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17 July 2019

Personal Data Protection Commission

Dear Sirs,

PDPC'S PUBLIC CONSULTATION ON PROPOSED DATA PORTABILITY AND DATA INNOVATION PROVISIONS

We refer to the above matter and are pleased to submit our views, enclosed herein, for the consideration of the Personal Data Protection Commission ("**PDPC**").

Yours faithfully

Marcus Lim
Data Protection Officer, Legal & Secretariat
for and on behalf of
Mediacorp Pte. Ltd.

**PDPC'S PUBLIC CONSULTATION ON REVIEW OF THE PERSONAL DATA
PROTECTION ACT 2012 - PROPOSED DATA PORTABILITY AND DATA INNOVATION
PROVISIONS**

**ISSUED ON
22 MAY 2019**

**RESPONSE TO PDPC'S PUBLIC CONSULTATION ON THE PROPOSED DATA
PORTABILITY AND DATA INNOVATION PROVISIONS**

BY MEDIACORP PTE. LTD.

Date of Submission
17 July 2019

1. INTRODUCTION

1.1 We refer to PDPC'S public consultation on the Proposed Data Portability and Data Innovation Provisions dated 22 May 2019 (the "**Public Consultation**"). We welcome the opportunity to provide feedback on the Public Consultation.

1.2 To provide some background, Mediacorp Pte. Ltd., together with its various group companies ("**Mediacorp**"), is one of Singapore's biggest media organisations. We are, *inter alia*, a nationwide free-to-air television and radio broadcaster, and also have an over the top digital platform. We produce content for television and radio broadcasts, as well as cover live events and report the news.

2. SUMMARY OF MAJOR POINTS

2.1 We have certain concerns and proposals in respect of the Data Portability Obligation which we hope the PDPC can give further consideration to, including the following major points summarised below:-

- (i) limit the Data Portability Obligation to similar products or services only;
- (ii) limit the scope of data covered to user provided data and not user activity data;
- (iii) require the fees payable for providing the service to port the requested data to be paid upfront;
- (iv) put in place a sunrise period of 18-24 months before the Data Portability Obligation takes effect; and
- (v) clarify the potential liabilities arising from compliance with the Data Portability Obligation.

2.2 We have set out our concerns by responding to the specific questions raised in the Public Consultation as set out below.

3. SCOPE OF THE DATA PORTABILITY OBLIGATION

Question 1. What are your views on the impact of data portability, specifically on consumers, market and economy?

Question 2. What are your views on the proposed Data Portability Obligation, specifically

- a) scope of organisations covered; and*
- b) scope of data covered?*

A. Scope of organisations covered

3.1 *Limit the Data Portability Obligation to similar products or services*

(a) We understand from the Public Consultation that a central purpose of the Data Portability Obligation is to foster competition between organisations by facilitating the switching between providers of products or services.

(b) To better support this central purpose, we suggest that the Data Portability Obligation be limited to circumstances where the data to be ported is in relation to similar products or services offered by the porting organisation and receiving organisation. This limitation is practical since the types of personal data collected or used for similar products or services are likely to be similar.

(c) Furthermore, this limitation would ensure that the ported data are relevant and specific to the product or service the receiving organisation is providing to the requesting individual, which will facilitate more efficient use of the ported data by the receiving organisation to provide a better service experience for the requesting individual.

(d) For the requesting individual, relevance of the ported data that is specific to the provider's product or service would limit the dissemination of unnecessary personal data to receiving organisations and hence minimise the risk of misuse.

B. Scope of data covered

3.2 *Clarification on applicability of Data Portability Obligation where relationship has terminated*

(a) We would like to seek clarification from PDPC on paragraph 2.22 of the Public Consultation which states:-

“... the PDPC is proposing for the proposed Data Portability Obligation to apply only to data in the possession or control of organisations that is held in electronic form.”
[Emphasis added]

(b) We understand paragraph 2.22 of the Public Consultation to mean that as long as the organisation has the requesting individual's data in its possession or control, the organisation will have to comply with the Data Portability Obligation.

(c) We would be grateful if PDPC could clarify whether porting organisations which hold personal data of the requesting individual are still obligated to comply with a data portability request in situations where the relationship with that requesting individual has already terminated.

