

商會組織 / 企業的意見書的非範本式意見書
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Response to Commerce and Economic Development Bureau on Strengthening the Regulation of Person-to-Person Telemarketing Calls

As a local outsourcing call centre service provider for over 20 years and a CoP certified telemarketing company, **Epro Telecom Services Limited** ("Epro") would like to express our absolute consensus on all the views made by The Hong Kong Call Centre Association (HKCCA) on the above captioned subject dated 11 July 2017.

Being a long time outsourcing telemarketing service provider for large corporations in banking, insurance and telecommunications, Epro helps our corporate clients to promote their products and services to their end customers on their behalf. In other words, all the outbound telemarketing calls made by Epro are "warm calls" and each called person is a customer of the corporations selected through a series of careful data segmentation and mining. As Commerce and Economic Development Bureau (CEDB) may already know that there are stringent guidelines among these industries in making outbound communication to their customers which including but not limited to:

- A "frozen" period after reaching a customer to re-select/re-call him/her for promotional activities again;
- An opt-out mechanism must be in place to take and execute the request from the customer at any time; and
- A clear identification of the calling agent and the entity represented at the very beginning of the call (mainly applicable to banking industry).

Based on the above self-regulated policies as well as compliance to the telemarketing guidelines of HKCCA's CoP Certification, Epro believed that an effective balance is in place between the right and protection of the called parties who are willing to receive the telemarketing call and those who do not. Therefore, out of the three options proposed by CEDB, Epro also supports Option 1 – Trade Specific Self-regulatory Regime.

From our experience in all these years, customers receiving telemarketing calls from companies they have relationship with, are not annoyed as much as those cold calls from nowhere. As a matter of fact, from the far higher offer acceptance rate of "warm" telemarketing calls than cold calls, it is adequate to justify the demand as well as effectiveness of the service. Therefore, in our view, it is necessary to have a clear distinction between the two types of telemarketing calls, and any blanket or cross-sectorial Do-not-call register will only jeopardize/penalize the need and right of the consumers.

With respect to the option of Call-filtering Applications in Smartphones raised by CEDB, Epro also supports the "white list" and Q-mark (Certified Telemarketer) approach suggested by HKCCA, which can not only provide a peace of mind to

the customer upon receiving call, but also avoid the customer from missing any important or anticipated calls.

As a lot of people will agree, it is the cold call or fraudulent call that are most annoying and "hated" by the general public. Thus it should be the prime objective of any regulations to limit, crush and/or penalize those entities in making such calls. It would be unfair to those responsible telemarketing practitioners and general public to bear the full blunt of further legislation that would eventually strangle the service but let the real culprits off the hook.

— End —



Urgent Return receipt Sign Encrypt
Feedback re P2P consultation from MetLife Limited
 to: p2pcalls@cedb.gov.hk

31/05/2017 14:26

Dear Sir/Madam,

MetLife Limited is generally support the direction of strengthening the current regulation but we are writing to express our strong objection to "Do-Not-Call Register" and to support the "Trade Specific Self-regulatory Regime".

The reasons are listed below:-

1. We do agree that strengthened controls on the P2P calls shall be balancing the interests from all the stakeholders in the society and the public expectation. Those uncooperative players should not hinder and damage the normal business opportunities of good players. Currently, more than 7000 employees in Hong Kong are worked directly or indirectly in making P2P calls.
2. Insurance industry adopts self-disciplined best practices/code of practice controls which not only effectively enables the public to enhance their confidence but also minimize the nuisance caused. As an active and one of the outstanding insurance players in telemarketing business, we has also already established internal compliance guidelines for conducting telemarketing calls to customers, such as calling window which will straightly avoid causing any nuisance to our customers. We believe that the current practice can benchmark the governance quality of whole insurance industry.
3. Besides, given The Unsolicited Electronic Messages Ordinance helped to regulate the sending of commercial electronic messages and Guidelines on direct marketing issued by Privacy Commissioner was effective enacted which governs P2P calls that involving the use of personal data, an "opt-out" choice is more than sufficient for the customers to quit if they are not willing to receive direct marketing contacts. Those existing mechanism can effectively eliminate the nuisance causing to customers.
4. While calls from bad players and potential fraud calls from overseas (usually Mainland) influenced the feeling and image of personal-to-person calls. Legislation is not necessary only if the purpose is to limit the calls from designated geographic region(s) , i.e. overseas/Mainland China *OR* for specific business sector(s) instead of ALL P2P calls.

We believe that the current market self-control mechanism is sufficient. The future trend and industrial expectation is that government should strengthen the current self-regulatory mechanism instead of directly build a Do-not-call register list to kill the whole industry.

Best Regards
 (Name provided) | (Title provided) | Hong Kong | Metlife
 (Address provided) | (Email provide)
 O: (Phone number provided) | F: (Fax number provided)

The information contained in this message may be CONFIDENTIAL and is for the intended addressee only. Any unauthorized use, dissemination of the information, or copying of this message is prohibited. If you are not the intended addressee, please notify the sender immediately and delete this message.

This message is from MetLife Limited and/or Metropolitan Life Insurance Company of Hong Kong Limited, both are the private companies limited by shares incorporated and registered under the applicable laws in Hong Kong.



By Courier

June 22, 2017
 Commerce and Economic Development Bureau
 Communications and Creative Industries Branch,
 B Division, 21/F, West Wing, Central Government Offices
 2 Tim Mei Avenue, Tamar, Hong Kong

Dear Sir/Madam,

In response to the Consultation Paper on "Strengthening the Regulation of Person-to-Person Telemarketing Calls" dated 11 May 2017 published by your department, our company supports the intention to strengthen the current regulation. However, we believe that, in general, the current self-discipline and best practice controls in the industry, if properly followed and/or enforced, are adequate. We hope that any changes do not overly restrict the important P2P channel that allows Hong Kong residents to receive alternate, potentially more attractive, insurance offers while still minimizing any inconvenience. We request the committee keep the following key points in mind when considering any changes to the "Trade Specific Self-regulatory Regime".

1. Any changes should reflect the interest of all stakeholders – the residents of Hong Kong as well as the more than 7,000 Hong Kong employees that work directly or indirectly in relationship to making P2P calls.
2. The Unsolicited Electronic Messages Ordinance currently adequately eliminates most unwanted calls involving the use of personal data through the "opt-out" choice.
3. Further legislation is not necessary if the purpose is to limit the calls from designated geographic region(s), i.e. overseas/Mainland China OR for specific business sector(s). Instead, we would welcome action that can be taken that could restrict such overseas calls that cannot be adequately monitored and that could damage to the legitimate Hong Kong P2P market.

We thank you for your consideration.

Yours faithfully,

For and on behalf of
 MetLife Limited
 Metropolitan Life Insurance Company of Hong Kong Limited

(Signed)

(Name provided)

Chief Executive Officer



PrimeCredit

24 July 2017

By Email: (p2pcalls@cedb.gov.hk)

Commerce and Economic Development Bureau,
 Communications and Creative Industries Branch,
 B Division, 21/F, West Wing,
 Central Government Offices,
 2 Tim Mei Avenue, Tamar, Hong Kong

Dear Sir / Madam,

**Response to Consultation Paper on Strengthening the Regulation of
 Person-to-Person Telemarketing Calls (“P2P Calls”)**

We refer to the consultation paper issued in May 2017 and would like to give our views on the subject matter as below:

- 1) We are of the view that the “**Option 1 – Trade Specific Self-regulatory Regime**” can strike a better balance between managing nuisances caused by P2P Calls to the general public and the economic as well as social impact brought by a tighter regulatory regime for telemarketing. Therefore, we prefer this non-statutory regime.
- 2) We would like to draw the attention of Commerce and Economic Development Bureau (“CEDB”) on the following two concerns:

Concern 1:

As you may be aware from news reports, some fraudsters make fake calls to the public, impersonating as staff of licensed money lenders or banks, and scamming that they can provide financial services, such as personal loan, to the recipients. We discover around 60 – 70 fake calls per month.

