

SINGAPORE TELECOMMUNICATIONS LIMITED SUBMISSION

JOINT IDA-AGC REVIEW OF ELECTRONIC TRANSACTIONS ACT STAGE III: REMAINING ISSUES

1. STATEMENT OF INTEREST

- 1.1 Singapore Telecommunications Ltd (“SingTel”) is licensed to provide telecommunications services in Singapore. It was corporatised on 1 April 1992. SingTel is committed to the provision of state-of-the-art telecommunications technologies and services in Singapore. In addition, the SingTel group has a comprehensive portfolio of services that includes voice and data services over fixed, wireless and Internet platforms.
- 1.2 As a leading provider of telecommunications services, including Internet services and transmission of content, the SingTel group has a strong interest in the issues raised with the Electronic Transactions Act.
- 1.3 The IDA and the AGC have released a joint consultation paper entitled “Joint IDA-AGC Review of Electronic Transactions Act Stage III : Remaining Issues”
- 1.4 SingTel’s submissions in response to Questions 6 - 9 and 15 - 27 of the joint consultation paper are outlined below. SingTel makes no submissions on the other Questions in the paper.

2. SPECIFIC COMMENTS

Q6. Is it necessary to clarify the meaning of “network service provider”. Do you agree with the proposed definition of “network service provider”? (See definition proposed for discussion in paragraph 3.4.8).

A6. Yes, SingTel considers that a clarification of the meaning of “network service provider” is necessary.

SingTel submits that the proposed definition is too narrow. The definition appears to have been drafted primarily in contemplation of Internet services and network access, but this is too limited given the potentially wide scope of transmission mediums and manner in which electronic transactions may be made.

For example, a person who enables transactions to be made via mobile phone (e.g. purchases made via sms text message or interactions between a mobile service provider and its customer without using any Internet access service), should be clearly covered by the definition of network service provider.

Therefore, SingTel submits that the definition of “network service provider” should be clearly expanded to ensure it is broad enough to apply to any person who facilitates any kind of electronic transaction, however transmitted and through whatever medium.

Q7. Do you agree with the proposed deletion of the words “to which he merely provides access” in section 10(1) of the ETA? (See paragraph 3.4.14).

A7. Yes, SingTel agrees with the proposed deletion.

SingTel submits that mere provision of access should not be the basis on which a network service provider is exempt from liability. Rather, the basis of exemption from liability should depend on who supplies, creates or owns the relevant content. Except in a limited class of defined cases, a network service provider who is not the owner, creator or supplier of the relevant content should not be held liable for that content.

Q8. If section 10 of the ETA is amended as proposed in paragraphs 3.4.8 and 3.4.14, do you think any further safeguards are necessary? In particular, would the protection given under section 10 be too wide? (See paragraph 3.4.22). If yes, please elaborate with specific reference to the kinds of liability from which network service providers should not be exempted.

A8. SingTel does not consider that further safeguards are necessary.

In relation to paragraph 3.4.8, and as noted above at A6, SingTel considers that the proposed definition of “network service provider” is too limited (ie; it should be amended to ensure that all types of electronic transactions are clearly covered). To that extent, the current definition is not wide enough.

As to the scope of protection under section 10, SingTel submits that the protection given under section 10 should be wide, as liability should be founded on the

supply, creation and ownership of content, rather than on the provision of access (see A7 above).

Q9. Should the immunity regime for service providers under section 10 of the ETA be changed (other than the changes mentioned in Q.6, 7 and 8)?

A9. Yes, SingTel considers that further changes to section 10 are required.

SingTel has already set out at A6, 7 and 8 above its view on each of Q6, 7 and 8 (being that the definition of “network service provider” should be broader, and the reference to mere provision of access should be removed from section 10). In this regard, SingTel submits that the underlying premise on which section 10 is based ought to be reviewed. The section appears to have been heavily influenced by copyright law considerations and, as a result, focuses on the network service provider as a conduit and fails to take into account that the network might also be the creator, supplier or owner of the relevant content (see A7 above).

In addition to the above comments, SingTel submits that the exceptions in section 10(2)(b) and section 10(2)(c) should also be reviewed.

A key reason for enacting section 10(1) is to ensure that network service providers are not unfairly exposed to liability. To this end, the appropriate level and extent of liability and exemptions have been subject to thorough and detailed discussion. Therefore, it seems logical that section 10(1), as a carefully considered and customized liability exemption, ought to prevail over any general licensing regimes, regulatory regimes and written laws that have been drafted without specific consideration of this issue.

To that end, SingTel submits that the protection conferred by section 10(1) should be effective **despite** the provisions of any licensing regime, regulatory regime or written law, unless the relevant regime or law is expressly stated to apply notwithstanding section 10(1).

Q15. Do you agree that the definition of an electronic signature should not require such a signature to fulfill both an identification as well as an approval function?

A15. SingTel submits that the definition of electronic signature should be broad enough to recognize that an electronic signature may, but does not always, fulfill both an identification and approval function.

