

**PUBLIC CONSULTATION BY MINISTRY OF INFORMATION, COMMUNICATIONS
& THE ARTS ON THE PROPOSED CONSUMER DATA PROTECTION
REGIME FOR SINGAPORE**

**SINGAPORE TELECOMMUNICATIONS LIMITED AND ITS RELATED
COMPANIES' RESPONSE**

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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 services 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 make a submission in response to the consultation paper issued by the Ministry of Information, Communications & the Arts (**MICA**) in relation to the consultation on the proposed consumer Data Protection regime for Singapore (**Consultation**).
- 1.5. This submission is structured as follows:
 - Introduction
 - Executive Summary
 - Specific Comments
 - Conclusion

2. EXECUTIVE SUMMARY

- 2.1. SingTel's view on the key points of the Consultation can be summarised as follows:
 - (a) SingTel generally supports the move for a consumer Data Protection framework in Singapore; as a leading info-communications company, SingTel respects the need to protect our customers' data and we have put in place the necessary systems and mechanisms to protect customer data from being compromised or misused;

- (b) data is vitally important for the provision of info-communications and innovation and such should not be stifled by a consumer Data Protection framework;
- (c) organisations should only be regulated by either the Data Protection framework or, if the sector is currently regulated by separate sectoral specific laws and regulations, then such sectors should only be regulated by the sector specific laws and regulations to the extent of Data Protection;
- (d) if organisations subject to sector specific laws and regulations are subject to the new Data Protection laws, then information collected under pre-existing sectoral specific laws should be “grandfathered” and deemed to comply with the new Data Protection framework;
- (e) the definition of personal data is too wide and only information that directly identifies the customer should be considered to be personal data;
- (f) Data Protection laws should apply to all private sector organisations who have activities in Singapore, not just those located in Singapore;
- (g) the proposed consumer Data Protection law should only apply to individuals who have an existing contractual relationship with the organisation;
- (h) consent should only be required for specified key purposes or generically described purposes, and not required for each required purpose which is impractical;
- (i) consent should not be required for employee personal details;
- (j) company representatives should be determined by the organisation;
- (k) cross-border personal data transfer should require at least reciprocal protection;
- (l) time periods for updating the accuracy of data should be more flexible;
- (m) retention of data for a specified period should be removed from the Data Protection framework; other laws and regulations deal with retention of information for specified periods; and
- (n) the sunrise period should be no less than two (2) years.

Either Data Protection law or pre-existing sector regulations should apply, not both

- 2.2. Many existing telecommunication and broadcast licensees, like SingTel, already comply with existing regulatory requirements in regard to the use of customer data. When applying the proposed consumer Data Protection law, due attention should be given to the fact that there are existing organisations that have already put in place mechanisms and effort to protect their customer data.
- 2.3. SingTel submits that in so far as there are sectors that have already put in place their activities for compliance with current consumer Data Protection requirements of their

pre-existing sectoral regulation, these sectors should be allowed to “grandfather” existing frameworks that they have put in place.

- 2.4. Organisations that are currently regulated by sector specific regulations should not also be required to comply with the Data Protection law. That is, there should not be dual regulations for any organisation, if an organisation is subject to sector specific regulation, then this should be the only regulation that applies to that organisation. The Data Protection law should apply to organisations that are currently not subject to any sector specific regulation.
- 2.5. Furthermore, where existing exclusions applied under pre-existing sector specific laws, those exclusions should continue to apply.

Importance of data for the provision of info-communications and innovation

- 2.6. The delivery of data within and across networks is vital to providing info-communications. In order to provide info-communications services within and across various network platforms, or to enable other parties to deliver services to customers, it is often necessary to exchange network related information, for example, the calling telephone (A-party) number, the called telephone number (B-party).
- 2.7. Increasingly, customers are also expecting to receive information or services that are relevant to them or reflect their preferences or interests. It is important that Data Protection laws do not result in stifling or otherwise dampening the development of new and innovative services in Singapore that would improve customer services or the customer experience.
- 2.8. Innovation could be adversely affected by overly strict consents required for the collection, use and disclosure of customer data. Data Protection laws should balance the need to protect customers with the demand to provide customers with new and innovative services.

Proposed definition of personal data is too wide

- 2.9. SingTel considers that the proposed personal data definition is too wide and such a wide definition is likely to stifle or otherwise dampen the development of new and innovative services that would improve customer services or the customer experience.

- 2.10. SingTel proposes that a more appropriate definition of personal data, which would not stifle innovation, would be to regard only the following data as ‘personal data’:
- (a) data that is directly related to managing the ongoing business relationship between the organisation and the customer; and
 - (b) data that directly identifies an individual without the need for any other data.

Data Protection law should apply to organisations who have activity in Singapore

- 2.11. The proposed consumer Data Protection law should apply to all private organisations in Singapore.
- 2.12. SingTel proposes that every organisation that wishes to collect data about a Singaporean should have to comply with the local / prevailing legislation in Singapore including the proposed consumer Data Protection law. SingTel, therefore, considers that the Data Protection law should apply not only to organisations in Singapore, but rather organisations whose activities occur in Singapore. It is not equitable that overseas organisations are able to deliver their services without having to comply with the laws and regulations in Singapore. The proposed law should protect any local customer who takes-up a service(s) with any organisation, rather than limit that protection to only local customers who take-up services with an organisation that has a presence in Singapore.

