

## Response to Public Consultation on Review of the Personal Data Protection Act 2012 – proposed Data Portability and Data Innovation provisions

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Dear Sirs,

### Comment on proposed Data Portability Obligation

#### A. Introduction

We wish to make a comment regarding Section B. Proposed Data Portability Obligations of the Public Consultation Paper in respect of sub-header, "Covered Data", in particular, relating to paragraph 2.24(b) (read with paragraphs 2.25 to 2.27 of the same section), and paragraph 2.28 of the section. Paragraph 2.24(b) states that the Data Portability Obligation would apply to data that is "generated by the individual's activities in using the organisation's product or service"; whilst paragraph 2.28 sets out examples of data subject to, or not subject to, Data Portability Obligation in relation to, among others, "Hotel".

#### B. Summary of Suggestions

We wish to suggest that the proposed changes outlined below will make it clearer that there will be no obligation for hotels to provide data regarding room rates, prices of products and services purchased at the hotels, and rates and prices of other transactions pursuant to data that are subject to Data Portability Obligation. In this regard, we would suggest that paragraph 2.24(b) be amended to the following (**bold** wordings are suggested):

"generated by the individual's activities in using the organisation's product or service **without regards to monetary value of the product or service.**"

Similarly, we wish to suggest that with respect to paragraph 2.28, under the column "Data not subject to Data Portability Obligation", it is added to the column, "Monetary values (e.g. rates, prices) of rooms, products, services and transactions".

Please see below our rationale regarding the above suggestions.

#### C. Rationale and Comments

Our suggestions set out here take into consideration the potential infringement of the Competition Act Chapter 50B (the "Competition Act"). Pursuant to the Competition Act, anti-competitive agreements between undertakings which have as their object or effect the prevention, restriction or distortion of competition within Singapore are prohibited. In this context, the phrase, "agreement between undertakings", is typically construed broadly for the purpose of the Competition Act. As such, the mere transfer of information relating to monetary values of transactions, products or services could risk being construed as an agreement between the transferor and the transferee organisations.

Therefore, such a transfer regarding the monetary values of transactions at the hotels such as room rates, room services and food and beverages could potentially be construed by the Competition and Consumer Commission of Singapore as infringing the Competition Act due to anti-competitive agreements between undertakings even if the hotels have no intention to infringe the Competition Act. It could also be too onerous for hotels to assess and determine each time whether the transfer of monetary values to another hotel would infringe the Competition Act whilst being mindful of their requirement to comply with the proposed obligations under the Personal Data Protection Act 2012.

#### **D. Conclusion**

We believe that our suggestions as set out above will help organisations to avoid the dilemma between their compliance of the Competition Act Chapter 50B and the Personal Data Protection Act 2012. The Consultation Paper has already set out in reasonable details relating to the issue of confidential commercial information that could harm the competitive position of an organisation. We hope that our suggestions will help to provide greater clarity regarding the issue of competition laws concerning the disclosure and transfer of monetary values, which could be construed as price-sensitive or anti-competitive under the Competition Act Chapter 50B.