

**For Discussion
on 11 April 2016**

**Legislative Council Panel
on Information Technology and Broadcasting**

**Report on the Findings of the Survey on
Person-to-Person Telemarketing Calls**

Purpose

This paper briefs Members on the key findings of the Consultancy Survey (“Survey”) commissioned by the Administration on person-to-person telemarketing calls (“P2P calls”) and the proposed way forward in respect of the regulation of P2P calls in light of the results of the Survey.

Background

2. The current regulatory regime governing P2P calls in Hong Kong includes both statutory and self-regulatory elements. The use of personal data in direct marketing¹ without obtaining consent of the data subject² is prohibited in the Personal Data (Privacy) Ordinance (Cap. 486). Separately, with the active encouragement of the Administration, the trade associations of the four sectors that were found to have made most of the P2P calls (finance, insurance, telecommunications and call centres)³ have issued their voluntary industry codes of practice (“CoP”)

¹ Direct marketing as defined in section 35A of the Personal Data (Privacy) Ordinance (Cap. 486) means – (a) the offering, or advertising of the availability, of goods, facilities or services; or (b) the solicitation of donations or contributions for charitable, cultural, philanthropic, recreational, political or other purposes, through direct marketing means. Direct marketing means include, inter alia, making telephone calls to specific persons.

² Data subject as defined in section 2 of the Personal Data (Privacy) Ordinance (Cap. 486) means, in relation to personal data, the individual who is the subject of the data.

³ According to the survey conducted by the then Office of the Telecommunications Authority in 2009,

since end 2010 to recommend best practices of P2P calls to their members. These best practices include reasonable calling hours, revealing calling number display and honouring unsubscribe requests, etc.

3. Notwithstanding the above regulatory measures, there are still constant concerns about the nuisances caused by P2P calls to call recipients and the associated use of personal data in some circumstances. We briefed this Panel in January 2015 on the review on the regulation of P2P calls and thereafter commissioned an independent Consultant to conduct a Survey on P2P calls in order to better grasp the latest situation of P2P calls in Hong Kong. From June to October 2015, the Consultant conducted surveys to solicit views of the general public and the industry on the regulation of P2P calls; gathered information about the employment and business situations of the industry; as well as studied the regulatory regime adopted by other jurisdictions on P2P calls. The Survey is now completed.

Public Survey and Industry Survey

4. Two surveys were conducted, a public survey conducted by telephone interview (the “Public Survey”) and an industry survey (the “Industry Survey”). The Public Survey solicited the views of 1 004 members of the public. The Industry Survey covered five sectors - self-administered questionnaires were distributed to the four business sectors mentioned in paragraph 2 above which were previously found to have made the most P2P calls. The beauty sector was also included in the Industry Survey as it was recently noted that the sector also made a considerable number of P2P calls. The Consultant issued 873 questionnaires to business entities in these five sectors and received 190

these sectors were found to have made more than 90% of the P2P calls.

questionnaires from July to October 2015.

5. The key findings of the Public and Industry Surveys are set out in Annex A and Annex B respectively. Some major findings are highlighted below.

(A) Number of P2P Calls

6. In the Public Survey, 941 respondents (94%) indicated that they had received P2P calls before. Among the 941 respondents, 35% reported that they had received 6 calls or more in the past seven days prior to the date of the survey. As for the Industry Survey, 42 responding companies indicated that they were involved in making P2P calls and together they make about 210 000 calls per day. 37 of these companies made around 142 550 P2P calls per day from Hong Kong with 3 853 calls made on average per company per day; furthermore, 7 companies⁴ out of the 42 made around 66 800 calls per day from offices in Mainland China to Hong Kong with 9 543 calls made on average per company per day.

(B) Response and Feeling towards P2P Calls

7. Upon receiving P2P calls, 37% of the respondents in the Public Survey would indicate to the callers at the outset that they were not interested in the calls, 27% would hang up immediately while 20% would listen first to see whether they would be interested in the content. 13% of the respondents would not answer the calls (e.g. blocked by phone applications). A great majority (96%) of the respondents considered that P2P calls had caused nuisance or inconvenience to some extent.

⁴ Two of these companies made calls from both Mainland China and Hong Kong.

