



**SINGAPORE TELECOMMUNICATIONS LTD**

**SUBMISSION TO THE PERSONAL DATA PROTECTION COMMISSION**

**IN RESPONSE TO THE**

**PUBLIC CONSULTATION ON PROPOSED ADVISORY GUIDELINES ON THE  
APPLICATION OF THE PERSONAL DATA PROTECTION ACT TO  
SCENARIOS FACED IN THE TELECOMMUNICATION SECTOR**

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("PDPC")  
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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 services 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 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 SingTel welcomes the opportunity to provide comment on the proposed advisory guidelines for the telecommunications sector ("**Guidelines**").
- 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 The Guidelines provide a reasonable level of assistance and direction to industry participants in relation to the PDPC's interpretation of the *Personal Data and Protection Act 2012* (“**PDPA**”) in the context of the telecoms sector.
- 2.2 While the Guidelines represent a step in the right direction, SingTel also considers that the Guidelines could benefit from further development and refinement to take account of some of the issues that have been identified in this submission.
- 2.3 The key areas that can benefit from further refinement and consideration include:
- (a) **Unduly wide interpretation of the concept of personal data:** SingTel is concerned by the overly expansive interpretative approach adopted by the PDPC in relation to the concept of personal data. Many of the types of information that have been identified by the PDPC as being personal data are unlikely to strictly satisfy the corresponding definition of “personal data” in the PDPA. This is because these types of information are not, when viewed in isolation or combined with other types of information, necessarily capable of identifying an individual. The PDPC's approach has resulted in some types of activities, such as the disclosure of a telephone number to the recipient of a call or message, being subject to the operation of the PDPA. This in turn has prompted the PDPC to adopt particular interpretations of the PDPA provisions to avoid the creation of compliance issues for telecoms operators. While SingTel does not necessarily object to the conclusions that have been ultimately reached, SingTel submits that a better approach from a policy perspective would be to treat certain types of information, such as information that simply allows an individual to be contacted, as not constituting personal data in the first instance.
  - (b) **Application of the PDPA to roaming services:** SingTel does not consider that the provision of information between local and international operators to support roaming services will necessarily be captured by the PDPA. The provision of outbound roaming services by foreign operators is unlikely to entail the disclosure or transfer of personal data by local operators on the basis that the information being disclosed is highly limited in nature and will not allow the foreign operator to necessarily establish the identity of the roaming subscriber. Similar issues arise in the context of inbound roaming services.

- (c) **Clear and unambiguous consent in the context of prepaid services:** While SingTel appreciates that the way that telecoms operators comply with the Consent Obligation and Disclosure Obligation in relation to prepaid services is likely to vary and flexibility is required, SingTel would appreciate greater industry guidance on how telecoms operators can comply with the requirement in section 43 of the PDPA to obtain clear and unambiguous consent to the sending of the specified message in relation to prepaid services.
  - (d) **Do Not Call provisions:** SingTel considers that there would be merit in the PDPC providing specific examples of common messages sent by telecoms operators that would not constitute specified messages.
  - (e) **Change in personal particulars:** SingTel seeks clarity from the PDPC as to how it views the requirement to obtain consent for collection, use and disclosure of personal data in the event that a customer changes, for example, its residential address or its NRIC.
  - (f) **Access and Correction Obligations:** SingTel believes that the PDPC may want to provide a guide as to a prescribed set of personal data that should be provided
- 2.4 SingTel looks forward to working with the PDPC to further refine and develop the Guidelines.

### 3 COMMENTS

- 3.1 SingTel welcomes the development of sector specific guidelines on the application of the PDPA to the telecommunications sector in Singapore.
- 3.2 SingTel is committed to delivering telecommunications services to its customers in a way that complies with the requirements of the PDPA. However, SingTel also wishes to ensure that the regulatory burden associated with compliance with the PDPA remains proportionate and does not result in unnecessary costs for industry participants or inconvenience to end-users.
- 3.3 While the Guidelines provide the telecoms sector with some high level direction in understanding how the PDPC will potentially interpret the PDPA, we consider that there are certain aspects of the PDPC's proposed approach which are likely to raise a

range of issues for telecoms operators and which should be reconsidered by the PDPC in a further version of the Guidelines. SingTel considers that further development and refinement of the Guidelines would ensure that the operation of the PDPA remains proportionate and focused, while ensuring that personal data of subscribers is subject to sufficient levels of protection.

