

立法會
Legislative Council

LC Paper No. CB(1)246/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/4/05/2

Bills Committee on Unsolicited Electronic Messages Bill

**Minutes of the fourth meeting on
Tuesday, 31 October 2006, at 4:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Howard YOUNG, SBS, JP (Chairman)
Hon James TO Kun-sun
Hon SIN Chung-kai, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
- Public officers attending** : Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry and Technology
(Communications and Technology)
- Mr Tony LI
Principal Assistant Secretary for Commerce, Industry and
Technology (Communications and Technology) B
- Mr Franco KWOK
Assistant Secretary for Commerce, Industry and
Technology (Communications and Technology) B1
- Mr SO Tat-foon
Assistant Director of Telecommunications (Support)
- Mr Jeffrey GUNTER
Senior Assistant Law Draftsman
Department of Justice
- Miss Leonora IP
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)4

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Mr WONG Siu-yee
Senior Council Secretary (1)7

Action

I Confirmation of minutes

(LC Paper No. CB(1)83/06-07 -- Minutes of meeting on 27 September 2006)

The minutes of the meeting held on 27 September 2006 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1)2317/05-06(01) -- Administration's response to the concerns raised by members at the meeting on 27 September 2006

LC Paper No. CB(1)175/06-07(01) -- Administration's letter dated 26 October 2006 responding to the issues raised at the meeting on 10 October 2006 (Annex B to the letter is LC Paper No. CB(1)175/06-07(02))

LC Paper No. CB(1)175/06-07(02) -- Summary of views submitted to the Bills Committee and the Administration's response (position as at 27 October 2006)

LC Paper No. CB(1)175/06-07(03) -- Follow-up actions to be taken by the Administration on issues raised at the meeting on 10 October 2006)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

3. The Administration was requested to –

(a) further consider the suggestion that mandatory disclosure of calling line identification (CLI) information should also apply to person-to-person interactive telemarketing calls; and

Action

- (b) report during the clause-by-clause examination of the Bill the outcome of its consideration on whether further clarification was necessary to exclude web traffic from the scope of the Bill and the need to expand the definition of "commercial electronic message".

III Any other business

4. Members noted that the next meeting would be held on Tuesday, 7 November 2006, at 4:30 pm.
5. There being no other business, the meeting ended at 6:25 pm.

Council Business Division 1
Legislative Council Secretariat
13 November 2006

**Proceedings of the fourth meeting of the
Bills Committee on Unsolicited Electronic Messages Bill
on Tuesday, 31 October 2006, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000020	Chairman	Confirmation of minutes of the meeting held on 27 September 2006 (LC Paper No. CB(1)83/06-07)	
000021 - 000648	Ms Emily LAU Chairman Mr SIN Chung-kai	Administration's response to issues raised at the meeting on 27 September 2006 (LC Paper No. CB(1)2317/05-06(01)) Not in favour of regulating person-to-person interactive telemarketing calls at this stage; it should only be considered if the problem became very serious in the future	
000649 - 000810	Mr WONG Ting-kwong Chairman	Enquiry on whether mandatory disclosure of CLI information was technically feasible Solicitation of further views on regulating person-to-person interactive telemarketing calls	
000811 - 001319	Mr James TO	Regulation of person-to-person interactive telemarketing calls at this stage would be undesirable. Thorough consideration would be needed for this complicated issue and it might delay the enactment of legislation for regulating machine-generated telemarketing calls Concern that a recipient being charged for using roaming service even if the recipient did not accept a call after seeing the CLI information and suggestion that there should be discussion with network operators on the possibility of waiving such charges	

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001320 - 001538	Chairman	Reference to the Administration's response detailed in LC Paper No. CB(1)2317/05-06(01) and LC Paper No. CB(1)175/06-07(01) in relation to CLI information and roaming charge arrangements	
001639 - 001731	Administration	Elaboration that only three local fixed network operators provided calling name display service for intra-network calls and it would not be feasible to implement mandatory calling name display	
001732 - 002819	Mr James TO Chairman Administration	<p>The adoption of different roaming charge arrangements by network operators might have implications on the legislative measures required for achieving the intended objective</p> <p>The fact that certain services, such as calling name display service, not commonly provided by network operators at present should not necessarily inhibit making a related requirement mandatory, as there was an interactive relationship between legislative requirements and the provision of services in the market</p> <p>Display of CLI information could be made mandatory for calls to places where such CLI information display service was available</p> <p>The Administration's response that -</p> <p>(a) the provisions of the Bill should be appropriate and reasonable having regard to the impacts of the provisions on various stakeholders;</p> <p>(b) Hong Kong authorities had no control over the provision of CLI information display service by overseas network operators and</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>provision of such service was network dependent;</p> <p>(c) calling name display service, an uncommon service, had a low patronage rate; and</p> <p>(d) the Telecommunications Authority would not regulate service charge arrangements of local network operators as long as the arrangements were open and transparent</p> <p>The Administration's clarification that -</p> <p>(a) roaming calls would be charged only when network resources were used (Annex A to LC Paper No. CB(1)175/06-07(01)) and charging was reasonable under such circumstances; and</p> <p>(b) under the Bill, it was a mandatory requirement for telemarketers not to conceal or withhold CLI information for machine-generated telemarketing calls</p>	
002820 - 003255	Mr SIN Chung-kai Chairman Administration	<p>A balance was needed between protecting the rights of the recipient of unsolicited electronic messages and the need for the Government to exercise restraint in regulating market activities</p> <p>Service charge arrangements and cooperation agreements could change very fast, and introducing statutory requirements that were dependent on such arrangements or agreements could be rendered ineffective</p> <p>Local network operators should transmit CLI information for all</p>	