(C) P2P Calls Involving the Use of Personal Data

8. 56% of 831 respondents who could recall the proportion of P2P calls of which callers had their personal data reported that more than 40% of the P2P calls they received had access to their personal information. In the Industry Survey, responding companies reported the sources of their call lists. On average, 74% of the called parties were their existing or previous customers; 21% were the numbers with personal data of the call recipients provided by the customers/outsourced call centre/affiliated companies/chamber of commerce; and only 6% of the numbers to be called were without the use of personal data.

(D) Benefits of P2P Calls

9. 4% of the 941 respondents who had received P2P calls perceived that P2P calls had brought benefits to them, with enjoying lower prices or discounts being the key perceived benefits. 10% of the 941 respondents had made commercial transactions as a result of the P2P calls. In order to better understand the commercial value of the calls, the Industry Survey solicited the average transaction success rate⁵ of P2P calls. 57% of the responding companies which are involved in making P2P calls indicated that their average transaction success rate was below 5% while 23% of those responding companies indicated a transaction success rate of over 10%. The mean average transaction success rate was 13% and the median was 5%.

(E) Unsubscribe Mechanism

10. 93% of the responding companies indicated that they

⁵ The success rate is defined as the percentage of calls that could achieve the intended purpose, e.g. to get the call recipient to agree to buy/subscribe to the products/services, or to make an appointment with the call recipient for a meeting, etc..

maintained an in-house unsubscribe list. Among these companies, 92% claimed the call recipients could simply tell the callers over the phone that they do not wish to receive such calls again and these companies would stop calling. However, only 47% of the respondents who had received P2P calls involving the use of personal data had ever requested the callers not to call again. Among those who had not asked the callers to stop calling, 34% of the respondents had already hung up without talking to the callers and 17% considered it useless to make such requests.

(F) Employment relating to P2P Calls

11. The 36 responding companies⁶ reported that they employed around 3 400 staff who were directly or indirectly engaged in making P2P calls, with around 2 400 staff employed in Hong Kong and around 1 000 staff in Mainland China. Based on the reported local employment and the response rate, the Consultant made a linear projection and estimated that there were around 7 000 employees in Hong Kong who were directly or indirectly engaged in making P2P calls in 2015.⁷

(G) Opinion towards Regulation of P2P Calls

12. In the Public Survey, 86% of the respondents were of the view that there was a need to expand the regulation of P2P calls to all trades with 67% supporting regulation by legislation and 16% preferring regulation by voluntary CoP. 11% of the respondents held the opposite view that regulation should not expand to all trades that made P2P calls.

⁶ These 36 companies have in-house calling teams or are call centres.

⁷ The Consultant made the projection by assuming (i) the survey frame to be the total population of companies engaging in P2P calls, and (ii) the distribution of answers between responding companies and non-responding companies to be identical (e.g. the proportions of companies engaging in P2P calls out of responding companies and non-responding companies to be identical). The estimation accuracy could be affected by low response rate and large variation in the size of companies among individual sectors.

13. In the Industry Survey, responding companies not involved in making P2P calls considered reducing inconvenience to citizens, tightening existing Personal Data (Privacy) Ordinance (“PDPO”) and clamping down calls from other jurisdictions as the more important factors for strengthening regulation of P2P calls. For companies involved in making P2P calls, they are more concerned about the impact of regulation on employment situation, number of transactions and increased operational costs. Among all the responding companies, the views on the preferred mode of regulation of P2P calls were divided, with 29% each supporting legislation and CoP for voluntary compliance and 37% finding both modes acceptable. For the 42 companies involved in making P2P calls, 10% preferred legislation, 60% preferred CoP and 19% considered both were acceptable.

14. When asked whether they were willing to assist in the investigation of infringement of regulation of P2P, 73% of the 1 004 respondents in the Public Survey indicated that they were willing to do so while 20% of the respondents were unwilling. Among those who indicated willingness, more than 85% are prepared to provide details of the calls (e.g. calling date and time, content of call, information about the callers). However, only 63% and 51% of such respondents were willing to proceed to the law enforcement agencies to assist in further investigation or witness in court respectively.

15. If regulation of P2P calls were to be tightened by legislation, 54% of the 190 responding companies, mostly consisting of companies not involved in making P2P calls, would not take any corresponding action. However, 31% of the responding companies indicated that they would rely more on other marketing channels, 8% would decrease the number of P2P calls to be made and 4% indicated that they would procure call centre services from outside Hong Kong. In addition, 18%

of the 190 responding companies expected that they would lose on average 35.4% of their sales volume if all P2P calls are regulated by legislation. The above suggests that there exists potential adverse implications on the business sector if the regulation of such calls were to be tightened. .

