

立法會
Legislative Council

LC Paper No. CB(1)1346/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/4/05/2

Bills Committee on Unsolicited Electronic Messages Bill

**Minutes of the fourteenth meeting on
Wednesday, 14 March 2007, at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Howard YOUNG, SBS, JP (Chairman)
Hon Emily LAU Wai-hing, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon James TO Kun-sun
Hon SIN Chung-kai, JP
Hon Jasper TSANG Yok-sing, GBS, JP
- Public officers attending** : Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry and Technology
(Communications and Technology)
- Mr Tony LI
Principal Assistant Secretary for Commerce, Industry and
Technology (Communications and Technology) B
- Mr SO Tat-foon
Assistant Director of Telecommunications (Support)
- Miss Carrie TANG
Legal Adviser 5
Office of the Telecommunications Authority
- Mr Jeffrey GUNTER
Senior Assistant Law Draftsman
Department of Justice

Miss Leonora IP
Senior Government Counsel
Department of Justice

Attendance by invitation : Hong Kong Direct Marketing Association

Ms Monica CHAN
Director of Membership Development

Hong Kong Call Centre Association

Mr Michael COWELL
Executive Committee Member

Mr Joseph WONG
Member

Other attending person

Mr LAU Kwok-wah
Legislative Assistant
Office of the Hon WONG Ting-kwong

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)4

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Mr WONG Siu-yee
Senior Council Secretary (1)7

Action

I Meeting with the Administration and deputations

- (LC Paper No. CB(3)735/05-06 -- The Bill
LC Paper No. CB(1)1124/06-07(01) -- Draft Committee Stage amendments to the Bill proposed by Hon WONG Ting-kwong, BBS
LC Paper No. CB(1)1024/06-07(01) -- Explanatory note dated February 2007 from Hon WONG Ting-kwong, BBS in relation to his proposed Committee Stage amendments

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- LC Paper No. CB(1)934/06-07(01) -- Letter dated 8 February 2007 from Hon WONG Ting-kwong, BBS
- LC Paper No. CB(1)1124/06-07(02) -- Letter dated 13 March 2007 from Hon WONG Ting-kwong, BBS
- LC Paper No. CB(1)502/06-07(02) -- Submission dated 6 December 2006 from The Hong Kong Call Centre Association
- LC Paper No. CB(1)1087/06-07(01) -- Letter dated 5 March 2007 from Hong Kong Direct Marketing Association and The Hong Kong Call Centre Association
- LC Paper No. CB(1)995/06-07(03) -- Marked-up version of the draft Committee Stage amendments to be proposed by the Administration
- LC Paper No. CB(1)995/06-07(02) -- Administration's response to the outstanding issues raised at the Bills Committee meetings
- LC Paper No. CB(1)502/06-07(01) -- Submission dated 24 November 2006 from Hong Kong General Chamber of Commerce
- LC Paper No. CB(1)995/06-07(04) -- Administration's response to the views submitted by Hong Kong General Chamber of Commerce
- LC Paper No. CB(1)1088/06-07(01) -- Outstanding issues requiring follow-up actions by the Administration (Position as at 12 March 2007)
- LC Paper No. CB(1)1124/06-07(03) -- Administration's response to the outstanding issues (Position as at 12 March 2007)
- LC Paper No. CB(1)1117/06-07(01) -- "Extracts of statutory provisions relating to the exercise of the powers of entry and inspection, etc. under a warrant" prepared by the Legal Service Division
- LC Paper No. CB(1)1117/06-07(02) -- "Copies of statutory provisions relating to the appointment of the Chairman, Deputy Chairman and panel members of Appeal Boards and the tenure of such appointment" prepared by the Legal Service Division
- LC Paper No. CB(1)1117/06-07(03) -- "Examples of Ordinances which contain an express provision that the Ordinance binds the Government" prepared by the Legal Service

Action

Division)

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Administration was requested to –
 - (a) provide the names of the members of the Telecommunications Users and Consumers Advisory Committee (the Committee) and the respective length of service of individual members of the Committee;
 - (b) consider the suggestion of improving the mechanism for appointment of members to the Committee; and
 - (c) reconsider whether the provisions of the Bill should be binding on the Government.
3. Depending on the Administration's response to item (c) above, the Bills Committee would consider moving a Committee Stage amendment to the effect that all the provisions of the Bill should be binding on the Government.

