

**PUBLIC CONSULTATION BY MINISTRY OF INFORMATION,
COMMUNICATIONS AND THE ARTS ON THE PROPOSED PERSONAL DATA
PROTECTION BILL**

SINGAPORE TELECOMMUNICATIONS LIMITED

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SINGAPORE TELECOMMUNICATIONS LIMITED

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 In 2011 SingTel submitted a response to the Ministry of Information, Communications and the Arts (**MICA**) in response to its call for submissions on the:
- (a) proposed consumer data protection regime (**DP**) for Singapore; and
 - (b) proposed national Do Not Call Registry (**DNC**) for Singapore.
- 1.5 SingTel now welcomes the opportunity to provide comment on the proposed Personal Data Protection Act 2012 (**PDPA**) and 2012 MICA consultation paper (**Consultation**).
- 1.6 This submission is structured as follows:
- (a) Introduction;
 - (b) Executive Summary;
 - (c) Comments; and
 - (d) Conclusion.

2 EXECUTIVE SUMMARY

- 2.1 SingTel welcomes MICA's clarification in respect of the right of an organisation to collect, use and disclose personal data about an individual without consent if that collection, use or disclosure is mandated by regulatory requirements imposed or expressly permitted under law. The practical effect of this statement is that where a sector specific regulatory instrument permits an organisation to use customer information for specific purposes, there is no requirement for that organisation to seek consent for collection, use or disclosure under the PDPA. This clarification provides significant certainty for organisations operating in regulated sectors and will significantly reduce the compliance burden associated with the PDPA.
- 2.2 Notwithstanding the above, SingTel submits that MICA should nonetheless re-consider its position that entities that are already regulated by a sector specific data protection regime, such as licensees in the telecommunications and broadcasting sectors, should be subject to concurrent regulation under the PDPA. Given the existence of an existing regime in respect of data protection that applies to telecommunications and broadcasting licensees, SingTel does not consider that two sets of largely overlapping sets of regulation should apply to licensees. If an organisation is subject to sector specific regulation in relation to data protection, then this should be the only regulation that applies to that organisation.
- 2.3 The operation of the 'reasonableness' criteria in section 16(2) of the PDPA should be refined to provide greater flexibility in how organisations collect, use and disclose data. The proposed approach is simply not realistic and is out of touch with how modern organisations supply products and services to end users. To address this significant limitation, SingTel submits that the scope of proposed section 16(2) of the PDPA should be capable of being expanded beyond the current default position based on specific, narrowly defined exceptions incorporated directly into the PDPA, or if the relevant organisation is otherwise able to obtain the consent of the end user and makes sufficient disclosures about the purpose for which such information may be used.
- 2.4 The requirements in respect of the notification of purpose under section 22 of the PDPA require reform to better reflect the fact that it may not always be possible to know, at the time of informing the individual and obtaining their consent, of the specific purpose for which the relevant information may be used. Business requirements are constantly evolving and it would be highly inflexible for organisations to effectively need to go back to the individual to inform them that they intend to use personal data for another purpose. To address these issues, MICA should consider creating an exemption from the obligation to inform the individual if the use or disclosure is related to the primary purpose of collection and the individual would reasonably expect the organisation to use or disclose the information for that secondary purpose. In addition, MICA should provide greater clarity on the level of detail it expects when organisations make

disclosures as to the purpose for which personal information may be collected, used and disclosed.