There should be certain exclusions from the Data Protection law

- 2.13. To obtain consent from individuals whose data is already in the public domain is clearly impractical. The proposed consumer Data Protection law should also only apply to individuals who have an existing contractual relationship with the organisation. Furthermore, data that circulates in the public domain, whether it relates to the same individual or an individual that does not have a contractual relationship with the organisation, should not constitute personal data for the purpose of the law.
- 2.14. Whilst we generally agree that organisations that outsource the collection / processing of data are still responsible for the management of such data, this approach cannot apply where separate organisations may work in joint promotional efforts. A company should not be held culpable for a breach of the proposed consumer Data Protection law on basis that its joint marketing partner has not obtained the consent of its own customers for the use of its own data.

- 2.15. In relation to literary and artistic purposes, SingTel agrees that there should be no exclusions granted from the Data Protection law for such purposes.

Consent should be obtained generally for specified key purposes

- 2.16. Flexibility should be adopted when organisations seek consent. An organisation should outline most of the key purposes upfront when seeking customers' consent. Any enforcement agent must grant flexibility when assessing whether the specific use falls within the key purposes or generically described purposes, rather than to demand and expect that an unending list of purposes be identified. For instance, organisations should not have to needlessly seek consent for the 'common-sense' purposes, for example use of data for billing, fraud management, planning, provisioning, managing bad debt and generally to provide their own services to their customers.
- 2.17. SingTel submits that in so far as there are sectors that have already put in place their activities for compliance with current consumer data protection requirements of their pre-existing sectoral regulation, these sectors should be allowed to "grandfather" existing consents that they already obtained and retain current scope of the consent. This grandfathering would only be necessary to the extent that these organisations are subject to the new Data Protection laws.

Consent should not be required for employee personal details

- 2.18. Employers should not need to obtain consent from their employees. SingTel suggests that the need for informing employees only apply when there is possible grey area, for example, where the employer is not certain that the use of the data falls within the stated purposes. Only then would the employer inform the employee. We further suggest that the limitation in relation to what is deemed as personal data that is not related to the individual's employment be removed.

Company representative should be determined by the organisation

- 2.19. The choice of the designated company representatives responsible for answering customer queries should be left to the organisation, provided that such representatives should always be equipped with the necessary data and knowledge to be able to address customer queries in relation to the organisation's/ company's Data Protection policies and the collection of customer data.

Retention of data should not be the focus of Data Protection laws

- 2.20. Retention of data for specified periods is not usually within the purview of Data Protection laws and should be removed from the Data Protection framework. Rather, the Data Protection framework should focus on organisations destroying data after a period that the data is no longer used or required.
- 2.21. For example, where data has an immediate effect on the customers' contractual obligation or on-going relationship where the service provider is attempting to provide services to the customer or potential user, the retention period should be reasonable enough to permit the service provider to manage this.

Cross-border personal data transfer should require at least reciprocal protection

- 2.22. Where an organisation transfers customer data out of Singapore, they should have put in place measures to protect their customer data. However, given that not all organisations can reasonably ensure that their cross-border partner has all the necessary measures, the regulatory approach should be principle-based and we note that any enforcement must review all matters at hand. For example, where the organisation has notified the cross-border partner of the Singapore data protection requirements and sought that appropriate or similar measures be taken by the cross-border partner to comply with the Singapore Data Protection laws, then the organisation's conduct should be regarded as adequate attempts to ensure that protection is accorded to the customer data where there is cross-border transfer, and no liability should be placed upon the organisation for any breach by the cross-border partner under Singapore's Data Protection law.

Time periods for updating the accuracy of data should be more flexible

- 2.23. SingTel generally agrees that where an organisation becomes aware that personal data in its database is inaccurate, reasonable steps should be taken by the organisation to correct that data, provided that the customer can be contacted to validate the correction.
- 2.24. However, SingTel considers that flexibility relating to the timing of organisations correcting such incorrect data as there can be a gap between the time the updated data is first provided to the organisation and the time it is updated in the organisation's database. Such delays can be due to delays in gaining confirmation from individuals and also minor practical administrative constraints relating to volumes of data to be corrected.

- 2.25. SingTel proposes that flexibility be given to organisations in regards to the timing of updating incorrect information.
- 2.26. SingTel also proposes that organisations should be given flexibility about the measures and tools they use deem appropriate to secure the data collected.

Retention period should not need to be disclosed to public

- 2.27. SingTel proposes there is no need to inform customers of the retention period.
- 2.28. SingTel proposes that organisations should not be required to inform customers how their data has been used, except for the fact that the general / key purposes should be identified upfront to the customer. Nonetheless, we agree that a reasonable administrative fee should be applied to cover costs of customer accessing their data.

Sunrise period should be no less than two (2) years

- 2.29. A single sunrise period should apply for all provisions in the proposed Data Protection law and all organisations. SingTel asks that the sunrise period be no less than two (2) years.
- 2.30. SingTel agrees that consent should be deemed to have been granted for the use and disclosure of existing personal data, that is, any data of customers collected before the effective period of the proposed consumer Data Protection law.
- 2.31. SingTel does not see any instance where different organisations may require different transitional arrangements. Rather, we propose a slightly longer transitional period to apply to all, that is, a no less than two (2) years sunrise period.