Other Regulatory Regime

16. The Consultant also conducted desktop studies on the regulatory regime in respect of P2P calls in 17 jurisdictions. The key findings are set out in **Annex C** and summarised below.

17. Almost all of the jurisdictions have some kind of statutory regulation in place. 6 jurisdictions have specific laws or regulations focusing on P2P calls; 9 jurisdictions have their P2P call regulatory regime embedded in their data/consumer-protection laws or regulations; and one jurisdiction's regulatory regime comes under its telecommunications legislation.

18. 11 jurisdictions (India, Korea, Mainland China, Singapore, Australia, South Africa, Netherlands, United Kingdom, Canada, United States of America, and Argentina) have a statutory Do-Not-Call Register ("DNC Register") in place. Telemarketers making P2P calls to consumers in the DNC Register are liable to prosecution and/ or fines. New Zealand has a non-statutory DNC Register of which non-compliance will be punished by the respective trade association. Japan's legislation only mandates telemarketers to provide certain information to call recipients. In Taiwan and Macau, recipients of P2P calls have the right to know how their personal data will be processed (e.g. call recipients should be informed to which institutions their personal data would be transferred) and to object to telemarketers' further processing.

19. The major challenges in enforcing regulations on P2P calls faced by these jurisdictions include the spoofing technology falsifying calling number display. One jurisdiction, Macau, encountered difficulty in investigations as the majority of the P2P calls were made from outside the jurisdiction.

Overall Analysis

20. The then Office of the Telecommunications Authority (“OFTA”) also commissioned a public survey in 2008 and conducted an in-house industry survey in 2009⁸.

21. While the results of the two surveys may not entirely be comparable, broadly speaking, we found that the percentage of respondents having ever received P2P calls had increased (from 84% in 2008 to 94% in 2015), the percentage of respondents having received a larger number of calls also rose (the percentage of respondents having received 6 calls or more in the 7 days prior to the date of the survey rose from 8% in 2008 to 35% in 2015).

22. Meanwhile, fewer respondents (from 46% in 2008 to 20% in 2015) would listen to the content of the call before disconnecting them. Yet 20% of the respondents would not dismiss such calls immediately. It is also noted that 13% of the respondents would not answer such calls, for example, through using phone applications. Almost all (96%) respondents considered that P2P calls had caused nuisance or inconvenience to some extent (as compared with 81% in 2008). A lower proportion of the respondents perceived they had received

⁸ The industry survey in 2009 and the industry survey in 2015 may not be directly comparable. The then OFTA conducted the industry survey in-house in 2009 but the industry survey in 2015 was commissioned to the independent Consultant which adopted a more structured approach in conducting the survey.

benefits from P2P calls (from 13% to 4%). These results suggest that the opinion of the majority of the general public has become more negative in respect of P2P calls.

23. The effectiveness of P2P calls in striking commercial transactions has also exhibited a drop from 21% in the 2008 Survey to 10% in 2015. This trend is also reflected in the Industry Survey, which indicated that responding companies having an average transaction success rate of P2P calls below 5% have risen from 38% in 2009 to 57% in 2015, whereas companies having transaction success rate over 10% had dropped from 31% in 2009 to 23% in 2015.

24. On the use of personal data in making P2P calls, the situation seems to remain rather constant. In the 2008 survey, 55% of the respondents considered that more than 40% of the P2P calls they received had access to their personal information. The figure was similar, at 56% of the respondents, in the 2015 survey. As reported by the responding companies in the Industry Survey, only 6% of numbers used in the calls did not involve the use of personal data.

25. According to the latest projection, the number of persons employed in Hong Kong who were directly or indirectly involved in making P2P calls dropped from about 22 500 in 2009 to around 7 000 in 2015. Nevertheless, 7 000 is still a sizeable number.

Way Forward

26. The Public and Industry Surveys and the study conducted by the independent Consultant have provided us with very useful updates. It seems that the number of persons receiving P2P calls is still on the increase notwithstanding the declining effectiveness of P2P calls as a means of conducting business transactions. Although the estimated

number of persons employed in making P2P calls has fallen, it still remained a sizable 7 000. Nearly 20% of the responding companies expected a substantial fall in their sales volume if P2P calls are regulated by legislation. In the other jurisdictions examined in the study, most of them have some form of statutory regulation.