安信信貸有限公司
PrimeCredit Limited

總辦事處：香港灣仔莊士敦道181號大有大廈23樓 電話 (852) 2530 3666 傳真 (852) 2528 3627
 Management Office: 23/F, Tai Yau Building, 181 Johnston Road, Wanchai, Hong Kong Tel (852) 2530 3666 Fax (852) 2528 3627



PrimeCredit

Our concern is that it is hard to identify and ascertain whether a call, claiming as a call from us, is true or not by the public. Any breach of the proposed code of practice caused by a fake call, which is not aware by the recipient that it is a fake call, may lead to an unfair sanction against us.

We urge CEDB to consider about an effective measure to tackle this concern when designing the aforesaid regulatory regime.

Concern 2:

Some stakeholders suggest that “Warm Call” should be excluded from the new regulation of P2P Calls as it has already been covered by the provisions of “Use of Personal Data in Direct Marketing and Provision of Personal Data for Use in Direct Marketing” under Part 6A of Personal Data (Privacy) Ordinance (“PDPO”).

We don't have any objection to this suggestion. To ensure legal / regulatory certainty, we urge CEDB to provide clear definitions for “Warm Call” and “Cold Call” in plain and unambiguous language, if CEDB would take this suggestion to limit the scope of regulation on “Cold Call” only.

We would appreciate very much if the concerned areas will be properly addressed by CEDB.

Yours faithfully,

Susanna Liew
Chief Executive Officer
PrimeCredit Ltd.

安信信貸有限公司
PrimeCredit Limited

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Commerce and Economic Development Bureau,
Communications and Creative Industries Branch
B Division, 21/F, West Wing,
Central Government Offices,
2 Tim Mei Avenue,
Tamar, Hong Kong

24 July 2017

To whom it may concern,

**Response to Commerce and Economic Development Bureau on Strengthening the
Regulation of Person-to-Person Telemarketing Calls**

Hong Kong Broadband Network Limited (HKBN) has received and reviewed the Consultation Paper on strengthening the regulation of Person-to-Person Telemarketing Calls, and would like to express the following views:

As a member of The Hong Kong Call Centre Association (HKCCA), HKBN agrees with the HKCCA's views on the consultation paper. Of the three options that Commerce and Economic Development Bureau (CEDB) has identified, HKBN prefers Option 1 - Trade Specific Self-regulatory Regime.

Please refer to the Annex for the detailed views from the HKCCA. Should you have any enquiries, please contact me at (Email provided) or (Phone number provided)

Yours faithfully,

(Name provided)

(Title provided)

Hong Kong Broadband Network Limited

Annex: Hong Kong Call Centre Association's Response to Commerce and Economic Development Bureau on Strengthening the Regulation of Person-to-Person Telemarketing Calls

After reviewed the Consultation Paper on strengthening the regulation of Person-to-Person Telemarketing Calls, the Association would like to express the following views:

1. The Association acknowledges there is public concern on P2P marketing calls that cause inconvenience and sometimes nuisance to the recipients. It agrees there is a need for the Government and parties concerned to address the issue and implement effective measures to rectify the situation.
2. Of the three options that Commerce and Economic Development Bureau (CEDB) has identified, members of the Association unanimously prefer Option 1 - Trade Specific Self-regulatory Regime.

Since the Unsolicited Electronic Messages Ordinance (UEMO) was enforced on 22 December 2007 that regulates commercial electronic messages; including fax; short messages and pre-recorded messages, HKCCA joined effort with other trade associations in banking, insurance and telecommunications sectors, with the support of Office of the Telecommunications Authority (OFTA), implemented a Code of Practice (CoP) effective on 1 July 2010 that covers, among others, the hours of calling, the need to reveal the identity of telemarketers and to honour unsubscribe requests.

To demonstrate our commitment to fulfil the requirement of the CoP, HKCCA further established a CoP Certification mechanism by appointing Hong Kong Quality Assurance Agency (HKQAA), an independent quality management body, to conduct on-site audit annually for the contact centres that participate in the scheme voluntarily. Different assessment methodologies are used for the audit to assess if the telemarketers are fully compliant to the CoP that include: recorded calls

assessment; document review; data inspection; equipment setting checking; on-the-spot interview.

HKCCA was successful in applying for the SME Development Fund to extend this Certification scheme to support SME telemarketers in providing free Certification audit for them as well as free training series relating to telemarketing operation knowledge and skills for their frontline agents. A total of 25 companies were certified in 2011. Upon the cessation of the SME Development Fund in August 2012, those funded SME telemarketers gradually discontinued their participation in the Certification. There remains 10 companies, mainly HKCCA Corporate members, participating in the Certification since 2011. And one member from telecom sector joined the Certification recently.

In order for Option 1 to be effective, a registration regime for telemarketers (companies) has to be in place. Coupled with a mandatory CoP Certification to ensure every registered telemarketer is compliant to the requirement of the CoP on an on-going basis (through annual re-audit) and be traceable (through registration).

Our current Certification scheme has too little participation to be convincing as an effective mechanism to curb nuisance as participation is voluntary. Through mandatory certification, participation would be significantly increased and telemarketing business would be more structured in particular in the SME sector. Companies looking for telemarketing vendors to make calls for themselves would be encouraged to use certified telemarketers.

3. For Option 2 – Call-filtering Applications in Smartphones. We suggest, instead of using call-filtering applications to screen out “black-listed” unwanted calls, it would be better to use the applications to maintain a “white list” where the telephone numbers of government departments e.g. social welfare department; public institutions e.g. hospitals and certified telemarketers are maintained. When the call is from those on the “white list”, phone-users will be alerted with a Q-mark display (Certified Telemarketer) or the name of the institution (QM Hospital) that those are

the calls to answer.

This would encourage more telemarketers to obtain certification through proper operation of their business and instil more confidence to the phone-users to answer calls they don't want to miss.

4. For Option 3 - Do-not-call Register. We strongly oppose the establishment of a blanket; cross-sectorial do-not-call register on person-to-person marketing calls.

Under the Personal Data (Privacy) Amendment Ordinance 2012 (PDPO) (effective 1 April 13), there are already very strict requirements in collecting; using and transferring personal data in making marketing calls with heavy penalty for non-compliance. Telemarketers making "warm calls" (using the personal data which have been previously collected in accordance and compliance with PDPO) are already regulated by PDPO and provide opportunities (in every call and at any time) for the receiving party to unsubscribe (opt-out) future calls from the calling party / principal. It would be inappropriate and unreasonable to include "warm calls" in the ambit of any additional do-not-call register that would impact tens of thousands of people who are gainfully employed using the phone to legitimately speak with their previous customers and business prospects.

5. The enforcement of PDPO 2012 had triggered an increasing number of "cold calls" (called numbers generated by computer without personal data of the called party) being made by rogue operators / brokers that often mask their true identity. Most of these calls are generated from offshore, with the purpose of soliciting loan prospects or selling beauty therapy packages for their ultimate clients. For the general public, they cannot tell the difference between warm calls and cold calls but are getting frustrated being called frequently. If the establishment of a "cold call only"; sector-specific (public can choose to opt-out certain sectors e.g. beauty therapy, property agency etc.) do-not-call register could screen out those malpractice; provide a better business environment for the genuine and compliant telemarketers and minimize the nuisance to

the public, this could be an acceptable option - provided an expiry date to be associated with the number registered. The reason for an expiry is that the number does not belong to the phone-user perpetually – only the period the telephone service is subscribed. To register a phone number on the Do-not-call Register is to subscribe a service though it would be free. Like other subscribed services, there is a service end date that the subscriber has the chance to review if he needs the service anymore. The registration effective period should be 2 to 3 years – similar to most subscribed service contracts.