II Any other business

4. Members agreed that the next meeting would be held on Tuesday, 17 April 2007, at 8:30 am.
5. There being no other business, the meeting ended at 10:45 am.

Council Business Division 1
Legislative Council Secretariat
13 April 2007

**Proceedings of the fourteenth meeting of the
Bills Committee on Unsolicited Electronic Messages Bill
on Wednesday, 14 March 2007, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000236	Chairman	Opening remarks	
000237 - 000635	Hong Kong Call Centre Association (HKCCA)	<p>Presentation of views</p> <p>Support for the legislative intent of the Bill but grave concern about the impact of the amendments proposed by Mr WONG Ting-kwong on the employment opportunities in the telemarketing industry, and the operational costs of various other industries which had been using person-to-person (PTP) telemarketing to promote their products and services</p> <p>Emphasis that telemarketing was an economical method for small and medium enterprises (SMEs) to promote their products and services</p> <p>Suggestion of setting aside the proposed amendments</p>	
000636 - 000819	Hong Kong Direct Marketing Association (HKDMA)	<p>Presentation of views</p> <p>Emphasis on the reliance of SMEs on telemarketing as a publicity channel and concern that Mr WONG's proposed amendments would deter enterprises from using PTP telemarketing to promote their products and services</p> <p>Grave concern about the difficulty in defining what would constitute a business or client relationship, a necessary factor for exemption from the regulation of the Bill under Mr WONG's proposed amendments, and the possibility of a large amount of complaints and litigation arising</p>	

Time marker	Speaker	Subject(s)	Action required
		from confusion about whether such a relationship existed	
000820 - 001323	Ms Emily LAU Chairman HKCCA	<p>Enquiry on the number of employees that might be affected by Mr WONG's proposed amendments</p> <p>HKCCA's response that while there were no concrete employment figures, various types of companies were involved in PTP telemarketing campaigns, such as companies responsible for providing customer lists, producing the products and telemarketing. Any uncertainties in legislation would act as a strong deterrent for them and affect employment opportunities. If either one of those companies declined the work, telemarketing campaigns could not be carried out</p>	
001324 - 001932	Mr WONG Ting-kwong Mr Alex LAU	<p>Briefing on the proposed amendments (LC Paper No. CB(1)1124/06-07(01))</p> <p>Emphasis that the proposed amendments would not ban PTP telemarketing activities. Senders were only required to provide accurate sender information and not to conceal their calling line identification (CLI) information. No employment figures were available as convincing evidence for the alleged adverse impact of the proposed amendments</p> <p>The proposed amendments would provide exemption when the PTP interactive communications were made pursuant to a previous or current business or client relationship between the caller and the recipient. There should be no negative impact on telemarketers because their</p>	

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		<p>customer lists were obtained through previous or current business or client relationship. A win-win situation would be created because telemarketing service standard would be enhanced by providing accurate sender information and not concealing CLI information</p>	
001933 - 003527	<p>Chairman Administration Mr Ronny TONG HKCCA</p>	<p>The Administration's briefing on its response to Mr WONG's proposed amendments (LC Paper No. CB(1)1124/06-07(03))</p> <p>The Administration's advice that its stand of not regulating PTP interactive telemarketing calls at this juncture remained unchanged and the Administration did not support Mr WONG's proposed amendments</p> <p>Mr TONG's support for the direction of Mr WONG's proposed amendments; his view that the proposed amendments should have been more aggressive, and that the Administration's explanation was unconvincing as the number of PTP interactive telemarketing calls should not be used as the criteria for deciding whether or not PTP interactive telemarketing calls should be regulated. There should be a balance between protecting the rights of individuals and facilitating business. Mr TONG's further comment that business facilitation should not be at the expense of the privacy of the public</p> <p>HKCCA's remark that customers already had the option of being placed on a do-not-call list with individual firms using telemarketing to promote products and services; telemarketers would not call such</p>	

