

**立法會**  
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**Panel on Information Technology and Broadcasting**

**Meeting on 12 January 2015**

**Background brief on review on regulation of person-to-person  
telemarketing calls**

**Purpose**

This paper summarizes previous discussions by Members on the review on regulation of person-to-person telemarketing calls ("P2P calls").

**Background**

2. The Unsolicited Electronic Messages Ordinance ("UEMO") (Cap. 593) came into full operation in December 2007. It regulates the sending of commercial electronic messages, including pre-recorded phone messages, short messages, fax messages, emails, etc. When sending commercial electronic messages, senders must comply with the rules of sending commercial electronic messages prescribed under the UEMO.

3. In 2008, the former Broadcasting Authority (replaced by the Communications Authority) also established three do-not-call registers ("DNCs") for fax messages, short messages and pre-recorded phone messages in accordance with the UEMO. Members of the public could register their telephone and fax numbers onto the relevant DNC in order to unsubscribe from unsolicited commercial electronic messages. Protection under the UEMO would commence on the tenth working day from the date on which the number was registered onto the DNC. Senders of commercial electronic messages were not allowed to send messages to any telephone/fax numbers listed on the DNC unless consent had been obtained from the registered user of the number concerned. The former Telecommunications Authority (replaced by the Office of the Communications Authority in 2012) might issue enforcement notices to those senders who contravened the prescribed rules of the UEMO. Failure to comply with the enforcement notice was a criminal offence and was subject to a fine up to \$100,000 on

first conviction, and up to \$500,000 on second and subsequent conviction.

4. According to the Administration, the UEMO does not cover P2P calls mainly because most business enterprises in Hong Kong are small and medium enterprises ("SMEs") which rely on electronic communications as a means of marketing. To avoid affecting the development of normal electronic marketing activities, P2P calls were excluded from the regulatory ambit when the Government formulated the UEMO.

## **Previous discussions**

### Bills Committee on Unsolicited Electronic Messages Bill

5. During the deliberation of the Bills Committee on Unsolicited Electronic Messages Bill ("the Bill") in the 2006-2007 legislative session, some members opined that P2P calls might cause as much nuisance to a recipient as pre-recorded calls and should be subject to regulation. As a basic safeguard for the right of recipients of commercial electronic messages, P2P calls should also be subject to the requirements of including accurate sender information in the messages and not concealing the calling line identification information in sending the messages.

6. According to the Administration, one of the objectives of the Bill was to strike a proper balance between respecting the rights of recipients and allowing the development of legitimate electronic marketing in Hong Kong. Over-regulation should be avoided in order not to affect adversely the viability of SMEs which relied on electronic communications as a key way to promote their business. In view of the above legislative intent and the anticipated enforcement difficulties, the Administration considered that regulation of P2P calls would be justified only if it caused a serious problem to the public. Nevertheless, the Bill authorized the former Telecommunications Authority to approve codes of practice ("CoP") for the purpose of providing practical guidance in respect of the application or operation of any provision of the Bill, and to revise a CoP and withdraw approval from any CoP approved under the proposed legislation. The Administration would monitor the problem of P2P calls to assess if it warranted regulation in future, and to consult the Panel on Information Technology and Broadcasting ("the Panel"), as well as the relevant industries and the public, in preparing the CoP and on their subsequent amendments.

7. As the Administration maintained its position that the proposed legislation should not regulate P2P calls at that juncture, Hon WONG Ting-  
kwong proposed Committee Stage amendments ("CSAs") to the Bill to the effect that P2P voice or video messages without pre-recorded or synthesized

elements were to be regulated, except where the messages involved P2P interactive communications made pursuant to a previous or current business or client relationship between the caller and the recipient. Hon WONG Ting-kwong's proposed CSAs were not supported by the Council when the Bill was passed on 23 May 2007.

