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Comments on the Hong Kong Government's 2007 Digital 21 Strategy Public Consultation

1 Introduction

Microsoft is pleased to see the leadership and continuous commitment demonstrated by the Hong Kong Special Administrative Region Government under the "Digital 21" strategy. Hong Kong has already accomplished significant milestones in establishing itself as an international IT hub, the latest one being the successful conclusion of the ITU in Hong Kong. In the spirit of driving the momentum that keeps Hong Kong at the forefront of the digital world, as a territory that embraces technological development together with all of the benefits it offers, we wish to make the following comments on the Digital 21 Strategy.

Here is an executive summary of our comments:

- Hong Kong needs a strong intellectual property law regime, which will be favorable to and encourage the creation of R&D and the development of the local industry. This will in turn drive growth of local IT economy and eco-system.

- Hong Kong should allow market forces to drive the use and adoption of ICT solutions. The Government should maintain neutrality in technology adoption, and promote maximum choice for users.

- The Government has chosen the right course in ensuring that government services and projects are to be developed in a manner which encourages interoperability through the adoption of industry-led, voluntary and consensus based standards.

- Hong Kong should leverage its synergy with the Mainland and act as a two-way platform to help China attract foreign investment and participate in the global economy. At the same time, it would be good to see more concrete action plans from the Government to assist the Hong Kong based ICT businesses and professionals to gain access to the China market.

- On the creation of a conducive business environment, we support

  o the idea of a risk assessment and electronic authentication framework, but would emphasize on the principle of "total security";
  o the review of the data privacy law;
  o the passage of the anti-spamming law,

  as all of the above will boost online security and strengthen users' confidence in transacting online, and leading to "Trustworthy Computing".

- We are pleased to see the Government's continuous efforts in driving the next generation of e-government services.

- We applaud the Government's dedication in building an inclusive, knowledge-based society, and look forward to opportunities to cooperate with the Government and other NGOs in this regard.

2   Comments

The Government has identified five key action areas and we comment on each of them in detail below:

A   Facilitating a Digital Economy

We believe that protection of intellectual property rights ("IP") should be a key goal for every government around the world. As Hong Kong people become more reliant on technology in their everyday lives, it is crucial that developers of such technology continue to develop and offer their products here. If the protection given to copyright owners is inadequate, then technological innovation and development will be inhibited. Hong Kong needs to continue to educate its people, develop legislation, and undertake law enforcement action against infringers of IP.

We all know the threat that software piracy may pose to ICT development in Hong Kong. According to a study conducted by IDC on the economic impact of reducing piracy[1], the benefits of reducing 10 points in the piracy rate by 2009 will bring an aggregate of US$576.3 million of additional local industry revenue to Hong Kong, translating into a total of over 4,600 additional jobs and additional taxes of US$150 million over the same period.

We therefore believe that for local ICT industry to prosper, it is absolutely crucial to drive down piracy rate. Good IP law will also give additional confidence to local businesses when they decide to incur R&D in new creative industries.

B   Promoting Advanced Technology and Innovation

Microsoft welcomes the Government's previous actions in relation to promoting new technologies but would ask that it continue its work in ensuring that Hong Kong remains as open to technological development as it has always been. It is this freedom that has, in part, maintained Hong Kong's advantage over many economies in the region. The Government must ensure that ICT continues to be chosen in Hong Kong on the basis of neutrality towards solutions and that reliance is placed upon market forces in determining the best technology for any project. ICT should always be chosen on merit, taking into account factors including functionality, security, performance and price. The market naturally selects solutions based on innovation and needs, and this guarantees efficiency and competition and the best allocation of resources.

We are therefore pleased to note that Hong Kong was one of the inaugural signatures of the "APEC Technology Choice Principles" signed at the 18th APEC Ministerial Meeting in Hanoi, where Ministers recommended that leaders embrace policies that facilitate regional trade by and emphasis on the promotion of technology choice in a market-opening, trade-liberalizing manner. These Principles state for example that signatories agree to "refrain from mandating standards that have the potential to stifle innovation, limit technology choice, hinder competition, or serve as a barrier to market access" as well as to "promote procurement practices, with respect to the acquisition of technology, that are transparent, non-discriminatory, openly competitive, and merit-based, including with respect

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[1] Copy of the IDC study may be found at http://www.bsa.org/idcstudy/.

to the procurement of open source and proprietary software." We believe that Hong Kong will continue to benefit from the virtuous cycle of innovation and the trade and development in the Asia – Pacific region as a result of its adoption and adherence to these Principles.

