IN RESPONSE TO THE PUBLIC CONSULTATION ISSUED BY MINISTRY OF INFORMATION, COMMUNICATIONS AND THE ARTS ("MICA")

PROPOSED PERSONAL DATA PROTECTION BILL

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1. As one of the major info-communications service providers in Singapore, M1 welcomes this opportunity to provide our comments in response to the consultation paper issued by the Ministry of Information, Communication and the Arts ("MICA") in relation to the proposed personal Data Protection ("DP") law.

2. M1 supports the introduction of a regulatory framework for consumer data protection in Singapore to ensure a consistent level/standard of responsible handling of personal data/information across all industries in Singapore. However, we strongly urge MICA to give due consideration to:
   - pre-existing sector-specific regulations on DP that have been instituted to address specific policies, operational considerations and needs of the industry;
   - proportionate regulation that does not absolve any party of its due responsibilities; and
   - important market and/or operational realities.

Necessary to exempt industries with pre-existing sector-specific regulations on data protection, particularly the telecommunications sector

3. In response to MICA's first consultation on the proposed consumer DP regime in Singapore, the telecommunications operators have unequivocally submitted that the proposed DP law should not apply concurrently with existing sector-specific regulations. We note that the telecommunications operators' representations were not addressed in the latest consultation paper or proposed law. As such, M1 would like reiterate our rationale/basis for seeking exemption:

   a) Collection, processing and protection of personal data is already regulated by the Info-communications Development Authority of Singapore ("IDA"). It is a more rigorous regime that balances data protection requirements with sector-specific policies and operational considerations, and still allow the telecommunications operators to effectively and efficiently carry out their functions while providing support/assistance to law enforcement, judicial or other government agencies.

   b) Fixed and mobile telecommunications operators in Singapore have implemented clear, effective and robust measures to monitor and manage DP issues and uphold high standards of responsible marketing practices. To our best knowledge, there has been no incidence of unsolicited marketing calls/messages originating from the fixed/mobile telecommunications operators in Singapore.

   c) There are conflicts/discrepancies between MICA's proposed baseline regime and existing sector-specific frameworks, which would cause unnecessary confusion and complications in regulatory compliance and operations.

d) The parallel application of the proposed DP law with existing sector-specific regulations imposes unnecessary burden and costs in regulatory compliance for industry players.

e) With regard to the proposed DNC Registry, the telecommunications operators do not broadcast marketing messages to members of the public, other than to their own customers where consent needs to be obtained, and there are already processes/procedures in place to allow customers to opt-out of receiving marketing messages.

4. M1 believes that the existing telecommunications regulations are effective in safeguarding against the unauthorised use of personal data, and yet provides for telecommunications operators' need to obtain and process such data for legitimate and reasonable purposes. Hence, M1 strongly advocate that the telecommunications sector be excluded from the proposed DP Regime, as per MICA's treatment of the public sector. This is also in line with the approach taken by the Competition Commission of Singapore on the exclusion of specific sectors from the General Competition Law where another regulatory authority has jurisdiction.

Proportionate regulation that does not absolve any party of its due responsibilities

5. The telecommunications operators have raised legitimate concerns with regard to the proposed requirement to place the onus on us to regularly provide the list of terminated numbers to the Do-Not-Call ("DNC") Registry so as to facilitate the update of its database. MICA has not responded to address this issue. We believe that what is rightfully a responsibility of the subscribing individuals and the role of the entity serving these clients, should not be transferred to the telecommunications operators out of convenience and having to bear the increased business costs.

i) The public make their own personal decision on whether to register on the DNC Registry. Accordingly, the onus should lie with the DNC registrants/subscribers to update their particulars in the DNC Registry. This is the operational norm across all industries/institutions/organisations e.g. banking, utilities, telecommunications etc. Hence, entities such as the Singapore Post Limited, Singapore Power, Housing Development Board, Town Councils, Residents Committees or Constituencies etc. are never required to provide any service information pertaining to customers towards any centralised customer database.

ii) It should rightly be the responsibility of the party managing/operating the DNC Registry to ensure on-going accuracy of its database. It is a logical and common practice of any database operator to have processes in place to systematically verify and update its client database on an ongoing basis. This should be part and parcel of its business operations.

iii) In any case, if the party managing/operating the DNC registry wishes to engage any third party's services in its set-up/maintenance/management etc., then it is only fair and reasonable to expect the party concerned to commercially source, negotiate and procure the services that best suit its purpose and duly compensate its respective service providers for the resources incurred towards the efforts or the services rendered.