27. The findings notwithstanding, it would be prudent to have a wider discussion of the pros and cons of stepping up the current regulatory regime. This would help to forge a consensus on the way forward. In this connection, we propose to conduct a public consultation on the regulation of P2P calls. We intend to present the key information collected in the surveys to facilitate an informed discussion. We also expect to seek public views on whether the regulation of P2P calls should be strengthened, and if so, the specific modes of regulation and the relevant considerations. We expect the outcome of the public consultation exercise would help us to chart the way forward while striking the right balance.

Communications and Creative Industries Branch
Commerce and Economic Development Bureau
April 2016

Key Findings of the Public Survey

The Commerce and Economic Development Bureau (“CEDB”) commissioned an independent consultant, Consumer Search Hong Kong Limited, to conduct a survey to collect the general public’s opinion on person-to-person telemarketing calls (“P2P calls”) in 2015. The telephone survey was conducted from July to August 2015 and targeted all Hong Kong residents aged 18-64 who speak Cantonese, Putonghua or English. A total of 1 004 respondents were successfully interviewed, with the response rate at 20.1%.

Number of P2P calls received

2. Among the 1 004 interviewed respondents, 941 respondents (93.7%) had received P2P calls before. Among these 941 respondents, 35.1% had received 6 calls or more in the 7 days prior to the date of the survey. The mean and median numbers of calls received during the said period were 8.6 and 4 respectively. Details are set out in the below table.

No. of calls received in the 7 days prior to the survey	Percentage (n=941)
None	9.9%
1-3 calls	26.5%
4-5 calls	14.1%
6 calls or above	35.1%
Unable/refuse to answer	14.4%
Total	100%

Note: the percentages above and in other tables in the Annex may not add up due to rounding.

Usual response when receiving P2P calls

3. When receiving P2P calls, 20.1% of the 941 respondents (i.e. those who had received P2P calls before) would listen first to see whether they were interested in the information and discontinue the call if they were not interested, 36.9% would indicate to the caller at the very

beginning that they are not interested, 27.3% would discontinue the call immediately, 12.7% would not answer the call (e.g. blocked by phone applications). The remaining respondents would respond depending on situations (1.0%), listen to the entire call (0.9%) or have other responses (i.e. language problem, asking the callers why they possessed recipients' number, etc.) (1.1%).

P2P calls involving the use of recipients' personal data

4. Out of the 941 respondents who have received P2P calls before, 831 respondents could recall the proportion of P2P calls of which callers had their personal data⁹. Among these 831 respondents, 55.5% reported that more than 40% of the P2P calls involved the use of their personal data. Details are set out in the below table.

Percentage of calls involving the use of personal data	Percentage (n=831)
None	8.1%
20% or below	19.0%
21-40%	17.3%
41-60%	29.5%
61-80%	15.0%
81% or above	11.0%
Total	100%

Making requests to callers to stop calling

5. In respect of P2P calls involving personal data, 47.3% of the 763 respondents who had received such calls before had asked the callers to stop calling, while 52.2% of the respondents had not. For P2P calls not involving personal data, 40.0% of the 941 respondents who had received P2P calls had asked the callers to stop calling, while 59.0% had not. The usual response of callers when being asked to stop calling included¹⁰ “hang up immediately” (31.0%), “ignore your request

⁹ In the telephone survey, “the caller knows your surname or full name” was provided as an example of the calls that may involve the use of personal data.

¹⁰ Multiple answers were allowed for this question.

and persuade you to receive more information” (29.0%), “promise not to call again, but you still receive calls from them afterwards” (23.7%), “promise not to call again, and you receive no more calls from them” (6.2%) and “promise not to call again, but you cannot remember if you receive calls from them afterwards” (5.0%).

6. Among the 607 respondents who had never asked the callers to stop calling, 34.1% had already hung up without talking to the callers and 17.0% considered it useless to make such requests.

Perceived benefits of receiving P2P calls

7. 4.3% of the 941 respondents opined that there had been benefits from receiving P2P calls. The key benefits of receiving P2P calls mentioned by the respondents were “lower prices or discounts” (1.9%) and “receiving more information” (1.2%).