We note that the government's consultation document references the importance of open standards and interoperability. Interoperability is important to governments, consumers, businesses and other organizations for various reasons, including that it: (1) promotes open access to information and addresses backwards compatibility issues with legacy systems, (2) promotes healthy IT eco-system based on choice, competition, and innovation, (3) reduces costs while increasing the efficiency, flexibility, and value of a system, (4) enables the integration and working together of competing products, and (5) facilitates important social and policy solutions (e.g., accessibility, privacy, security).

The goals of interoperability can be accomplished through a variety of independent and interdependent means, including: (1) implementation of market driven standards through market competition; (2) development of software that is "interoperable by design"; (3) voluntary publication and licensing of proprietary technologies and intellectual property; and (4) formal collaborations among businesses and governments to create interoperable systems. To maximize the level of interoperability, governments should embrace a policy that allows for "choice" by their software procurement and other divisions seeking interoperability solutions -- choice as to which one of these four complementary options, or combination of them, is the best means of achieving interoperability in a given situation; choice regarding which open standard(s) and/or proprietary standard(s) on which to rely under the circumstances; and choice between open source software and proprietary software in the procurement process. This flexible approach predicated on choice is particularly appropriate in the rapidly converging IT world, in which customers and governments increasingly rely on a combination of proprietary and open source software, as well as open standards and proprietary standards, to develop an ideal interoperability strategy.

Increasingly, however, governments are confronted with arguments that government policy (in particular a policy of technology neutrality) should be altered with the purported goal of promoting interoperability in the marketplace. Proponents of this view have argued that there is a need to somehow engineer interoperability by prescribing specific and unwavering requirements. For example, they may identify a particular open standard and suggest that only that standard be used to achieve interoperability among different IT systems, or they might alternatively argue that mandates or preferences should be established in favour of open source software to the exclusion of software developed under a proprietary model. While such an approach might have some superficial simplicity and appeal, such preferences or mandates simply curtail the flexibility of government agencies or organizational divisions by precluding their use of alternative means that would have resulted in even greater levels of interoperability had they been pursued. When considering these issues, governments should also be cautious to avoid unknowingly becoming a partner and competitive ally of private industry by promoting one technology choice over another, or selecting only one way by which companies can deliver interoperable products.

To avoid the foregoing pitfalls, we submit that the government should maintain the policy of technology neutrality that has long been a hallmark of Hong Kong's leadership in the area of IT policy, including by continuing to allow industry to lead in promoting technical interoperability (e.g., by developing voluntary, industry-driven, consensus-based standards) and avoiding policies that would mandate or extend preferences to specific technology solutions, standards implementations, platforms, or business or development models.

C   Developing Hong Kong as a Hub for Technological Cooperation and Trade

C1   Workforce Development

We are pleased to note that the Government is working closely with the industry to facilitate the continued education and training for ICT workforce in Hong Kong. This is clearly required to maintain Hong Kong's competitive position in the region as a knowledge-based economy. We would remind the ITAC that the Qualification Framework to be developed for ICT industry should be neutral and avoid unnecessarily restrictions to any particular technology or development.

C2   Mainland China

One of Hong Kong's great advantages is its close ties to mainland China. We welcome the Government's action to cement geographical proximity with new programs and developments in the technology sphere. We strongly support initiatives such as the Economic Summit on "China's 11th Five-Year Plan and the Development of Hong Kong", as Hong Kong definitely should leverage its niche to grasp opportunities and be prepared for challenges arising from the rapidly changing economies in China. We look forward to seeing more concrete action plans in the final Digital 21 Strategy in this regard. At the same time, we wish the Government will adopt more concrete plans to assist the Hong Kong based ICT professionals to gain access to the China market.

C3   "Trustworthy Computing"

"Trustworthy Computing" is a long-term, collaborative effort that Microsoft has taken up to provide more secure, private, and reliable computing experiences for everyone. Trustworthy Computing is built on four pillars: security, privacy, and reliability in our software, services, and products; and integrity in our business practices[2].

We would urge the Government to take steps in relation to the below to ensure that Hong Kong is an electronically secure jurisdiction in which to carry out business.

- The Government needs to encourage the use and development of security features in software and hardware, both by itself and by all businesses. Security needs to be constantly updated as new threats and vulnerabilities are discovered. Small and medium sized businesses need to receive suitable education on the steps they can take to make their businesses more secure. We are pleased to note the idea of the publication of risk assessment and electronic authentication framework for public reference in 2008, and look forward to more details in the final strategy and the opportunity to provide input in the making of such framework. *Total security* depends not only on the design of security features, but also how well the software is deployed, configured, updated, and maintained, including whether product vulnerabilities are discovered and resolved through appropriate updates.