- 2.5 Flexibility is needed in how consent may be obtained under the PDPA. SingTel's expectation is that it would be able to continue to obtain consent using its current methods and that overly onerous ways of collecting consent will not be required. This is consistent with the approach adopted in overseas markets.
- 2.6 SingTel broadly supports the provisions in section 18 of the PDPA in relation to withdrawal of consents. SingTel also supports the 'grandfathering' provisions in section 21 of the PDPA, which allow for the use of personal data collected before the appointed day, except in circumstances where consent is subsequently withdrawn. However, while the proposed provisions are broadly consistent with SingTel's requirements, SingTel also considers that there is some scope to expand the 'grandfathering' provisions in section 21 to address circumstances where it may not be readily possible to implement a withdrawal of consent that is made by an individual after the commencement of the PDPA.
- 2.7 Some of the exceptions available to organisations in respect of the obligation to obtain the consent of individuals to collect, disclose and use information under these Schedules 3, 4 and 5 of the PDPA are unduly narrow and need to be expanded to cover other activities that are reasonably common and which need to be undertaken by an organisation to provide products or services to an individual. For example, checking a potential customer against a database for credit history as part of pre-sales activity does not appear to be subject to an exemption, even though it may not always be possible to obtain an individual's consent in relation to the use of personal information before an actual legal relationship exists between SingTel and the individual (e.g. during pre-sales activity).
- 2.8 The ability to obtain consent for the sharing of personal data between related organisations should be explicitly allowed as long as the individual is made aware of this fact and this purpose is disclosed in the customer contracts. This approach is consistent with practice in some overseas markets.
- 2.9 The meaning of 'specified message' in section 41(1) of the PDPA is too wide and prohibits organisations from providing any degree of marketing material to a customer. A more appropriate approach would be to remove the 'or one of the purposes' statement from section 41(1)(d), and amend the section to the effect that the message is only considered to be a 'specified message' if its dominant purpose is related to the marketing activities as listed in the section.
- 2.10 Organisations should not be penalised under both the PDPA and another law for the same offence, and greater protection should be given to organisations that operate in regulated sectors that this will not occur.

2.11 We also seek clarity regarding the imposition of penalties for offences under Part IX of the proposed PDPA.

3 COMMENTS

3.1 In this section, SingTel provides comments on the PDPA that SingTel would expect to see addressed in a further draft of the legislation if our preferred position of exempting telecommunications and broadcasting licensees from the operation of the PDPA is not accepted.

3.2 Our comments seek to address some of the practical issues that we see arising from the proposed operation of the PDPA. Our comments take three forms:

- (a) seeking greater clarity on how certain aspects of the PDPA are intended to work in practice to allow SingTel to better understand the implications that compliance with the PDPA will have on its business activities;
- (b) seeking a greater degree of flexibility so that the PDPA can take better account of the existence of different business models, sales channels and methods of service delivery that exist in modern day organisations; and
- (c) minimising costs of compliance with the PDPA, particularly for organisations, such as SingTel, that are already subject to an industry specific data protection regime.

Exceptions that are required or authorised by law

3.3 Schedules 3, 4 and 5 of the PDPA specifically provide that an organisation may collect, use and disclose personal data about an individual without the consent of that individual where the collection, use or disclosure “*is required or authorised by law*”.¹ MICA has clarified in its consultation paper that this exclusion covers situations where the collection, use or disclosure is mandated by regulatory requirements imposed under law or expressly permitted rather than mandated by law, but that it will not apply where the relevant legislative instrument is silent.²

3.4 SingTel welcomes this clarification.

3.5 The practical effect of this statement is that where a sector specific regulatory instrument permits licensees to use customer information for specific purposes, there is no requirement for that same licensee to seek consent for collection, use or disclosure (and thereby no requirement for withdrawal of consent) under the PDPA.

3.6 If this is the intent, then telecommunications and broadcast licensees would be able to continue using their customer information (whether collected before or after the PDPA is implemented) for the purposes as granted under Section 3.2.6.2 of the Telecom

¹ Personal Data Protection Bill, Clause 1(g) of Schedule 3 and Schedule 4, and Clause 1(h) of Schedule 5.

² MICA, Consultation Paper, paragraph 2.72.

Competition Code and Section 3.6.2 of the Media Market Conduct Code without the need to seek consent.