6. To address the concern on the difficulty of law enforcement towards offenders making calls to the public outside of Hong Kong, the beneficiary / principals of the marketing call should be held responsible for the offence irrespective of where the call was generated.

For example, a beauty salon in Hong Kong appoints an operator in China to make "cold calls" to Hong Kong public to source business. If the China-based operator breaches the law and call phone-users on the Do-not-call Register (assuming Do-not-call Register were statutory), though collection of evidence and prosecution of offshored offenders would be difficult, the beauty salon, being the principal of the marketing call should bear the legal liabilities of the offence. Under PDPO 2012, principals of warm calls are already being held responsible for any offence arising from conducting the telemarketing business.

We believe this would be a more effective measure to deter non-compliant telemarketers / principals and encourage companies considering using vendors to make calls to use certified telemarketers.

7. We are in agreement with the conclusion that assigning specific prefixes to telemarketers who wish to conduct telemarketing business is not feasible as stated in the consultation paper. It will also create a labelling effect and involve substantial costs and resources to the business for the change.

In closing, we believe it is the responsibility of the authority concerned to tackle crimes using marketing calls as a tool and channel for illegal acts. There are already ordinances (Unsolicited Electronic Messages Ordinance; Personal Data (Privacy) Amendment Ordinance 2012; Commodity Description Regulations) and Code of Practice in place to govern the telemarketing business and protect the interests of the general public. The industry practitioners at large are responsible corporates that adhere to the requirements of the ordinances and Code of Practice. It would be unfair for them to bear the full blunt of further legislation that would eventually strangle the industry but let the real culprits off the hook.

— End —

HONG KONG BROADBAND NETWORK LIMITED

Comments to the Consultation Paper on
Strengthening the Regulation of
Person-to-Person Telemarketing Calls

31 July 2017

Hong Kong Broadband Network Limited ("HKBN") welcomes the consultation and is pleased to provide its comments as set out in the following paragraphs.

(a) Do you prefer a statutory or non-statutory regime for enhancing the regulation of P2P telemarketing calls?

If you opt for a statutory regime, please also consider question (b);

If you opt for a non-statutory regime, please also consider question (c)

Any statutory regime being put forward must be effective, efficient and worthwhile. CEDB's proposed Option 3 Do-not-call Register will be used here for illustration.

Effective and Efficient

Effective circumventions namely caller-ID spoofing, VoIP calls and calls from other jurisdictions, as listed by CEDB, have been taking place. In light of the current and upcoming technological advancement, one can envisage that even more circumventions with increasing effectiveness and even shorter time-to-market will be launched and be widely used.

Given the existence of all these circumventions, together with those to be invented, difficulties in implementing and enforcing Option 3 will only be ever-increasing.

In view of this, the effectiveness and efficiency of Option 3 is in doubt.

Worthwhile

CEDB has pointed out that, pursuing Option 3 Do-not-call Register would require the setting up of a competent regulator to oversee the operation. This will not come for free but to be paid by the tax payers and the society of Hong Kong as a whole.

Using the example in Clause 5.5 of the Consultation Paper, to combat a 5-second P2P call, the whole society has to pour in numerous resources from all trades, the government and all tax payers. Obviously, this is not a balanced deal and is not worthwhile.

Overall

If statutory regime like Option 3 is adopted, the public will be set with high

expectation upfront that P2P telemarketing calls would be eradicated, but end up with disappointment because of its ineffectiveness, inefficiency and unworthiness.

- (b) As the establishment of a statutory Do-not-call Register will take time, do you prefer to have some non-statutory measures in place in the interim, such as those set out in question (c)?

Statutory regime is not panacea to the issue.

- (c) Which of the following non-statutory option under Chapter 4 do you prefer?
Option 1: Trade Specific Self-regulatory Regime;
Option 2: Call-filtering Applications In Smartphones

Option 1: Trade Specific Self-regulatory Regime

As stated in Clause 1.3 – 1.5 of the Consultation Paper, four trade sectors: finance, insurance, telecommunications and call centres have adopted the Code of Practice on Person-to-Person Marketing Calls (“CoP”) since June 2011, and it has been running smoothly ever since.

Being a member of the telecommunications sector, HKBN has adopted the CoP for years. With years of experience, HKBN proudly states that the CoP works well, and therefore, highly recommends that the CoP be swiftly extended to other trades as well.

Option 2: Call-filtering Applications in Smartphones

P2P telemarketing calls go to both fixed lines and mobile numbers. This Option is congenitally handicapped as it could only cover mobile numbers with call-filtering compatible devices.

Broadly speaking, half of the P2P call-receiving population using fixed lines will not be covered. For the remaining population using mobile numbers, it is estimated that half of them will not be covered too due to incompatible devices. Ultimately, only approximately 25% of the total call-receiving population could benefit.

Under CEDB’s proposed funding support to software companies, the money to be spent would be beneficial to the said 25% of the total call-receiving

population only. Inequity will result.

(d) Other Suggestions

There is no other suggestion.

Hong Kong Broadband Network Limited
31 July 2017



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人對人促銷電話公眾諮詢發表意見

to: p2pcalls@cedb.gov.hk

26/07/2017 17:07

姓名: Max Wong

職業: Call Center營運者

我傾向以(非立法)方式加強規管人對人促銷電話

我傾向採用以下哪個在第四章中提到的非立法方案?

方案一：個別行業的自行規管制度

方案二：智能電話的來電過濾應用程式

方案一和方案二都可以



Urgent Return receipt Sign Encrypt

Re: 加強規管人對人促銷電話 - 香港商務及經濟發展局的邀請

jeffkuo@gogolook.com to: crystalchiu@cedb.gov.hk,
p2pcalls@cedb.gov.hk

27/07/2017 21:29

Cc: matt.chen@gogolook.com, james.chu@gogolook.com

From: Jeff Kuo <jeffkuo@gogolook.com>
To: Crystal Chiu <crystalchiu@cedb.gov.hk>, p2pcalls@cedb.gov.hk,
Cc: 陳柏菁 <matt.chen@gogolook.com>, 朱劍銘 <james.chu@gogolook.com>

趙小姐您好：

很開心能收到您的來信，這對敝公司的產品是非常大的肯定。針對本次「加強規管人對人促銷電話」諮詢案及其中方案二，「智能電話的來電過濾應用程式」，本公司以對來電過濾產業多年觀察之經驗提供意見與分享，期許香港政府未來在經濟發展與友善社會通話中取得一平衡位置。

首先，面對香港一直以來人對人促銷電話問題嚴重之情況，本公司認為「加強推廣來電阻截程式」之方案對於解決問題確有幫助。因此，防止民眾收到詐騙與促銷電話一直是我們努力的目標，敝公司的產品「Whoscall」及「Call defender(小熊來電通知)」希望在不造成民眾隱私外洩前提下，幫助更多人辨識與攔截這些電話也是未來會持續優化的方向，然對於此類來電過濾應用程式得發揮其最大效益需有以下幾點為前提：

一 來電過濾資料庫的即時更新

如諮詢文件當中所提，我們每週皆會進行數次資料庫更新的動作，這類產品最重要的數字為「辨識率」，因為每週電話數量的增加會造成辨識率快速下降，故我司開發與運營人員每週皆會做號碼過濾與資料品質優化的流程，因此如何時時提醒已安裝的用戶做更新是我們建議很重要的一點。