Singapore does not need a Do-Not-Call Registry if the proposed Data Protection regime is in place

- 2.32. SingTel sees practical issues with the implication of a Do-Not-Call Registry and believes that the proposed Data Protection law should adequately oblige organisations to reasonably use personal details which makes a Do-Not-Call Registry is not necessary.

3. SPECIFIC COMMENTS

Question 1: Do you have any views / comments on the impact of the proposed DP law on specific sectors? Do you have any suggestions on measures to mitigate this or any other anticipated impact?

Question 2: With reference to paragraph 3.8, do you have any views / comments on the concurrent application of the DP law with existing sectoral regulations?

- 3.1. SingTel generally supports the move for a consumer Data Protection regime. As a leading info-communications company, SingTel respects the need to protect our customers' data and we have put in place the necessary systems and mechanisms to protect customer data from being compromised or misused.
- 3.2. For example, we already have in place systems to protect customer data from being compromised or misused by third-party vendors. Our databases are password-protected with limited personnel with access. Employees are trained to handle customer information and other proprietary company information with the utmost care and confidentiality. Furthermore, SingTel also complies with other legislations or regulations relating to use of customer data, for example, our promotional messages are labelled as advertisements in compliance with the Spam Control Act and customers have the option to unsubscribe from our mailing lists. We also limit the number of direct marketing messages that we can send to our customers via our marketing channels over a given time period.
- 3.3. SingTel is already regulated under prevailing legislation that applies to the telecommunications and broadcast industries and complies with the regulatory requirement to protect customer data. Specifically, SingTel currently complies with regulatory requirements set by the Info-communications Development Authority of Singapore (**IDA**) and the MDA based on their powers under the Telecommunications Act (Cap 323) and the Broadcasting Act (Cap 27) respectively.
- 3.4. Section 3.2.6 of the Telecom Competition Code 2010 states the requirements applicable to all telecommunication licensees in relation to the use of their customers' data. Section 3.6 of the Media Market Conduct Code 2010 states corresponding and similar requirements applicable to broadcast licensees. SingTel has fully complied with such requirements since the early 2000s with the implementation of the first Telecom

Competition Code and subsequently complied with the Media Market Conduct Code when it was first established.

- 3.5. Both the Telecom Competition Code 2010 and the Media Market Conduct Code 2010 set out in detail the need for licensees to obtain their customers' consent for the use of their data, the ability of customers to withdraw consent etc. The Codes also require licensees to indicate the uses to which information may be put (and the means for customers to withdraw consent) in their contracts or terms and conditions of services.
- 3.6. Many existing telecommunication and broadcast licensees, like SingTel, already comply with existing regulatory requirements in regard to the use of customer data. When applying the proposed consumer Data Protection law, due attention should be given to the fact that there are existing organisations that have already put in place mechanisms and effort to protect their customer data.
- 3.7. SingTel submits that in so far as there are sectors that have already put in place their activities for compliance with current consumer Data Protection law according to the requirements of their pre-existing sectoral regulation, these sectors should be allowed to "grandfather" existing frameworks that they have put in place.
- 3.8. Organisations that are currently regulated by sector specific regulations should not also be required to comply with the Data Protection law. That is, there should not be dual regulations for any organisation, if an organisation is subject to sector specific regulation, then this should be the only regulation that applies to that organisation. The Data Protection law should apply to organisations that are currently not subject to any sector specific regulation.

Question 3: Do you have any views / comments on the proposed definition of personal data outlined at paragraphs 3.9 to 3.11?

Question 4: With reference to paragraphs 3.15 to 3.16, do you have any views / comments as to whether the proposed DP law should cover the personal data of the deceased? If it should, do you have any views / comments on the proposed approach to the protection of personal data of the deceased?

Definition of personal data

- 3.9. The definition of personal data is too general and wide; practical limitations should be set for retention and customer access.
- 3.10. The Consultation has outlined its proposal for the definition of personal data:
- (a) “personal data” means data about an identified or identifiable individual; where “individual” means a natural person, whether living or deceased;
 - (b) it can be a single piece of information (or a group of information taken together) that relates to an identified or identifiable individual will be considered personal data;
 - (c) personal data refers not only to unique identifiers, that is, attributes assigned to an individual which are guaranteed to be unique and hence can be used to accurately identify a person, for instance, a person’s National Registration Identity Card (**NRIC**) number, passport number or photograph, but extends to any information about an identifiable individual; and
 - (d) IP addresses of devices linked to ownership of the device can be considered personal data.
- 3.11. The proposed definition is too wide and very general. Whilst SingTel does not object, in principle, to a definition that attempts to incorporate any data about the customer, the proposed broad definition, coupled with the various accompanying requirements of the proposed consumer Data Protection framework (for example retention of customer data, customer access to their data, etc.) will result in excessive and onerous obligation(s) on organisations.
- 3.12. In particular, with the proposed consumer Data Protection framework, organisations are faced with the requirement to archive anything that may be remotely related to customers. For example, for the purpose of delivering location-based services, customers would need to consent to their locations being used. A customer’s location would change rapidly over the course of a day. To expect organisations to retain such data and allow customers to view the same data would mean high retention and database costs. Similarly, depending on the type of broadband Internet service that is used, a customer may have different IP addresses over time. Clearly, the requirements are unrealistic.
- 3.13. SingTel notes that there may be guidelines issued on examples of what constitutes personal data after the enactment of the proposed consumer Data Protection law. Whilst

we welcome such guidance, we are concerned with an approach that may generalise all data about a customer to be personal data. For example, we note that the Consultation indicates that there will not be a hardwired list of personal data; any data could be customer data depending on the circumstances.

