for legitimate reasons. Yet this could lead to aspersions of unreasonableness. Applying price benchmarks could also be problematic as it could serve as a barrier of entry to organisations that cannot meet the data portability obligation within the benchmarked fees. Also, without a prescribed, uniform scope of data, it would also be difficult to compare across requests.

3.7 As previously mentioned in Paragraph 3.2, certain types of data that are essential for business operations may require substantial investments to acquire. If these costs are

charged to the consumers, they could be prohibitive. Yet, if they are not, then receiving organisations would unfairly benefit from the porting organisations investments without incurring any cost. We recognise that, although this situation could potentially be mitigated by the proposed exception of commercially confidential data², it could be more aptly addressed by clarifying the definition of user activity data.

Potential for abuse by bad actors

3.8 Due to the value of data in the modern economy, the provision could be abused by organisations acting in bad faith. A possible scenario could be an organisation being targeted by another by having its customers incentivised to submit data portability requests. While each request in itself could be reasonable and not commercially sensitive, a concerted effort to acquire enough data over multiple requests can reveal commercially sensitive information about the organisation.

3.9 This situation could be exacerbated by the lack of material requirements for receiving organisations. This means that companies could be set up in Singapore for the sole purpose of being a receiving organisation to carry out such activities and undermine the competitiveness of legitimate companies. Due to Changi Airport's significant strategic and economic value to Singapore, we are circumspect that we could be a target of such activities.

3.10 In light of the above, we would suggest that a right be provided for organisations to refuse data portability requests where it is reasonably certain that the data portability provisions are being abused by a receiving organisation acting in bad faith.

Time period for responding is too short

3.11 We are concerned that the proposed response period of seven calendar days is too short to comply with. We note that under the current access obligation, the response period is thirty calendar days and the data requirements are more onerous under the portability obligations. We also foresee that there will be significant problems to comply in seven days if the requests are received just before or during periods extended non-working days such as during the Chinese New Year period. We urge PDPC to consider aligning the response period to the thirty calendar days of the access obligation.

3.12 We note that under "Handling data portability requests" of the Consultation Document it states that "The period from the time the individual requests for the data to

² Which, if disclosed, would reveal confidential commercial information that could harm the competitive position of the organization.

be ported to the time the data is ported must be within a reasonable period. PDPC is proposing to prescribe in Regulations a period of no longer than 7 calendar days for the porting of data upon confirmation of the data (or any other periods as specified under the codes of practice”³. Whereas in Annex A of the Consultation Document, “Comparison of access obligation and proposed data portability obligation”, the time period for responding is described as “Organisation must port the data as soon as practicable from the time it receives the individual’s request to port data. Organisation should port the data within 7 calendar days, or any other periods as specified under codes of practice”⁴. We hope PDPC can provide greater clarity on how reasonableness will be assessed in the former definition. We also note that the latter definition appears to begin once the request is received, which will be considerably stricter and would exacerbate our concerns.

Proposed Data Innovation Provision

4 On the proposed data innovation provision, we appreciate the guidance that it provides towards the permitted use of personal data for business innovation purposes. The definition of derived data and derived personal data also provides clarity on the obligations that they are subject to.

4.1 We hope PDPC can clarify if data can be collected for “business innovation purposes” without consent along the lines of the exceptions found in the Second Schedule to the Personal Data Protection Act or if the proposed provision is more akin to the exceptions to consent for use found in the Third Schedule to the Personal Data Protection Act.

³ Page 13 of Consultation Document

⁴ Page 26 of Consultation Document

Conclusion

5 CAG is grateful for the opportunity to provide our comments for PDPC's consideration. We would also be happy to clarify further if needed.

6 Thank you.

Yours faithfully,



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