3.4 Before addressing specific components of the Guidelines, SingTel makes the following broad comments:

- (a) the Guidelines would be improved if they provided more detailed guidance on how the provisions of the PDPA will be interpreted and applied by the PDPC. As drafted, the Guidelines provide a high level commentary on the potential application of the PDPA on the telecommunications sector, without a detailed legal and technical analysis that participants in the telecommunications sector require to be able to operationalise and implement the requirements of the PDPA;
- (b) the Guidelines do not accurately reflect the technical and operational aspects of service delivery by telecoms operators in some areas. In some cases, such as inbound and outbound roaming, SingTel submits that the PDPC's interpretation is not tenable and is unlikely to be capable of implementation in any event having regard to established global practice in relation to roaming services; and
- (c) the PDPC appears to have taken an expansive interpretation to the meaning of personal data, which in turn has resulted in certain activities which should not be subject to the PDPA being caught by the operation of the PDPC. SingTel submits that there is scope for the PDPC to take a more straightforward approach to the application of the definition of personal data to the telecoms sector.

3.5 In light of these broad comments, SingTel would encourage the PDPC to engage in a further round of consultation with the telecoms sector to further develop and refine the Guidelines.

3.6 SingTel notes that some of the proposals from the PDPC relate to a consultation by the Info-communications Development Authority of Singapore (“**IDA**”) in relation to the review of end-user service information provisions in the Telecom Competition Code (2012) (“**Code**”). SingTel considers that the PDPC should have regard to the

proposals to be put forward by the IDA and industry submissions on that consultation prior to finalising the Guidelines.

- 3.7 SingTel provides the following specific comments to the PDPC on its proposed Guidelines.

***Personal Data***

- 3.8 SingTel submits that the PDPC has adopted an overly expansive interpretation of the concept of ‘personal data’ for the purposes of applying the PDPA to the telecoms sector.
- 3.9 This approach has created some ambiguity in relation to the application of the PDPA to certain activities in the telecoms sector.
- 3.10 While SingTel acknowledges that certain types of information, such as a telephone number or International Mobile Equipment Identity (“IMEI”) number, would constitute personal data in certain circumstances where such information is combined with other types of information and can then be used to ascertain the identity of an individual, SingTel does not consider that these types of information can be reasonably regarded as personal data in circumstances where the information exists in isolation.
- 3.11 For example, a telephone number will not, in and of itself, necessarily result in the identification of an individual, except where the identity of that person is known in advance or capable of being ascertained through the combination of that telephone number with other information (e.g. the person’s name, address and other end-user account information). Similarly, it is not clear how the combination of an IMEI and a data point like location information would necessarily lead to the identification of a specific individual, or how just an account / bill reference number along with account balance can lead to the identification of a specific individual.
- 3.12 The PDPC’s approach in this regard has resulted in a situation where the provision of calls or messages results in the disclosure of personal data to the recipient of that communication. While this is discussed separately below, the genesis for this construction is the assumption that a telephone number constitutes personal data for the purposes of the PDPA. SingTel does not consider that this is a tenable construction.

3.13 As the Australian Law Reform Commission has recently noted in the context of a report that provided the basis for recent changes to the Privacy Act in Australia:<sup>1</sup>

*“Information that simply allows an individual to be contacted—such as a telephone number, a street address or an IP address in isolation—would not fall within the recommended definition of ‘personal information’”.*

3.14 Of course, the above statement is not intended to suggest that a telephone number or other similar information will not constitute personal data when combined with other types of information. However, it does suggest that a more flexible approach to the interpretation of the characterisation of telecommunication identifiers like phone numbers and IMEI numbers needs to be considered by the PDPC to avoid a situation where individual data sets are inadvertently captured, or treated as personal data.

3.15 SingTel asks that the PDPC provides more specific guidance on when information may become personal data in the telecommunications context, and more precise guidance on when exemptions may apply. Further, the Guidelines could provide more practical advice to telecoms operators like SingTel on what to do with information once it has been classified as personal data.

### ***Outbound roaming***

3.16 The PDPC requires a Singapore mobile operator to comply with the Transfer Limitation Obligation in respect of the transfer of the personal data of the outbound roamer to an overseas mobile operator (ie an international roaming partner). Put simply, the Transfer Limitation Obligation under section 26 of the PDPA prohibits the transfer of personal data to a country or territory outside Singapore except where the recipient of that information is subject to a standard of protection in relation to the personal data that is comparable to the protections afforded under the PDPA. The PDPA also provides a mechanism for the PDPC to grant exemptions in relation to this obligation.

