

立法會
Legislative Council

LC Paper No. CB(4)835/17-18(04)

Ref. : CB4/PL/ITB

Panel on Information Technology and Broadcasting

Meeting on 9 April 2018

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

Purpose

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

Background

2. P2P calls refer to the interpersonal communication used to reach out to customers or potential clients. The growing preponderance of P2P calls in Hong Kong has given rise to concerns whether P2P calls should be subject to regulation as more people are responding negatively to the calls.

Personal Data (Privacy) Ordinance (Chapter 486)

3. At present, only the use of personal data in P2P calls is regulated. Under Personal Data (Privacy) Ordinance (Cap. 486), the use of personal data in any direct marketing activity (including P2P calls) is prohibited without explicit prior consent of the data subject.

Unsolicited Electronic Messages Ordinance (Chapter 593)

4. The Unsolicited Electronic Messages Ordinance (Cap. 593), which came into full operation in December 2007, regulates the sending of commercial electronic messages, including faxes, Short Messaging Service messages and pre-recorded telephone calls. The Communications Authority has established three registers under Cap. 593, namely, Do-not-call ("DNC") Register for fax, a DNC Register for short messages and a DNC Register for pre-recorded telephone messages. However, Cap. 593 does not cover P2P calls as it is argued

that regulating P2P calls may affect the development of normal electronic marketing activities.

Current self-regulatory schemes for person-to-person telemarketing calls

5. In recent years, the wide and proliferated use of P2P calls have caused nuisance to general phone users. With the active encouragement of the Commerce and Economic Development Bureau, the trade associations of the four sectors that were found to have made most of the P2P calls, namely finance, insurance, telecommunications and call centres, have joined a self-regulatory scheme since mid-2011 by introducing industry-specific codes of practice on P2P calls to their respective industry members.

The 2015 consultancy study on person-to-person telemarketing calls

6. The Administration commissioned a public survey and an industry survey in 2015 to solicit the public and the industry's views on the use and regulation of P2P calls. The public survey revealed that the majority of respondents favoured extending the regulation of P2P calls to all trades that involve telemarketing calls through legislation. There were views that supported expanding the regulation through voluntary codes of practice while some preferred that only the four major sectors that conducted the most P2P calls (i.e. finance, insurance, telecommunications and call centres sectors) should be regulated by legislation. Among respondents in the industry survey, roughly about one-third each expressed support for legislation and for code(s) of practice for voluntary compliance while slightly more than one-third considered both modes acceptable. The Administration also studied the regulatory measures of selected jurisdictions and found that a statutory DNC Register was commonly used. Some jurisdictions regulated P2P calls with a statutory DNC Register together with laws governing marketing practices.

The 2017 public consultation on strengthening regulation of person-to-person telemarketing calls

7. To gauge public views on whether the regulation of P2P calls should be strengthened and, if so, the specific mode(s) through which such calls should be regulated, the Administration launched a public consultation on 11 May 2017. Apart from uploading the document online, the Administration had issued the consultation paper to industry stakeholders, District Council secretariats, and other relevant bodies such as the Consumer Council and the Office of the Privacy Commissioner for Personal Data. 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 period ended on 31 July 2017.

Previous discussions

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8. At the Panel on Information Technology and Broadcasting ("the Panel") meeting held on 10 July 2017, the Panel was briefed on the conduct of the public consultation launched by the Administration on "Strengthening the Regulation of P2P calls" in May 2017. Members generally expected stronger measures be imposed on regulating P2P calls.

Self-regulatory regime

9. Members was informed that from the information provided by the trade associations who had participated in the self-regulatory scheme, the number of complaints relating to P2P calls had decreased. Some members commented that the voluntary self-regulation had been effective in reducing the number of complaints against P2P calls. The Administration also advised that the finance sector had taken initiatives to enhance the scheme with measures whereby a caller would have to provide his/her name and company telephone number to facilitate enquiry and identity verification. Some other members were of the view that cold calls from beauty and loan lending companies were most annoying and these companies would not participate in any voluntary monitoring scheme.

Call-filtering applications in smartphones

10. Panel members noted that the Administration would be cautious when considering whether it should take the initiative of developing call-filtering mobile applications ("apps") or whether it should promote wider use of apps that were already available in the market. The Administration would reach out to the elderly or vulnerable groups to educate and encourage these people on the wider use of suitable call-filtering software.

Statutory regulatory regimes

11. Members commented that the current regulation against P2P calls was ineffective and public opinion was predominantly in favour of regulating P2P calls by legislation. Members held that the Administration seemed only concerned about the impact of a statutory regulatory regime on small and medium enterprises ("SMEs") and the employment market. Some other members were of the view that P2P calls were the usual and affordable method of direct marketing for many SMEs. Introducing statutory regulation of P2P calls would adversely affect the operation of SMEs, especially the call centre business, and would affect employment. The Administration reiterated that it was aware of the public views and expressed that there was a need to balance

the interest of all stakeholders, measures to be imposed should not restrain normal commercial activities unduly.

12. To address members' concerns on the issue of cold calls vis-à-vis warm calls, the Administration informed the Panel that if legislation would be introduced to regulate P2P calls eventually, the Administration would then address the issue of whether and how warm calls should be exempt under the new regulatory regime and how it work with other relevant provisions in the Cap. 486, in particular that warm calls normally involved the use of personal data.

13. Some members considered that the proposed DNC Register would not have sufficient deterrent effects. Members also proposed that the Administration should consider assigning specific telephone prefixes such as "41" or "42" to telemarketers for P2P calls. The Administration advised that the measures would end up freezing up many telephone numbers which should otherwise be allocated for use. Requiring telemarketers to use telephone numbers with specific prefixes would also involve a lengthy legislative process, but such might easily be circumvented by the use of technology such as spoofing or falsifying caller identity.

Latest position

14. The Administration will brief the Panel on 9 April 2018 on the report on the public consultation on strengthening the regulation of P2P telemarketing calls.

Relevant papers

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

List of relevant papers

Issued by	Meeting date/ Issue date	Paper
<p>Panel on Information Technology and Broadcasting</p>	<p>10 July 2017</p>	<p>Administration's paper on public consultation on strengthening the regulation of person-to-person telemarketing calls (LC Paper No. CB(4)1344/16-17(04))</p> <p>Updated background brief on review on regulation of person-to-person telemarketing calls (LC Paper No. CB(4)1344/16-17(05))</p> <p>Minutes of meeting (LC Paper No. CB(4)1537/16-17)</p>