Commercial transactions made during P2P calls

8. 98 respondents (10.4%) had made commercial transactions as a result of P2P calls. Among these 98 respondents, 67.5% perceived less than 10% of the calls which involved the use of personal data would result in commercial transactions. The percentage dropped to 15.9% for calls not involving the use of personal data. Among these 98 respondents, 71.1% perceived they had not made commercial transactions with calls not involving the use of personal data, while only 3.2% had not done so with calls involving the use of personal data. In other words, it was more likely for calls involving the use of personal data to result in commercial transactions.

Nuisance or inconvenience caused by P2P calls

9. 96.4% of the 941 respondents opined that P2P calls had brought about nuisance or inconvenience. The most common type of nuisance or inconvenience quoted by respondents included “disrupt my daily life” (42.0%), “waste my time” (35.9%) and “bother me/affect my mood” (31.6%).

Should regulations on P2P calls be expanded to all trades

10. Among all 1 004 respondents, 86.0% of the respondents were of the view that regulation should expand to all trades that made P2P calls, comprising 15.8% supporting regulation by voluntary code of practice, 67.4% supporting regulation by legislation and 2.8% supporting both or did not specifying the means. 11.1% of the 1 004 respondents held the opposite view that the regulation should not expand to all trades that made P2P calls.

Opinion on whether the regulation should be expanded to all trades	Percentage (n=1 004)
No need to regulate	11.1%
No opinion/Hard to say/Refuse to answer	3.0%
Support regulation by voluntary code of practice	15.8%
Support regulation by legislation	67.4%
Support regulation (without specifying the means/ both means are good)	2.8%
Total	100%

11. 73.0% of the 1 004 respondents were willing to assist in the investigation of infringement of regulation of P2P calls while 20.2% were unwilling. Among those who were willing to do so, 90.4% were prepared to provide the calling date and time, 88.1% would provide relevant information about the content of the call, 86.3% would provide information about the callers including their identity and contact. Nonetheless, only 63.1% were willing to proceed to the relevant law enforcement agencies to assist in further investigation and 51.0% would prepare to give evidence as a witness in Court.

Key Findings of the Industry Survey

The consultant also conducted a survey to collect the industry’s opinion on P2P calls and to gather information about the employment and business situations of the industry in 2015 (“2015 Survey”). Self-administered survey questionnaires were distributed to the members of the industry associations covering call centres, banking, finance, insurance and telecommunications¹¹. As it is noted that the beauty sector also makes a considerable number of P2P calls, questionnaires were also issued to companies in the beauty sector. The Consultant issued 873 questionnaires and received 190 questionnaires from July to October 2015.

Nature of responding companies and number of staff directly or indirectly engaged in making P2P calls

2. Out of the 190 responding companies, 42 were involved in making P2P calls whereas 148 were not involved in making P2P calls. The nature of the 190 responding companies is set out below –

Nature of the responding companies	No. of Companies (n=190)	Percentage (n=190)
The company is a call centre providing outbound call ¹² services to clients and making calls to recipients in Hong Kong	6	3.2%
The company has outsourced call services (making calls to recipients in Hong Kong) to a call centre or other parties	6	3.2%
The company is deploying an in-house team for making P2P calls to recipients in Hong Kong	28	14.7%
The company has outsourced part of the call service and at the same time is deploying an	2	1.1%

¹¹ According to the surveys conducted by the then Office of the Telecommunications Authority in 2008 and 2009, the call centres, banking, finance, insurance and telecommunications sectors were found to have made more than 90% of the P2P calls.

¹² Outbound calls refer to calls made by the call centres to recipients. These contrast with inbound call services provided by some call centres in which the call centres help clients take calls made by customers (e.g. customer services hotline).

in-house team for making calls to recipients in Hong Kong		
None of the above	148	77.9%
Total	190	100%

Note: the percentages above and in other tables in the Annex may not add up due to rounding.

3. 36 responding companies which are call centres or have in-house calling teams employed around 3 400 staff who were directly or indirectly engaged in making P2P calls, with around 2 400 staff employed in Hong Kong and around 1 000 staff employed in Mainland China. Based on the reported local employment and the response rate, the Consultant made a linear projection and estimated that there were around 7 000 employees in Hong Kong who were directly or indirectly engaged in making P2P calls in 2015.¹³

	Total number of staff engaged in P2P calls	
	Employed in Hong Kong (<i>n=6 for Call Centre; n=30 for company deploying in-house calling teams</i>)	Employed in Mainland China (<i>n=6 for Call Centre; n=30 for company deploying in-house calling teams</i>)
Call centre	Around 500	Around 700
Company deploying in-house calling teams	Around 1 900	Around 300
Total	Around 2 400	Around 1 000

