

**For Discussion  
on 9 November 2009**

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

**Person-to-Person Telemarketing Calls**

**Purpose**

This paper reports to Members the results of the two surveys commissioned by the Administration in respect of person-to-person (“P2P”) telemarketing calls, and discusses the action to be taken in light of the information collected from the surveys.

**Background**

2. To contain the problem of unsolicited commercial electronic messages, the Unsolicited Electronic Messages Ordinance (“UEMO”) was fully implemented in December 2007. This regulates the sending of commercial electronic messages, including those sent by fax, emails, short messages and pre-recorded telephone messages, but not P2P telemarketing calls. This is intended to leave room for legitimate telemarketing activities.

3. Although P2P telemarketing calls are not subject to regulation under the UEMO, the Administration has agreed to continue to monitor the situation and consider introducing regulation if such calls cause a serious problem to the community.

**Opinion Surveys of the Public and the Industry**

4. To gauge the impact of P2P telemarketing calls on the public and to assess the views of the public and the industry towards such calls, the Office of the Telecommunications Authority (“OFTA”) has conducted two opinion surveys. In October 2008, the University of Hong Kong (“HKU”) was commissioned by OFTA to conduct a general telephone survey. About 1,100 respondents were successfully interviewed in the survey. In parallel, OFTA sent

out questionnaires through various industry associations to collect views from the industry. By the end of September 2009, a total of 52 companies (which together made about 491,000 P2P telemarketing calls per day) had responded to the questionnaire.

5. Summaries of the results of the public and industry surveys are attached in Appendix 1 and Appendix 2 respectively. Key findings of the surveys are highlighted and discussed in the following paragraphs.

### **Key Findings of the Surveys**

#### ***(A) The public views and response towards P2P telemarketing calls***

##### Whether the public regard P2P telemarketing calls as useful or disturbing

6. In the public opinion survey, 81% of the respondents considered that P2P telemarketing calls did cause them inconvenience. However, only 43% of respondents, when receiving such calls, would indicate to the caller at the very beginning that they were not interested. On the other hand, 46% of the respondents would listen to see whether they would be interested in the information and would discontinue the call if they were not interested. In other words, nearly half of the respondents would not reject P2P telemarketing calls straight away and would continue the telephone conversation if they were interested in the information.

##### Whether the public would make or agree to make commercial transactions during P2P telemarketing calls

7. About 21% of the respondents in the public survey had made or agreed to make commercial transactions during P2P telemarketing calls. Some respondents considered that they could, through P2P telemarketing calls, obtain lower prices or discounts, or receive more information or gifts. The results of the industry survey also reflected that companies were able to generate business through P2P telemarketing calls. Among the 42 companies that had provided in their returns the success rates<sup>1</sup> of their P2P telemarketing calls, one-third of them quoted a success rate of 5.1% to 10% and another one-third quoted a success rate of over 10%.

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<sup>1</sup> "Success rate" means the percentage of calls that could achieve the intended purpose e.g. to get the call recipient agree to buy/subscribe to the products/services, or to make an appointment with the call recipient for a meeting, etc.

## ***(B) Unsubscribe mechanism***

### In-house unsubscribe list

8. Out of the 52 respondents in the industry survey, 43 (83%) indicated that they maintained an in-house unsubscribe lists<sup>2</sup>.

### Making unsubscribe requests

9. Only 35% of respondents in the public opinion survey indicated that they had made unsubscribe requests to callers of P2P telemarketing calls, showing that many members of the public did not make such requests when they received P2P telemarketing calls. Among the respondents who had made unsubscribe requests, only 21% of them said that callers would honour their requests<sup>3</sup>.

## ***(C) Proportion of P2P telemarketing calls that involve the use of call recipients' personal data***

10. In the public opinion survey, 55% of the respondents reported that more than 40% of the P2P telemarketing calls received by them involved the use of personal data<sup>4</sup>. A similar result was also obtained in the industry survey. Among the 491,000 P2P telemarketing calls made daily by the responding companies, 45% involved the use of call recipients' personal data and 55% did not. Based on these results, one can conclude that around half of the P2P telemarketing calls do not involve the use of call recipients' personal data.