我們的產品雖然會主動做一些更新通知提醒，但民眾不一定有這樣的觀念，或覺得資料庫沒有到這麼重要，有了產品自然一定能幫助他們達成電話攔截的效果，因此如何宣導民眾時時更新或定期更新號碼資料庫的認知傳遞實在需要當地政府或官方協助，從認知做起才能真正防範並達到最佳的效果。

一 用戶回報號碼意願

雖然部分用戶會做自發舉報的動作，這可幫助產品的辨識率提升，但是用戶目前回報的意願與認知並不強，除了官方可協助加強宣導其回報意識與觀念外，如何提供民眾回報號碼的誘因也極其重要。

接著針對「來電過濾產業」之現況與未來，以及長期發展規畫當中，如欲有效呼應「加強規管人對人促銷電話」之議題，建議香港政府得就以下幾點項目作為重點考量：

一 隱私資料的保護限制

許多敝司的產品從初創至今，皆沒有拿取用戶隱私資料的行為，而我們真正獲取的公開號碼資料也只用做利於大眾的號碼辨識與分析，為的是增加用戶更便利於攔截與辨識促銷電話等行為，若政府機關需要推廣這類型的產品，可能需要有一套流程確認各家應用產品是必須在消費者都同意的情況下才取得資料，當然在用戶完全不知情的情境下獲取用戶資訊這需要有明確的條款做制裁，方能降低行為的發生。

一 產品的改良與發展

如前面所提，這類型產品關鍵在於號碼的辨識資料庫，雖然我們有一套自己的SOP處理號碼辨識的方法，但為了提升服務品質與優化號碼辨識率，會需要更多可公開分析或獲取號碼的管道讓我司做分析，若能有機會增加資料庫的量，這類型產品能夠貢獻用戶的服務才能更精準與強化。

一 人才培育與協助

亦如前面所提，這類型產品的分析是一門硬科學，會需要演算法與現今資料科學家的協助幫助號碼資料能夠更有效率的解析正確，相信在地人才培育與投入會是很重要的一環。

除了以上數點之外，我們對於未來政府資助「來電過濾產業」之方案亦持正面態度，然僅應注意以下幾點，避免造成負面影響。故仍建議有限度地控制資助力道。

一 產業過熱與資安議題

舉凡政府有意扶植的產業未來皆可能成為熱錢流入的目標，然「來電過濾產業」與「個人隱私」一直有叫高敏感度的關係，未來如進入多廠林立的狀況導致惡性競爭，廠商偏離「保護使用者」的初衷，恐有許多資安與個人隱私之隱憂產生。

一 惡性競爭與資料分散

如前述所提，「來電過濾產業」為一倚靠大量資訊集中之產業，如未來惡性競爭導致資料過度分散，辨識率降低，最終失去保護使用者不被電話騷擾之效果，對香港市民來說反而可能造成更多困擾。

以上幾點建議，希望對貴單位有幫助，也希望有機會能與您暢談彼此的想法與交流更細節的事項。

再次感謝您的來信與肯定。謝謝!

Jeff

Jeff Kuo
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100 台北市中正區羅斯福路二段100號26樓 (古亭捷運站9號出口，大都市大樓)
Crystal Chiu <crystalchiu@cedb.gov.hk> 於 2017年7月14日 下午4:59 寫道：
郭先生：

你好！我是香港的商務及經濟發展局助理秘書長趙雅欣。我們現正進行公眾諮詢，收集社會對加強規管人對人促銷電話的意見，諮詢期將於2017年7月31日屆滿（諮詢文件：http://www.cedb.gov.hk/ccib/chi/paper/pdf/Consultation%20Paper_C.pdf）。



Urgent Return receipt Sign Encrypt
人對人促銷電話諮詢文件意見
zoesy@physical.com.hk to: p2pcalls@cedb.gov.hk
Cc: simmypoon@physical.com.hk

28/07/2017 12:21

From: "Zoe Sy" <zoesy@physical.com.hk>
To: <p2pcalls@cedb.gov.hk>,
Cc: "Simmy Poon" <simmypoon@physical.com.hk>

商務及經濟發展局通訊及創意產業科:

就有關加強規管人對人促銷電話的諮詢，我司(美容業界)有以下意見:

1. 以 非立法 方式加強規管人對人促銷電話
2. 傾向採用以下非立法方案
 - 個別行業的自行規管制度 及
 - 智能電話的來電過濾應用程式

Best Regards,

Zoe Sy

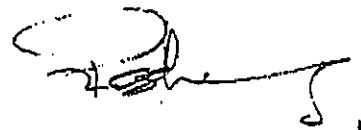
Beauty Development Executive
Physical Health Centre Hong Kong Limited
DL: 2917 0176

B 009

致 商務及經濟發展局：

有關針對改善人對人促銷對電話使用者構成之負面效果，如能對業界及消費者取得平衡基礎上，本人對於能配合實際需求之可行方案表示贊同。

但就第三方案建議立法設立拒收訊息登記冊，此一刀切規管冷電及暖電之方式，令規管變相成為禁止模式，令消費者完全失去接收任何訊息機會，亦嚴重影響促銷電話業的就業情況及造成經濟損失，由於此立法方案亦未必能完全確保其成效，為免造成對社會及經濟之壞影響，本人謹代表個人及商界反對此第三方案，敬希慎重考慮。



卓悅集團 主席

葉俊亨博士

2017年7月28日

(聯絡電話: 6386 6636)

**Strengthening the Regulation of
Person-to-Person Telemarketing Calls**

Response to Consultation Paper

SmarTone Mobile Communications Limited ("SmarTone") is pleased to provide its comments on the consultation paper entitled "Strengthening the Regulation of Person-to-Person Telemarketing Calls" ("Consultation Paper") issued by the Commerce and Economic Development Bureau ("CEDB") in May 2017.

1. The Consultation Paper has invited views on whether a statutory or non-statutory regime for enhancing the regulation of person-to-person ("P2P") telemarketing calls is preferred.
2. SmarTone submits that a non-statutory regime is in preference to a statutory regime. The statutory Do-Not-Call Register regime has the following key issues:
 - The Consultation Paper has provided a very detailed analysis of the issues associated with both the statutory and non-statutory regimes. While most international references quoted in the Consultation Paper have adopted a statutory Do-Not-Call Register regime, the difficulties and challenges experienced by the overseas regime is noteworthy. Not only the collection of evidence (e.g., recording incoming P2P telemarketing calls) would not be easy, the effectiveness of the regime is also compromised by the circumvention measures taken by non-abided telemarketers, such as caller-ID spoofing, VoIP calls and overseas calls.
 - The statutory regime may adversely affect the normal marketing activities and livelihood of employees engaged in the telemarketing business. However, the non-abided or unscrupulous telemarketers may continue to use the above-mentioned circumvention measures to bypass the regime and continue to make P2P telemarketing calls.
 - There would be resources implication of setting up a regulatory body for the enforcement of the relevant legislation. Whether the resources are well spent in tackling P2P telemarketing calls is uncertain in view of the technical circumventions by unscrupulous telemarketers.
3. As rightly pointed out by CEDB, the statutory Do-not-Call Register regime is not a "fool-proof" regime. While the costs of implementing this regime (including the cost to the economy at large as well as the cost of setting up a regulator to

enforce the legislation) would be the highest amongst the 3 options proposed in the Consultation Paper, the enforceability and efficacy of the statutory regime is seriously undermined by issues such as the difficulties in collection of evidence and circumvention techniques by non-abiding telemarketers.

