



We also understand that the calling name display service is not defined in the common Global System for Mobile Communications (GSM) standard. No mobile operator in Hong Kong is providing or considers to provide such service. Thus, it is not feasible to impose this feature as a mandatory requirement for sending unsolicited electronic messages via telecommunications networks.

**(b) Transactional or relationship messages**

As prescribed in clause (2), “commercial electronic message” is defined as an electronic message the purpose or one of the purposes of which is to promote or advertise goods or services or the supplier in the course of or in the furtherance of any business. Therefore, a pure transactional or service-related message (e.g. an invoice or bill or welcome message) without any promotional/advertising elements, or any inducement for further business, will not amount to a “commercial electronic message” under the Bill. If these types of messages are excluded from the application of the Bill, they may be exploited for sending promotional/advertising messages without the need to fulfil the obligations under Part 2 of the Bill.

**(c) Messages to be covered by the Bill**

Whether or not an electronic message will fall within the definition of “commercial electronic message” will depend on the facts of the particular case, in particular the purpose(s) of the message. If the message contains any commercial element in the sense described in the definition of “commercial electronic message”, it is likely to be covered by the Bill.

For promotional materials on websites, they are uploaded onto the Internet for public access. As websites are displayed in response to requests made by viewers (e.g. by entering an Internet Protocol address or a domain name, or by clicking a hyperlink on a webpage), we do not intend to cover website traffic under the Bill. We will consider if further clarification is necessary to exclude such type of activity from the scope of the Bill.

**(d) Company logo containing slogan**

Please refer to our response in first part of paragraph (c) above. We will consider further views from Members.

**(e) The concept of “unsolicited” in the Bill**

The concept of “unsolicited” can be regarded as “without consent” of the recipient. The meaning of “consent” has already been provided in clause 5. As explained in the Bills Committee meeting, unsolicited commercial electronic messages can be sent under the proposed opt-out regime until the recipient refuses to further receive such message. We do not see how further strengthening this term could help to combat spam e-mail under the proposed opt-out regime and would be pleased to discuss further with Members.

**(f) Roaming service charges**

If a recipient uses the roaming service provided by his mobile operator, whether or not roaming charges will be incurred in the circumstance that the call is not answered will depend on how the recipient has configured the call forward/diversion services. Different scenarios are set out in **Annex A** for reference.

In the event that a recipient uses a third party ‘roaming’ service which is not offered by his mobile network (such as International Call Forward service), charges may be incurred when a roamed call is ringing on a roamed mobile phone, subject to the actual contractual arrangement for this service.

**(g) Television and radio advertisements**

Advertisements on TV are part of the television programme services regulated under the Broadcasting Ordinance and hence would be excluded

from the application of the Bill by virtue of Item 3 of Schedule 1. Similarly, advertisements on radio are part of the sound broadcasting services under the Telecommunications Ordinance and hence would be excluded from the application of the Bill by virtue of Item 4 of Schedule 1.

Our response to other views submitted to the Bills Committee is appended at **Annex B**.

Yours sincerely,



(Tony Li)  
for Secretary for Commerce,  
Industry and Technology

c.c. DG Tel (Attn: Mr T F SO)	Fax No. 2116 3334
D of J (Attn: Mr Jeffery Gunter)	Fax No. 2869 1302
Ms Leonora IP)	Fax No. 2845 2215