- 3.14. SingTel submits that a more appropriate approach would be that any data that identifies the customer directly or explicitly without the need for any other data should be considered personal data for the purposes of the proposed consumer Data Protection law.
- 3.15. Similarly, data that is directly related to managing the ongoing business relationship between the organisation and the customer (such as data that is used for the purposes of billing, managing bad debt etc.) should also be considered personal data given that these have direct effects on managing the on-going business relationship between the customer and the organisation involved.
- 3.16. SingTel notes the Consultation also proposes exemptions from specific clauses of the proposed Data Protection law for certain requirements, including what types of personal data should be covered under the proposed law. SingTel welcomes this approach. We agree that some data is not completely sensitive and does not necessarily need to be covered under the proposed law, including data in the public domain.

Personal data of deceased individuals

- 3.17. SingTel agrees that it would be administratively complex to extend the proposed law to cover the personal data of the deceased. As such, we agree that there should be a limitation to the requirements applicable to such data, for example, only to comply with safeguarding and disclosure.
- 3.18. SingTel further proposes that the retention of data of a deceased person should be limited to a specific period and limited to only specific types of data. Typically, organisations make use of such data for the purpose of managing the outstanding payments left by the deceased. Once the organisation is aware that the customer is deceased and where the debt has been managed, organisations do not typically retain the deceased's data in their database. Even where retention is necessary, it is only limited to specific types of personal data; all other data regarding the service preferences of the customer would not be required. Therefore, the family of deceased individuals should only have rights to the data to this extent.

- 3.19. Hence, we propose that where data about deceased individuals is concerned, organisations should be required to retain such data for no more than one (1) year; the types of data retained should be limited to those specific to managing any remaining outstanding charges in the service account, for example name, address, NRIC, service numbers etc.

Question 5: Do you have any views / comments on the proposed organisations covered by the DP law?

Question 6: With reference to paragraphs 3.20 to 3.22, do you have any views / comments as to whether the DP law should extend to organisations located outside Singapore, so long as they engage in personal data collection or processing activities in Singapore? Do you have any suggestions as to how the DP law could be implemented if it should apply to such organisations?

Data Protection law should apply to organisations with activities in Singapore

- 3.20. SingTel agrees that where any proposed consumer Data Protection law is enacted, it should apply, at very least, to all private organisations in Singapore.
- 3.21. The Consultation then asks whether the proposed consumer Data Protection law should cover only organisations in Singapore or should it also cover collection and processing in Singapore regardless of where the organisations are located. The Consultation goes on further to suggest that given the difficulties in applying the proposed law to organisations located or established outside of Singapore even when data collection and processing activities occur in Singapore, the proposed law should therefore not apply to organisations located or established outside Singapore.
- 3.22. SingTel notes the comments in the Consultation that there is limited ability to investigate organisations that have no presence in Singapore. However, as a matter of principle, the proposed law should protect any local customer who takes up service(s) with any organisation, rather than limit that protection to only local customers who take up services with an organisation that has a presence in Singapore. The same local customer should not, for example, need to apply to the overseas courts in order to take action against an overseas organisation where it feels its privacy has been intruded upon because of the practices of such an overseas organisation. A further scenario that could occur is that the same customer may find that the overseas courts are not prepared to take on the

case or otherwise takes a long time to process the case, rendering the same customer without a remedy.

- 3.23. Therefore, a more reasonable and justifiable requirement should be that any / every organisation (regardless of where they are physically located) that wishes to collect data about a Singaporean should first have to comply with the local / prevailing legislation in Singapore. We point out, for example, cases where global entities like Google and Facebook are actively collecting customer data worldwide, including data of Singapore customers. Organisations like SingTel are also providing media and content based services to customers; we compete with Yahoo!, Google and Facebook. It is not equitable that such overseas organisations are able to deliver their services without having to comply with the laws and regulations in Singapore, including the consumer Data Protection framework.
- 3.24. Our proposed approach also ensures that customers are not confused or misled by the differing practices of various organisations and companies they encounter. For example, where a local organisation obtains consent from a customer, the practice is not seen as cumbersome compared to a case where an overseas organisation offering a similar service does not need to obtain consent. The approach also ensures that overseas organisations do not have an unfair advantage over local organisations.

Question 7: Do you have any views / comments on the proposed general exclusions from the DP law?

Question 8: With reference to paragraph 3.26, do you have any views / comments as to whether there should be exclusions for artistic and literary purposes under the DP Act? How should these exclusions be defined if exclusions for artistic and literary purposes should be provided for?

Question 9: Are there any other exclusions that should be catered for under the DP Act?

General Exclusions from the Data Protection law

- 3.25. SingTel notes that whilst data in the public domain could technically constitute personal data under the proposed law, practically, the data already circulates in the public domain. SingTel suggests that it would be impractical to request that organisations who write to

an individual (whether that individual's data is publicly available or not) to obtain the individual's consent to the use of that data when the individual may or may not even be their customer or have an existing contractual relationship with the organisation.