## ***(D) Whether P2P telemarketing calls not involving the use of personal data should be regulated***

11. In the public opinion survey, 29% of the respondents did not consider that there was a need for the Government to expand the scope of existing

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<sup>2</sup> The purpose of an in-house unsubscribe list is to record a list of telephone numbers in respect of which unsubscribe requests have been raised, so that no further marketing calls would be made to these numbers. Members of the public have to make requests to individual companies for registering their numbers onto the companies' in-house unsubscribe lists. This arrangement is different from a centralised do-not-call register ("DNC") in which a member of the public can unsubscribe from marketing messages of *all* companies by registering his number onto the DNC, without the need to make unsubscribe requests to individual companies.

<sup>3</sup> How the respondents ascertained whether their unsubscribe requests had been honoured was not covered in the scope of the public survey.

<sup>4</sup> Personal data refer to data from which the identity of an individual can be directly or indirectly ascertained, e.g. a telephone number plus the name of the person who can be reached by calling that number.

regulation to cover P2P telemarketing calls not involving the use of personal data, while 13% could not decide or did not know whether there was such a need. In other words, a total of 42% of the respondents did not have any strong view on imposing regulation on P2P calls not involving the use of personal data.

12. While 57% of the respondents in the same survey considered that the Government should regulate such calls, only 42% of the total respondents supported regulation by legislation while 15% of the total supported a voluntary compliance approach. Generally speaking, the public opinion survey results do not present overwhelming support for regulation by legislation.

13. In the industry survey, 41 companies (79%) indicated that there was no need to regulate P2P telemarketing calls that did not involve the use of personal data. Only 9 responding companies (17%) considered that such calls should be regulated, with one company supporting legislation and seven companies supporting self-regulation with the implementation of a voluntary code of practice. The remaining one company did not state its preferred option. In general, companies that support regulation make relatively small number of telemarketing calls, as compared with those that do not consider regulation necessary.

#### ***(E) Main business sectors making P2P telemarketing calls***

14. The industry survey results show that the main business sectors making P2P telemarketing calls, in the descending order of number of P2P telemarketing calls made, are finance (48%), telecommunications (25%), call centres (14%) and insurance (10%).

### **Observations**

#### ***(A) The public views and response towards P2P telemarketing calls***

15. The survey results indicate to some extent that some members of the public might consider that some P2P telemarketing calls did bring useful information and benefit to them. Whether a call recipient would regard P2P telemarketing calls as useful or a source of inconvenience might largely depend on whether he was interested in the products or services that were promoted by the callers. In addition, such calls also generate business for companies making use of this channel to promote their products/services. Nonetheless, potential economic benefits of P2P telemarketing calls (for both the public and

the industry) should not override the right of the public to unsubscribe from unwanted P2P telemarketing calls. The Administration therefore considers that companies making use of P2P telemarketing calls should put in place an appropriate unsubscribe mechanism so that call recipients may opt out from receiving further P2P telemarketing calls from the company the request is made to.

***(B) Unsubscribe mechanism***

In-house unsubscribe list

16. Based on the data given in paragraph 8 above, it seems that many companies have set up in-house unsubscribe mechanisms. In contrast, the data in paragraph 9 above indicates that only 35% of the public ever made unsubscribe requests. Among these respondents who had made unsubscribe requests, only 21% said that callers would honour their unsubscribe requests. The discrepancy between the public and industry surveys raises two issues. First, the percentage of the public who make unsubscribe requests to callers of P2P telemarketing calls is still relatively low. Secondly, it is doubtful whether companies making use of P2P telemarketing calls have really put in place proper internal policies to ensure that unsubscribe requests are recorded and honoured. The two issues may be related in that if companies making such calls honour unsubscribe requests, more call recipients would be keen to make such requests. OFTA will therefore approach industry associations and request them to step up their effort in recording and honouring unsubscribe requests. OFTA will also mount publicity programmes to educate members of the public about making use of the unsubscribe mechanism put in place by callers of P2P telemarketing calls if they do not wish to receive further calls from the concerned callers.

