

HUTCHISON GLOBAL COMMUNICATIONS LIMITED

AND

HUTCHISON TELEPHONE COMPANY LIMITED

***SUBMISSIONS IN RESPONSE TO
CITB'S CONSULTATION PAPER***

ON

***LEGISLATIVE PROPOSALS TO CONTAIN THE PROBLEM OF
UNSOLICITED ELECTRONIC MESSAGES***

INTRODUCTION

1. Hutchison Global Communications Limited and Hutchison Telephone Company Limited are pleased to submit their views on the Consultation Paper on Legislative Proposals to Contain the Problem of Unsolicited Electronic Messages issued by the Commerce, Industry and Technology Bureau ("CITB") in January 2006.

GENERAL

2. We support the Government's proposal to legislate against activities relating to the sending of unsolicited electronic messages ("UEMs") and to implement a statutory scheme to give the public an option to choose whether or not to receive UEMs from e-marketers. Spamming activities are affecting almost everyone in Hong Kong. They have brought inconveniences to general public as well as burdens on the network capacity of telecom operators. Telecom operators have also allocated additional resources to handle customer's complaints concerning spamming activities. We support an anti-spamming legislation that can, on the one hand, effectively tackle the spamming problems and on the other hand, encourage positive development of legitimate electronic communications for e-marketers to promote their goods and services.

COMMENTS ON THE PROPOSED LEGISLATIVE FRAMEWORK

3. We set out below our comments on the proposed legislative framework and would request CITB to consider adopting in the legislative proposals.

Legitimate Business Messages

4. We are concerned that the scope of application of the proposed Unsolicited Electronic Messages Bill (“UEM Bill”) is too wide. Paragraph 29 of the Consultation Paper provides that UEMs cover all forms of commercial electronic communication transmitted over public telecommunication service having a “Hong Kong link” with the exceptions of (i) person-to-person interactive communication without pre-recorded element; and (ii) transmission of sound or video material on broadcasting channel. Such definition of “commercial electronic message” is unnecessarily general and wide. In long run, it will hinder the development of e-marketing as a legitimate promotion channel in Hong Kong and is contrary to one of the six guiding principles under the UEM Bill. The Government should identify and carve-out from the definitive of UEMs certain categories of legitimate business messages.
5. On this basis, we believe that legitimate business messages in furtherance of a pre-existing commercial relationship between sender and its customers should be excluded from the scope of application of the UEM Bill. In fact, Section 34 of the Personal Data (Privacy) Ordinance (Cap.486) has already provided sufficient protection for customers in this regard. Section 34 requires sender of any direct marketing campaign to inform its customers their right to opt out, and existing customers are free to opt out at any time with their existing service providers. In our opinion, the definition of “direct marketing” under the Personal Data (Privacy) Ordinance has covered legitimate commercial electronic messages between a sender and its existing customers. Hence, we see no reasons why the UEM Bill and the Personal Data (Privacy) Ordinance should overlap in this respect.
6. Some other legitimate business messages should also be specifically excluded from the scope of application of the UEM legislation. For example, welcome messages issued by local mobile carriers to inbound roamers. Such welcome messages are sent to inbound roamers offering contact details for assistance when they connect to mobile carrier’s network first time. Due to its one-off and ambassadorial nature, we do not consider it is appropriate to prohibit such messages.

Functional Unsubscribe Facility

7. Paragraph 36 of the Consultation Paper provides that sender of a commercial electronic message should include a functional unsubscribe facility to enable a registered user of an electronic address to indicate to the sender his wish not to receive further commercial electronic messages from that sender. There are practical difficulties for Short Messaging Service (SMS) to include such functional unsubscribe facility due to its inherent limit of 160-character text. As spamming through SMS is not yet a major nuisance in Hong Kong, we are of the view that SMS should be exempted from this facility requirement.

Do-not-call Registers

8. It is proposed in Paragraph 44 of the Consultation Paper that “do-not-call registers” of telephone numbers and electronic addresses should be set up and maintained by the Government so as to provide members of the public a means to opt out from receiving UEMs from all e-marketers. We support that such “do-not-call registers” should be established, administered and maintained by a central authority. However, since the service is for public good, the administering agency should be funded by general revenue. As such, we do not consider the Telecommunications Authority as the appropriate authority to take up this responsibility.

Administrative Issues and Codes of Practice

9. The scope and form of such “do-not-call registers” are not proposed in the Consultation Paper. As a balance between privacy protection and promotion of e-marketing incentives, it is our view that the “do-not-call” requests made by the public should have an expiry date so that the public would “refresh” their individual preference, say after a 2 to 3 year interval.
10. It is proposed in Paragraph 94 of the Consultation Paper that codes of practice on further operational details of the UEM Bill would be formulated. We foresee there would be tremendous enforcement issues to be addressed, such as in cases where an originator of UEMs is not hosted by a telecom operator or is otherwise overseas. The Government may need to expend further time and efforts to formulate measures that can provide effective enforcement with least impact on business efficacy.

Liability of Employers

11. According to Paragraph 90 of the Consultation Paper, employer or director of a company would be presumed to have authorized his employee’s act unless they can demonstrate that this is not the case. We do not support this presumption of guilt. We believe general criminal law principle should apply to the UEM legislation such that employees or directors of a company should not be guilty for their employee’s act unless it is proved beyond reasonable doubt that they have authorized such act to be done.

CONCLUSION

12. We support the Government’s proposal to combat spamming activities and the proposed UEM Bill. However the scope of application and implementation of the UEM legislation should be further refined as outlined in this submission.

20 March 2006