6. To summarise, there is no logical or valid justification to transfer the due responsibility of the DNC registrants/subscribers to the telecommunications operators to cover situations where individuals may not exercise diligence in updating the providers on their own service subscriptions. On the same basis, it is unwarranted for MICA to then obligate or require the telecommunications operators to assume such responsibility on behalf of the end-users.

7. Instead of imposing additional requirements on the telecommunications operators, the Government should work towards promoting a culture of consumer responsibility. Focus should be given on greater public education to promote a better understanding and appreciation of the DNC Registry, its operating environment, and the necessary process/procedures to update any changes in particulars (e.g. pre-recorded messages to remind/prompt individuals to withdraw any numbers that are no longer applicable when individuals call to attempt to register new numbers on the DNC Registry etc.).

Important Market or Operational Realities

8. M1 submits that the proposed DP law has not given sufficient weight to important market realities where many organisations have already put in place stringent, effective and robust measures for responsible marketing and management of DP issues. Such organisations should not be subjected to additional requirements which would only increase the burden and costs in compliance. In light of this, M1 respectfully request for reconsideration of providing exemptions for existing business relationships.

9. Additionally, since the intent of the law is to safeguard consumer interest in the collection, processing and use of personal information, organisations should be relieved from the additional regulatory obligations to allow individuals to access personal data in the custody of the organisation, which has complex operational implications.

10. Notwithstanding our position above, our further comments/request for clarifications on the specific provisions of the proposed DP law can be found in Annex 1.

Annex 1: Further Comments/Request for Clarifications

a) Proposed DP Law

No.	Section/Description	M1 Comment
1.	Definition of Personal Data [Clause 2]: *"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.*	The proposed personal data definition is overly broad. As currently drafted, all data in the possession of organisations is likely to fall under the definition of "personal data". In fact, the definition may be wide enough to also capture SMS, MMS and e-mails in which, owing to their contents, the individual can be identified. Such a broad definition will impose unnecessary burden and costs on the organisations, and not only constraint operations but also stifle product/service creativity and innovation. While balancing the need to safeguard consumer interest and giving due consideration to operational realities and compliance costs of organisations, M1 proposes that only data which can directly identify individuals without the need for any other data should be deemed as personal data (e.g. Name, NRIC, address, telephone numbers etc.).
2.	Application of the Act [Clause 4(7)]: *"To the extent that any provision of this Act is inconsistent with any provision of other written law, the provision of the other written law shall prevail."*	To ensure clarity and understanding, Clause 4(7) should be amended to reflect that the proposed DP law does not override existing regulatory or statutory requirements that organisations have to comply with (as indicated in paragraph 2.43 of MICA's consultation paper). That said, should there be any inconsistencies between the proposed DP law with any provision of existing sector-specific regulations or other written law, the provision of the existing sector-specific regulations and/or other written law should prevail.
3.	Consent required [Clause 15]	Organisations may collect/record personal data of individuals for security or national interest purposes, and to facilitate response in case of emergency situations (e.g. visitors may be required to provide personal particulars in order to gain access to a particular building, Pandemic Flu contact tracing etc.). The collection and retention of personal data is not associated with the supply of a product or service, and is unlikely to be used for business purposes. As such, M1 submits the collection of personal data for security purposes should be exempted from the proposed DP law.
4.	Provision of consent [Clause 16(2)]: *"An organisation shall not, as a condition of supplying a product or service, require an individual to consent to the collection, use or disclosure or personal data beyond what is reasonable to provide the product or service to that individual"*	As currently drafted, organisations will be prohibited from using any personal data collected when supplying a particular product or service to offer individuals other related products or services. The requirement is impractical and would unnecessarily restrict organisations from making new innovative products or services, promotional offers etc. to existing customers. We submit that organisations should be allowed to leverage on existing business relationships to inform and offer their customers of related products. For example, where an individual subscribes to fixed-line broadband services provided by a telecommunications operator, the latter should be allowed to avail the customers with other telecommunication services e.g. mobile, digital voice etc. that may be of interest.