- 3.26. SingTel proposes that the requirements of the proposed law (with the suggested changes highlighted in this document) only apply to individuals who have an existing contractual relationship with the organisation. Furthermore, data that circulates in the public domain, whether it relates to the same individual or an individual that does not have a contractual relationship with the organisation, should not constitute personal data for the purpose of the law.

Artistic & literary purposes should not be exempt from Data Protection laws

- 3.27. In relation to literary and artistic purposes, SingTel agrees that there should be no exclusions granted for such purposes. The premise for such activities is similar to any other organisation, that is, an author who wishes to write a play about an individual will need to contact the individual concerned for specific data. Where the data is in the public domain, it is clearly not an issue. Where the data is still private, clearly the individual has the right to grant consent for the use.

Specific situations that should be excluded from Data Protection laws

- 3.28. SingTel further emphasises that organisations should be excluded from the need to obtain consent (and correspondingly, the customer cannot withdraw consent from those uses) for purposes relating to billing, fraud management, planning, provisioning, managing bad debt and generally to provide their own services to their customers. In the case of telecommunications and broadcast licensees, they also need to use the same data for facilitating interconnection and inter-operability between licensees. SingTel also notes that these 'exclusions' are already specified in the Telecom Competition Code 2010 and the Media Market Conduct Code 2010.
- 3.29. SingTel cautions that an approach that provides little flexibility to organisations to use customer data actually unfairly penalises organisations and the industry at large.

Question 10: Do you have any views / comments on the proposed general rules under the DP law?

Question 11: With reference to paragraph 3.35, do you have any views / comments as to whether individuals should be deemed to have given consent for organisations to collect, use or disclose their personal data if they are notified and given reasonable time to opt out but do not?

General rules

- 3.30. In relation to the proposal relating to outsourcing or processing of customer data, whilst we generally agree that organisations that outsource the collection / processing of data are still responsible for the management of such data, we wish to highlight that this approach cannot apply where separate organisations may work in joint promotional efforts. So Company A and Company B may work together to market services to their customers but each company should be separately responsible only for their own customers. It cannot be that Company A is held culpable for a breach of the proposed consumer Data Protection law on basis that Company B has not obtained the consent of its own customers for the use of the customers' data.

Consent should be able to be obtained generally for key specific purposes

- 3.31. We note that the approach taken in the Consultation is rather broad-sweeping in that it proposes that consent is required for all the purposes that an organisation has for collecting the data.
- 3.32. Whilst this broad-sweeping method appears to be a safe route, it does have impractical consequences. Organisations do not always know the specific purposes for which they would put the data to use. Largely, apart from using the data to bill and collect monies, the organisation could use the data to market its own services to customers, to provide technical help, to ensure that customer disputes are properly managed and perhaps even for testing of new systems. In some cases, even where organisations do not disclose their customers' data to third parties, they may use the data (on their own) when they enter into joint marketing efforts to benefit the customers.
- 3.33. The myriad of reasons and purposes involved simply do not permit organisations to seek consent from customers for each distinct purpose. Furthermore, it is impractical for an

organisation to seek fresh consent when there is a new purpose. This would be too burdensome on organisations, and highly impractical.

- 3.34. We therefore suggest that flexibility should be adopted when organisations seek consent. An organisation would outline most of the key purposes upfront when seeking customers' consent. Organisations would then only act within the key purposes, but at the same time, may have a wider scope of consent obtained than necessary, but that such is required from a practical perspective. Any enforcement agent must grant flexibility when assessing whether the specific use falls within the key purposes, rather than to demand and expect that an unending list of purposes be identified.
- 3.35. SingTel stresses again that organisations should not have to needlessly seek consent for use of consumer data that involves billing, fraud management, planning, provisioning, managing bad debt and generally to provide their own services to their customers. In the case of telecommunications and broadcast licensees, they also need to use the same data for facilitating interconnection and inter-operability between licensees. In short, these are the common-sense purposes for which each organisation must be able to put their customer data to use.
- 3.36. SingTel also emphasises that whilst it agrees with the principle that organisations should obtain consent from customers for use of their data, it has concerns over the extent of the requirement. For instance, it is not clear what is anticipated in the Consultation which states that:
- 'an organisation may not, as a condition of supplying a product or service, require an individual to consent to the collection, use or disclosure of personal data beyond what is necessary to provide the product or service.'*
- 3.37. The ambiguity in this proposition lies in what is perceived as 'necessary' which can differ from person to person.
- 3.38. Using the example of airways, an airways strictly only needs to ensure that every customer that has paid for a seat on a flight is given that seat. The seat is the product offered. However, it may wish to offer a service level and experience that is beyond just allowing a customer to fly on its aircraft to a specific destination. In-flight entertainment, meal preferences, seat preferences, even the availability of flight staff who could speak various languages are the added layers of service. The airways may also choose to work with other service companies to offer marketing promotional offers to its customers. It is

not clear whether such an organisation is therefore required to seek consent for all such other activities.