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<sup>1</sup> Australian Law Reform Commission, *The Privacy Act: Some Important Definitions, What is ‘personal information’?*, paragraph 6.6.1. See, <http://www.alrc.gov.au/publications/6.%20The%20Privacy%20Act%3A%20Some%20Important%20Definitions/what-%E2%80%98personal-information%E2%80%99>



- 3.17 While the Transfer Limitation Obligation appears conceptually straightforward, the implementation of this obligation in the context of international roaming arrangements is inherently complex. For example, it may not always be possible for a Singapore mobile operator to be able to comply with the Transfer Limitation Obligation in its roaming arrangements with overseas mobile operators.
- 3.18 SingTel has a very large number of roaming agreements in place with overseas mobile operators to allow SingTel customers to roam on foreign networks while those customers are overseas. These agreements are typically based on the standard form GSMA roaming agreement, which contains basic requirements applicable to overseas mobile operators in relation to confidentiality and data privacy.
- 3.19 These basic requirements do not necessarily extend to requiring the overseas mobile operators to offer a level of data protection and privacy which is equivalent to that which exists in the home operator's market. It is also not typical for these agreements to be negotiated (or extensively negotiated).
- 3.20 Accordingly, it is likely to be difficult for a Singapore mobile operator to be able to secure a commitment from an overseas mobile operator that it will be able to offer a level of data protection and privacy which is equivalent to that found under the PDPA in Singapore in circumstances where an equivalent level of protection does not already exist under their own domestic legislation.
- 3.21 While this is unlikely to be an issue where the overseas mobile operator is based in a jurisdiction which already has a strong data protection regime (e.g. EU countries, Australia, etc.), this will present an issue for Singapore mobile operators in their dealings with overseas mobile operators in other jurisdictions which do not have such protections in place. In fact, it is probably the case that a significant number of jurisdictions in which SingTel offers roaming services through an overseas mobile operator will not have a level of protection which is equivalent to the PDPA.
- 3.22 In addition, SingTel does not agree that the provision of outbound roaming services to Singapore mobile customers will trigger the operation of the Transfer Limitation Obligation and involve the disclosure of personal data to overseas mobile operators. SingTel submits that this assumption, which is made by the PDPC in the Guidelines, is not correct.

- 3.23 The information which a Singapore mobile operator discloses to an overseas mobile operator in relation to an outbound roaming subscriber will generally be the MSISDN of the subscriber and information about that subscriber's eligibility for roaming services and related information, such as the type of roaming services that should be provided (eg voice, data, etc)
- 3.24 SingTel does not consider that the above mentioned information will constitute personal data for the purposes of the PDPA in the context of outbound roaming services provided by overseas mobile operators. Put simply, the provision of this information is unlikely to result in a situation where the identity of the roaming subscriber will be capable of being readily ascertained by the overseas mobile operators. Accordingly, SingTel submits that the Transfer Limitation Obligation will not be applicable in instances where this basic information is transferred to overseas mobile operators for the purpose of supplying roaming services to Singaporean mobile subscribers.
- 3.25 Finally, in the event that the PDPC does not agree with SingTel's categorization that the information which is provided to overseas mobile operators does not constitute personal data, SingTel requests that the PDPC provide some clarification on how this obligation would be satisfied in practice.
- 3.26 In particular, SingTel wishes to understand whether the PDPC would be inclined to issue an exemption under section 26(2) of the PDPA to Singapore mobile operators in relation to the application of the Transfer Limitation Obligation to outbound roaming services. SingTel would seek to apply for such an exemption in the event that the PDPC indicated that it considered that the disclosure of personal data to overseas mobile operators constituted a transfer of personal data under section 26 of the PDPA.

### *Inbound roaming*

- 3.27 The PDPC has stated that, in respect of inbound roaming services, Singapore mobile operators collect some personal data as part of the provision of roaming services to that inbound roamer. The PDPC also states that Singapore mobile operators could be the data intermediaries of overseas mobile operators to the extent that the Singapore mobile operator is processing information (e.g. called party, time and duration of call, etc.) on behalf of the overseas mobile operator to support wholesale charging and end-user charging by the home operator.