4. In view of the above, SmarTone's preference is the trade specific self-regulatory regime. With the joint efforts of the CEDB, the Office of the Communications Authority ("OFCA"), the Communications Associations Hong Kong ("CAHK") and the participated telecommunications network operators, the telecommunications industry has adopted the Code of Practice on P2P Marketing Calls ("CoP") since 2011. Similar CoP has been adopted by the other three sectors including finance, insurance and call centres. As indicated in the Consultation Paper, the CoP has been running smoothly in the four trade sectors. Given that the currently adopted CoP could be used as a basis for further strengthening the regulation of P2P calls (e.g., by extending the CoP to other trades which make P2P telemarketing call), both the time and resource required for implementing this option would be relatively shorter and smaller as compared to the statutory option.
5. As regards the other non-statutory option of call-filtering software as proposed in the Consultation Paper, it would require more information regarding the proposed implementation details in order to evaluate the implications of such option. We concur with the CEDB's view that careful consideration should be given in order not to upset the free market of call-filtering applications.
6. To conclude, SmarTone considers that it is important to strike an appropriate balance between legitimate business activities through telemarketing and prevention of nuisance caused by P2P telemarketing calls. While the statutory option may be the most common form of regulation in other jurisdictions, the enforceability and efficacy of such option would be seriously undermined by the difficulties in collecting evidence and the circumvention measures taken by unscrupulous telemarketers. On the other hand, the self-regulatory trade specific CoP has been adopted by four trades in Hong Kong, which can be used as a practical benchmark for expanding to other trades within a short period of time. For the option of call-filtering software, more information would be required to understand its implication, especially whether the government's collaboration effort would upset the free market for call filtering applications.



Hong Kong Call Centre Association
30 June 2017

Response to Commerce and Economic Development Bureau on Strengthening the Regulation of Person-to-Person Telemarketing Calls

The Hong Kong Call Centre Association (HKCCA) has received and reviewed the Consultation Paper on strengthening the regulation of Person-to-Person Telemarketing Calls

The Association would like to express the following views:

1. The Association acknowledges there is public concern on P2P marketing calls that cause inconvenience and sometimes nuisance to the recipients. It agrees there is a need for the Government and parties concerned to address the issue and implement effective measures to rectify the situation.
2. Of the three options that Commerce and Economic Development Bureau (CEDB) has identified, members of the Association unanimously prefer Option 1 - Trade Specific Self-regulatory Regime.

Since the Unsolicited Electronic Messages Ordinance (UEMO) was enforced on 22 December 2007 that regulates commercial electronic messages; including fax; short messages and pre-recorded messages, HKCCA joined effort with other trade associations in banking, insurance and telecommunications sectors, with the support of Office of the Telecommunications Authority (OFTA), implemented a Code of Practice (CoP) effective on 1 July 2010 that covers, among others, the hours of calling, the need to reveal the identity of telemarketers and to honour unsubscribe requests.

To demonstrate our commitment to fulfil the requirement of the CoP, HKCCA further established a CoP Certification mechanism by appointing Hong Kong Quality Assurance Agency (HKQAA), an independent quality management body, to conduct on-site audit annually for the contact centres that participate in the scheme voluntarily. Different assessment methodologies are used for the audit to assess if the telemarketers are fully compliant to the CoP that include: recorded calls assessment; document review; data inspection; equipment setting checking; on-the-spot interview.

HKCCA was successful in applying for the SME Development Fund to extend this Certification scheme to support SME telemarketers in providing free Certification audit for them as well as free training series relating to telemarketing operation knowledge and skills for their frontline agents. A total of 25 companies were certified in 2011. Upon the cessation of the SME Development Fund in August 2012, those funded SME telemarketers gradually discontinued their participation in the Certification. There remains 10 companies, mainly HKCCA Corporate members, participating in the Certification since 2011. And one member from telecom sector joined the Certification recently.

In order for Option 1 to be effective, a registration regime for telemarketers (companies) has to be in place. Coupled with a mandatory CoP Certification to ensure every registered telemarketer is compliant to the requirement of the CoP on an on-going basis (through annual re-audit) and be traceable (through registration).

Our current Certification scheme has too little participation to be convincing as an effective mechanism to curb nuisance as participation is voluntary. Through mandatory certification, participation would be significantly increased and telemarketing business would be more structured in particular in the SME sector. Companies looking for telemarketing vendors to make calls for themselves would be encouraged to use certified telemarketers.

3. For Option 2 – Call-filtering Applications in Smartphones. We suggest, instead of using call-filtering applications to screen out “black-listed” unwanted calls, it would be better to use the applications to maintain a “white list” where the telephone numbers of government departments e.g. social welfare department; public institutions e.g. hospitals and certified telemarketers are maintained. When the call is from those on the “white list”, phone-users will be alerted with a Q-mark display (Certified Telemarketer) or the name of the institution (QM Hospital) that those are the calls to answer.

This would encourage more telemarketers to obtain certification through proper operation of their business and instil more confidence to the phone-users to answer calls they don't want to miss.

4. For Option 3 - Do-not-call Register. We strongly oppose the establishment of a blanket; cross-sectorial do-not-call register on person-to-person marketing calls.

Under the Personal Data (Privacy) Amendment Ordinance 2012 (PDPO) (effective 1 April 13), there are already very strict requirements in collecting; using and transferring personal data in making marketing calls with heavy penalty for non-compliance. Telemarketers making “**warm calls**” (using the personal data which have been previously collected in accordance and compliance with PDPO) are already regulated by PDPO and provide opportunities (in every call and at any time) for the receiving

party to unsubscribe (opt-out) future calls from the calling party / principal. It would be inappropriate and unreasonable to include "warm calls" in the ambit of any additional do-not-call register that would impact tens of thousands of people who are gainfully employed using the phone to legitimately speak with their previous customers and business prospects.

5. The enforcement of PDPO 2012 had triggered an increasing number of "cold calls" (called numbers generated by computer without personal data of the called party) being made by rogue operators / brokers that often mask their true identity. Most of these calls are generated from offshore, with the purpose of soliciting loan prospects or selling beauty therapy packages for their ultimate clients. For the general public, they cannot tell the difference between warm calls and cold calls but are getting frustrated being called frequently. If the establishment of a "cold call only"; sector-specific (public can choose to opt-out certain sectors e.g. beauty therapy, property agency etc.) do-not-call register could screen out those malpractice; provide a better business environment for the genuine and compliant telemarketers and minimize the nuisance to the public, this could be an acceptable option - provided an expiry date to be associated with the number registered. The reason for an expiry is that the number does not belong to the phone-user perpetually – only the period the telephone service is subscribed. To register a phone number on the Do-not-call Register is to subscribe a service though it would be free. Like other subscribed services, there is a service end date that the subscriber has the chance to review if he needs the service anymore. The registration effective period should be 2 to 3 years – similar to most subscribed service contracts.

6. To address the concern on the difficulty of law enforcement towards offenders making calls to the public outside of Hong Kong, the beneficiary / principals of the marketing call should be held responsible for the offence irrespective of where the call was generated.

For example, a beauty salon in Hong Kong appoints an operator in China to make "cold calls" to Hong Kong public to source business. If the China-based operator breaches the law and call phone-users on the Do-not-call Register (assuming Do-not-call Register were statutory), though collection of evidence and prosecution of offshored offenders would be difficult, the beauty salon, being the principal of the marketing call should bear the legal liabilities of the offence.

Under PDPO 2012, principals of warm calls are already being held responsible for any offence arising from conducting the telemarketing business. The court case relating to Hong Kong Broadband Network (HKBN) refers, HKBN was found guilty for calling an opt-out customer for re-contract of service. The actual calls were made from Guangzhou.

We believe this would be a more effective measure to deter non-compliant telemarketers / principals and encourage companies

considering using vendors to make calls to use certified telemarketers.

7. We are in agreement with the conclusion that assigning specific prefixes to telemarketers who wish to conduct telemarketing business is not feasible as stated in the consultation paper. It will also create a labelling effect and involve substantial costs and resources to the business for the change.