***(C) Proportion of P2P telemarketing calls that involve the use of call recipients' personal data and (D) whether P2P telemarketing calls not involving the use of personal data should be regulated***

17. The use of personal data for direct telemarketing is already regulated under the Personal Data (Privacy) Ordinance (“PDPO”)<sup>5</sup> and there is no clear need to contemplate further legislative measures for such calls. However, both the public opinion and industry survey results show that over half of the P2P telemarketing calls made do not involve personal data. If non-legislative measures are to be introduced to address the problem of inconvenience caused

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<sup>5</sup> Section 34 of the Personal Data (Privacy) Ordinance Cap 486 provides that a data user who uses personal data for direct marketing (which covers, among other things, telephone calls) shall, without charge to the data subject, cease to use those data, if the data subject so requests.

by P2P telemarketing calls, they should cover all such calls, regardless of whether they involve the use of personal data or not. This would avoid confusion and argument over what actually constitutes personal data, and make implementation of the measures more easily understood by both the industry and the public.

*(E) Main business sectors making P2P telemarketing calls*

18. As P2P telemarketing calls made by the finance, telecommunications, call centres and insurance companies constitute over 90% of the total P2P telemarketing calls made, it is reasonable to believe that the inconvenience caused by P2P telemarketing calls may be significantly reduced if appropriate measures are introduced in respect of these four business sectors in the way they deal with telemarketing calls.

**Overall Analysis**

19. The results of the surveys suggest that it is desirable for additional measures to be introduced to tackle the inconvenience caused by P2P telemarketing calls to recipients. The question is what the appropriate measures should be.

20. The surveys do not present an overwhelming case to regulate such calls by legislation as this may not be proportionate to the nature or the degree of the issue at hand. Nearly half of the respondents in the public opinion survey would not reject P2P telemarketing calls straight away and would continue the telephone conversation if they were interested in the information. About 21% of them had made commercial transactions during P2P commercial calls (paragraphs 6 and 7). These show that a portion of such calls are useful and of value to both the recipient and the caller. There is, however, still room for administrative measures to be enhanced regarding how companies deal with such calls in order to protect the rights of call recipients and to minimise inconvenience to them e.g., asking companies to step up effort to honour unsubscribe requests and educate the public to exercise their right in this regard (paragraph 16).

21. Accordingly, we are of the view that the way forward on the part of the industry would be for the companies engaged in P2P telemarketing calls to comply voluntarily with a code of practice (“CoP”) which contains all the necessary ingredients such as maintaining an in-house do-not-call list and establishing a system effectively to respond to unsubscribe requests. We will

work together with the industry with a view to formulating a benchmark CoP which companies and industry associations will be encouraged make reference to when they work out their own CoP, tailored to the need of their business. The four business sectors which make the largest number of P2P telemarketing calls, i.e. finance, telecommunications, call centres and insurance will be specially targeted. They would be urged to post on their websites their CoP and their pledge to it to enable the public to monitor their compliance. It is expected that companies mindful of the need to maintain good reputation would support this approach.

22. On the part of the public, OFTA will mount public education programmes on how they can protect themselves from unwanted P2P telemarketing calls.

23. We believe that the above combination of measures strikes a balance between the need to protect the rights of the public, while still allowing for legitimate telemarketing. We would closely monitor the effectiveness of the measures above on the problem posed by P2P telemarketing calls. If it is found that further measures, such as regulation by legislation, are required, we will seek the views of the Panel accordingly.

**Office of the Telecommunications Authority**  
**November 2009**

**Summary of the Public Opinion Survey Results**

The Social Science Research Centre of the University of Hong Kong was commissioned by OFTA to conduct a survey of public opinion regarding person-to-person (“P2P”) telemarketing calls.

2. The survey has successfully interviewed 1,157 respondents through telephone interviews in October and November 2008. Among the interviewed respondents, 967 respondents (84%) had received P2P telemarketing calls before.

*Number of P2P telemarketing calls received*

3. About 30% of the 967 respondents reported they had not received any P2P telemarketing calls over the past 7 days prior to the survey, while 42% received 1-3 calls. Both the mean and median numbers of P2P telemarketing calls received during the said period were 3.