4. The P2P call-related operations of responding companies were largely located in Hong Kong in 2015. Among the 42 responding companies that made P2P calls, 37 responding companies made calls from offices in Hong Kong while 7 responding companies made calls from offices in Mainland China (2 responding companies made calls

¹³ The Consultant made the projection by assuming (i) the survey frame to be the total population of companies engaging in P2P calls, and (ii) the distribution of answers between responding companies and non-responding companies to be identical (e.g. the proportions of companies engaging in P2P calls out of responding companies and non-responding companies to be identical). The estimation accuracy could be affected by low response rate and large variation in the size of companies among individual sectors.

from both Hong Kong and Mainland China).

Number of P2P calls made per day

5. The responding companies made around 209 351 calls per day in 2015. 37 companies made around 142 550 P2P calls per day from Hong Kong with 3 853 calls made on average per company per day; whereas 7 companies¹⁴ made around 66 800 calls per day from offices in Mainland China to Hong Kong with 9 543 calls made on average per company per day.

	Calls made from Hong Kong			Calls made from Mainland China		
	Number of company	Number of calls made per day	Average number of calls made per company per day	Number of company	Number of calls made per day	Average number of calls made per company per day
Call centre	4	23 200	5 800	2	11 200	5 600
Banking	17	92 606	5 447	2	29 500	14 750
Finance (non-banking)	1	1 810	1 810	-	-	-
Telecommunications	2	500	250	2	26 000	13 000
Insurance	8	23 575	2 947	1	100	100
Beauty	2	30	15	-	-	-
Others	3	830	27	-	-	-
Total	37	142 550	3 853	7	66 800	9 543

Calling hours

6. All responding companies started their calls after 9 a.m.. The closing hours of their P2P calls were set out below. No responding companies made calls after 10 p.m..

¹⁴ Two of these companies made calls from both Mainland China and Hong Kong.

Hours the responding companies ended their P2P calls	Percentage	
	Mondays to Fridays (n=40)	Saturdays, Sundays and Public Holidays (n=20)
7:00 p.m. or before	45%	70%
7:01 – 8:00 p.m.	17.5%	10%
8:01 – 9:00 p.m.	22.5%	5%
9:01 – 10:00 p.m.	15%	15%
10:01 – 11:00 p.m.	0%	0%
Total	100%	100%

P2P calls involving the use of personal data

7. Responding companies reported the sources of their call lists. On average, 73.7% of the called parties were responding companies' existing or previous customers; 20.8% were the numbers with personal data of the call recipients provided by the customers/ outsourced call centre/ affiliated companies/ chamber of commerce; and only 5.6% of numbers to be called were without the use of personal data.

Benefits from making P2P calls

8. In order to better understand the commercial value of the calls, the Industry Survey solicited the average transaction success rate¹⁵ of P2P calls. 57.1% of the responding companies which are involved in making P2P calls indicated that their average transaction success rate was below 5% while 22.9% of those responding companies indicated a transaction success rate of over 10%. The mean average transaction success rate was 13.0% and the median was 5.0%. Details are set out below.

Average success rate reported by the industry	Percentage (n=35)
2% or below	25.7%

¹⁵ The success rate is defined as the percentage of calls that could achieve the intended purpose, e.g. to get the call recipient to agree to buy/subscribe to the products/services, or to make an appointment with the call recipient for a meeting, etc..

2.1% - 5%	31.4%
5.1% - 10%	20.0%
10.1% - 20%	5.7%
Over 20%	17.1%
Total	100%

Unsubscribe mechanism

9. 92.9% of the responding companies maintained an in-house unsubscribe list. Among these companies, 92.3% claimed the call recipients could simply tell the callers over the phone that they do not wish to receive such calls again and these companies would stop calling.

Regulation of P2P calls

10. The table below shows the mean score¹⁶ in the relative importance of a particular factor perceived by the responding companies when considering whether the Government needs to regulate P2P calls.