In closing, we believe it is the responsibility of the authority concerned to tackle crimes using marketing calls as a tool and channel for illegal acts. There are already ordinances (Unsolicited Electronic Messages Ordinance; Personal Data (Privacy) Amendment Ordinance 2012; Commodity Description Regulations) and Code of Practice in place to govern the telemarketing business and protect the interests of the general public. The industry practitioners at large are responsible corporates that adhere to the requirements of the ordinances and Code of Practice. It would be unfair for them to bear the full blunt of further legislation that would eventually strangle the industry but let the real culprits off the hook.

— End —

About the HKCCA

The Hong Kong Call Centre Association (www.hkcca.com) is a not-for-profit organisation that has a mission to help local businesses improve their contact centres and on-line customer service by deploying the best management practices and latest technologies. The HKCCA has grown to include over 460 corporate and individual members in both Hong Kong and Southern China and supports its members through annual benchmarking studies, site visits, awards competitions, symposium, seminars; training and many social events.

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**Consultation Paper on Strengthening the Regulation
of Person-to-Person Telemarketing Calls**

Response by Hong Kong Telecommunications (HKT) Limited

Date – 16 June 2017

1. The Commerce and Economic Development Bureau (“CEDB”) has issued the Consultation Paper on Strengthening the Regulation of Person-to-Person Telemarketing Calls (“P2P calls”) in May 2017 to solicit stakeholders’ and the public’s views on how the regulation of P2P calls should be strengthened. The Communications Association of Hong Kong (“CAHK”) has also invited its members to provide comments, so that CAHK could consolidate all members’ comments and feedback in response to the information and questions set out in the Consultation Paper to the CEDB accordingly.
2. HKT’s inputs are summarized in this paper for the consolidation of the CAHK, with views presented in the Summary and in the following sections with the same order of questions set out in Paragraph 6.3 of the Consultation Paper.

Summary

3. Being the largest key provider of telecommunications services in Hong Kong, HKT considers that the proper use of P2P calls is one of the essential interpersonal communications and marketing tools for serving our customers. As a member of the CAHK, we have also adopted since May 2011 the Benchmark Code of Practice on Person-to-Person Marketing Calls (“Benchmark COP”) issued by the CAHK for the purpose of providing guidance to its members in making P2P calls for marketing activities. As mentioned in the Consultation Paper (and also based on our own experience), the Benchmark COP presents an effective self-regulatory scheme for the sectors adopting similar benchmark codes, including the telecommunications sector.
4. As such, we believe that the Benchmark COP remains the most practical and effective option and preferably be used as the basis for further discussion on trade specific regulatory proposals and enhancements on P2P calls. We also propose that similar Benchmark COP should be adopted by companies of other trades and industries as the preferred way-forward of pursuing a non-statutory self-regulatory regime. Respective trade organizations should promote among their member companies to adopt similar Benchmark COP with the objective of reducing nuisances caused by P2P calls to the

general public.

5. The decision of establishing a statutory Do-not-call Register should not be taken lightly. In the event that the Government were to establish a statutory Do-not-call Register for P2P calls, we would propose that the effectiveness of established trade specific self-regulatory regimes (including the adoption of the Benchmark COP) should be fully recognized and reasonably factored into consideration of the basis of possible reliefs and exemptions from relevant restrictions under the statutory Do-not-call Register.
6. Most importantly, there should be a clear distinction between “cold” and “warm” P2P calls. “Warm” P2P calls are often integral parts of delivering key customer services and information, including necessary assistance for helping customers to renew contracts and to acquire service upgrades and enhancements. Customers’ choice should decide which service providers would deliver the most appropriate customer services and communications including “warm” P2P calls. On this basis, apart from the existing provision under the Personal Data (Privacy) Ordinance (Cap. 486), the practices of “warm” P2P calls should best be left to the market and should not be subjected to further statutory regulation.

Question (a) - Do you prefer a statutory or non-statutory regime for enhancing the regulation of P2P telemarketing calls?

7. We consider that the current trade specific self-regulatory regime through the adoption of the Benchmark COP is the most practical and effective approach for regulating the P2P calls. Such trade specific Benchmark COP not only presents a reasonable inter-personal customer communications channel attuned to the prevailing individual trade practices, but also provides a transparent and evolving approach where both the trade participants and the general public could explore for further enhancements, including the objective of reducing nuisances to the general public.
8. We notice that the recent public discussion of the nuisances caused by P2P calls tends to gravitate largely towards P2P calls relating to companies of trades that have not yet established or adopted any code of practices in relation to the P2P calls. As such, the general public receiving these P2P calls have no common measure to comprehend the reasonableness of such marketing activities or to file complaints against individual companies of practicing inappropriate marketing behaviors regarding the use of P2P calls.

9. As a practical way forward, we propose that respective trade organizations (particularly those with a relatively high level of complaints of nuisance P2P calls as reported by the public) should actively pursue a more effective trade specific self-regulatory approach by promoting among their trade member companies to establish and adopt a code similar to the Benchmark COP with the objective of reducing nuisances caused by P2P calls to the general public.

Question (b) - As the establishment of a statutory Do-not-call Register will take time, do you prefer to have some non-statutory measures in place in the interim, such as those set out in question (c)?

10. We do not agree that the statutory Do-not-call Register approach would be the ultimate solution to regulate the P2P calls. The decision of establishing a statutory Do-not-call Register for the P2P calls should not be taken lightly as the statutory regulation of such a common and effective means of inter-personal communications would cause significant impact on the day-to-day business transactions of Hong Kong. In the meantime, we should focus the effort to promote and improve the overall self-regulatory regime, including the enhancement of the practices and scope of trade specific codes similar to the Benchmark COP for P2P calls (see also the response to Question (c) below).
11. In the event that the Government were to establish a statutory Do-not-call Register for P2P calls, we would propose that due consideration outlined in the following areas should also be included:
- (i) The effectiveness of established trade specific self-regulatory regimes (including the adoption of codes similar to the Benchmark COP) should be fully recognized and reasonably factored into consideration of the basis of possible reliefs and exemptions from relevant restrictions under the statutory Do-not-call Register. The area of reliefs and exemptions should broadly include the relevant restrictions of aspects and concerns that have been adequately and reasonably addressed under the Benchmark COP.
 - (ii) There should be a clear distinction between “cold” and “warm” P2P calls in relation to the regulation of the P2P calls under the statutory Do-not-call Register. Apart from the provisions under the Personal Data (Privacy) Ordinance (Cap. 486), the practices of “warm” P2P calls should be left to the market and should not be subjected to further statutory regulation (see also the responses to Question 4 below).

Question (c) - Which of the following non-statutory option under Chapter 4 do you prefer?

Option 1: Trade Specific Self-regulatory Regime;

Option 2: Call-filtering Applications in Smartphones

Option 1: Trade Specific Self-regulatory Regime

12. As mentioned above, we maintain that the current self-regulatory regime through the adoption of the Benchmark COP remains the most practical and effective option and preferably be used as the basis for discussion on any further regulatory proposals or enhancements. The trade specific self-regulatory regime of governing P2P calls does not only serve the interests of the trade member companies by maintaining a cost-effective channel to communicate directly with the customers but also provides the customers with the means to acquire on a one-to-one basis the necessary customer services and latest marketing information from their service providers.
13. The Benchmark COP is also a transparent and evolving approach where both the trade participants and the general public could explore for any further enhancements and acceptance by the general public, including the reduction of nuisances caused by P2P calls. Examples of such enhancement may include:
 - (i) Improved public awareness program of the current commitments and practices under the Bench COP;
 - (ii) Enhancement of transparency of complaint handling and enforcement processes; and
 - (iii) Promotion on certification program of compliance by member companies.
14. We also propose that trade specific codes similar to the Benchmark COP should be established and adopted by companies of other trades (including those with a relatively high level of complaints by the general public) as a common means of the non-statutory self-regulatory regime. Respective trade organizations should advocate among their member companies to adopt such codes with the objective of reducing nuisances caused by P2P calls to the general public.
15. While the trade specific Benchmark COP is more attuned to the prevailing individual trade practices, the public in large should also be involved in the general discussion of enhancement of practices common to most trades. Such discussion would promote public awareness of the best benchmark practices and the available avenues to file

complaints and to seek effective assistance against cases of violation of the Benchmark COP.