<b>No. of calls received</b>	<b>Percentage</b>
None	30%
1-3 calls	42%
4-5 calls	11%
6 calls or above	8%
Unable to answer	9%
<i>TOTAL</i>	<i>100%</i>

*Normal response when receiving P2P telemarketing calls*

4. When receiving P2P telemarketing calls, 46% of the 967 respondents would listen first to see whether they were interested in the information and would discontinue the call if they were not interested, while 43% would indicate to the caller at the very beginning that they were not interested.

*P2P telemarketing calls in which callers had respondents’ personal data*

5. Out of the 967 respondents, 766 were always sure whether callers had their personal data or not. Among these 766 respondents, 55% reported that more than 40% of P2P telemarketing calls received by them involved the use of their personal data. Based on the results of the public opinion survey, we are unable to ascertain exactly the proportion of P2P telemarketing calls involved the use of personal data. Nonetheless, it is likely that a significant portion of

such calls involve the use of the respondents' personal data.

<b>Proportion of calls in which callers had respondents' personal data</b>	<b>Percentage of total respondents</b>
None	12%
20% or below	19%
21-40%	14%
41-60%	28%
61-80%	19%
81% or above	8%
<i>TOTAL</i>	<i>100%</i>

*Making unsubscribe requests to callers of P2P telemarketing calls*

6. Out of the 806 respondents who had ever received P2P telemarketing calls in which callers had their personal data, only 35% of them had ever requested the callers not to call them again. Among those respondents who had ever made unsubscribe requests to callers, only 21% said that callers would honour their request (how the respondents ascertained whether their unsubscribe requests had been honoured was not covered in the scope of the public survey). On the other hand, 30% said that callers would continue to call even though they had promised not to call again.

*Benefits from receiving P2P telemarketing calls*

7. 13% of the 967 respondents said that they had got benefits from P2P telemarketing calls. The most often quoted benefits included lower price or discounts, and receiving more information and gifts.

*Commercial transactions made during P2P telemarketing calls*

8. About 21% of the 967 respondents had ever made or agreed to make commercial transactions during P2P telemarketing calls. Around 60% of these respondents (who had made or agreed to make commercial transactions) reported that callers of over 80% of such calls had their personal data. Only 9% of these respondents said none of the callers had their personal data. This shows that respondents were more likely to make commercial transactions during P2P telemarketing calls when callers had their personal data, as compared to calls in which callers did not have their personal data.

*Inconveniences or costs caused by P2P telemarketing calls*

9. About 81% of the 967 respondents said that P2P telemarketing calls had

caused inconvenience to them. When asked to rate the level of inconvenience, over 30% considered such calls caused a lot of inconvenience to them, while almost half of them reported moderate inconvenience. The most often quoted inconveniences included wastage of time, being called when respondents were working or busy, and being called repeatedly.

10. Among the 555 respondents who had mobile phones with SIM card supporting roaming service, only 20% had received P2P telemarketing calls through mobile roaming service over the past 30 days prior to the survey. The mean and median of roaming charges incurred during the said period were HK\$48 and HK\$25 respectively.

<b>Roaming charges incurred by P2P telemarketing calls over the past 30 days</b>	<b>Percentage</b>
Did not receive such calls through roaming service	80%
Received such calls through roaming service, but could not specify the amount of charges	11%
\$1-20	4%
\$21-40	1%
\$41-60	2%
\$61 or above	2%
<i>TOTAL</i>	<i>100%</i>

*Need for the Government to regulate P2P telemarketing calls not involving the use of personal data*

11. In the survey, the respondents were asked their views about whether there was a need for the Government to expand the scope of existing regulation to cover P2P telemarketing calls not involving the use of personal data, and if yes, the form of regulation that they preferred. The following information was provided to respondents to help them understand (i) the reasons for exempting P2P telemarketing calls from the Unsolicited Electronic Messages Ordinance and that the use of personal data for direct marketing is currently regulated under the Personal Data (Privacy) Ordinance; and (ii) the factors that the Government would consider when deciding the appropriate form of regulation.