- 3.7 SingTel considers that this clarification provides significant certainty for organisations operating in regulated sectors and will significantly reduce potential compliance burdens.
- 3.8 SingTel supports this view and would appreciate confirmation of this position within supporting documentation that complements the enactment of the PDPA to provide greater certainty to organisations that participate in regulated sectors.

Organisation should be regulated under the PDPA or sector specific regulation, not both

- 3.9 Regardless of the exclusion granted above, SingTel submits that MICA should reconsider its position that organisations that are already regulated by a sector specific data protection regime, such as licensees in the telecommunications and broadcasting sectors, should also be required to comply with the PDPA.
- 3.10 In particular:
- (a) subjecting telecommunications and broadcast licensees to the PDPA - even with the exclusions that licensees can rely upon – mean that there are effectively two sets of overlapping regulations applicable to licensees; and
 - (b) where the use of customer information is not covered by the exclusions, telecommunications and broadcast licensees may be subject to the jurisdiction of two regulators in respect of the same subject matter, with potentially inconsistent obligations arising under the two applicable regimes.
- 3.11 The telecommunications and broadcast industries already face a strict regulatory requirement to protect customer data. These regulatory requirements arise under the Telecom Competition Code and the Media Market Conduct Code and are within the jurisdiction of the Info-communications Development Authority of Singapore (**IDA**) and the Media Development Authority of Singapore (**MDA**) respectively (based on their powers under the Telecommunications Act (Cap 323) and the Broadcasting Act (Cap 27)).
- 3.12 These existing regulatory requirements set out a comprehensive regime for the protection of end-user data and specifically establish a consent based model for the collection, use and disclosure of that data.³ Both the Telecom Competition Code and Media Market Conduct Code also require licensees to indicate the uses to which

³ See, section 3 of Telecom Competition Code 2010 and Media Market Conduct Code 2010.

information may be put (and the means for customers to withdraw consent) in their contracts or terms and conditions of service.⁴

- 3.13 Given the existence of an existing regime in respect of data protection that applies to telecommunications and broadcasting licensees, SingTel does not consider that two sets of largely overlapping sets of regulation should apply to licensees. If an organisation is subject to sector specific regulation, then this should be the only regulation that applies to that organisation. The PDPA should only apply to organisations that are currently not subject to any sector specific regulation.
- 3.14 This position has been previously adopted in Singapore. For example, the Competition Act specifically excludes the telecommunications sector for the application of competition law on the basis that sector specific regulation already covers the field. There is no reason why the PDPA should not take a similar approach.
- 3.15 Furthermore, the IDA and MDA have legislative powers to also take enforcement action in relation to specified matters, which includes how licensees are able to protect end-users information. Removing telecommunications and broadcast licensees from the ambit of the PDPA does not necessarily result in a lesser degree of oversight into these matters.
- 3.16 While SingTel acknowledges that section 4(7) of the Personal Data Protection Bill⁵ could potentially be relied upon to address inconsistencies that may exist, reliance on this provision is sub-optimal. Such an approach will require telecommunications licensees, such as SingTel, to determine the extent to which particular provisions of the Telecoms Competition Code and the Media Market Conduct Code align with the PDPA, resulting in significant administration cost and burden. More importantly, such an approach will not necessarily address the fundamental concern; the fact that a licensee will be subject to the jurisdiction of more than one (1) regulator in respect of the same subject matter, with potentially inconsistent obligations arising under the two applicable regimes.

Section 16(2) is unduly narrow and contrary to the interests of both organisation and end users

- 3.17 SingTel considers that the operation of the ‘reasonableness’ criteria in section 16(2) of the PDPA needs to be further refined to provide greater flexibility in how organisations collect, use and disclose data.

⁴ For example, see section 3.3.7 of the Telecom Competition Code 2010.

⁵ This proposed section provides that: “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”.

3.18 Section 16(2) of the PDPA provides that:

An organisation shall 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 reasonable to provide the product or service.

