

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

Our Ref: SS/RSN/TZQ/308688/1

29 August 2016

Ministry of Communications and Information
140 Hill Street
Singapore 179369

By Email:
TA_Public_Consult2016@mci.gov.sg
Fax: 6837 9480
(No. of Pages: 3 Only)

Attention: Jason Bay
Director, Economic Regulation Division

Dear Sir,

Public Consultation on the review of The Telecommunications Act (Cap.323) and related amendments to the Media Development Authority of Singapore Act (Cap.172)

Asia Pacific Carriers' Coalition ("APCC") is pleased to submit its comments to the Ministry of Communications and Information ("MCI") in response to the public Consultation Paper dated 5th August 2016. The subject matter of the present consultation paper is important and timely, as innovation combined with technology has brought to the market new service formats and offerings for consumers and business, increasingly sophisticated networks and service platforms and, important for the purpose of this consultation, the need to balance the interests of all the stakeholders to assure a continued flow of investment and innovation.

APCC members primarily provide data service to large enterprises and business users who have global presence. Through continuous innovation, APCC members are creating new markets and opportunities to drive growth and prosperity around the world. We would like to provide our inputs on two specific issues:

1. POWERS TO ESTABLISH AN ALTERNATIVE DISPUTE RESOLUTION ("ADR") SCHEME FOR TELECOMMUNICATION AND MEDIA SECTORS

We understand that the MCI is proposing to set up an independent ADR mechanism which is a dedicated dispute resolution framework for the telecommunication and media sectors, to better serve consumers and resolve their disputes with the service providers more fairly and effectively. The policy intention here is to give **consumers** access to an alternative platform to resolve their disputes.

We also understand that the MCI is keeping the business/enterprise customers out of the purview of the proposed ADR scheme on the basis that such participants generally have more equal bargaining power with the service provider and hence most disputes can be resolved without third party assistance. In that regard, we kindly ask the MDI to expressly clarify that the ADR scheme will not apply to disputes between licensees and business customers and that licensees providing services

Asia Pacific Carriers' Coalition
c/o Rajah & Tann Singapore LLP
9 Battery Road
#25-01 Straits Trading Building
Singapore 049910

T: +65 6535 3600
F: +65 6225 0747
Email: secretary@asiapacificcarriers.org

only to business customers will not be mandated to participate in such ADR scheme.

Even though the proposed ADR scheme seems to be voluntarily (as the MCI explains it, the consumers will have a flexibility to resolve their disputes through ADR or other avenues), we fully support the proposed exclusion of business customers from the purview of the proposed ADR scheme. We outline below several reasons why business customers should continue to be kept out of the purview of such consumer and requirements.

The reasons to support exclusion of enterprise services from the ADR scheme are multi-fold:

- The marketplace for business customers' services is well-functioning and highly competitive.
- Enterprise services and contracts typically contain a certain degree of customization or are individually negotiated, and the contracts typically set out in detail the applicable dispute resolution processes; business consumer services are not individualized (other than through common differentiated service offerings) and are not offered through customized or individually negotiated agreements.
- The nature of the services themselves is radically different in the enterprise space. Unlike mass-market consumer services, large business and enterprise services present various specificities that differentiate them from mass-market services and are significantly more complex (e.g., telecom services provided across multiple locations and countries, different access technologies, bundles of services, demanding Service Level Agreements (SLAs), to name just a few).
- Business while contracting for communications services, business customers can take care of themselves; they typically have technical, legal and commercial teams which have sophisticated knowledge of the technology and economic implications of the services they are buying.
- From a consumer protection perspective, terms relating to the required quality levels, detailed service transparency, technical characteristics, and penalties for noncompliance, are usually addressed in a contract and form the scope of the overall commercial deal. Thus, the exclusion of high-end enterprise market users from extension of ADR obligations is very well justified and should continue to remain outside the remit of such obligations.

2. AMENDMENTS TO PROVIDE GREATER CLARITY TO SELECTED PROVISIONS OF THE TELECOMMUNICATIONS ACT

We understand that there are certain amendments proposed to provide greater clarity to selection provisions of the TA. As per one of the proposed amendments, MCI proposes to amend Section 26 of the TA to make clear IDA's powers to authorize the collection, use or disclosure of personal data by telecommunication licensees without end-users' consent, for the operations of telecommunication systems and the provision of telecommunication services, in accordance with the exception under the PDPA. We fully endorse this strengthening of the exception as it

provides greater clarity and transparency regarding the collection/use/disclosure of personal data by telecom service providers. We also understand that this clarity in regulation reflects market dynamics including the need for a flexible, technology neutral, and future proof framework. Finally, in respect of this amendment and other great initiatives, we would like to share high level regulatory Policy/Data Privacy principles that may merit your attention Such policy to a great extent possible be:

- Horizontal rather than sector specific;
- Light touch horizontal regulatory regime for all markets market and, in particular, business customers;
- Encourage investment and innovation; and
- Non Sector-specific regulation when general data protection, security and consumer protection rules already exist and are robust enough across sectors.

In order to ensure transparency and legal certainty, it should be made clear which authority has jurisdiction to enforce rules under PDPA in the telecommunications sector in Singapore.

Thank you.

Yours faithfully



Simon Smith
President, Asia Pacific Carriers' Coalition
E president@asiapacificcarriers.org
T +65 6722 9839