

Bills Committee on Unsolicited Electronic Messages Bill

Further Proposed Committee Stage Amendments

Purpose

This paper briefs Members on the Administration's no objection to the Committee Stage Amendments (CSAs) proposed by Hon. Emily LAU on the binding effect of the Unsolicited Electronic Messages Bill (the Bill) and further CSAs proposed by the Administration after considering the views of some telecommunications service providers.

Hon. Emily LAU's Proposed CSAs

2. Our consistent position is that Government bureaux and departments would not send spam, nor are we aware of complaints that we are sources of spam. Strictly speaking, it is therefore not necessary to make the Bill bind the Government. However, having regard to the good example which binding the Government would set for the community at large and telemarketers in particular, the need not to delay passage of the Bill, and the fact that Government would have no problem in complying with the Bill, we would have no objection to Hon Emily Lau's proposed CSAs and would incorporate them as part of the Administration's CSAs.

Telecommunications Industry's Concerns

3. The Communications Association of Hong Kong recently conveyed the concern of some telecommunications service providers on Clauses 33 and 36A of the Bill. The Administration met with the Association and some telecommunications service providers to understand their concerns. Accordingly to our understanding, the main concerns centre on two aspects – the wide powers given to the Telecommunications Authority (TA) under Clause 33 of the Bill, and the heavy financial penalty imposed on them under Clause 36A of the Bill for non-compliance with a direction issued by the TA under Clause 33 of the Bill.

4. On the wide power given to the TA under Clause 33, because the telecommunications service providers carry all electronic messages sent from or to Hong Kong, they are in a unique position to assist the TA in monitoring spamming activities and enforcing the Bill effectively. Therefore, we maintain our view that the TA should be given the necessary powers to issue directions to telecommunications service providers, who are licensees under the Telecommunications Ordinance

(Cap. 106), to serve such purposes. In the light of the concerns of the telecommunications service providers on the broad wording used in drafting Clause 33, we propose to clarify in Clause 33 of the Bill that the TA should issue directions only for the purposes of assisting the TA to determine whether to commence an investigation into a contravention or suspected contravention of the Bill or to investigate such contraventions or suspected contraventions, and also to provide information to the TA for the purpose of assisting or enabling the TA to establish, operate or administer do-not-call registers. Therefore, the TA would not have the power under this clause to issue directions for other purposes.

5. Some telecommunications service providers pointed out that there could be some overlap between the TA's powers under Clause 33 of the Bill and his powers under other clauses, thereby rendering them potentially subject to TA directions issued under Clause 33 of the Bill while others would be subject to other clauses. This has never been our policy intent. Therefore, we propose to clarify in Clause 33 of the Bill that where a matter is one where the TA could exercise his powers under Clause 34 or 35 of the Bill, the TA should not exercise his powers in Clause 33 of the Bill for such a matter. We have also accepted a suggestion from the telecommunications service providers that a reasonable period should be given for them to comply with any direction from the TA.

6. Clause 36A of the Bill was proposed by the Administration after the Assistant Legal Advisor to the Bills Committee pointed out that there is no sanction for non-compliance with directions issued by the TA under Clause 33 of the Bill. The telecommunications service providers considered it too harsh to subject them to the same levels of fine as in section 36C the Telecommunications Ordinance.

7. The proposed draft Clause 33 of the Bill incorporating the above proposals is at **Annex**. Subject to the agreement of the Bills Committee, we will replace the current Clause 33 by this new Clause 33 and remove the proposed Clause 36A in the CSAs to be moved by the Administration.

Communications and Technology Branch
Commerce, Industry and Technology Bureau
3 May 2007

33. Authority may issue directions to telecommunications service providers

(1) Subject to subsections (2) and (3), the Authority may issue directions in writing to a telecommunications service provider requiring it to –

- (a) take such action as the Authority considers necessary for the purpose of assisting the Authority to determine whether to commence an investigation into a contravention or suspected contravention of a provision of this Ordinance;
- (b) take such action as the Authority considers necessary for the purpose of assisting or enabling the Authority to investigate a contravention or suspected contravention of a provision of this Ordinance; or
- (c) provide information to the Authority for the purpose of assisting or enabling the Authority to establish, operate or administer a do-not-call register,

and the telecommunications service provider shall give effect to such directions before a date specified in the directions, being a date reasonable in all the circumstances of the case.

(2) No directions shall be issued to a telecommunications service provider under subsection (1) in relation to a matter for which the Authority may serve a notice on the telecommunications service provider under section 34 (*Authority may obtain information or documents relevant to investigation*) or section 35 (*Authority may issue enforcement notice*).

(3) No directions shall be issued to a telecommunications service provider under subsection (1) unless the Authority is satisfied that the telecommunications service provider has been afforded a reasonable opportunity to make representations to the Authority.