3.19 While the concept of what is “reasonable” is likely to depend on the product or service being supplied, SingTel considers that the operation of this requirement is likely to be unduly narrow. The proposed approach is unrealistic and out of touch with how modern organisations supply products and services to end users. Information is not collected, used and disclosed in a silo like manner in respect of the specific service being supplied to an individual but is typically used in an integrated manner within the relevant organisation to inform other activities, such as marketing practices for replacement products and services, as well as complementary and related offerings. That is not to say that organisations should be allowed to collect more personal data than is reasonable. However, it is important for the PDPA to provide organisations with a degree of flexibility around the purpose for which personal information may be used, provided that the relevant purpose is disclosed to the end user and the end user has consented to such collection, use and disclosure.

3.20 For example, it may be the case that customer data is collected, used and disclosed for the following purposes:

- (a) to provide the relevant product or service requested by the customer, which would include customer care and maintenance;
- (b) to understand the customer’s preferences in relation to the relevant product and service being acquired for the purposes of assisting in the sale of future purchases of the same product (e.g. preferences around types of mobile devices in respect of replacement services);
- (c) to identify complimentary or related products or services that may interest the customer.

3.21 The collection, use and disclosure of data for the purposes set out in paragraphs (b) and (c) above would not be consistent with proposed section 16(2), as it is currently drafted, even though there is nothing inherently problematic about the use of information in this manner, provided that the customer has provided their consent and is made aware of the purpose for which the data may be used. In fact, such an approach is likely to have a broad range of benefits for both consumers and organisations alike, with little, if any, downside from a data protection perspective.

3.22 The proposed ‘reasonableness’ criteria under proposed section 16(2) does not provide sufficient flexibility, restricting the collection, use and disclosure of personal data to that which is squarely linked to the supply of the relevant product or service to the

individual. The “deemed consent” provisions in proposed section 17 of the PDPA do not provide any real flexibility either.

- 3.23 To address this significant limitation, SingTel submits that the scope of proposed section 16(2) of the PDPA should be capable of being expanded beyond the current default position:
- (a) based on specific, narrowly defined exceptions incorporated directly into the PDPA; or
 - (b) if the relevant organisation is otherwise able to obtain the consent of the end user and makes sufficient disclosures about the purpose for which such information may be used.
- 3.24 Based on this proposal, an organisation will be permitted to collect, use and disclose the personal data for a purpose that is broader than the provision of the relevant product or service to the individual (as specified in section 16(2)), provided that the relevant purpose is permitted under the PDPA or if the relevant purpose is disclosed to the end user and the organisation has obtained provided its consent.
- 3.25 Our proposal is consistent with the approach that currently applies under the Telecoms Competition Code. For example, while section 3.2.6.2(a) of the Telecom Competition Code requires a licensee to ensure that it will not use End User Service Information other than for a listed purpose, the scope of the use can potentially be expanded if the licensee obtains the prior consent of the end user. Similarly, section 3.2.6.2(b) of the Telecom Competition Code provides that the licensee must further ensure that, unless the end user has provided consent, the Licensee will not provide End User Service Information to any third party (including its affiliates) for the purposes of developing and marketing any goods or services.
- 3.26 A similar approach has been adopted in Australia. Under the National Privacy Principles in the Privacy Act, an organisation must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection unless (amongst others):⁶
- (a) both the following apply:
 - i the secondary purpose is related to the primary purpose of collection; and
 - ii the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose; or
 - (b) the individual has consented to the use or disclosure; or
 - (c) if the information is not sensitive information and the use of the information is for the secondary purpose of direct marketing and certain conditions are met

⁶ Privacy Act 1988 (Cth), Clause 2 of Schedule 3 (National Privacy Principles). Available at, <http://www.comlaw.gov.au>

- 3.27 These alternative approaches would be more reasonable compared to current section 16(2) of the PDPA, which is overly rigid and does not provide end users and organisations with flexibility to agree to alternative models. Importantly, the alternative suggestion does not negatively impact the data protection objectives that underpin the PDPA, as the ability to collect, use and disclose personal information beyond the narrow operation of section 16(2) (as currently drafted) always remains subject to customer consent and disclosure to the end user.
- 3.28 SingTel considers that the PDPA should be amended to adopt the recommendations set out above in relation to section 16(2) of the PDPA.