- Hong Kong laws need to be updated to take into account the technological and security requirements of businesses. The Government has stated that the Electronic Transactions

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[2] To find out more about Microsoft's view on "Trustworthy Computing", please visit http://www.microsoft.com/mscorp/twc/default.mspx.

Ordinance will be considered for updating as part of a 2008 review and this is needed to ensure it remains up to date with technological developments and practice.

- The Government should also consider how Hong Kong addresses the problem of consumer security in the digital space, including taking steps to minimize viruses, Trojans and worms and the more recent phenomenon of phishing and theft of identity. These are all issues that could be addressed to better protect consumers in Hong Kong and such measures might make Hong Kong a more attractive place to do business. The Government will need to work closely with industry to see meaningful steps taken in this direction. Concerted efforts in consumer education on online security will be a good start.

- Personal data protection has an increasing importance in a digital society. The Personal Data (Privacy) Ordinance ("PDPO") was enacted in 1997 and given the development of the Internet in the intervening period it is surely time to investigate how data is collected and used by businesses in Hong Kong. We support an overall review of such laws and the enforcement of such protections under the office of the Privacy Commissioner.

- We were pleased to see that the recent Unsolicited Electronic Messages Bill will soon provide increased protection against the receiving of unwanted commercial emails. However, we urge the Government to reconsider accommodating pre-existing business relationships between senders and recipients of commercial electronic messages when defining the scope of the legislation. Otherwise, the anti-spam legislation will unduly increase the obligations on persons who send commercial electronic messages in furtherance of pre-existing business relationships and increasing compliance costs particularly for SMEs. On the question of private right of action, we also believe that ISPs, email service providers and other intermediaries are well-equipped to bring effective civil actions against spammers and are capable of representing the interests of individual spam recipients as well as their own. We therefore are doubtful as to how effective it is to extend the private right of action to anyone who has suffered loss or damage. If the Government wants to allow such extensive private right of action, it would be prudent to impose certain monetary threshold for the claims.

D   Enabling the Next Generation of Public Services

The Government must lead by example in the use of ICT both internally and for its public services. We are therefore glad to note that the Government's commitment to introduce citizen-centric mode of public service delivery, which will in turn encourage migration and adoption of ICT use in business sectors as well as individual citizens.

In this regard, we would also refer to our comments on technology neutrality. It is also essential that robust proven technology standards that are used by the citizens of Hong Kong on their chosen devices are adopted. Needless to say, a "trust-worthy computing" environment is also key to the success of electronic transactions and services.

E   Building an Inclusive Knowledge-based Society

Given the ever increasing importance of ICT in everyone's lives, it is vital that Hong Kong's residents be properly equipped to use and make the most of it. The Government also clearly has an integral role in ensuring that the vast benefits of ICT are extended to as many people as possible. For both of these goals to be achieved we believe the Government needs to:

- ensure affordable access to Internet to every Hong Kong resident no matter what their income, since today such service should be seen as a utility, as essential as water, electricity or gas;

- engage industry into more detailed discussions on what action it will take to ensure the adoption of new wireless technologies such as HSDPA, WiMax and mesh networking; and

- ensure that small and medium sized companies are properly educated in relation to purchasing ICT for their businesses, so that they understand the long-term "total costs of ownership" - long term support and maintenance costs, training costs as well as ease of use and productivity gains, and not only the initial acquisition costs.

In Hong Kong, Microsoft has on various occasions partnered the Government and non-governmental organizations in offering its resources and training programs to promote "Digital Inclusion". Such efforts include the Digital Solidarity Fund, Partners in Learning program, Unlimited Potential program, and various software donation programs[3]. We strongly feel that public (including NGOs) private partnership has a huge multiplying effect in this area in particular, being able to make full use of all stakeholders human and financial resources. We wish to be able to contribute more to the society through such initiatives.

3   Summary

Hong Kong needs to strive to maintain its position as one of the most technologically developed territories in Asia, and it is important that its ICT policy continues to assist it in retaining this position. The Government needs to ensure that it facilitates an open, technologically advanced society which allows future advances to benefit everyone. Microsoft would like to thank the Government for the opportunity to assist with developing its Hong Kong ICT strategy and we look forward to hearing your comments on our suggestions.

Microsoft Hong Kong Limited
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[3] Learn more about Microsoft's commitment to global citizenship at
http://www.microsoft.com/about/corporatecitizenship/citizenship/default.mspx.