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		<p>outgoing calls</p> <p>The Administration's view that although legislation could be made very encompassing, the provisions should be commensurate with the importance of the matter being regulated</p> <p>The Administration's confirmation that at present, local network operators were required to transmit CLI information for all local calls</p>	
003256 - 003448	Mr WONG Ting-kwong	Mandatory disclosure of CLI information should also apply to person-to-person interactive telemarketing calls	
003449 - 003829	Mr SIN Chung-kai Administration Chairman Mr Jasper TSANG	<p>Enquiry on whether inclusion of a provision in the Bill to prohibit the suppression of CLI information by network operators was feasible</p> <p>The Administration's response that local operators must relay CLI information at the network level. However, whether such information would be displayed at the recipient's end was subject to a number of factors such as the preference of the sender and whether the overseas network operator concerned had caller number display service. Prohibiting the suppression of CLI information was technically feasible but there was no guarantee that CLI information would be displayed at the recipient's end</p> <p>Discussion on the feasibility and suitability of mandatory disclosure of CLI information for all senders was inappropriate</p>	

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003830 - 004154	Mr Andrew LEUNG Administration Chairman	<p>The view that privacy of the sender should be respected and the recipient could reject calls without CLI information. Mandatory disclosure of CLI information should not apply to personal calls</p> <p>The Administration's response that it was a mandatory requirement under the Bill for telemarketers not to conceal or withhold CLI information for machine-generated telemarketing calls</p>	
004155 - 004925	Mr Jasper TSANG Chairman Administration	<p>Suggestion that mandatory disclosure of CLI information should also apply to person-to-person interactive telemarketing calls and query on why it could not be implemented</p> <p>The Administration's explanation that there would be practical difficulties in enforcement because the nature of a person-to-person interactive call might change during the course of the conversation from non-promotional to promotional. It was not Government's policy intention to mandate disclosure of CLI information for all business person-to-person interactive calls regardless of whether there were any promotional elements</p> <p>Not convinced that there were insurmountable difficulties in applying the requirement of mandatory disclosure of CLI information to person-to-person interactive telemarketing calls. The crux of the issue was whether there was a clear definition of "commercial electronic messages". Request for further consideration of this issue by the Administration</p>	Administration to further consider and report

Time marker	Speaker	Subject(s)	Action required
004926 - 005233	Ms Emily LAU Administration	<p>Enquiry on whether there were any objections from deputations to regulating person-to-person interactive telemarketing calls</p> <p>The Administration's response that some deputations objected to regulate person-to-person telemarketing calls. As regulations would be made to specify detailed requirements of sending commercial electronic messages, there would be complication in applying such requirements to person-to-person interactive telemarketing calls</p>	
005234 - 010632	Mr WONG Ting-kwong Administration Chairman	<p>The spirit of the Bill should be protecting rights of the recipient</p> <p>The recipient could reject person-to-person interactive telemarketing calls by recording CLI information if the sender of those calls was not allowed to conceal CLI information</p> <p>The Administration's response that –</p> <ul style="list-style-type: none"> (a) a balance should be struck between protecting the rights of the recipient and allowing room for the development of legitimate telemarketing, and the provisions of the Bill should be easily enforceable by clear definition; and (b) practically, telemarketers could change telephone numbers frequently even if disclosure of CLI information was mandatory for person-to-person interactive telemarketing calls <p>The view that normal telemarketers would not conceal their CLI information</p>	