Notification of purpose under section 22 needs further refinement

- 3.29 Section 22(1) of the PDPA requires that, in order to validly obtain consent under section 16(1), an organisation must inform the individual of the following:
- (a) the purposes for the collection, use or disclosure of the personal data on or before collecting the personal data; and
 - (b) any other purpose for the use or disclosure of the personal data in respect of which the individual has not been informed under paragraph (a) before the use or disclosure of the personal data for that purpose.
- 3.30 The effect of this provision is that the purpose for which personal data may be used needs to be disclosed to the individual before that data can be used by the relevant organisation for either a stated purpose or unstated purpose. While SingTel agrees with the objective behind proposed section 22(1) of the PDPA, SingTel considers that:
- (a) organisations should have greater flexibility to use or disclose personal data for any other purpose without informing the individual; and
 - (b) organisations should have a degree of flexibility to be able to describe the purposes for which personal data may be collected, used and disclosed in a reasonably generic way.
- 3.31 In respect of the issue of greater flexibility to use or disclosure of personal data for any other purpose without informing the individual, SingTel submits that it would be useful for the MICA to consider creating an exemption from the obligation to inform the individual if the use or disclosure is related to the primary purpose of collection and the individual would reasonably expect the organisation to use or disclose the information for that secondary purpose.
- 3.32 The key reason for this requirement is that it may not always be possible to know, at the time of informing the individual and obtaining their consent, of the specific purpose for which the relevant information may be used. Business requirements are constantly evolving and it would be highly inflexible for organisations to effectively need to go back to the individual to inform them that they intend to use personal data for another

purpose. Provided that the other purpose has a relationship with the primary purpose and there would be a reasonable expectation that the information would be used for that other purpose, SingTel considers that there is unlikely to be any downside associated with providing organisations with greater flexibility on this point. This approach is consistent with the approach adopted in overseas markets.

- 3.33 On the issue of organisations having a degree of flexibility in how they describe the purposes for which personal data may be collected, used and disclosed, SingTel recommends that section 22(1) of the PDPA be amended to make it clear that organisation are able to provide a broad form description or outline of the purposes for which the relevant consent has been obtained.
- 3.34 As there could potentially be dozens or hundreds of purposes for which personal information may be used in respect of service provision (and these purposes may vary depending on the product or service being supplied and may also vary over time), an overly strict approach to the interpretation of this requirement is likely to entail very significant disclosure requirements in customer contracts and may cause confusion for end users.
- 3.35 For example, an entity may use the customer information for customer profiling purposes, inviting customers to sign up for surveys or market research, providing customer retention programmes, for the purposes of sending promotional literature relating to the entity's own products and services to customers and / or other entities' products and services, to advertise materials to the customer, to send the customer information to third parties for processing purposes or for telemarketing purposes etc.
- 3.36 While MICA is cognisant of the compliance burden associated with informing individuals about the purpose behind the use and disclosure of personal data and does not wish to mandate practices in the PDPA⁷, SingTel considers that it would be prudent for MICA to provide greater certainty to organisations about the level of detail that is expected here.
- 3.37 In our view, the better approach will be to ensure that organisations are able to specify, at a reasonably high level, what purposes in respect of which personal information will be collected, used and disclosed. These could include:
- (a) providing the product or service to the customer, including billing, customer care, maintenance and replacement services;
 - (b) identifying and informing the customer of complimentary or related products and services that may interest the customer; and
 - (c) disclosure to third parties for the purposes of promotional efforts or processing, telemarketing efforts.