- 3.28 SingTel disagrees with the PDPC's categorization, which does not accurately capture the way in which inbound roaming services are supplied and fails to accurately explain how the exchanged data constitutes personal data in the first place.
- 3.29 As noted above in the context of outbound roaming services, SingTel does not consider that the provision of inbound roaming services will necessarily result in the disclosure of personal data to a Singapore mobile operator by the relevant overseas mobile operator. Again, the exchanged information is limited and would not permit the Singapore mobile operator to necessarily identify the person to whom roaming services is being provided.
- 3.30 It will not generally be possible for a Singapore mobile operator to establish the identity of the roaming subscriber through the information which is typically collected by the overseas mobile operator. The other relevant data points which would be necessary to enable the Singapore mobile operator to identify the roaming subscriber are held by the overseas mobile operator and are not typically available to the Singapore mobile operator that provides roaming services.
- 3.31 Accordingly, SingTel disagrees that the provision of inbound roaming services will necessarily result in Singapore mobile operators acting as the data intermediary of the overseas mobile operator of the roaming subscriber. Therefore, even though SingTel would treat the information it collects and processes in accordance with the Protection Obligation and Retention Limitation Obligation as a matter of course, SingTel does not consider that the provisions of the PDPA would be applicable at all in this instance.
- 3.32 SingTel requests that the PDPC reconsider its guidance on this matter in light of the additional information provided above.
- 3.33 In relation to circumstances where a Singapore mobile operator uses the telephone number of a roaming subscriber to market its own services to that person, SingTel understands from the Guidelines that this will trigger the operation of the Data Protection Provisions generally, unless the Singapore telecoms operator is able to obtain the benefit of an exception in this instance. In this regard, SingTel strongly supports the IDA authorising telecommunications licensees to collect and use information from inbound roamers to offer roaming related information and services, which in turn will result in an exception to the Consent Obligation being created. SingTel intends to make submissions to the IDA on this issue.

3.34 Finally, SingTel agrees with the PDPC's comment where a Singapore mobile operator carries out activities associated with inbound roaming that do not involve personal data (e.g. using anonymous inbound roaming data for planning purposes), the Data Protection Provisions would not apply. This would not satisfy the definition of personal data.

***Provision of subscriber identity for calls or text messages***

3.35 In its Guidelines, the PDPC appears to suggest that the provision of subscriber identity related information, such as a telephone number, in the context of calls or messages being made by a subscriber should be considered to be personal data and that the person identified by that data should be deemed to have consented to the collection, use and disclosure of that data for the purpose of calling and message sending.

3.36 In particular, the PDPC has stated that:

- (a) a subscriber that elects to have an unblocked or listed telephone number would be aware that the telephone number would be collected, used or disclosed for the purpose of identifying that subscriber to other parties. Similarly, where that subscriber places a call or sends a message, that subscriber should be deemed to have consented to the collection, use or disclosure of the number for the purpose of identification to the receiving party; and
- (b) a subscriber that elects to have a blocked or unlisted telephone number should be considered as not consenting to the collection, use or disclosure of that number when making calls, etc.

3.37 SingTel does not consider that such data should be considered to be personal data in the first place. SingTel submits that the better approach is that information that simply permits a person to be contacted (e.g. a phone number, IP address, etc.) should not be considered to be personal data at all. By definition, a telephone number is not personal data in its own right because it does not allow for the identification of an individual when that data exists in isolation. The same can be said of IMEI and other subscriber specific information where that information exists or is used in isolation.

- 3.38 On this basis, SingTel submits that the PDPC should reconsider its adopted approach in sections 4.9-4.11 of the Guidelines. However, if the PDPC is not inclined to change its approach, SingTel submits that the PDPC's approach should be expanded to make it clear that the telecoms operator that receives the call or message (the recipient network operator) is also covered by the deemed consent given by the relevant individual. This does not appear to be explicitly covered in the PDPC's analysis and should be clarified.
- 3.39 Given the multi-operator environment in Singapore, SingTel submits that the deemed consent approach in relation to unblocked or listed numbers should also extend to interconnecting operators that use that information to provide services to their own subscribers (e.g. caller ID services to recipients). In this regard, SingTel understands that the IDA has proposed the authorisation of telecommunications operators for the purpose of interconnection and inter-operability and SingTel supports such an authorisation as it would enable the recipient network operator to provide the telecommunication services to its own customers without fear of an inadvertent breach of the PDPA.

#### ***Displaying personal data in itemised bills***

- 3.40 Again, SingTel does not consider that the telephone number should be considered to be personal data in the first place. However, if the PDPC is not inclined to change its approach, SingTel supports the PDPC's view that:
- (a) consent obtained by the subscriber to make a call or send a message to an individual would be sufficient for the recipient's telephone number to be displayed in the subscriber's itemised bill; and
  - (b) consent given by an individual who makes a call or sends a message to the subscriber would extend to the display of the caller's telephone number in the subscriber's itemized bill.