### Panel on Information Technology and Broadcasting

#### *Review on regulation of person-to-person telemarketing calls*

8. At the Panel meeting on 9 November 2009, the Administration briefed members on the findings of the two opinion surveys commissioned by the former Office of the Telecommunications Authority ("OFTA") in respect of P2P calls and the actions to be taken in the light of the information collected from the surveys. These included formulating a benchmark CoP for reference by companies and industry associations when working out their own CoPs, and launching public education programmes on how they could protect themselves from unwanted P2P calls.

9. While some Panel members expressed disappointment that although 81% of the respondents in the general telephone survey considered that P2P telemarketing calls did cause them inconvenience, the Administration remained unconvinced that the situation was serious enough to warrant regulation by legislation. These members opined that P2P telemarketing calls, which caused inconvenience and nuisance to recipients and were also an abuse of personal data and privacy as evidenced in the rampant illegal sale of personal data, should be regulated by way of legislation. However, some members expressed reservation over the regulation of telemarketing calls by legislation, particularly those involving opinion poll and surveys conducted by academic institutions and the media. These members opined that legislative control would curtail free flow of information and freedom of speech.

10. While Panel members appreciated the need to allow for the development of legitimate telemarketing, they considered appropriate regulation of such calls equally important to protect the rights of the public. Noting that voluntary compliance approach was the first step towards tackling the problem of P2P telemarketing calls, members called on the Administration to strictly enforce the CoP and urge the industry companies to strengthen the unsubscribe mechanism as well as put in place proper internal controls to ensure that unsubscribe requests were recorded and honoured. Strict compliance with the CoP by the four business sectors (namely finance, telecommunications, call centres and insurance), which made most of the calls, might help significantly reduce the inconvenience and nuisance caused to the public. Failing that, the Government would have to resort to tougher

measures including legislative measures. The Administration assured members that it would continue to monitor the situation and seek the views of the Panel if it was found that further measures were necessary, such as regulation by legislation.

### *The use of personal data in direct marketing*

11. Some Panel members expressed grave concern about the abuse of personal data and privacy in P2P telemarketing calls. According to the Administration, the Personal Data (Privacy) Ordinance ("PDPO") (Cap. 486) contained provisions concerning the use of personal data in direct marketing. Data Protection Principle Three provided that without the data subject's prescribed consent, personal data should not be used for purposes other than the purpose for which the data were collected or for a directly related purpose. A data user who used personal data for direct marketing purposes had to cease using such data if the data subject so requested. As such, a call recipient could request the caller to stop using his personal data for direct marketing purposes under the PDPO<sup>1</sup>.

### Council meetings

12. At the Council meetings on 22 October and 20 November 2014, Hon Michael TIEN and Hon Charles Peter MOK raised questions on the regulation of P2P calls.

13. The Administration advised that it had been adopting an open-minded approach towards the suggestion of strengthening the regulation of P2P calls. As the suggestion would have an impact on the employment and livelihood of tens of thousands of persons who were engaged in conducting legitimate telemarketing activities, and most enterprises (especially SMEs) had facilitated commercial transactions through related legitimate telemarketing activities, careful and thorough considerations must be made in considering any way forward for tightening the regulation of P2P calls.

### **Latest position**

14. The Administration will brief the Panel on 12 January 2015 on the progress of its review on regulation of P2P calls.

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<sup>1</sup> In 2011, the Administration introduced multiple amendments to the PDPO to strengthen the protection of personal data privacy. The Personal Data (Privacy) (Amendment) Ordinance 2012 was implemented in two stages in 2012 and 2013. Thirteen new provisions concerning direct marketing, including the provisions which require "Data user to take specified action before using personal data in direct marketing" and "Data user must not use personal data in direct marketing without data subject's consent", commenced operation on April 1, 2013.

**Relevant papers**

15. A list of the relevant papers with their hyperlinks is at:

<http://www.legco.gov.hk/yr05-06/english/bc/bc04/general/bc04.htm>

<http://www.legco.gov.hk/yr09-10/english/panels/itb/agenda/itb20091109.htm>

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