- 3.39. The same applies for an info-communications organisation like SingTel. SingTel strictly needs to offer the specific info-communications service that the customer has subscribed to. However, to offer enhanced customer service(s) or customer experience to the customer, we may need to know other information including the types of mobile handsets that the customer may like to use. This allows us to make specific offers to the customer and serve the customer better. This highlights how data is vitally important for the provision of info-communication and innovation and should not be stifled by a consumer Data Protection framework
- 3.40. We note that the various purposes to which an organisation may legitimately and reasonably put the customer data to use makes it impractical for organisations to seek consent from customers for each purpose and to refrain from seeking consent for purposes beyond that of providing the product and service.
- 3.41. We have asked that flexibility should be adopted when organisations seek consent, that is, an organisation would outline most of the key purposes upfront when seeking customer's consent. However, flexibility should be granted so that the key purposes are to be described or the purposes may be generically described and may be described on an inclusive (rather than an exhaustive) basis. Any enforcement agent must also grant flexibility when assessing whether the specific use falls within the key purposes, rather than to demand and expect that an unending list of purposes be identified.

Accountability through a self-nominated representative should exist

- 3.42. SingTel notes that the choice of the designated company representatives responsible for answering customer queries should be left to the organisation, provided that such representatives should always be equipped with the necessary data and knowledge to be able to address customer queries in relation to the organisation's/ company's Data Protection policies etc.

Implied Consent

- 3.43. SingTel agrees that consent could be implied in circumstances where consent may be deemed to have been given and it would be difficult or impractical for organisations to have to obtain explicit consent from the individual in such circumstance. In most cases,

customers do not object to the use of their data as long as the use and key purposes are identified upfront; however, it is also the case that in general, customers neither care nor bother with providing consent even though they have no objections to the use of their data.

- 3.44. SingTel notes that requiring a customer to provide active consent is likely to eventually lead to an instance where most customers or individuals generally do not return their consent form to the organisation. Under such circumstances, the organisation will be unable to provide any further enhanced services. This means that a customer who has not provided active consent, but instead assumes that consent is given, misses out on attractive promotional offers. It is highly likely that the process of seeking consent will actually lead to dissatisfaction on the parts of customers, which runs contrary to the wishes of the organisation and reflects a failure in the execution of the proposed Data Protection law.
- 3.45. Customers should be considered to have granted consent if they do not register objections. For example, the key purposes and uses or generically described purposes could be set out in the terms and conditions of services/ contracts signed by customers or in suitable literature on a non-exhaustive basis and where customers do not withdraw their consent or object, then it should be deemed that they have granted consent.

Question 12: Do you have any views / comments on the proposed rules on collection, use and disclosure of personal data?

Question 13: Do you have any views / comments on the proposed exceptions to the rules on collection, use and disclosure? Should an exception be provided for organisations to collect, use and disclose an individual's personal data for the purposes of identifying him or her as a member, or for circulation within the organisation? Are there any other exceptions that should be provided?

Question 14: Do you agree with the proposed approach to the transfer of personal data outside Singapore outlined at paragraphs 3.60 to 3.61?

Collection

- 3.46. SingTel agrees that consent should not be required where the personal data is already publicly available.

- 3.47. Again, in relation to the requirement for a company representative to respond to queries on collection of customer data, the choice of the representative should be left to the organisation, provided that such representatives should always be equipped with the necessary data and knowledge to be able to address customer queries in relation to the organisation's / company's data protection policies etc.
- 3.48. SingTel agrees that employers should not need to obtain consent from their employees. However, we find the need for employers to inform their employees that personal data is collected for the purpose of establishing, managing or terminating an employment relationship to be unnecessary. The stated purpose of any supply of data relates to an employer-employee situation. SingTel submits that the need for informing employees only applies when there is possible grey area, for example where the employer is not certain that the use of the data falls within the stated purposes. Only then would the employer need to inform the employee.
- 3.49. Furthermore, it is not clear what could be deemed as 'personal data' that is not related to the individual's employment¹. Employers may choose to collect an employee's leisure preferences and or other seemingly unrelated data that could allow them to have a more well-balanced view of their employee. Employees who are keen on gardening, for example, could be encouraged to get involved in corporate social activities that involve outdoor activities etc. and take up leadership roles in such activities. We suggest that this limitation be removed.

Use / Processing

- 3.50. SingTel emphasises that it is impractical for an organisation to seek fresh consent whenever there is a new purpose.
- 3.51. As discussed above, we suggest that flexibility should be permitted when organisations seek consent. An organisation would outline most of the key purposes upfront or generically describe the purposes when seeking customer's consent. Any enforcement agent must grant flexibility when assessing whether the specific use falls within the key or generically described purposes.

¹ See footnote 24 of the Consultation

- 3.52. Furthermore, SingTel supports the proposal that implied consent is consent granted. Hence, even where fresh consent has to be obtained, as long as the customer has been notified and does not withdraw its consent or raise an objection, then consent should be deemed to have been granted.

Disclosure

- 3.53. SingTel generally agrees with the approach in the Consultation in relation to disclosure of personal information which should be in line with the purpose for which consent was granted.
- 3.54. SingTel notes that disclosure to law enforcement agencies would already be required as a matter of compliance with prevailing legislation(s). In relation to disclosure arising from business transactions like mergers and acquisitions, SingTel agrees with the proposals in the Consultation.