Factors to be considered on whether the Government needs to regulate P2P calls	Companies involved in making P2P calls (n=42)	Companies Not Involved in making P2P calls (n=148)
Tightening the regulation can reduce the inconvenience and nuisance to the citizens	3.5	4.4
Since many telemarketing calls involve the use of personal data, the Government can consider tightening the existing Personal Data (Privacy) Ordinance and related enforcement measures instead of strengthening the regulation	3.7	3.8
Since some P2P calls are made by numbers in other jurisdictions, tightening the	4.0	3.7

¹⁶ Mean score is the average value of the responding companies' answers ("Very Important" = 5; "Important" = 4; "Average" = 3; "Unimportant" = 2; "Very Unimportant" = 1). The answer "refuse to answer" is excluded from the calculation.

regulation might not effectively clamp down on such calls		
Huge manpower may be involved for checking if individual telemarketing calls infringe the regulation	3.9	3.6
Tightening the regulation may threaten the employment and livelihoods of legitimate telemarketing-related workers	4.2	3.3
Tightening the regulation may reduce the number of transactions made via legitimate telemarketing activities by small and medium-sized enterprises	4.2	3.3
Tightening the regulation may increase the operational cost of small and medium-sized enterprises	4.1	3.2

11. Responding companies not involved in making P2P calls considered reducing inconvenience to citizens (mean importance=4.4), tightening existing Personal Data (Privacy) Ordinance (“PDPO”) (mean importance=3.8) and clamping down calls from other jurisdictions (mean importance=3.7) as the more important factors in the consideration of strengthening regulation of P2P calls. For companies involved in making P2P calls, they are more concerned about the employment situation (mean importance=4.2), number of transactions (mean importance=4.2) and increased operational costs (mean importance=4.1).

12. In the Industry Survey, the opinion towards the preferred mode of regulation of P2P calls was split, with 55 responding companies (28.9%) each supporting legislation and code of practice for voluntary compliance. Meanwhile, 70 responding companies (36.8%) considered both modes acceptable. For the 42 responding companies involved in making P2P calls, 4 responding companies (9.5%) preferred legislation, 25 responding companies (59.5%) preferred code of practice and 8 responding companies (19.0%) considered both legislation and code of practice acceptable.

13. Companies were asked in the Industry Survey what

corresponding actions they would take if regulation of P2P calls were tightened by legislation. 102 responding companies (53.7%), in particular those not involved in P2P calls (98 responding companies), would not take any corresponding action. On the other hand, 59 (31.1%) indicated that they would rely more on other marketing channels, 15 (7.9%) would decrease the P2P calls to be made and 7 (3.7%) would procure call centre services from outside Hong Kong. 35 responding companies (18.4%) expected that they would lose on average 35.4% of their sales volume if all P2P calls are regulated by legislation.

- End of Annex B -

**Key Findings of the Study on the Regulatory Regime
on P2P Calls of Other Jurisdictions**

The consultant conducted a research study from June to October 2015 on the regulatory practices of 17 other jurisdictions on the regulation of P2P calls. The selected jurisdictions cover different parts of the world and are set out below –

Region	No. of Jurisdictions Studied	Selected Jurisdictions
Asia	8	India, Israel, Japan, Korea, Macau, Mainland China, Singapore and Taiwan
Australasia	2	Australia and New Zealand
Africa	1	South Africa
Europe	2	The Netherlands and the United Kingdom
European Union	1	The European Union
North America	2	Canada and the United States of America
South America	1	Argentina

2. By carrying out literature review, documentation analysis as well as internet research, the following areas of information were studied -

- (i) Whether jurisdictions currently have any regulatory regime on P2P calls, and if so, whether such regulatory regime is statutory or self-regulatory
- (ii) Manner in which each regulatory regime operates
- (iii) Regulatory authority responsible for administering the regulatory regime
- (iv) Problems, if any, identified in regulating P2P calls and administering the regulatory regime

Presence of regulatory regime

3. Out of the 17 selected jurisdictions, 16 currently have some kind of statutory regulations on P2P calls.

Statutory Regulations	13 (India, Japan, Korea, Singapore, Australia, New Zealand, South Africa, Netherlands, United Kingdom, European Union, Canada, United States of America and Argentina)
Partial Statutory Regulations	Covering specific sector (Mainland China)
	Covering calls involving the use of personal data (Macau and Taiwan)
No Statutory Regulations	1 (Israel)

4. 6 jurisdictions¹⁷ have specific laws or statutory regulations focusing on P2P calls, 9 jurisdictions¹⁸ have their on P2P call regulatory regime embedded in their data/consumer-protection laws or regulations; and one jurisdiction's¹⁹ regulatory regime comes under its telecommunications laws.

Regulatory authority

5. Most selected jurisdictions with statutory regulations have specific regulatory authorities responsible for implementing the regulations.

