ASIA PACIFIC CARRIERS' COALITION
(Incorporated in the Republic of Singapore)

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30 April 2012

Ministry of Information, Communications and the Arts (MICA)
MICA_DP_Bill_Consultation@mica.gov.sg By Email

Dear Sirs

Submission by the Asia Pacific Carriers' Coalition (APCC) in response to MICA's Consultation on the Proposed Personal Data Protection Bill

This submission is provided by the Asia Pacific Carriers' Coalition ("APCC") in response to MICA's public consultation of the Proposed Personal Data Protection Bill for Singapore issued on 19 March 2012.

The APCC is an industry association of global and regional carriers operating in the Asia Pacific region, formed to work with governments, national regulatory authorities and consumers to promote open market policies and best practice regulatory frameworks throughout the Asia Pacific region that will support competition and encourage new and efficient investment in telecommunications markets. APCC's submission reflects the consensus of opinion among at least a majority of the APCC members. Therefore none of the views expressed in this submission should be attributed to any individual member of the APCC.

APCC generally welcomes and supports the proposal of a general data protection regime in Singapore. We have previously participated in the first consultation issued by MICA on the proposed Consumer Data Protection regime on 13 September 2011, and we would like to make the following specific comments in this consultation for MICA's consideration.

APCC appreciates the opportunity to express its views in this public consultation on the proposed Data Protection regime and we would like to make the following specific comments for MICA's consideration.

We hope that our comments will be helpful to MICA in developing policies that both protect consumer privacy and nurture the investment and innovation necessary for the sustainable development of the Information Society within Singapore, and between Singapore and the global community. To maintain the pace of innovation on the Internet, we believe both governments and the private sector must continue to find ways to strengthen consumer trust online, which will, in turn, increase Internet usage and adoption both domestically and internationally. We fully support the Consultation Paper's goal of ensuring data protection and strengthening "Singapore's position as a trusted hub for business" and recognizing the importance of ensuring cross border data flows both in and out of Singapore.

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1. Flexibility is Needed for Large Business Customers

The regulatory environment should be flexible enough to permit large companies to address through contracts how responsibility for data protection requirements is assigned. In business-to-business services - and particularly with large business customers - service contracts establish the roles and responsibilities of each party in fulfilling data protection requirements as well as determine the jurisdiction for governance of a contract, based on the agreement of the contracting entities.

For large businesses, which frequently process personal data of individuals from many countries, regulators should avoid undermining the certainty provided by contracts that establish consistent provisions and processes across jurisdictions. They also should avoid establishing overly detailed and divergent privacy and other regulatory requirements that cannot be accommodated in a unified service level agreement between the service provider and the business customer governing multiple jurisdictions.

When business customers have agreed to the roles of each party relative to data protection and the governing law, and there is a reasonable nexus to the subject of the contract and the agreed law, this contracted preference should prevail. Given the characteristics of the extensively negotiated business services contracts, and the highly sophisticated nature of these customers, which are frequently represented by legal counsel in negotiating these arrangements, it is typical for different policy considerations to be applied to business customers as compared to for individual consumers.

In the large business market, services are highly complex, and are a customized and dynamic mixture of infrastructure, platform and software services frequently delivered on the widest scale. These extensively negotiated commercial arrangements are normally set forth in Service Level Agreements (SLAs) or End User Agreements. A regulatory overlay to this market-based model is both unnecessary and potentially harmful. Attempting to standardise SLAs with regard to data protection requirements would risk stifling competition to the detriment of both providers and users.
Competition in the provision of services to these customers relies precisely on the different performance and service levels that the various providers can offer. Any levelling of these arrangements would reduce customers' choices for trade-offs among factors including price and quality, and would undermine providers' competitiveness. For these reason, large business to business arrangements should be exempted from the proposed rules.

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2. The Need for a Flexible Approach to Data Protection Regulation for Cross Border Data Flows

We compliment the Consultation Paper's recognition of cross border data flows and particularly its proposal to establish limited obligations on Data Intermediaries as well as to permit the Transfer of Personal Data outside of Singapore. Together, these proposals will help establish global norms for cross border data flows such as cloud computing.

We do, however, recommend that the Data Protection requirements include a safe harbor for data that is transferred out of Singapore. In particular, we recommend that companies may be deemed compliant with Singapore's Data Protection rules for data that is transferred and stored abroad if they comply with one of the following internationally recognized privacy frameworks:

a) APEC Privacy Principles and Cross Border Privacy Rules ;
b) International Standards such as ISO or other internationally accepted standards;
c) Standard Data Protection Contract clauses; or
d) EU Binding Corporate Rules, US Safe Harbor, EU Adequacy Determinations or other similarly government approved leading data privacy practices.

These safe harbors will allow the mutual recognition of privacy standards with other countries and regions and avoid impediments to the cross-border data flows that are critical to the global growth of many services, including cloud services.

There is broad consensus on the most important privacy and security principles that should form the basis for a global framework that is better designed to promote cross-border data transfers. For example, the APEC Privacy Framework recently adopted by the Electronic Commerce Steering Group sets forth broadly-applicable privacy standards that can be adapted to particular jurisdictions and industries, while enjoying mutual recognition by participating economies. This approach promotes a consistent global approach to privacy protection to avoid the creation of unnecessary barriers to information flows and to remove impediments to trade.[1]

[1] Similarly, the OECD recently convened a high-level meeting on the Internet economy, which produced a set of principles for Internet policy-making agreed to by Member States, the Business and Industry Advisory Committee and the Internet Technical Community. *See Communique on Principles for Internet Policy-Making*. The principles include strengthening consistency and effectiveness in privacy protection at a global level.

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Consistent with these principles, Singapore's adoption of a Safe Harbor approach would facilitate cross border data flows by allowing companies to develop economies of scale while protecting personal data. For example, APCC members offer data storage throughout the Asia region, including Singapore. In order to minimize the operational costs of complying with multiple, and possibly conflicting Data Protection rules, we recommend that Singapore establish a framework of safe harbor rules for personal data stored outside of Singapore that achieve Singapore's goal of protecting personal data. Such a regime would allow Singapore to establish a regional and global norm of protecting personal data while encouraging regional and global data centers.

3. Use of Personal Data

The Consultation Paper defines personal data as:

"data, whether true or not, about an individual who can be identified —
(a) From that data, or
(b) From that data and other information to which the organisation is likely to have access."

One concern we have is whether companies can legally anonymize personal data for research internally while still maintaining the original data. For example, a large company may have personal health care records that contain vital data for diabetes research. If such an anonymous data base was provided to an external entity, then such data would not meet the definition of personal data under the proposed regulatory requirements. However, it should also be possible to provide the anonymous data to researchers in the same company, provided those researchers are unable to identify the individuals associated with that data. The companies that store data should be able to undertake analysis of anonymous personal data in the same manner as companies that do not store such data, as long as appropriate controls are in place to prevent such identification.

APCC believes that this data should not be classified as personal data under these circumstances and asks MICA to modify the definition of personal data to include this clarification.

APCC would be pleased to answer any questions concerning these comments.

Yours sincerely

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