Transfer of personal data outside Singapore

- 3.55. SingTel generally agrees that where an organisation transfers personal data out of Singapore the organisation should have measures in place to protect its customer's data to a standard similar to the requirements under Singapore law. However, we note that it is not possible for a Singapore organisation to be absolutely sure of how the foreign organisation which receives the personal data will handle the customer data. Therefore, we support the proposal that the regulatory approach should be principle-based. We also note that any enforcement must review all matters at hand. For example, where the Singapore organisation notified the foreign organisation which receives the personal data of the Singapore data protection requirements and asked, or requires, that appropriate or similar measures be taken, then the Singapore organisation should be considered to have taken 'appropriate measures' to protect the personal data.

Question 14: Do you have any views / comments on the proposed requirements for the accuracy, protection and retention of personal data outlined at paragraphs 3.62 to 3.67?

Question 15: With reference to paragraph 3.67, do you have any views /comments as to whether organisations should be required to specify the retention period when collecting personal data?

Accuracy and security of data

- 3.56. SingTel generally agrees with the need for the data collected to be accurate, to the extent that it is reflective of the data at the point of collection. SingTel stresses however, that data can vary and can change over time and this makes the task of ensuring up-to-date and also accurate data difficult and time consuming. In other words, any enforcement agency must have regard to the fact that a gap exists between the time the data is provided and the time it is updated into the organisation's database. It is not reasonable to assume that customer data is updated instantaneously.
- 3.57. In relation to securing personal data to prevent data breaches and inadvertent disclosure, SingTel generally agrees with the proposal that organisations should ensure personal data in the custody or in the control of an organisation is secure. However, SingTel proposes that organisations be given the flexibility to determine what measures and tools be used to secure the data collected. That is, the method used to comply with this requirement is not a matter of choice or demand on the part of enforcement agencies or customers, but rather, a choice that the organisation makes based on industry practices and business needs.

Retention of data

(i) Practical limitations to be set on what sort of data should be retained

- 3.58. SingTel submits that whilst organisations may be required to obtain consent from their customers for use and disclosure of personal data, the Data Protection regime should not focus on the need to retain personal data. Data protection regimes usually only focus on the requirement that data is not unnecessarily retained by organisations; and does not specify time periods for the retention of data. Data retention is usually the focus of other laws, such as the need to retain business records for a specified period. Furthermore, in many cases it is impractical to retain data. For example, data relating to technical information, IP addresses, locations etc. should not need to be archived nor accessed by customers as there is no immediate effect on the contractual obligations faced by customers arising from the data, nor can customers be directly identified by such data.

(ii) Retention period(s) to differ for different types of data

- 3.59. SingTel does not believe that a retention period should be the focus of Data Protection law. Further, SingTel does not see a need to retain all the data that a customer supplies to it. In relation to data retention of data about its customers, SingTel considers the data obtained from its customers falls into either ‘important customer data’ (critical data like name, address, account, telephone number that relates to billing the customer, managing bad debt, etc.) or ‘other customer data’ (all other ‘non critical’ customer data, including data that relates to technical data, IP addresses, locations etc.).
- 3.60. In relation to legitimate reasons for retaining data, SingTel considers that ‘important customer data’ should be retained for as long the service provider needs to use it and customers be allowed to view such data as it has an immediate effect on their subscription or their contractual obligations (for example to pay for their services).
- 3.61. Where the data has an immediate effect on the customers’ contractual obligation or on-going relationship where the service provider is providing or attempting to provide services to the customer or potential user, the service provider should be permitted to retain data for the period required to manage this. For this purpose, critical data like name, address, account and telephone number can be retained for as long the service provider needs to use it.
- 3.62. In relation to deceased individuals / customers, service providers should have the right to determine how long they want to retain the data. SingTel proposes that for deceased individuals / customers, their critical data be retained for no more than one (1) year.
- 3.63. Finally, SingTel does not support any proposal to inform customers of the retention period of personal data at the point of collection or at any future point. SingTel considers that informing customers of the retention period may in fact generate confusion as different organisations have different retention periods and there is no standard understanding of what is meant by ‘reasonable retention period’.

Question 16: Do you have any views / comments on the proposed rules on access to and correction of personal data?

- 3.64. SingTel generally agrees that where customer data held by an organisation is inaccurate then such errors should be corrected as soon as reasonably practical.

- 3.65. SingTel considers that access by a person to their ‘important customer data’ (critical data like name, address, account, telephone number that relates to billing the customer, managing bad debt, etc.) held by SingTel is largely already provided to customers in their bills.
- 3.66. SingTel considers that it should not have to provide access to a person to their ‘other customer data’ (all ‘non critical’ customer data, including data that relates to technical data, IP addresses, locations etc.) as SingTel does not consider that such data should need to be retained. This is because, for example, technical data or location-based data is likely to change rapidly over time, and it is therefore, not feasible to retain such data for customers to access.
- 3.67. We also support the proposal to charge a reasonable fee to recover costs incurred in providing access to customer data. SingTel notes that this is no different from organisations who may levy a charge for an extra copy of a bill or any other administrative work.
- 3.68. SingTel proposes that organisations should not be required to inform customers how their data has been used, except for the fact that the general / key purposes should be identified upfront to the customer and the customer should have granted consent first (whether implied or otherwise) before the organisation makes use of the data. SingTel is concerned that the need to disclose such uses will result in numerous and possibly vexatious disputes with customers who may agree with one specific minute type of use but disagree with another for example, agree with their data being used in a joint promotional effort with one company but not with another company). SingTel also agrees that organisations should not need to let customers know when their data has been requested by and supplied to law enforcement agencies or to agencies pursuant to court order(s) etc.