(d) We would like to propose that in such a situation, the Data Portability Obligation should not apply in such a situation given that the relationship has already terminated and as such, (i) the data may no longer be up to date or complete, and (ii) the data may already be archived and hence may not be easily retrievable or in an easily readable or accessible format.

3.3 *Clarification on the scope of the data including personal data of third parties*

(a) We would like to seek clarification from PDPC on paragraph 2.30 of the Public Consultation which states:-

“The data is not limited to the personal data of the individual, but may include personal data of third parties, so long as it was provided by the requesting individual, or generated by the individual's activities.” [Emphasis added]

(b) We understand paragraph 2.30 of the Public Consultation to mean that an organisation may process a data portability request that include personal data of third parties without the consent of the third party so long as such data was provided by the requesting individual or generated by the individual's activities.

(c) We would like to propose that it should be expressly provided in the relevant legislation that an organisation processing such a data portability request will not be required to seek the consent of such third parties and will have no liability to such third parties arising from compliance with the Data Portability Obligation.

3.4 *Liability of the porting organisation*

(a) We would also like to seek clarification from PDPC on paragraph 2.31 of the Public Consultation which states:-

“PDPC takes the view that the porting of such personal data of third parties is unlikely to have any adverse impact on the third parties if the receiving organisation provides for adequate protection of the personal data”. [Emphasis added]

(b) We would like to clarify if this would mean that porting organisations would be required to ensure that data portability requests which include personal data of third parties will only be effected if the receiving organisation is deemed to have provided for adequate protection of such personal data.

(c) If that is the case, we do not think that porting organisations are in a position to make such an assessment. If however that is not the intention, then we would request the PDPC to clarify how the issue of whether a receiving organisation has provided adequate protection will be determined. We would additionally request that the porting organisations should be absolved from any liability related to such porting obligation.

3.5 *Limit Data Portability Obligation to User Provided Data only*

(a) We would suggest that the Data Portability Obligation be limited to user provided data and not include user activity data. The definition of “user activity data” is very broadly defined such that the type of data applicable to the Data Portability Obligation is significantly enlarged.

(b) This enlarged data set increases the likelihood that the data to be ported may not be relevant to the products and services which are the subject of the data portability request. Accordingly, extending the Data Portability Obligation to user activity data would lead to disproportionate and unnecessary efforts, costs, and burdens to both porting and receiving organisations.

(c) In particular, porting organisations will have to dedicate significantly more effort and time to manage, collate and organise user activity data in a manner which would facilitate compliance with the Data Portability Obligation which will translate into additional costs passed on to requesting individuals or receiving organisations. Even for the receiving organisation, a much larger data set which includes user activity data would mean more effort and time is required to review the data set to ensure that only relevant data pertaining to the product or service is retained.

(d) The inclusion of user activity data within the scope of the Data Portability Obligation would present challenges for the requesting individual as well.

(e) We understand from paragraph 2.37(c) of the Public Consultation that the requesting individual is to be allowed to view the data to be ported before transmission to the receiving organisation. However, if user activity data is included, it may render the data to be ported to be so voluminous that it may be impractical for the requesting individual to view all the data and accurately remove personal data he/she does not wish to port. This may result in the unintentional dissemination of personal data to receiving organisations which creates privacy risks for the requesting individuals.

(f) Given the current broad scope of “user activity data”, we foresee that there will be significant effort and cost in consolidating the data which will result in possibly high administration charges to the requesting individual or the receiving organisation. Examples of such costs include:

- High volume of data (e.g. web browsing history)
- Consolidation across platforms
- Handling requestor queries regarding the completeness and accuracy of the data

(g) A central purpose of the data portability right is to support the free flow of personal data and to foster competition between organisations by facilitating the switching between service providers.

(h) The applicability of the Data Portability Obligation to user activity data would not support this central purpose. While data individuals will provide more or less the same user provided data to similar providers of products and services, it is the providers themselves who make

implementation choices as to the type and scope of user activity data collected or generated, which may not be similar or comparable from one provider to the other. As such, the user activity data could potentially be of little use to receiving organisations if their implementation choices differ from the porting organisation.

(i) In addition, the broad definition of “user activity data” may make the distinction between user activity data and user generated data difficult. This difficulty is demonstrated in the Public Consultation where social media posts have been described to be examples of both user provided data (see paragraph 2.25 of the Public Consultation) and user activity data (see Table 1 of the Public Consultation).