“In order to contain the problem of unsolicited commercial electronic messages, the Government fully implemented the Unsolicited Electronic Messages Ordinance in December 2007. Under the Ordinance, all commercial electronic messages including pre-recorded telephone messages, short messages, faxes and emails, etc. are regulated, but person-to-person interactive communications are exempt. The reason to exempt person-to-person calls from the Ordinance is to leave room for legitimate telemarketing activities in Hong Kong, in view of the fact that the majority of Hong Kong businesses are small and medium-sized

enterprises (SMEs) which do not have a lot of resources for marketing activities. But it does not mean that P2P marketing calls are not subject to any regulation. Currently, the use of personal data for direct marketing is regulated under the Personal Data (Privacy) Ordinance.”

“If P2P marketing calls not involving the use of personal data are to be regulated, there can be different forms of regulation. In making the decision of the appropriate form of regulation, the Government will strike a balance among the level of protection offered to the public, the cost of compliance imposed on the industry as well as the room to be left for the industry to conduct legitimate electronic marketing. There are two options for your consideration – one is through legislation, and the other is through voluntary codes of practice.”

12. Out of the 1,157 interviewed respondents, 29% did not consider that there was a need for the Government to expand the scope of existing regulation to cover P2P marketing calls not involving the use of personal data, while 13% could not decide or did not know whether there was such a need. In other words, a total of 42% of the respondents did not have any strong view for expanding existing regulation for P2P calls. While 57% of the respondents in the same survey considered that the Government should regulate such calls, only 42% of the total respondents supported regulation by legislation while 15% of the respondents supported to regulate such calls by a voluntary code of practice,

	<b>Percentage</b>
No need to regulate	29%
Could not decide whether there was a need to regulate	13%
Support regulation by voluntary code of practice	15%
Support regulation by legislation	42%
Support regulation (but did not specify the means)	1%
<i>TOTAL</i>	<i>100%</i>

- End of Appendix 1 -

### Summary of the Industry Survey Results

OFTA has collected views from the business sector regarding P2P telemarketing calls made to recipients in Hong Kong. The views were collected through questionnaires distributed via various industry/sector associations, covering call centres, marketing, banking, finance, insurance, telecommunications, trade and commerce, SMEs, etc. Altogether 52 questionnaires have been received by OFTA during the second and third quarters of 2009.

#### Nature of responding companies and number of staff employed for making P2P telemarketing calls

2. The breakdown by nature of the 52 responding companies is given in the table below.

	<b>No. of companies</b>	<b>Percentage of total responding companies</b>
The company is a call centre providing outbound call service to clients	7	13%
The company has outsourced outbound call service to a call centre or other parties	17	33%
The company is deploying an in-house team for making outbound calls	24	46%
The company has outsourced part of the outbound call service and at the same time is deploying an in-house team for making calls	2	4%
No answer	2	4%
<b>TOTAL</b>	<b>52</b>	<b>100%</b>

3. The 7 responding call centres have employed around 1,900 staff for making outbound commercial calls to recipients in Hong Kong. The 26 responding companies which have deployed in-house calling teams have employed around 2,800 staff for making outbound commercial calls for their own companies.

4. The questionnaire did not ask companies which have outsourced outbound call service to call centres or other parties to provide the number of staff employed for making P2P telemarketing calls. As the call service was outsourced, the calling staff were not employed by these responding companies and it was likely that they would not know the number of calling staff

employed to make calls for them.

Number of P2P telemarketing calls made per day

5. 45 responding companies provided the number of calls made in the questionnaire and they altogether made around 491,459 P2P telemarketing calls per day. The following table provides the breakdown of number of calls made by industry. Among the 45 responding companies, finance-related companies generated the largest number of P2P telemarketing calls per day, followed by telecommunications companies.

	<b>No. of companies</b>	<b>% in terms of no. of companies</b>	<b>No. of calls made per day</b>	<b>% in terms of no. of calls</b>	<b>Average no. of calls made per day per company</b>
Insurance	16	35%	49,702	10%	3,106
Telecom	7	16%	122,200	25%	17,457
Finance	5	11%	235,427	48%	47,085
Call centre	7	16%	70,750	14%	10,107
Banking	2	4%	8,500	2%	4,250
Others	8	18%	4,880	1%	610
<b>TOTAL</b>	<b>45</b>	<b>100%</b>	<b>491,459</b>	<b>100%</b>	

Hours of calling

6. Forty-nine responding companies specified their calling hours in the questionnaire. While all these companies started their calling hours at or after 9 am, there is variation in when their calling hours ended and the breakdown is given in the table below. Twelve responding companies (24%) continued to make commercial calls after 9pm.