Question 17: Do you have any views / comments on the proposed enforcement powers of the DPC or the proposed appeals mechanism?

Question 18: Do you have any views / comments on the proposed penalties for contravention of the DP law outlined at paragraphs 4.4 to 4.5? Do you have any views / comments on the criteria for breaches that would warrant financial penalties?

Enforcement powers and appeals mechanism

- 3.69. SingTel agrees with the enforcement powers and appeal mechanisms listed in the Consultation. Specifically, SingTel supports the establishment of the Data Protection Commission (**DPC**) and independent Appeals Board. We also support the DPC's focus on early resolution of complaints, and welcome the ability for organisations to mediate disputes before further enforcement powers are exercised.

Penalty regime

- 3.70. SingTel supports the proposed tiered penalty regime listed in the Consultation, which consists of the imposition of undertakings, settlements, orders and financial penalties. SingTel believes that criminal penalties should only be sought in cases of wilful or negligent disregard for the Data Protection law that cause significant harm to individuals.
- 3.71. The Consultation proposes that, in some circumstances, an incident by an organisation may constitute a breach of both sectoral regulation and also the consumer Data Protection framework. The Consultation also proposes that an organisation be subject to the investigation and enforcement of one regulator. SingTel suggests (at paragraph 2.2 of this response paper) that organisations should only be regulated by existing sector specific Data Protection requirements. Therefore, there should not be any occasion where an incident constitutes a breach of both sectoral regulation and the consumer Data Protection framework.

Question 19: Do you have any suggestions on specific guidelines that the DPC should provide to help organisations achieve compliance with the DP law?

Question 20: With reference to paragraphs 4.11 to 4.14, do you have any views / comments as to whether a one to two year "sunrise" period would be appropriate?

Question 21: With reference to paragraphs 4.15 to 4.19, do you have any views / comments on the proposed treatment of existing personal data?

Question 22: Are there certain organisations that may require different transitional arrangements?

Sunrise period

- 3.72. SingTel agrees that a single sunrise period should apply for all provisions in the proposed Data Protection law and all organisations to assist with implementation of the law. SingTel asks that the sunrise period be no less than two (2) years. Given the nature of some of the proposals listed in the Consultation, it is likely that organisations may need to redesign their own processes and systems, train staff, invest in new technology, call tenders for such new systems and technologies, test them before putting them into action. We believe that any period less than two (2) years may not be sufficient for all organisations to complete such preparations.

Existing personal data

- 3.73. SingTel agrees that consent should be deemed to have been granted for the use and disclosure of existing personal data, that is, any data of customers collected before the effective period of the proposed consumer Data Protection law. SingTel notes that it would be a potentially massive undertaking on the part of any organisation to review all the processes involved for existing personal data in order to comply with the proposed law. Furthermore, SingTel notes that nothing stops a customer, today, from withdrawing its consent to the use and /or disclosure of its data, where it so wishes to. Hence, existing contractual arrangements in relation to use and disclosure of data should not be invalidated.

Different transitional arrangements

- 3.74. SingTel does not see any instance where different organisations may require different transitional arrangements. Rather, we propose a slightly longer transitional period to apply to all, that is, a no less than two (2) years sunrise period.

Question 23: Do you have any views / comments as to whether a National Do-Not-Call Registry should be set up in Singapore?

Do Not Call Registry

- 3.75. SingTel understands that Do Not Call registries (**DNCR**) exist in other countries. However, SingTel sees practical difficulties in the implementation of the DNCR given the proposal for a consumer Data Protection law.

- 3.76. For example, where a customer has given consent to an organisation (whether implied or otherwise) for marketing literature or information to be given to that same customer and the same customer registers with the DNCR, it generates doubt as to the intention of the customer and the flexibility granted to the organisation.
- 3.77. Second, a customer may in fact be misled into thinking that by registering with the DNCR, it constitutes a one-time means to withdraw consent from all organisations to use and / or disclose its data. SingTel notes that this is not the intent of the application of the DNCR; but, the existence of such a DNCR would in fact lead to such confusing issues.
- 3.78. SingTel notes that the proposed consumer Data Protection law will already oblige all organisations who have a contractual relationship with the customer to ensure that where a customer does not grant consent or withdraws consent, the organisation cannot contact the customer for any reasons other than for the purpose of providing its service to the customer². In other words, the customers have the means and access to mechanisms to ensure that it is not contacted when it does not wish to be contacted. The DNCR is therefore not necessary.
- 3.79. SingTel suggests that a sensible approach would be one where an organisation has a contractual relationship with a customer, it does not need to check the DNCR. The customer will either grant consent or otherwise withhold or withdraw consent. The approach will ensure no confusion over whether the DNCR or the consent granted to the organisation prevails. It also ensures that organisations do not needlessly invest in time and effort to check with DNCR if they already have a contractual relationship with the customer.

4. CONCLUSION

- 4.1. SingTel generally supports the move for a consumer Data Protection framework in Singapore. SingTel believes that a number of improvements could be made to the Data Protection framework as discussed in this submission to reduce duplication of regulation and to enhance the experience of both customers and organisation.

² See submissions in Section 3 and paragraphs 4.16 to 4.20