⁷ MICA, Consultation Paper, paragraph 2.81.

Flexibility is needed about how consent is obtained under the PDPA

- 3.38 SingTel considers that the PDPA (and enforcement of the PDPA) needs to allow for organisations to establish a flexible range of practices in relation to how consent may be obtained by an organisation and how the obligations to obtain consent can be discharged.
- 3.39 Currently, the PDPA provides that the consent may be gained explicitly (under section 16) or can be deemed to be obtained (under section 17) in circumstances where the end user has voluntarily provided the data to the organisation and that voluntary provision of information is reasonable.
- 3.40 As the deemed consent provision is likely to have very limited utility for organisations such as SingTel, SingTel considers that it is necessary for organisations to have a high degree of flexibility in how they obtain explicit consent from individuals.
- 3.41 As SingTel sells services in a multitude of different ways and through a variety of different channels, it is important for the method of gaining consent to be flexible, reasonably streamlined and does not create unnecessary customer inconvenience. To this end, SingTel currently obtains customer consent for data protection purposes through provisions in its General Terms and Conditions, which form part of the supply terms agreed between SingTel and customer. SingTel does not have more onerous arrangements in place to obtain this explicit consent, such as requiring customers to give agreement to a specific data collection or requiring customers to explicitly sign on the consent provision for it to be regarded that the customer has granted explicitly.
- 3.42 Furthermore, consent can be obtained in many varied ways. For example, customers may choose to provide verbal consent for telephone based transactions. We submit that the usual rules of contract acceptance and formation should apply and a party's consent is granted when contract terms are accepted by customers. SingTel will endeavour to highlight such terms to customers in a more express manner.
- 3.43 SingTel's expectation is that it would be able to continue to obtain consent in this manner and that overly onerous ways of collecting consent will not be required. This is consistent with the approach adopted in overseas markets.
- 3.44 On this basis, SingTel considers that the PDPA (or supporting documentation developed by MICA) should include additional provisions that clarify that organisations are to have a degree of flexibility in how consent may be obtained and to list of series of non-exhaustive examples of how that consent may be obtained.

Withdrawal of consents

- 3.45 SingTel broadly supports the provisions in section 18 of the PDPA in relation to withdrawal of consents. SingTel also supports the 'grandfathering' provisions in section 21 of the PDPA, which allow for the use of personal data collected before the appointed day, except in circumstances where consent is subsequently withdrawn.

- 3.46 However, while the proposed provisions are broadly consistent with SingTel's requirements, SingTel also considers that there is some scope to expand the 'grandfathering' provisions in section 21 to address circumstances where it may not be readily possible to implement a withdrawal of consent that is made by an individual after the commencement of the PDPA.
- 3.47 For example, there may be some circumstances where an organisation has already disclosed personal data to third party suppliers and vendors (including some that may be located overseas) and due to the contractual arrangements that have been previously established with these suppliers it will not be readily possible to cease the use of the relevant personal information. It may also be the case that removal of data will not be readily possible, or alternatively, only possible through costly manual intervention.
- 3.48 To this end, SingTel submits that the operation of section 21 of the PDPA should be subject to a "reasonably practicable" requirement, such that personal information collected prior to the appointment day should not be subject to the withdrawal of consent provisions in section 18 unless compliance with that requirement is "reasonably practicable" in the circumstances.
- 3.49 In applying this proposed test, the legislation (or supporting documentation released by MICA) could set out some threshold requirements that would allow organisations to determine the circumstances in which they could rely on the "reasonably practicable" carve out.