For example, a person may sign a document to acknowledge receipt of that or another document, without that signature being intended to show, or imply, that the signatory approves the contents of the document. Or a person may sign a document that, in the jurat, clearly identifies that person as signing in a particular capacity (eg; witness to another signature).

Therefore, the position should be the same as with a handwritten signature: whether or not the signature has or is intended to have an approval function will depend on the context in which the signature is used or required.

Q16. Do you agree that a general provision providing for the functional equivalence of electronic signatures to handwritten signatures (e.g. section 8) should not contain any reliability requirement?

A16. Yes. SingTel agrees there should not be any reliability requirement, for the reasons stated in paragraphs 5.10.9 to 5.10.12 of the consultation paper.

Q17. Should any laws imposing a signature requirement be clarified by prescribing the requirements as to reliability that should apply to electronic signatures? If yes, please state the legal requirement (e.g. Civil Law Act, section 6) and describe the standard that should be required of electronic signatures in order to satisfy that legal requirement.

A17. No, SingTel submits that there should not be any reliability requirement (see A16 above).

Q18. What difficulties or benefits do you foresee if the provisions of article 9(4) and (5) of the draft convention (relating to originals) are adopted in the ETA?

A18. SingTel has no submissions on this.

Q19. Do you have any comments on proposed section 9A in Annex B? Do you agree with the criteria for acceptance of electronic originals in proposed section 9A(1) and (2) in Annex B?

A19. As above.

Q20. What difficulties or benefits do you foresee if the provisions of article 10 of the draft Convention (relating to time and place of dispatch and receipt of electronic communications) are adopted in the ETA?

A20. SingTel notes that based on article 10 of the draft Convention, for transactions between an e-mail network service provider and its own subscribers (who are using the network service provider's email system) the time of dispatch would be the time of receipt of the electronic communication.

The focus on the time a notice **leaves** an information system may have unusual consequences.

For example, a corporate group may comprise both an internet service provider (ISP) and a mobile network service provider (MNSP). If the corporate group wished to serve a notice on the customer (eg; terminating contracts with the customer arising from the customer's bankruptcy), and both the ISP and MNSP sent a notice by email at exactly the same time on the same day, both using the ISP's email system:

- (a) The notice sent by the MNSP would be deemed dispatched on leaving the MNSP's email system; but
- (b) The notice sent by the ISP would only be deemed dispatched on receipt by the customer.

Therefore, identical notices sent at identical times by members of the same corporate group would have different deemed dispatch times. Further, the notice

sent by the MNSP may be deemed to have an earlier dispatch time, notwithstanding that it was required to pass into a third party system (eg; the ISP's system) before being routed to the customer.

In this regard, perhaps it may be better to focus (as the ETA does) on when the communication **enters** another party's system. For communications that stay at all times within an information system under the sender's control (eg; emails sent by an ISP to its own subscribers, via its ISP network) SingTel submits that such communications should be deemed, for this purpose and unless the parties have agreed otherwise, to have entered another party's system on reaching the addressee's electronic address.

Q21. What difficulties or benefits do you foresee if the provisions of article 11 of the draft Convention (relating to invitation to make offers) are adopted in the ETA?

A21. SingTel agrees with the provisions of article 11 of the draft Convention, as it is SingTel's understanding that this article reflects current commercial practice.

Q22. What difficulties or benefits do you foresee if the provisions of article 12 of the draft Convention (relating to automated message systems) are adopted in the ETA?

A22. SingTel is of the view that this may require more clarification.

The reference to a contract "formed by the interaction of an automated message system and a natural person" should be amended so that it is clear that the "natural person" need not be acting on his or her own account, but may be acting on behalf of another person or corporation. For this purpose, SingTel suggests adding, after the words "natural person", the words " , whether acting in a personal capacity or for and on behalf of another person,".

Q23. What difficulties or benefits do you foresee if the provisions of article 14 of the Convention (relating to Error in Electronic Communication) are adopted in the ETA?

A3. SingTel has no submissions on this.

Q24. What exclusions from the applicability of the Convention do you propose in the context of Singapore? Please specify legislative provisions affected where relevant. (See paragraphs 5.16.9 to 5.16.11).

A24. As above.

Q25. Do you agree that Singapore should not adopt any of the limitations in article 18(1)? (See paragraph 5.16.12).

A25. As above.

Q26. Should sections 13, 14 and 15 in Part IV of the ETA be allowed to apply to non-contractual transactions? (See paragraphs 5.17.1 to 5.17.3)

A26. Yes, SingTel is of the view that sections 13, 14 and 15 in Part IV should apply to non-contractual transactions.

Q27. Do you have any comments on whether any of the provisions of the Convention should apply to non-contractual transactions? (See paragraphs 5.17.4 to 5.17.7)

A27. For the same reasons that international and domestic transactions are brought under this regime (i.e. for consistency, and the difficulty in applying two different regimes), SingTel is of the view that it would be appropriate to generally apply the Convention to non-contractual transactions, unless the articles are clearly only meant for contracting purposes.