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		<p>customers in order not to upset them and to improve overall cost-efficiency</p> <p>The Administration's response that the objective of the Bill was to strike a balance between respecting the rights of users of electronic addresses and allowing the development of legitimate electronic marketing in Hong Kong. The Administration would continue to monitor the situation, review the necessity of regulating PTP interactive telemarketing calls in future, and request the telemarketing industry to implement codes of practice and exercise self-discipline. The use of personal data in direct marketing was already regulated under section 34 of the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO)</p>	
003528 - 003907	Mr WONG Ting-kwong	<p>View that the fact that the number of PTP interactive telemarketing calls had substantially decreased recently should not be a reason for not introducing amendments to the Bill</p> <p>Query on whether PDPO could effectively deal with cases where the recipient did not know the CLI information or the identity of the caller</p> <p>View that the telemarketing industry tried to contain their operational cost at the expense of the recipients' airtime charges</p> <p>Emphasis that the proposed amendments had already struck a proper balance and all that was required of telemarketers under the proposed amendments was to provide recipients with a choice to answer a call or not</p>	

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003908 - 004234	HKCCA	<p>The telemarketing industry had already adopted stringent codes of practice to avoid upsetting customers because that would adversely affect their business</p> <p>In some jurisdictions, CLI information display service was unavailable. Locally, recipients could still decide whether to answer a call regardless of whether CLI information was displayed or not</p> <p>On average, less than 1% of the consumers that they had called requested to opt out of further telemarketing communication, indicating that there was wide acceptance of PTP interactive telemarketing</p>	
004235 - 004721	Ms Emily LAU Administration Chairman	<p>Enquiry on whether there was regulation of PTP interactive telemarketing calls in other jurisdictions, which was similar to Mr WONG's proposed amendments</p> <p>The Administration's response that those calls were usually not regulated by anti-spam legislation in other jurisdictions; there was separate legislation to regulate those calls in some jurisdictions. For example, the United States had Telemarketing Sales Rules to regulate such calls, while the United Kingdom adopted privacy protection guidelines based on those of the European Union</p> <p>Enquiry on the scope of the legislation on regulation of PTP interactive telemarketing calls in other jurisdictions</p> <p>The Administration's response that the scope varied among individual jurisdictions. In the United States,</p>	

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		<p>the scope of the legislation was quite broad, and this might be attributed to the relatively high cost of telephone spamming to both callers and recipients. In Hong Kong, the number of SMEs was high and telephone usage was heavy, and most people did not hold a negative attitude towards telemarketing</p>	
004722 - 005159	<p>Mr WONG Ting-kwong Chairman HKCCA</p>	<p>Mr WONG's view that the clients of the telemarketing industry were mainly corporations such as banks and insurance companies rather than SMEs; his reference to the survey result that the majority of the respondents supported requiring callers to provide accurate sender information and not to conceal their CLI information</p> <p>HKCCA's clarification that their members' clients were a mix of large corporations and SMEs, and telemarketing was a fast and cost-effective publicity channel for SMEs; and reiteration that the recipients could decide whether to answer a call regardless of whether the CLI information was displayed or not and the recipients could opt out and their requests would be honoured</p>	
005200 - 005648	<p>Ms Emily LAU HKCCA HKDMA</p>	<p>Enquiry on why the telemarketing industry found difficulty in not concealing the CLI information</p> <p>HKCCA's response that recipients were more prone to reject a call when the CLI information on display was unfamiliar to them, thus making it difficult for companies to use telemarketing to reach their potential customers</p> <p>HKDMA's view that there should be flexibility in the legislation in</p>	