With specific regulatory authority	15 (India, Japan, Korea, Macau, Mainland China, Singapore, Australia, New Zealand, South Africa, Netherlands, United Kingdom, European Union, Canada, United States of America and Argentina)
Without specific regulatory authority	1 (Taiwan ²⁰)

¹⁷ India, Mainland China, Australia, Canada, United States of America, and Argentina

¹⁸ Japan, Korea, Macau, Singapore, Taiwan, New Zealand, United Kingdom, European Union, and South Africa

¹⁹ Netherlands

²⁰ Regulation enforced by the Ministry of Justice

6. Among the 15 jurisdictions having specific regulatory authority on P2P calls, the regulatory authorities of 8 jurisdictions (Argentina, European Union, Japan, Korea, Macau, Netherlands, Singapore and South Africa) are data protection or consumer protection related (e.g. Personal Data Protection Commission for Singapore and Korea Fair Trade Commission). 3 jurisdictions (Australia, Canada and India) have regulation of P2P calls enforced by telecommunications related authorities (e.g. the Australian Communications and Media Authority). 3 jurisdictions (Mainland China, New Zealand and United States of America) have regulation of P2P calls enforced by commerce related authorities (e.g. the Commerce Commission of New Zealand). There are two regulatory authorities in the United Kingdom responsible for the regulation of P2P calls, one being a data protection authority and one being a telecommunications authority.

Regulatory framework

7. The regulatory framework can approximately be categorised into three types.

Regulatory Framework²¹	Jurisdictions	Details
Regulations on telemarketing practices with a do-not-call register (“DNC Register”)	12 (India, Korea, Mainland China, Singapore, Australia, New Zealand, South Africa, Netherlands, United Kingdom, Canada, United States of America and Argentina) ²²	<ul style="list-style-type: none"> ➤ Establish a DNC Register (i.e. a list of telephone numbers to which the telemarketers cannot make telemarketing calls) ➤ Some adopt certain telemarketing practices (e.g. mandatory information to be provided by callers to recipients)
Regulations on telemarketing practices	1 (Japan)	<ul style="list-style-type: none"> ➤ Adopt certain telemarketing practices (e.g. mandatory information to be provided by

²¹ European Union is excluded because the nature of the regulation is subject to the national legislation in each member state.

²² Three jurisdictions also have codes of practice in place for telemarketers to observe (Australia, New Zealand and South Africa)

without a DNC Register		callers to recipients)
Regulations on personal data protection	2 (Macau and Taiwan)	➤ Regulate those P2P calls involving the use of personal data. Recipients have the right to know how their personal data are processed (e.g. call recipients should be informed to which institutions their personal data would be transferred) and to object telemarketers' further processing

Do-not-call register

8. Telemarketers cannot make telemarketing calls to numbers registered in a DNC Register. Consumers can register, check or remove their numbers in the DNC Register.

Statutory	11 (India, Korea, Mainland China, Singapore, Australia, South Africa, Netherlands, United Kingdom, Canada, United States of America, and Argentina)	➤ Telemarketers making P2P calls to consumers in the register are liable to prosecution or punishment by the Government
Non-statutory	1 (New Zealand)	➤ Telemarketers making P2P calls to consumers in the register are liable to punishment by the respective trade associations

Exemptions of the regulations

9. Common exemptions from the regulations of P2P calls in other jurisdictions are calls relating to charitable contributions, government programmes and existing business contacts. Calls made from political parties are exempted from regulation in Australia and Canada, whereas calls for election campaigns are exempted in Argentina.

Penalty

10. Offenders are in general liable to fines and/ or imprisonment. In some jurisdictions (e.g. Japan, Unites States of America), administrative measures (e.g. order to suspend business, injunctions) will also be applied.

Effectiveness and problems

11. Out of the 11 jurisdictions adopting a statutory DNC Register the Consultant considered the regulations of eight²³ of them are seemingly effective as reflected by the decreasing number of complaints from consumers on P2P calls.

12. The major challenges in enforcing regulations on P2P calls faced by these jurisdictions include the spoofing technology falsifying calling number display and the calls made from other jurisdictions. For instance, the enforcement authority in Macau pointed out that investigations are made difficult as the majority of P2P calls are made from other jurisdictions.

- End of Annex C -

²³ India, Korea, Mainland China, Singapore, Australia, Netherlands, Canada, and United States of America