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Panel on Information Technology and Broadcasting

Meeting on 10 July 2017

**Updated background brief on review on regulation of
person-to-person telemarketing calls**

Purpose

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

Background

2. The Unsolicited Electronic Messages Ordinance (Cap. 593) came into full operation in December 2007. It regulates the sending of commercial electronic messages, including faxes, Short Messaging Service ("SMS") messages and pre-recorded telephone calls. Under Cap. 593, the Communications Authority ("CA") is empowered to establish Do-not-call ("DNC") Registers in Hong Kong. CA has established three registers, namely, a DNC Register for fax, a DNC Register for short messages ("Short Messages Register") and a DNC Register for pre-recorded telephone messages ("Pre-recorded Register"). The Short Messages Register generally covers SMSs and Multimedia Messaging Services sent over mobile network as well as short messages sent over fixed network. The Pre-recorded Register generally covers pre-recorded voice and video calls. A person may register his or her telephone and fax numbers onto the relevant DNC. Senders of commercial electronic messages are not allowed under Cap. 593 to send any further commercial electronic messages to the registered number from the 10th working day after the number is listed in the relevant DNC unless consent has been given to this sender to send such messages. At present, Cap. 593 does not cover P2P calls as it is argued that regulating P2P calls may affect the development of normal electronic marketing activities.

3. On the other hand, there are comments that P2P calls are causing nuisance in certain circumstances. In response, the finance, insurance, telecommunications and call centres sectors have drawn up and issued respective codes of practice with reference to the Benchmark Code of Practice on Person-to-Person Marketing Calls formulated by the then Office of the Telecommunications Authority in 2010.

4. The use of personal data in P2P calls is regulated by the Personal Data (Privacy) Ordinance (Cap. 486) with amendments effective from April 2013, in which the use of personal data in any direct marketing activity (including P2P calls) is prohibited without explicit prior consent of the data subject.

5. The Administration commissioned a consultancy to conduct a study on P2P calls ("the Survey") in 2015 to solicit the views of the general public and the industry on the regulation of P2P calls, as well as the employment and business situations of the industry. The Study revealed that the majority of the public considered that P2P calls had caused nuisance and expressed support on expanding the regulation. The Survey also studied the regulatory measures of selected jurisdictions. It was found that a statutory DNC Register is commonly used. Some jurisdictions regulate P2P calls with a statutory DNC Register together with laws governing marketing practices.

6. The Administration launched a public consultation in May 2017 to collect views on strengthening the regulation of P2P calls. The consultation paper sought public's views on the three possible options, namely enhancing the trade-specific self-regulatory regime, promoting the use of call-filtering applications in smartphones, and establishing a statutory DNC Register. The public consultation exercise would be closed in late July 2017.

Previous discussions

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7. At the Panel meeting held on 11 April 2016, the Panel was briefed on the key findings of the Survey and the proposed way forward in respect of the regulation of P2P calls in light of the results of the Survey. Members generally agreed that the Administration should step up regulatory efforts to address the problem of P2P calls, either through legislative amendment or the setting up of a statutory DNC register on P2P calls. Some members suggested that regulations should be introduced which would impose sanctions on persons who engaged telemarketers or call centres to make P2P calls from other jurisdictions on their behalf. Members urged the Administration to take immediate steps to tighten regulation of P2P calls without further procrastination.

8. The Panel noted that the Administration proposed to conduct public consultation on the regulation of P2P calls. Some members expressed concerns that it would take at least another five years before the relevant legislation could be introduced if the Administration was still conducting an open-ended consultation without a clear goal of introducing statutory regulation. Members also commented that there was already a consensus in the society for regulating P2P calls, the Administration should proceed to formulating the relevant legislation without further delay. The Panel urged the Administration that the public consultation should be aimed at soliciting the public's views on how, rather than whether, P2P calls should be regulated.

9. The Administration advised that it would be prudent to strike the right balance between the public's perception of P2P calls and the benefits of P2P calls. The Administration would 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. The Panel was informed that trade associations of the four relative sectors had already joined the self-regulatory scheme on P2P calls, and calls made by members of these trade associations were regulated by their industry codes. According to the industry codes, a telemarketer who made a P2P call should not conceal or withhold from the called party the calling line identification information of the sending telephone number.

10. Some Members commented that that P2P calls were no longer an effective marketing tool to promote commercial transactions. They expressed concerns about the misuse of personal data in P2P calls, especially in fraudulent cases involving financial intermediaries having access to the victims' personal data. The Administration advised that there were already provisions governing the use of personal data for particular purposes under Cap. 486. The Personal Data (Privacy) (Amendment) Ordinance 2012 ("Amendment Ordinance") had introduced multiple amendments to Cap. 486 which sought to strengthen protection of personal data privacy. New provisions concerning direct marketing, including the provision which required that a data user must not use personal data in direct marketing without data subject's consent, commenced operation on 1 April 2013.

11. To address unsolicited P2P calls, members proposed that telecommunications operators should be encouraged to waive the fees charged on the caller display function so that the public could make use of call blocking application and the build-in call blocking function. Regarding the DNC register, instead of the current opt-out mechanism under Cap. 593 which assumed that people were willing to receive P2P calls unless they indicated otherwise, members suggested the adoption of an opt-in approach which assumed that people were unwilling to receive such calls at the outset. It was also suggested that the Administration should explore judicial co-operation with other

jurisdictions, including the Mainland authorities to deal with the problem of P2P calls from overseas.

Council meeting

12. At the Council meeting on 24 May 2017, Hon Dennis KWOK raised questions on whether the Administration has assessed the current modus operandi of P2P telemarketing calls and the effectiveness of the current legislation and measures in regulating P2P telemarketing calls, as well as whether the Administration has plans to amend the legislation and put in place other measures to strengthen the regulation of P2P telemarketing calls, so as to prevent the problem of nuisance being caused by such calls from worsening.

13. The Administration indicated that it had encouraged the sectors that had made most of the P2P calls to draw up their respective codes of practice on P2P calls, so as to regulate on a voluntary basis the practices in making P2P calls, such as calling hours, revealing the identity of the telemarketers and honouring unsubscribe requests, etc. The Administration was now conducting a public consultation on strengthening the regulation of P2P calls to gauge views from different sectors of the community. The public could suggest adopting different options as short-term and long-term measures at the same time, and they can also give other suggestions as appropriate.

Latest position

14. The Administration will brief the Panel on 10 July 2017 on the conduct of the public consultation on the regulation on P2P calls.

Relevant papers

15. A list of the relevant papers is set out in the **Appendix I**.

Appendix I

List of relevant papers

Issued by	Meeting date/ Issue date	Paper
Panel on Information Technology and Broadcasting	11 April 2016	Updated background brief on review on regulation of person-to-person telemarketing calls (LC Paper No. CB(4)816/15-16(06)) Minutes of meeting (LC Paper No. CB(4)1053/15-16)
Commerce and Economic Development Bureau	11 May 2017	Press release Consultation Paper on Strengthening the Regulation of Person-to-Person Telemarketing Calls
	24 May 2017	LCQ10: Regulation of person-to-person telemarketing calls