Option 2: Call-filtering Applications in Smartphones

16. We have no specific comment on the effectiveness of adopting call-filtering applications by individual users. It would be the choice of individual smartphone users of whether or not such call-filtering applications would serve his/her requirement or preference in relation to the reception of P2P calls. However, if the Government is to advocate the use of such call-filtering applications, individual users should also be reminded to pay attention to the specific terms and conditions of each of the applications, as currently there may not be any world-wide effective rules or laws that would adequately protect users of such applications regarding inappropriate use of personal data collected by and shared via such applications.

Question (d) - Other Suggestions

17. As highlighted above, there should be a clear distinction between “cold” and “warm” P2P calls for establishing any proposals or enhancements in relation to the regulation of the P2P calls. As a service provider, we are obligated to maintain proper communications with our customers and “warm” one-to-one P2P calls are often integral parts of delivering key customer services and information, including necessary assistance for helping customers to renew contracts and to acquire service upgrades and enhancements. From the market perspective, the customers always have the power in deciding which service provider could deliver the most appropriate combination of customer services including “warm” P2P calls from a service provider. If a customer is not satisfied with the overall customer services of a service provider, he/she would choose services from other companies in the market. On this basis, apart from the provisions under the Personal Data (Privacy) Ordinance (Cap. 486), the best practices of “warm” P2P calls should be left to the market and should not be subjected to further statutory regulation.

Hong Kong Telecommunications (HKT) Limited
June 2017



B 013

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14 July 2017

By email: p2pcalls@cedb.gov.hk

Mr. Patrick Lee
Principal Assistant Secretary for
Commerce and Economic Development
Communications and Creative Industries Branch, B Division
21/F, West Wing, Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Mr. Lee

Consultation on Strengthening the Regulation of Person-to-Person Telemarketing Calls

Thank you for the opportunity to comment on the Consultation Paper on Strengthening the Regulation of Person-to-Person Telemarketing Calls, which is of direct relevance to our members' operations.

The attached submission (Annex) consolidates the comments from members of the Hong Kong Association of Banks ("HKAB") in relation to the Commerce and Economic Development Bureau's ("CEDB") specific questions, as set out in the consultation paper.

We hope that this will assist the CEDB in formulating its approach for this important matter.

If you have any questions about this submission, please do not hesitate to contact Ms. Ivy Wong of HKAB Secretariat at 2526 8895.

Yours sincerely

Celia Shing
Secretary

Enc.

Chairman Bank of China (Hong Kong) Limited
Vice Chairman The Hongkong and Shanghai Banking Corporation Limited
Standard Chartered Bank (Hong Kong) Limited
Secretary Celia Shing

主席 中國銀行（香港）有限公司
副主席 香港上海滙豐銀行有限公司
渣打銀行（香港）有限公司
秘書 盛思怡

Commerce and Economic Development Bureau

**Consultation on Strengthening the Regulation of
Person-to-Person Telemarketing Calls**

Submission of The Hong Kong Association of Banks

14 July 2017

Introduction

This paper sets out the views of The Hong Kong Association of Banks ("**HKAB**") in relation to the Consultation Paper issued by the Commerce and Economic Development Bureau ("**CEDB**") on Strengthening the Regulation of Person-to-Person Telemarketing Calls ("**Consultation Paper**").

Assisted by King & Wood Mallesons, HKAB has considered the questions set out in the Consultation Paper provided by the CEDB and our views are set out in the section of this written submission titled "HKAB's response to the Consultation".

We would be pleased to engage in further discussions with the CEDB in relation to the proposed changes and to provide further industry input where necessary.

Unless otherwise defined, terms used in our response have the meaning given to them in the Consultation Paper.

Current arrangements adopted by HKAB members in relation to telemarketing calls

Paragraphs 1.3 to 1.5 of the Consultation Paper briefly discusses self-regulatory schemes for specific sectors in respect of person-to-person telemarketing calls ("**P2P Calls**").

We consider it is useful to elaborate on the current arrangements adopted by members of HKAB in relation to P2P Call activities to provide background and full context for HKAB's response to various questions raised in the Consultation Paper. Those arrangements are supplementary to and do not supplant the prudential supervision of the banking industry by the Hong Kong Monetary Authority ("**HKMA**") which promotes, amongst others, sound corporate governance, prudent business practices, a customer centric culture and effective complaint handling policies and procedures.

As an industry initiative, HKAB and the DTC Association ("**DTCA**") jointly issued the Code of Practice on Person-to-Person Marketing Calls ("**HKAB/DTCA CoP**") in November 2010 to promote best practices that respective members should comply with when making P2P Calls for marketing activities, having regard to regulatory expectation. The HKAB/DTCA CoP was adapted from the Benchmark Code issued by the then Office of the Telecommunications Authority. Subsequently, in light of experience and market developments, the HKAB/DTCA CoP was updated in May 2014 to enhance the robustness of P2P Call activities, making it easier for customers to identify whether a particular P2P Call is made by an Authorized Institution ("**AI**") or its authorised agent, and to make any necessary enquiries with the AI concerned. Prior consultations with stakeholders (including regulatory authorities such as the HKMA) were undertaken by HKAB and DTCA for the launch and revision of the HKAB/DTCA CoP to ensure it remains up to date, effective and practical.

To further strengthen customer protection, all major retail banks engaging in P2P Calls provide the called person with the telemarketers' specific identity information, such as staff ID, direct line or phone extension in addition to disclosing his full name, the name of the principal that authorised the making of the call and the purposes of the call. If in doubt, the called person may call the bank's hotline to verify the identity of the caller. This arrangement is detailed on HKAB's public website¹ and all the banks' hotlines can also be accessed at any time from the same HKAB website and the public website of the HKMA.²

¹ Available here: <https://www.hkab.org.hk/DisplayArticleAction.do?sid=5&ss=14>

² Available here: http://www.hkma.gov.hk/media/eng/doc/other-information/Bank_hotline_for_verify_caller_identity_ENG.pdf

HKAB's response to the Consultation

1 Preferred approach

Q(a) Do you prefer a statutory or non-statutory regulation of P2P telemarketing calls?

1.1 Given that the current framework for the banking industry (as described above) provides sufficient customer protection, the majority of our members prefer to continue with a non-statutory regime on regulation of P2P Calls going forward. We note that a statutory regime would be consistent with the approach taken by other international financial centres such as Singapore and the United Kingdom, but on balance, we still consider that a non-statutory regime would be appropriate for Hong Kong.

1.2 HKAB considers a non-statutory regime strikes an appropriate balance between the wider public interest and one that is realistic and feasible. Our reasons are as follows:

- (a) **Costs:** the costs associated with a statutory regime for regulating P2P Calls will impose an onerous burden on normal business operations which will increase the overall cost to consumers and the industry. In particular, costs associated with:
 - (i) **establishing** the regime, which is acknowledged at paragraph 5.11 of the Consultation Paper; and
 - (ii) **on-going compliance** once the regime is implemented. Paragraph 4.21 of the Consultation Paper acknowledges compliance costs for companies will increase and the impact on small and medium-sized enterprises ("SMEs") will likely be greater than that on the bigger enterprises. We agree and also highlight that banks are under widespread regulatory pressure in a job market where talented compliance professionals are in high demand. An additional statutory regime for P2P Calls adds to the overall compliance and talent sourcing burden.
- (b) **Offshore operations:** a statutory regime applicable in Hong Kong has limited jurisdictional reach. This is acknowledged in paragraphs 5.8 to 5.11 of the Consultation Paper and will not solve the issue of calls originating from outside of Hong Kong.
- (c) **Flexibility:** a non-statutory regime balances the interests of different stakeholders whilst being flexible to respond to market changes and people's needs.