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		<p>relation to CLI information; imposing a mandatory requirement for not concealing CLI information would seriously hamper telemarketers' ability to deliver information to prospective consumers</p> <p>Ms LAU's view that unlike junk post, PTP interactive telemarketing calls would disturb recipients and at the same time cause recipients to incur additional airtime charges</p> <p>HKDMA's response that as cost-effectiveness was an important consideration in telemarketing, telemarketers would not wish to disturb consumers because doing so would lower cost-effectiveness</p>	
005649 - 010339	Mr WONG Ting-kwong Administration HKCCA Chairman	<p>The Administration's remark that as the same telemarketer could be responsible for promoting different products for different corporations, the CLI information of the telemarketer might not be associated with any particular product or corporation. Therefore, the CLI information could not facilitate the recipients to make an informed decision to answer a telemarketing call or not</p> <p>HKCCA's view that telemarketers were not deceiving consumers to receive their calls. They were concerned about response rates and the key issue was having the flexibility to reach as many consumers as possible. Telemarketing was a growing industry with an annual growth rate of some 20% to 30%. The proposed amendments would have adverse impact on employment opportunities and publicity channels</p>	

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		<p>Enquiry on whether there was any marked difference in response rates between telemarketing calls with and without the CLI information</p> <p>HKCCA's response that while there were no concrete figures on the difference, the success rate of telemarketing calls ranged from 3% to around 20%, indicating a high acceptance level of this publicity channel</p>	
010340 - 010629	Mr Andrew LEUNG Administration	<p>Enquiry on whether there would be any difficulties in enforcement if Mr WONG's proposed amendments were adopted</p> <p>The Administration's response that while enforcement difficulties might be solved in future with more advanced technologies, tremendous difficulties were envisaged and could not be resolved at present, including the difficulty in obtaining sufficient evidence and in determining whether previous or current business or client relationship existed</p> <p>Enquiry on whether the proposed amendments would be applicable to non-local PTP interactive telemarketing calls</p> <p>The Administration's response that those calls which had a Hong Kong link would be regulated under the Bill</p>	
010630 - 011023	Mr WONG Ting-kwong Administration	<p>Remark that senders would not be liable if the CLI information was not displayed in jurisdictions where such service was unavailable</p> <p>View that SMEs were very willing and considered it necessary to</p>	

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		<p>display their CLI information in placing PTP interactive telemarketing calls to facilitate reply and communication. The crux of the issue was the stand of telemarketing agencies towards displaying the CLI information</p> <p>The Administration's response that there would be publicity targeting at telemarketers on the desirability of displaying the CLI information for PTP interactive telemarketing calls. Public education and administrative measures could be adopted before considering the need for further legislation</p>	
011024 - 011638	Ms Emily LAU Administration HKCCA Chairman	<p>Enquiry on the proportion of PTP interactive and machine-generated telemarketing calls</p> <p>The Administration's response that from the data for the 200 mobile phone accounts (i.e. honeypot) set up by OFTA over the past three months, the estimated ratio between PTP interactive telemarketing calls not involving personal data and machine-generated telemarketing calls was two to one. There was a 90% reduction in machine-generated telemarketing calls when compared with that in early 2006</p> <p>HKCCA's view that while its members placed at least two to three million PTP interactive telemarketing calls per month, the 11 000-odd complaints in the telecommunications category handled by the Consumer Council were mainly related to issues on billing and telecommunications service providers</p>	

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011639 - 011933	Ms Emily LAU Administration Chairman	<p>Enquiry on whether the views from SMEs had been solicited and whether they should be further consulted</p> <p>The Administration's response that there was adequate public consultation and representatives of SMEs attending consultation sessions supported the intent and provisions of the Bill. After the recent Taiwan earthquake, as reported in the press, many SMEs indicated that they were seriously affected by the breakdown of electronic communication because they relied heavily on this communication means in their operation</p>	
011934 - 012142	Ms Emily LAU Mr WONG Ting-kwong	<p>Enquiry on whether Mr WONG Ting-kwong had solicited the views of SMEs</p> <p>Mr WONG's response that the SMEs he had contacted in general had not engaged telemarketing agencies, and the SMEs indicated that they considered it necessary and important to display their CLI information when placing PTP interactive telemarketing calls</p>	
012143 - 012509	Chairman	View that the consumers' willingness to answer a telemarketing call might vary depending on the prevailing personal circumstances	
012510 - 013734	Ms Emily LAU Administration Mr WONG Ting-kwong Mr Ronny TONG	<p>Enquiry on whether the Administration would object to Mr WONG's proposed amendments based on reasons other than the merit of the proposed amendments, such as the proposed amendments having a charging effect</p> <p>The Administration's response that</p>	