<b>When the calling hours ended</b>	<b>No. of companies</b>	<b>Percentage</b>
7:00pm or before	22	45%
7:01- 8:00pm	7	14%
8:01- 9:00pm	8	17%
9:01-10:00pm	9	18%
10:01-11:00pm	3	6%
<b>TOTAL</b>	<b>49</b>	<b>100%</b>

P2P telemarketing calls in which the use of recipients' personal data was involved

7. In order to understand whether the P2P telemarketing calls made by the responding companies involved the use of recipients' personal data, companies

were asked to specify the source of their calling lists and whether personal data was involved. The result showed that among the 491,000 calls made per day, 219,000 calls (45%) involved the use of recipients' personal data while 272,000 calls (55%) did not.

Benefits from making P2P telemarketing calls

8. Almost all responding companies considered that P2P telemarketing calls provided an effective telemarketing channel for businesses and allowed them to communicate directly with call recipients for better understanding their needs. Other benefits quoted included increase in sales volume and creation of employment opportunities.

9. In order to better understand the commercial value of P2P telemarketing calls to businesses, the responding companies were asked to specify the success rate of such calls (i.e. the percentage of calls that could achieve the intended purpose, e.g. to get the call recipient agree to buy/subscribe to the products/services, or to make an appointment with the call recipient for a meeting, etc.). Forty-two responding companies stated their success rates in the questionnaire, among which 31% of them reported success rates of 10% or above, showing that P2P telemarketing calls did generate business for the responding companies.

<b>Success rate</b>	<b>No. of companies</b>	<b>Percentage</b>
2% or below	8	19%
2.1% - 5%	8	19%
5.1% - 10%	13	31%
10.1% - 20%	6	14%
Over 20%	7	17%
<i>TOTAL</i>	<i>42</i>	<i>100%</i>

Unsubscribe mechanism

10. Out of the 52 responding companies, 43 companies (83%) reported that they had maintained in-house unsubscribe lists for ensuring that P2P telemarketing calls would not be made to telephone numbers on the lists. All of these 43 companies accepted unsubscribe requests made over the phone, with the exception of one company which required call recipients to fill in a form for making unsubscribe requests (but it did not elaborate in the questionnaire how call recipients could obtain the unsubscribe form).

	<b>No. of companies</b>	<b>Percentage</b>
Maintain in-house unsubscribe list	43	83%
Do not maintain in-house unsubscribe list	6	11%
No answer	3	6%
<i>TOTAL</i>	52	100%

*Need for the Government to regulate P2P telemarketing calls not involving the use of personal data*

11. Altogether 41 companies (79%) considered that there was no need to regulate P2P telemarketing calls that did not involve the use of personal data, and their reasons are summarised below.

- Existing regulation is adequate and too much regulation would hurt normal business activities and employment.
- They have already put in place mechanisms for call recipients to opt out from further P2P telemarketing calls.
- P2P telemarketing calls bring benefits to consumers.

12. On the other hand, 7 companies (13%) considered that there was a need to regulate such calls by voluntary code of practice and 1 company (2%) supported regulation by legislation. Their reasons to support regulation are summarised below.

- Members of the public should have a right to unsubscribe from P2P telemarketing calls, regardless of whether the call involves the use of personal data.
- There is a need to introduce further regulation to reduce the nuisance caused to the public, which would ultimately uplift the confidence of the public on P2P telemarketing activities and facilitate the healthy growth of telemarketing business.

	<b>No. of companies</b>	<b>Percentage</b>
No need to regulate	41	79%
Support regulation by voluntary code of practice	7	13%
Support regulation by legislation	1	2%
Support regulation (but did not specify the means)	1	2%
No answer	2	4%
<i>TOTAL</i>	52	100%