		It will be necessary to state explicitly in this Section, that the reference to provide products or services to the individual will include disclosure of the personal data to other organisations on which the provision or charging of such product or service is dependant. Accordingly, this would apply even if such reference to other organisations is not specifically explained as a purpose to the customer. Examples, specific to the info-communications industry are roaming partners, OpenNet, other telecommunication operators for the purpose of facilitating interconnection and inter-operability etc.
5.	Personal data collected before the appointed day [Clause 21]: "….an organisation may use personal data collected before the appointed date for the purposes for which the personal data was collected unless…."	To manage compliance costs of organisations, where an individual is contracted before the appointed day, we submit that for subsequent renewals of such services (and for no other new purposes), further consent under the DP law should not apply.
6.	Accuracy of personal data [Clause 25]: *"An organisation shall make a reasonable effort to ensure that personal data collected by or on behalf of the organisation is accurate and complete, if the personal data –* *a) is likely to be used by the organisation to make a decision that effects the individual to whom the personal data relates; or* *b) is likely to be disclosed by the organisation to another organisation."*	Most personal data collected would be used for either of the stated purposes. In reality, the obligation to make reasonable efforts to ensure that the personal data collected is accurate and complete is an onerous obligation as the contents of the personal data is entirely within the control of the individual. The organisation should be entitled to rely on the personal data in good faith, unless it is put on notice that the data is likely to be inaccurate or incomplete in which case the reasonable effort obligation can apply.
7.	Exclusion for collection, use or disclosure of personal data without consent [Schedule 3-5]	To avoid an inadvertent situation under Section 22, an organisation should be able to share personal data with another organisation, solely where it is necessary to provide the product or service to the customer. This can be provided as an additional exclusion to consent in these Schedules.
8.	Exceptions from access requirement [Schedule 6]	We propose to include an exclusion for information that was not, or is no longer in the custody or control of the organisation.

b) Proposed DNC Registry

No.	Section/Description	M1 Comment
1.	Definition of Terminated Singapore Telephone Number [Clause 46(3)(a)(iii)] "the Singapore telephone number has not been allocated to a different subscriber…"	We reiterate M1's main position stated in the main paper. Notwithstanding our position, we wish to highlight that there are many industry specific arrangements operational issues that has to be considered/addressed instead of applying the simple concept of "terminated" Singapore Numbers. For example, numbers may be "terminated" but have to be "quarantined" for a specific period, "terminated" but allocated back to the same subscriber etc.. As such, we propose the following amendment to address some of the possible operational complication for the term "terminated Singapore telephone number": "the Singapore telephone number has not been re-allocated ~~to a different subscriber~~…"
2.	Duty to check register [Clause 47]	We would like to reiterate that it is not practical to adopt a "filtering" method across the board. It is not clear how long this filtering process will take nor has the filtering schedule/process been defined. We urge MICA to take into consideration that organisations need to be given more flexibility in executing their marketing campaigns, which may sometimes take place over a matter of days/hours. To provide organisations with more certainty and control over the filtering process, an arrangement/set-up for organisations to filter the list themselves may be more practical and feasible.
3.	Duty to check register [Clause 47(1)]	Please clarify whether the "prescribed date" commences when the organisation applies to the DNC Registry for confirmation, or upon receiving confirmation from the DNC Registry.