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		<p>further research was needed to ascertain whether additional public expenditure would be required</p> <p>Mr WONG's view that his proposed amendments were put up after thorough consideration of the interests of all stakeholders and the scope of application was already very narrow</p> <p>Enquiry on the difficulties in enforcement if Mr WONG's proposed amendments were adopted</p> <p>The Administration's response that unlike machine-generated telemarketing calls, for PTP interactive telemarketing calls, it would be difficult to record identical messages for investigation and for collection of evidence as the content of the messages would vary from call to call</p> <p>The Administration's further advice that evidence was needed to prove that the contents of the call concerned constituted a commercial electronic message and to ascertain whether there was a previous or current business or client relationship between the caller and the recipient</p>	
013735 - 014617	Chairman Ms Emily LAU Administration	Enquiry on the tenure of members of the Telecommunications Users and Consumers Advisory Committee, how they were identified, whether they represented their respective sectors, and whether the "six boards, six years" rule would be adhered to; and view that members of the Committee should be elected by the relevant sectors so that they could reflect the views of their sectors and report deliberations of the Committee to their sectors	

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		<p>The Administration's response that in general, the tenure would be two years. Some members were nominated by their respective sectors and some were identified through referral for appointment. The Administration would adhere to the "six boards, six years" rule as far as possible</p> <p>Request for the names of the members of the Committee and the respective length of service of the members of the Committee and suggestion of improving the mechanism for appointment of members to the Committee</p>	<p>The Administration to provide information and report the outcome of its consideration</p>
014618 - 014724	Mr WONG Ting-kwong Administration	<p>Enquiry on how the 10 members of the public on the Committee were identified</p> <p>The Administration's response that they were identified from a list maintained by the Home Affairs Bureau containing the names of persons who were interested in engaging in public service</p>	
014725 - 020417	Administration Chairman Ms Emily LAU Mr Ronny TONG ALA3	<p>Ms LAU's view that the provisions of the Bill should be binding on the Government as some of the electronic messages sent by Government departments might fall within the definition of "commercial electronic message". Reliance on internal guidelines was unsatisfactory because there would not be any liability for not adhering to guidelines. The Administration should not adopt double standards, and a number of existing Ordinances had an express provision that the legislation was binding on the Government</p>	

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		<p>The Administration's response that the Government would certainly adhere to the requirements of the Bill. Government departments were already following the spirit of the Bill because they would generally send electronic messages to recipients who either requested to receive such messages or who did not object to receiving such messages. They would discontinue sending such messages if the recipients chose to opt out, and existing mechanisms for complaints were sufficient for monitoring the sending of commercial electronic messages by Government departments</p> <p>Request for the Administration to reconsider whether the provisions of the Bill should be binding on the Government</p> <p>Mr TONG's view that the fact that an individual or organization would not likely commit a certain offence should not imply that legislation should not be binding on that individual or organization. It would be unfair and inconsistent with the principle of equality before the law if the Government was not required to abide by the provisions of the Bill</p> <p>ALA3's reference to LC Paper No. CB(1)1117/06-07(03) which provided examples of Ordinances which contained an express provision that the Ordinance bound the Government, and section 66(1) of the Interpretation and General Clauses Ordinance (Cap. 1) which provided that "No Ordinance (whether enacted before, on or after 1 July 1997) shall in any manner</p>	<p>The Administration to report the outcome of its consideration</p>

Time marker	Speaker	Subject(s)	Action required
		<p>whatsoever affect the right of or be binding on the State unless it is therein expressly provided or unless it appears by necessary implication that the State is bound thereby."</p> <p>ALA3's explanation that the word "State", as defined in section 3 of Cap. 1, included the Government of the Hong Kong Special Administrative Region</p> <p>Suggestion for the Bills Committee to consider moving a Committee Stage amendment to the effect that all the provisions of the Bill should be binding on the Government</p>	<p>ALA3 to prepare the draft Committee Stage amendment</p>
020418 - 020910	<p>Chairman Ms Emily LAU Mr WONG Ting-kwong Administration</p>	Date of next meeting	