(j) Alternatively, if user activity data must be included, we would suggest that “user activity data” be defined more restrictively, for example, by limiting it to purchase and transaction history.

3.6 *Exclusion of Business Contact Information*

(a) We propose to exclude Business Contact Information (“**BCI**”) from the scope of data covered under the proposed Data Portability Obligation.

(b) The proposal for the Data Portability Obligation to apply to BCI will create inconsistencies with other existing obligations under the PDPA which do not apply to BCI.

(c) For example, if the requesting individual, upon verifying the data to be ported, identifies an error in the BCI, is the porting organisation obligated to correct the error? If so, should the data portability request be consequently rejected?

(d) We understand that under PDPA, BCI includes the individual’s name, position name or title, business telephone number, business address, business electronic mail address or business fax number. These information could be subject to business concerns and confidentiality obligations, which may not be within the purview of the requesting individual to grant consent for the data to be transmitted to the receiving organisation. As such, we would like to propose to exclude BCI from the scope of data covered under the proposed Data Portability Obligation.

4. **EXCEPTIONS TO THE DATA PORTABILITY OBLIGATION**

Question 3. What are your views on the proposed exceptions to the Data Portability Obligation, specifically the proposed exception for “derived data”?

A. **Exception for “derived data”**

4.1 We support the position that derived data should not be within the scope of the Data Portability Obligation.

B. **Other proposed exceptions**

4.2 The proposed exceptions to the Data Portability Obligation do not specifically exclude the application of the data portability right to personal data created in the context of the employment relationship.

4.3 We believe that data collected in the course of an employment relationship should be expressly excluded from the Data Portability Obligation given the confidential nature of the employment relationship.

5. **REQUIREMENTS FOR HANDLING PORTABILITY REQUESTS**

Question 4. What are your views on the proposed requirements for handling data portability requests?

A. Verifying the data to be ported

5.1 Paragraph 2.37(c) of the Public Consultation states that:-

“Before the organisation ports the data, the porting organisation should allow the requesting individual to view the data (or a sample of the data which the individual has requested to be ported) before transmitting it to the receiving organisation.”
[Emphasis added]

5.2 As there will be costs incurred by porting organisations to convert the format of the data to be ported into a format the requesting individuals are capable of viewing, we would like to propose that such costs be chargeable to the requesting individual.

B. Porting the data

5.3 *Fee payable by the requesting individual*

(a) Paragraph 2.37(d)(i) of the Public Consultation states that “A *reasonable fee may be charged to recover the cost of providing the service to port the requested data*” but does not specify at which point the fees are required to be paid.

(b) We would like to propose that the fees be payable upfront, once the identity of the requesting individual has been validated. As the porting organisation will need to incur costs and expend effort to prepare and process the data porting request, it should be allowed to require the requesting individual to pay the requisite fees in case the individual subsequently chooses not to proceed with the transfer. Enforcing the payment upfront would likely reduce frivolous requests.

C. Format for porting data

5.4 *The requirement for easily accessible and affordable formats*

(a) Paragraph 2.37(e) of the Public Consultation states that:-

"To facilitate interoperability, the formats used should be easily accessible and affordable to any organisation receiving the data." [Emphasis added]

(b) As pointed out in paragraph 2.37(e) of the Public Consultation, there may be a wide range of types of data that could be processed by organisations and as such there may be certain types of data for which there are no formats reasonably available which are easily accessible and affordable. As such, we would like to propose that the Data Portability Obligation only be applicable if it is technically feasible for both the porting organisation and the receiving organisation.

6. SUNRISE PERIOD

6.1 We believe that the implications of the Data Portability Organisation are far-reaching, complex and multi-layered, and would require organisations to undertake extensive preparations in order to ensure they are in a position to comply with these new obligations.

6.2 We foresee that significant changes will have to be made to existing practices and processes including changes to software systems. Time is needed to test and effect changes to software systems, conduct operational and security testing, as well as train employees in the new workflow processes. In light of the foregoing, we would therefore urge PDPC to provide a sunrise period of at least 18 to 24 months before the new Data Portability Obligation comes into full effect.

7. CONCLUSION

- 7.1 We appreciate the opportunity to respond to the Public Consultation, and hope that the PDPC will take our concerns into consideration.