### ***Prepaid Mobile services***

- 3.41 In its Guidelines, the PDPC has accurately captured some of the key practices that are currently used in the sale of prepaid services, mainly, mobile operators do not always require prepaid subscribers to sign written contracts, but rather will direct those subscribers to terms and conditions of supply on the operator's website
- 3.42 While SingTel appreciates that it is up to each mobile operator to establish business methods that will allow for compliance with the Notification Obligation and the Consent Obligation, the PDPC proposed Guidelines still do not give guidance as to how the Singapore mobile operator can correspondingly also comply with the requirements under section 43 of the PDPA in relation to obtaining clear and unambiguous consent.
- 3.43 SingTel notes that the proposals put forward by the PDPA for satisfying the Notification Obligation and Consent Obligation in relation to prepaid services would not constitute clear and unambiguous consent for the purposes of section 43 of the PDPA. Furthermore, the PDPC has previously indicated in its Advisory Guidelines on the Do-not-Call Provisions that a message sent to a Singapore telephone number to obtain clear and unambiguous consent for the sending of specified messages would be considered a specified message for the purpose of the Do-not-Call Provisions.
- 3.44 The PDPC could consider permitting the sending of such messages as these could also be a way that the Singapore mobile operator could obtain consent for section 43 of the PDPA.

### ***Do Not Call provisions***

- 3.45 The PDPC has clarified that a message sent to a Singapore telephone number solely to provide account information / product information relating to the ongoing use of the service / product by the individual would not constitute the sending of a specified message and would fall within paragraph 1(d) and 1(e) of the Eighth Schedule of the PDPA.
- 3.46 The PDPC has provided examples in the Advisory Guidelines on the Do-Not-Call Provisions as to what does not constitute a specified message (see Section 3 of the Advisory Guidelines). SingTel considers that there would be merit in the PDPC providing specific examples of common messages sent by telecoms operators that would not constitute specified messages.

3.47 The provision of such examples would enable telecoms operators to assess better how their business systems and practices comply with the requirements of the PDPA.

*Other issues*

(i) Change in personal data

3.48 SingTel seeks clarity from the PDPC as to how it views the requirement to obtain consent for collection, use and disclosure of personal data in the event that a customer changes, for example, its residential address or its NRIC.

3.49 To illustrate, a telecoms operator may have obtained the consent from a customer to collect, use and disclose its residential address or NRIC with effect 2 July 2014.<sup>2</sup> However, after 2 July 2014, the customer may decide to change their residential address.

3.50 It is unclear whether the PDPA requires that the telecoms operator to obtain consent to collect, use and disclose the new residential address.

3.51 SingTel notes that to require consent to be obtained all over again is burdensome and not necessary if the telecoms operator had stated clearly in its consent provisions that the consent sought is for the 'type' or 'category' of personal data (e.g. whatever constitutes the residential address, whatever that constitutes the telephone number). We believe that this is the way that a customer would also understand the consent requested and granted.

3.52 We stress that this does not affect the customer's ability to withdraw consent; customers who wish to withdraw consent from the collection, use and disclosure of its personal data for any reasonable purpose will still be able to do so.

(ii) Access & Correction Obligations

3.53 The PDPC has yet to issue any advisory guidelines in relation to the access and correction obligations. We ask that the PDPC issues its guidelines soon to facilitate implementation activities.

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<sup>2</sup> In the case of an existing customer, the telecoms operator may grandfather the consent for the use of the personal data for an existing purpose.

3.54 Given the large amount of information that is potentially involved, we believe that the PDPC may want to provide a guide as to a prescribed set of personal data that should be provided to customers for the purpose of compliance with the Access and Correction Obligation so that telecoms operators do not end up retaining unnecessary information on grounds that a customer may ask to sight this information. An indicative set of personal data could for example involve : name, address and or telephone number etc

#### **4 CONCLUSION**

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

4.2 While the advisory guidelines are helpful for the industry and provide a reasonable starting point, we respectfully request that the PDPC undertake steps to provide further guidance on the matters identified in this submission and to also reconsider its position on various issues where SingTel considers the PDPC's application of the PDPA to be problematic.

4.3 We look forward engaging further with the PDPC on this important matter.