

**Motion debate on
“Enhancing the regulation of commercial marketing practices”
at the meeting of the Legislative Council on 29 June 2005**

Progress Report

Introduction

The Legislative Council passed a motion on “Enhancing the regulation of commercial marketing practices” at its meeting on 29 June 2005. This is a joint report from the Commerce, Industry and Technology Bureau, and the Economic Development and Labour Bureau (EDLB) to update Members on the follow-up actions taken by the Administration so far.

Issues Relating to Telecommunications

Measures to Contain the Problem of Unsolicited Promotional Calls

2. The Office of the Telecommunications Authority (OFTA) has met the fixed and mobile operators to explore various measures to tackle the issues associated with unsolicited promotional telephone calls generated and dialled by automated means (UTC-M), such as the Interactive Voice Response System (IVRS).

Code of Practice on Handling Inter-operators UTC-M

3. With a view to providing fixed and mobile network operators with a set of procedures and guidelines to jointly handle customer complaints against inter-operator UTC-M, OFTA has offered to assist the industry to issue a voluntary industry Code of Practice (CoP), and prepared a draft CoP for comment and consideration by operators. While most mobile network operators support the proposal to issue the CoP, the majority of fixed network operators have reservations and concern about the need and effectiveness of the CoP. OFTA would discuss further with the fixed and mobile operators on the draft CoP and the way forward.

Not-to-Call Lists

4. Some Members suggested that we should draw reference on the practice in the United States, and consider introducing “Not-to-Call” lists to help contain the problem of UTC-M. We are considering this suggestion in

the context of the proposed anti-spam legislation.

Blocking Unsolicited Promotional Telephone Calls

5. Currently, most fixed network operators are offering the block-the-blocker service as a value-added service to their customers. While this service would block the anonymous calls with caller numbers withheld by the callers (i.e. callers use “133” to block their caller numbers), the blocking service is not able to filter calls from overseas, for which the system would show “International” or “I”, or calls from local Private Automatic Branch Exchange (PABX) systems, for which the system would show “Out-of-Area” or “O”. For these two types of incoming calls, there would be limited caller information for recipients to decide if they would like to answer them.

6. OFTA has requested mobile network operators to study if they could also introduce and offer a similar value-added service to their customers to filter the anonymous calls. However, the majority of the mobile network operators do not support this proposal, as they have doubt about the effectiveness of the block-the-blocker service in combating UTC-M. In particular, they highlighted that the blocking service, even if available, would not work when the customers are using roaming services in overseas countries because most overseas mobile networks would not relay and show the caller numbers to customers on roaming services. Consumers, while out of Hong Kong, would still need to decide if they answer those incoming calls without caller information. Or, if the blocking service applies to all calls without caller information, legitimate calls may also be blocked which may not be welcome by consumers.

7. OFTA would discuss further with the mobile network operators on this proposed measure.

Assigning Special Prefix to Telemarketers

8. This is a proposal to assign a special number or prefix to telemarketers so that recipients can readily identify the nature of the calls and choose whether to answer them. Majority of mobile network operators support this proposal while some fixed network operators have concern and wish to study it further.

9. In respect of implementation, there are at least two issues. First, fixed network operators considered that the use of special number or prefix for telemarketers would put additional administrative burden on operators.

There could be cost and hence price implications. Second, as network operators cannot easily identify if their customers are telemarketers, it would be difficult for them to assign the required special number or prefix to telemarketers. In particular, it would be hard to decide what numbers should be assigned to companies, such as banks, in which telemarketing is one of their many functions/activities.

10. In order to assess the full impact on all affected parties, OFTA would consult members of the Telecommunications Numbering Advisory Committee at its next meeting scheduled in November 2005 on whether, and if so, how special number or prefix should be assigned and managed.

Adopt a “calling party pays” charging regime

11. There was a suggestion that the “calling party pays” regime should be adopted so that telemarketers would bear the costs of making promotional calls. We will consider this suggestion in the context of the review of convergence of fixed and mobile telecommunications services.

Statutory Measures

12. We have decided to enact legislation to regulate the sending of unsolicited electronic messages (UEMs)¹, which would include, among other things, unsolicited phone calls initiated by automated means. Under our proposed legislative framework, senders of UEMs would need to provide recipients with accurate sender information and a functional facility to unsubscribe, free of any usage charge, from receiving all future UEMs, or specific categories of UEMs from the sender.

13. We will consult the public on the detailed legislative proposals by early 2006, and aim to introduce the Bill into the Legislative Council in 2006.

Design of Contract for Telecom Services

14. Some Members suggested that operators should be encouraged to simplify the provisions of their contracts to improve their clarity and transparency, and provide a cooling-off period in the contracts to allow time for consumers to consider the features of the service plans before finalising

¹ Under the proposed anti-spam legislation, unsolicited electronic messages would exclude real-time communications between a caller/sender and a recipient which are not initiated by automated means. In other words, telemarketing calls by a sales person would not be brought under the legislation unless the call is initiated by automated means.

their decisions on whether to accept the services.

15. OFTA is conducting a survey on operators' compliance of the two Codes of Practice for Service Contracts. Whether the operators have listed out key provisions in prominent places or highlighted them in their contracts has been covered as part of the survey. As explained in the speech of Secretary for Economic Development and Labour during the motion debate, in respect of a "cooling-off period" for telecommunications services, OFTA has already promulgated the requirement for a subsequent confirmation telephone call, with the opportunity for the consumer to back out of an earlier contract signed through a direct marketing channel, as one of the 9 Best Practice Indicators² for the telecommunications licensees to follow. OFTA will assess the effectiveness of the 9 Best Practice Indicators, and decide on the need for further regulatory actions.

Strict Enforcement of Section 7M of the Telecommunications Ordinance

16. Some Members considered it necessary for the Telecommunications Authority to strictly enforce the Telecommunications Ordinance (especially section 7M) and increase penalties to combat misleading and deceiving marketing behaviors. On 29 March 2005, OFTA published the "Mis-selling Report" and introduced 9 Best Practice Indicators. In the "Mis-selling Report", OFTA stated clearly that heavy penalty would be imposed for any future breach of section 7M of the Telecommunications Ordinance. Besides, operators are under surveillance of OFTA on compliance with the 9 Best Practice Indicators.

Consumer Protection

17. Some Members had mentioned complaints about timeshare schemes. EDLB believes that the fundamental safeguard for consumer rights is to make consumers aware of and "encourage" them to exercise their rights and make their choices. As far as timeshare schemes are concerned, to protect consumers, the most important thing is to make them fully aware of the nature of such schemes and their rights as consumers. The Consumer Council (CC) reminds consumers from time to time through its "CHOICE" magazine of the things they should note when joining such schemes. The CC has also published a pamphlet on timeshare schemes for distribution at

² The 9 Best Practice Indicators cover (1) sales person selection; (2) sales person remuneration; (3) claw-back and withholding of commissions; (4) sales person training; (5) selling to the elderly; (6) "on-the-job" monitoring of sales people; (7) sales documentation; (8) quality control confirmation calls; and (9) recording conversations with consumers.

all its Consumer Advice Centres for reference by members of the public.

18. As regards legislation, the Unconscionable Contracts Ordinance empowers the courts to give relief to consumers with regard to unconscionable contracts. If a contract or any part of it is found to be unconscionable, the court may refuse to enforce the contract, or revise the unconscionable part. There were previous cases wherein consumers had successfully claimed the relevant traders.

**Communications and Technology Branch
Commerce, Industry and Technology Bureau
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