Expansion of exceptions to obligation to collect, use and disclose without consent

- 3.50 SingTel is generally supportive of the proposed exceptions that are available to organisations in respect of the obligation to collect, use and disclose with consent under Schedules 3, 4 and 5 of the PDPA.
- 3.51 However, it is also the case that some of the exceptions or carve-outs available to organisations under these Schedules are unduly narrow and need to be expanded to cover other activities that are reasonably common and which need to be undertaken by an organisation to provide products or services to an individual.
- 3.52 While there are certain exemptions that apply in relation to debt management and credit reporting practices, these exceptions appear to have been written from the perspective of financial institutions and cannot be readily be relied upon by other organisations, such as SingTel, that have significant credit risk and prudential requirements. These requirements do not fit neatly within the categorised established by the PDPA.
- 3.53 For example, the exceptions available under Schedules 3, 4 and 5 of the PDPA allow an organisation:

- (a) to collect, use and disclose personal information without the consent of the individual if *“the personal data is collected solely for the organisation to collect a debt owed to the organisation by the individual...”*;⁸
- (b) to collect and disclose personal information without the consent of the individual if *“the personal data is collected by a credit bureau from a bank or financial institution to create a credit report”*.⁹

3.54 The proposed provisions do not appear to provide organisations with the ability to conduct similar activities (e.g. credit vetting) if it was not conducted by a credit bureau to create a credit report, even though this particular activity may not necessarily always require a credit report to be produced. For example, it may just involve checking a potential customer against a database for credit history as part of pre-sales activity.

3.55 SingTel considers that the limited scope of these exceptions is likely to create some serious difficulties for organisations, such as SingTel, as it may not always be possible to obtain an individual’s consent in relation to the use of personal information before an actual legal relationship exists between SingTel and the individual (e.g. during pre-sales activity). To this end, SingTel considers that greater flexibility is needed for organisations to rely on the exceptions set out in Schedules 3, 4 and 5 of the PDPA.

The ability to obtain consent for the sharing of personal data between related organisations should be explicitly allowed

3.56 SingTel considers that the PDPA should allow the sharing of personal data between related organisations, for example, among the SingTel Group Corporation.

3.57 Currently the PDPA does not provide for the sharing of personal data between related organisations. SingTel also notes that this position reflects MICA’s intention as expressed in the Consultation to require each individual legal entity to obtain its own consent, regardless whether the legal entity formed part of a larger group of companies.

3.58 SingTel considers that MICA’s position to allow a consent given to one company to be used across the whole organisational group would place unnecessary burdens on larger organisations that were made up of multiple legal entities. This is because the structure of larger organisations is often based around dividing a group into smaller separate legal entities for a number of commercial reasons. Given that such structures are common, SingTel considers that MICA should consider how this requirement will impact larger groups of related companies.

3.59 Without such an ability to share the personal data of customers between members of a group of related companies, innovation and customer experience will be stifled because the entire group of companies is unable to fully understand the data behind its customers from a single instance of consent. Multiple consents for the same purpose

⁸ Personal Data Protection Bill, Clause 1(k) of Schedule 3 and Schedule 4, and Clause 1(m) of Schedule 5.

⁹ Personal Data Protection Bill, Clause 1(m) of Schedule 3 and Clause 1(o) of Schedule 5.

will need to be obtained from the customer for each individual legal entity. The customer is likely to find this onerous and unnecessary. SingTel suggests that if an individual is willing to consent to the provision of personal data to one member of the group, then it is likely that the individual would be prepared to consent to the group of companies using that information.

- 3.60 Increasingly customers are expecting to receive information or services that are relevant to them or reflect their preferences or interests, particularly in respect of converged services, such as telecommunications and media, where customers make purchasing decisions in an integrated way. For example, a mobile broadband customer may in fact also be interested in other broadband services or applications that are not necessarily offered by its mobile provider but by the mobile provider's affiliates (e.g. fixed broadband or pay-TV on mobile). Our proposal allows the related companies within a group to make specific offers to the customer and serve the customer better across business groups.
- 3.61 While MICA has stated that its approach is consistent with international practice¹⁰, the opposite is also true. For example, the Privacy Act in Australia specifically allows for the collection of personal information about the individual by a body corporate from a related body corporate, and the disclosure of personal information about the individual by the body corporate to a related body corporate, provided that the related body corporate complies with the Act itself.¹¹ SingTel considers that a similar approach could be readily adopted in Singapore.
- 3.62 To this end, SingTel reiterates its position that the PDPA should include an explicit allowance that allows an organisation to disclose personal data to related organisations as long as the reasons and / or purposes are disclosed in the customer terms and conditions.

