

Consumer Council
Submission to Commerce, Industry and Technology Bureau
Public Consultation Paper on 2004 Digital 21 Strategy

1. The Consumer Council welcomes the Government's proposal to draw up an updated version of the 2001 Information Technology Strategy to sustain the momentum created in the last five years and to harness the benefits of Information Technology for business, the community and Hong Kong's position in the world, in early 2004.

2. The Government has proposed various measures, all of which ultimately impact on the welfare of consumers. The specific areas of the consultation paper to which the Council would like to comment are:

- Sustainability of the e-government program;
- Adoption of e-business in today's business environment;
- The case for a unified regulatory body under the institutional review;
- Bridging the digital divide.

Sustainability of E-government Program

3. The Council supports the initiatives sustaining the e-government program. In particular, it agrees that it is vital for the Government to obtain information and design mechanisms to monitor the progress of the adoption by consumers of online government services, to ensure that service delivery is done promptly, non-discriminatorily, efficiently and at a fair and reasonable fee, with the goal of ultimately benefiting users.

4. The Council is willing to assist, through its educational and publicity resources in providing information to consumers on the delivery of government on line services.

Adoption of E-business in Today's Business Environment;

Targeted assistance

5. The Council supports the endeavors in encouraging the adoption of e-business, such as the pilot project supporting the Travel Industry Council of Hong Kong to launch a campaign to encourage the wider adoption of information technology among travel agents.

6. Similar recommendations have been made in the Council's recent report '*Competition in the Foodstuffs and Household Necessities Retailing Sector*' whereby it was suggested existing government business assistance programs (such as the 'Small and Medium Enterprise Office) be used to assist small retailers to develop their 'supply chain management' systems as a means of enhancing their ability to compete with larger retail chains.

Adoption of best practice in e commerce

7. The Council also considers that an important facet of developing this sector is the promotion of best practice in electronic commerce. There are two important areas of work involved, enhancing consumer confidence in electronic commerce; and measures to protect the integrity of the delivery platform (i.e. preventing the spread of 'spam' and other destructive practices).

8. As far as consumer confidence is concerned, industry should be encouraged to

adopt codes of practice that include provisions in electronic commerce guidelines that have in the past been promulgated by the OECD, and consumer bodies, including the Consumer Council as a means of enhancing consumer confidence in using electronic commerce. The Council is willing to assist relevant industry groups in devising specific codes of practice in this regard.

9. With regard to 'spam' and other practices that threaten the integrity of the Internet, the Council recognizes that consumer education is the first important step in addressing problems. The Council will be taking steps in this regard through its education and information dissemination services, and will be seeking the assistance of relevant government departments and bureaus and industry bodies.

10. The fact that professional spamming is a lucrative world wide business, and governments and agencies such as the Consumer Council can only take local action, the means to tackle the problem in the near future will have to be a global response. The Council therefore considers that the Hong Kong Government should be working to

- a) first, ensure that Hong Kong's laws are at a standard of 'world's best practice' (i.e. that laws are of practical use); and
- b) second, cooperate in embracing proposals for global laws and penalties in tracking down spammers and others who threaten the integrity of the Internet

The Case for A Unified Regulatory Body under the Institutional Review;

11. The Council has on a number of occasions in the past raised concerns with the Government's sector specific approach to industry oversight that has led to a fragmented approach to regulation of telecommunications and broadcasting.

12. For example, in our submission to the Legislative Council Bills Committee on the Broadcasting Bill in March 2000 when discussing the issue of competitive safeguards, the Council noted that

"...competition works within economic markets. Clearly, markets are not a phenomenon that can be arbitrarily constructed through licensing legislation. They are a function of the creative endeavors of entrepreneurs, and the patterns of purchasing behavior by consumers. They are constantly evolving and require a regulatory framework that is equally flexible."

13. There are currently two regulators; i.e. the Broadcasting Authority (BA) and the Office of the Telecommunications Authority (OFTA) examining issues in related industries. There are also the resources within the Information Technology and Broadcasting Bureau. Given the synergies between the telecommunications and broadcasting sectors, and the convergence of technologies, it would seem preferable that regulatory expertise be pooled in the interests of efficient regulation.

14. The Council has also noted in the past that similar problems with the sector specific approach by Government have resulted in a large amount resources being devoted to coordination in the financial services sector, where there are different regulators with responsibility for banking, securities and insurance, even though there is a convergence of service provision between entities regulated under those three separate areas. In the United Kingdom, the government has created the Financial Services Authority to oversee the regulation of activities within the broad financial services sector. A similar form of broad ranging oversight for Hong Kong in the telecommunications and broadcasting sector, as well as the financial services sector would seem ideal.

15. In addition, it is noted that the tests under which anticompetitive conduct is tested under the two separate Ordinances administered the BA and OFTA differ in their wording in that the *Broadcasting Ordinance* prohibits "*preventing, distorting or substantially restricting competition*", while the *Telecommunications Ordinance* only prohibits conduct "*preventing, or substantially restricting competition*" but not "*distorting*". Moreover, the recently introduced prohibitions against anticompetitive mergers and acquisitions in the Telecommunications Ordinance introduce yet another test altogether, i.e., "*substantially lessening competition*".

16. This inconsistency introduces confusion and uncertainty insofar as consumers, and particularly business is concerned because precedents set under one law cannot be applied in another; even though the economic detriment being targeted is essentially the same. The Council suggests that ideally, the test should be unified as '*substantially lessening competition*' as this is a form of wording used in a number of other competition laws around the world.

Misleading and deceptive conduct in trade or commerce

17. In May 2001 the Council issued a report '*Regulating Deceptive Misleading & Unfair Practices in Consumer Transactions*' which highlighted deficiencies in the legislative environment that endeavors to protect consumers from unfair advertising and marketing practices. In particular, it was noted that the main legislative means to protect consumers against trade misrepresentations, i.e. the *Trade Descriptions Ordinance*, only covers goods but not services.

18. As e-business develops, we have seen more and more cases of misrepresentation, misleading and deceptive conducts practiced in the digital services environment. It is illogical for the Government to develop a strategy to promote this important part of the service sector, yet ignore the needs for consumers to be protected from misleading and deceptive conduct that threatens consumer confidence in the supply of these services.

Bridging the Digital Divide.

19. The Council supports the Government in taking new initiatives to bridge the digital divide. However, the Government needs to enrich citizens' appreciation of the benefits of this technology by promoting widespread appreciation of the 'digital economy', through building an e-consumer culture aimed not only at special interest groups, such as the elderly, disabled or other vulnerable groups of citizen, but the community as a whole.

20. The Council will continue its work in this area, insofar as consumer protection and product awareness is concerned through its education and information dissemination programs. In this regard it will also be seeking the cooperation of relevant government agencies for assistance in order to bridge diminishing Council resources through budget cuts that are stretching to capacity the means by which it is able to cover not only the needs of this area, but other sectors of the economy which also demand attention.

Consumer Council
December 2003