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010633 - 011438	Ms Emily LAU Administration Chairman	<p data-bbox="727 255 1270 367">Enquiry on whether it was common for telemarketers to conceal CLI information</p> <p data-bbox="727 416 1270 927">The Administration's response that while information on person-to-person interactive telemarketing calls was not available, a number of machine-generated telemarketing calls did conceal CLI information and a possible reason for concealing CLI information was that if CLI information was displayed, the recipient could file a complaint against the sender and the network operator might terminate the sender's telephone line</p> <p data-bbox="727 972 1270 1160">The view that consideration could be given to regulating person-to-person interactive telemarketing calls in the future if the problem became very serious</p>	
011439 - 012228	Chairman Administration	<p data-bbox="727 1211 1270 1361">Enquiry on whether a company logo containing a slogan would be considered as a commercial electronic message</p> <p data-bbox="727 1406 1270 1765">The Administration's response that under normal circumstances, a company logo containing a slogan would not be considered as a commercial electronic message. However, it could not be ruled out that there could be disputes under certain circumstances, depending on the facts of a particular case</p> <p data-bbox="727 1809 1270 1883">The Administration elaboration on the concept of "unsolicited" in the Bill</p> <p data-bbox="727 1928 1270 2078">The Administration's elaboration on the different scenarios detailed in Annex A to LC Paper No. CB(1)175/06-07(01)</p>	

Time marker	Speaker	Subject(s)	Action required
		Completion of discussion on LC Paper No. CB(1)175/06-07(01)	
012229 - 012716	Chairman	The Chairman's remark that as there were different views among Bills Committee members on whether mandatory disclosure of CLI information should apply to person-to-person interactive telemarketing calls, members could consider moving amendments on their own if they considered it necessary	
012717 - 013350	Ms Emily LAU Administration Chairman	<p>Enquiry on whether small and medium enterprises (SMEs) would have to bear a high compliance cost if the "opt-in" regime was adopted</p> <p>The Administration's response that most SMEs could not afford to use expensive promotional methods and had no resource to maintain customer databases. Commercial electronic messages were therefore commonly used by SMEs to promote their goods and services. Without a large existing customer base, they could face substantial difficulty in seeking recipient's consent one by one as required under the "opt-in" regime. If the Bill was too stringent, it would jeopardize the survival of SMEs and it might have significant impact on Hong Kong's economy</p> <p>Enquiry on why the "opt-in" regime might not be more effective than the "opt-out" regime in combating spamming</p> <p>The Administration's explanation that enforcement would be difficult for overseas spammers and spammers would continue to spam regardless of which regime was adopted</p>	

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013351 - 013915	Mr SIN Chung-kai Administration	<p>Enquiry on whether telephone surveys such as polling surveys conducted by commercial organizations would be regulated under the Bill</p> <p>The Administration's response that such surveys would not be regarded as "commercial electronic messages" under the Bill, provided that they did not contain any commercial element. In case of dispute, the Court would give a ruling depending on the facts of individual cases</p>	
013916 - 014003	Ms Emily LAU Chairman	<p>Views of deputations on specific clauses would be further considered during clause-by-clause examination of the Bill</p> <p>Noted that the Administration would consider if further clarification was necessary to exclude web traffic from the scope of the Bill</p>	Administration to report outcome during clause-by-clause examination of the Bill
014004 - 014327	Mr SIN Chung-kai Administration Chairman Ms Emily LAU	<p>Enquiry on the suggestion given by Stevenson, Wong & Co on the definition of "commercial electronic message"</p> <p>The Administration's response that it would consider the suggestion from Stevenson, Wong & Co on expanding the definition of "commercial electronic message"</p> <p>Care should be taken not to be over-restrictive and legislative measures should only be introduced when necessary if there was a serious problem</p>	Administration to report outcome during clause-by-clause examination of the Bill

Time marker	Speaker	Subject(s)	Action required
014328 - 014857	Ms Emily LAU Administration	<p data-bbox="727 255 1270 331">Enquiry on the definition of "Hong Kong Link"</p> <p data-bbox="727 376 1270 607">The Administration's response that while some deputations supported the current definition, others were worried that Hong Kong would become a haven for spammers who made use of open relays/proxies for spamming</p> <p data-bbox="727 651 1270 1361">The Administration's further explanation that as the sender might not have knowledge of the locations of the servers through which a message was sent, if the definition included "transmission through Hong Kong", a message which had met the requirements of other jurisdictions that sent and received the message but not that of Hong Kong would also fall within the scope of the Bill, even if it did not have any relation to Hong Kong. The current definition which excluded "transmission through Hong Kong" was appropriate and advice would be given to server owners on the proper settings to prevent their servers from being abused</p>	
014858 - 015112	Chairman	<p data-bbox="727 1408 1270 1525">Completion of discussion on LC Paper No. CB(1)175/06-07(02) up to paragraph 2.9.5</p> <p data-bbox="727 1570 1270 1686">The Administration had responded to all the concerns listed in LC Paper No. CB(1)175/06-07(03)</p>	
015113 - 015136	Chairman	Date of next meeting	