Amendment to the meaning of 'specified message' in relation to the DNC Register

- 3.63 SingTel considers that the meaning of 'specified message' in section 41(1) of the PDPA is too wide and prohibits organisations from providing *any* degree of marketing material to a customer.
- 3.64 As currently drafted, a message under section 41(1)(d) of the PDPA is considered to be a 'specified message' if the purpose, *or one of the purposes*, of the message is marketing related.
- 3.65 Even if only a small proportion of the message relates to one of the listed marketing purposes in the section then an organisation prohibited from sending the message to an individual. SingTel does understand the need to protect an individual from receiving large amounts of purely marketing material, but considers this approach to be far too strict.

¹⁰ MICA, Consultation Paper, paragraph 2.35.

¹¹ Privacy Act 1988 (Cth), section 13B.

- 3.66 To further illustrate this, we may alert the customer that they should make some kind of arrangement with us when using their phone overseas is a service message to avoid incurring high roaming charges overseas. The proposed arrangement in our messages to customers would in fact include the type of facilities the customer can sign up for. The intention is clearly service-related but by virtue of the fact that the customer is asked to take up a facility to help itself would render that same message as a marketing message. Customers who have signed up with the DNCR would therefore not be able to receive these types of messages.
- 3.67 A more appropriate approach would be to remove the ‘or one of the purposes’ statement from section 41(1)(d), and amend the section to the effect that the message is only considered to be a ‘specified message’ if its *dominant* purpose is related to the marketing activities as listed in the section.

Organisations should not be penalised under both the PDPA and another law for the same offence

- 3.68 As noted in section 3, the PDPA will operate in an overlapping with the operation of the data protection provisions of the Telecom Competition Code and Media Market Conduct Code.
- 3.69 A key risk associated with this approach is the potential for an organisation, such as SingTel, to potentially be subject to enforcement action by two regulatory bodies, with the potential for two sets of penalties also being applied.
- 3.70 SingTel is strongly opposed to any type of arrangement that would create such a situation.
- 3.71 SingTel acknowledges MICA’s view that, where a particular incident may constitute a breach in both regimes, it would be preferable that the organisation be subject to the investigative and enforcement actions of one regulator, and that the PDPA will therefore provide the DPC with the powers to refer an incident to another regulatory agency, if necessary.¹² SingTel also notes that the proposed section 12 of the PDPA provides for the DPC to enter into co-operation agreements with other regulators and that these provisions seek to prevent the duplication of enforcement activities by the DPC and the other regulatory authority.
- 3.72 SingTel believes that this proposal is appropriate but notes that the proposal only provides for the referral of a matter to the other regulator. It does not include additional safeguards that if the other regulator takes action against an organisation then the DPC will not take its own parallel action.
- 3.73 SingTel considers that a further requirement should be included within the PDPA that makes it clear that if the other regulator takes action against an organisation then the DPC will not take its own action in respect of the same conduct.

¹² MICA Consultation Paper, paragraph 2.122.

Clarity regarding the imposition of penalties for offences under Part IX of the proposed PDPA

- 3.74 It is not clear from Sections 47 (4) (b), 48(2) and 49(2) whether the penalties apply in respect of each message or simply apply in relation to each incident (regardless of messages) where the entity is found guilty of such offences. We seek clarity as to the way the penalties are intended to be levied.

4 CONCLUSION

- 4.1 SingTel appreciates the opportunity to provide a submission to MICA on this important legislative reform. We trust that the recommendations for the MICA's consideration in this submission will assist with the further refinement of the PDPA.