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4 October 2006

Ms Anita SIT
Clerk to Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Ms SIT,

Bills Committee on Unsolicited Electronic Messages Bill
Follow-up to second meeting on 27 September 2006

I refer to your letter on 27 September 2006 and wish to provide our initial response to the two suggestions raised at the above meeting.

Clauses 7 and 12 of the Bill

On the suggestion not to exclude person-to-person interactive telemarketing calls from the application of clauses 7 and 12 of the Bill, we are open to further discussion on this suggestion, but are of the view that there are practical difficulties to address.

Clause 7 is an overarching provision requiring a sender of commercial electronic message to provide accurate sender information identifying the individual or organisation who authorised the sending of the message. Detailed information requirement would be specified in the regulations to be promulgated under clause 7(1)(c). For pre-recorded voice or video messages, it is our intention to specify in the regulations the exact types of information (e.g. business name and telephone number) that must be included in the message, as well as how such information should be presented (e.g. in both English and Chinese, and presented to the recipient within a fixed period from the beginning of the message) so that the recipient would be suitably informed upfront and could decide whether to continue to listen to the message. Such requirements could be met more readily by the sender of pre-recorded messages, since he could time the messages and ensure compliance with the requirements in the regulations during the preparatory stage.

However, in person-to-person telemarketing calls, since the exact content of the conversation could vary from caller to caller, and from recipient to recipient, a caller may inadvertently contravene the statutory requirements if, for instance, it took him longer than the timeframe prescribed in the regulations for giving those sender information to the recipient. Conversely, if a timeframe is not prescribed, a caller may abuse the requirement by claiming that he intends to give out such information to the recipient at the end of his telemarketing message and effectively forcing the recipient to listen to the entire message.

Furthermore, some calls may not be intended to be telemarketing calls initially (e.g. a call from a bank representative reminding a customer of an issued cheque requiring transfer of funds), but if some products or services are described and offered during the conversations (irrespective of whether the information is initiated by the caller or requested by the recipient), the call would then fall within the definition of commercial electronic messages under the Bill and require the caller to comply with the statutory requirements. In some cases, he

might have already contravened some requirements (e.g. not provided his name and telephone number within the prescribed timeframe) unintentionally. Similarly, applying clause 12 to person-to-person interactive telemarketing calls, if an original non-telemarketing call eventually becomes a telemarketing call in the midst of the conversation, the caller may have contravened that provision if the telephone line from which he called could not comply with the requirement in clause 12.

These examples show that more thorough considerations need to be given to the possibility of applying clauses 7 and 12 to person-to-person interactive telemarketing calls.

Calling Line Identification Information

On the suggestion of requiring senders of telemarketing calls to ensure that operators of the telecommunications networks through which the telemarketing calls are sent have made necessary arrangements to enable the display of the senders' calling line identification (CLI) information on the telephones of the recipients, especially in circumstances where the recipient are outside Hong Kong using roaming services, we consider that there will be practical difficulties in pursuing this suggestion in the Bill.

For a caller to make a call to a mobile service subscriber who is roaming on another mobile network outside Hong Kong (the recipient), four parties are involved – (1) the caller's operator, (2) the recipient's mobile operator in Hong Kong, (3) an international gateway operator and (4) the overseas mobile operator which the recipient is connected through roaming service. All Hong Kong local fixed and mobile operators are required to relay the CLI information. The ability of the recipient to see such information while roaming on a mobile network outside Hong Kong will depend on whether such information could be relayed along the route.

Some international gateway operators offer ways to connect roamed calls which do not support the relaying of CLI information. Furthermore, it is a common practice of international gateway operators not to relay the CLI information to economies where there is no privacy law, in order to protect the callers who might have their CLI information shown against their wish in those economies.

According to information available to the Office of the Telecommunications Authority (OFTA), among some 260 economies for which Hong Kong mobile operators have agreements with their counterparts to provide roaming service to their subscribers, less than 30 economies currently support the display of CLI information for calls from Hong Kong. In respect of those 230 economies, since a mobile operator cannot distinguish a telemarketing call from a non-telemarketing call, any requirements under the Bill mandating the display of CLI information while a recipient is roaming would need to apply to all roaming calls, including non-telemarketing calls. If such requirements could not be complied with for roaming service in any economy (irrespective of whether it is due to technical, contractual or legal reasons), the Hong Kong mobile operator would have to stop providing roaming service for all telemarketing and non-telemarketing calls in that economy in order not to contravene the Bill. This is an undesirable outcome.

Yours sincerely,



(LI Yeuk-yue, Tony)
for Secretary for Commerce, Industry and Technology

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