For example, paragraph 1.1 of the Consultation Paper defines P2P Calls as "*marketing calls involving interpersonal communication used to promote goods or services to customers or potential clients.*"

While this broad definition may be appropriate for the wider community, the definition of "telemarketer" in the **HKAB/DTCA CoP** excludes "relationship / account managers" of clients. This recognises that marketing calls are part of the banking services expected by customers when there is a pre-existing commercial relationship between a banker and its customer. This use of this definition for the banking industry has been successful to regulate the conduct of members and was formulated with the interests of different stakeholders, but we recognise that it might not be always appropriate where a statutory framework has to regulate the wider community. Additionally, the definition of "telemarketer" can be adapted expeditiously compared to a statutory definition in order to respond to market changes and consumer's needs; and

- (d) **Sufficient existing framework:** the existing framework in respect of banks is sufficient for the purposes of regulating our members' conduct. In particular, banks are subject to:
 - (i) the direct marketing requirements of the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong);
 - (ii) Unsolicited Electronic Message Ordinance (Chapter 593 of the Laws of Hong Kong); and

- (iii) specific banking industry regulation and industry's guidelines including the HKAB/DTCA CoP, the Code of Banking Practice jointly issued by HKAB and DTCA and supervisory oversight of the HKMA.

The current governance regime is effective and sufficient for regulating the P2P Calls and telemarketing activities of our members while offering flexibility for their daily banking operations. This is supported by the requirements of the HKMA that banks should take reasonable steps to handle any complaints fairly, consistently and promptly.

1.3 We consider that a better approach would be to focus on regulating:

- (a) **the specific calls** that are acknowledged throughout in Consultation Paper as a nuisance to the public, such as unsolicited calls and Caller-ID Spoofing calls; and
- (b) **known industries** involved in these calls, for example, the money lending³ and beauty industries,⁴ which are not subject to any specific governmental or regulatory oversight in respect of P2P Calls and until now are not subject to any equivalent self-regulatory regimes,

rather than adding additional burden(s) to closely regulated industries. In respect of lending companies, we suggest that imposing requirements as a licensing condition on money lenders (similar to the requirements in respect of lending intermediaries implemented on 1 December 2016⁵) could be an appropriate way to achieving this.

1.4 The adoption of a universal statutory regime – rather than initiatives focussed on the calls and industries of most concern – will penalise those industries already complying and may do little to curtail existing behaviour. It is also at risk of being so broad in order to be “universally applicable” but not specific enough to capture the requisite behaviour and persons. Any loopholes are likely to be exploited, without making an impact on the overall problem.

2 Preferred non-statutory option

Q(c) Which of the following non-statutory options under Chapter 4 [of the Consultation Paper] do you prefer?

Option 1: Trade Specific Self-regulatory Regime;

Option 2: Call-filtering Applications in Smartphones

2.1 HKAB prefers Option 1: Trade Specific Self-regulatory Regime (“**Option 1**”) because it represents a realistic and feasible solution. More specifically, our reasons are as follows:

- (a) **specificity:** based on our experience, Option 1 allows the requirements to be tailor-made for the relevant industry. The example highlighted in paragraph 1.2(c) above in relation to the HKAB/DTCA CoP recognises and adapts the requirements with reference to the client relationships and forms of marketing relevant to the banking industry. Its development was informed by the valuable input of our members and regulatory authorities. This definition may not be suitable for all industries, but in our experience it has worked well for our members.

Linked with our comment in paragraph 1.4 above, the specificity provided by Option 1 may also assist with minimising inadvertent loopholes under a universal regime;

- (b) **absence of Option 2 oversight:** a trade body is “close to the ground” and provides a focal point for regulatory liaison. In contrast, it is unclear how oversight of the call-filtering applications (“**Option 2**”) will be managed (if any at all) and where consumer grievances can be directed;

³ See footnote of 2 of the Consultation Paper which notes that money lenders, which are not members of HKAB and DTCA are not covered in the existing self-regulatory scheme.

⁴ See paragraph 4 of Legislative Council Paper No CB(4)816/15-16(05), available at: <http://www.leqco.gov.hk/yr15-16/english/panels/ltb/papers/ltb20160411cb4-816-5-e.pdf>

⁵ See: http://www.cr.gov.hk/en/public/moneylender_05.htm

- (c) **most feasible to implement from a costs and lead-time perspective:** Option 1 represents the most feasible option, compared to a statutory regime or Option 2. A statutory regime requires lengthy consultation and legislative processes to implement. Option 2 requires a lengthy implementation process to determine and develop the technical specifics and then once implemented, it will require positive action by consumers to subscribe. It will require further ongoing (and possibly expensive) technical maintenance to remain effective and significant work to ensure the database of consumer numbers remains accurate.

In contrast, Option 1 can be implemented relatively cheaply and swiftly. A benchmark code of practice is already available, so it should not be too onerous for other industries to adapt and implement. It also requires less “up-keep” compared to Option 2. Additionally, the formulation and consultation process can also be held with the benefit of full and frank discussion of the issues amongst members with similar business lines and facing similar challenges;

- (d) **easier to adapt and versatile:** marketing techniques are constantly evolving, particular in the digital age. Option 1 allows the requirements to keep up with the latest techniques (and corresponding issues) and be adapted swiftly following consultation with the relevant stakeholders. This is in contrast with a statutory regime, which requires lengthy legislative processes to implement changes, and Option 2 which may require significant technological advances once nuisance callers manage to adapt their practices to circumvent the filtering capabilities; and
- (e) **addressing nuisance behaviour:** Option 1 requires nuisance callers to curtail their offending behaviours. Once in place and once proven to be effective, Option 1 may have the additional effect of restraining further development of these behaviours. In contrast and linked with paragraph (d) above, Option 2 does not require any positive action by nuisance callers to curtail their behaviour and may even encourage continuance and further exploitation of loopholes.

2.2 HKAB also has the following additional reasons for not preferring Option 2:

- (a) **security of customer data:** paragraph 4.13 of the Consultation Paper highlights the personal data concerns for each individual user and every contact in their personal phone book. Personal data leakage and hacks is a ubiquitous concern and HKAB considers it is undesirable to expose such a large volume of personal data to potential hacking incidents when Option 1 presents an appropriate solution and does not expose any personal data; and
- (b) **inadvertent filtering:** HKAB understands that all calls from telemarketers will be filtered by the call-filtering applications without taking into consideration the nature/importance of the calls and/or whether customers have opted-in to receive certain calls. For example:
- (i) marketing calls related to specific products which the customer has requested or consented to may be inadvertently filtered; and
 - (ii) fraud alert calls from banks may also be filtered if the numbers are mistakenly identified as a telemarketing company.

This may lead to further inconvenience, and even financial loss, for consumers and the banking industry.

2.3 A small proportion of our members prefer Option 2 because, if implemented appropriately and successfully, it would strike a suitable balance between the interests of recipients and P2P Calls. In particular, we envisage a system whereby:

- (a) the Government would collaborate with a selected software provider to maintain a central database where a company can register the name of the company, nature of business and the phone number they use to conduct P2P Calls;
- (b) the provided information is validated and then maintained in a central database;

(c) consumers can select calls from which industry (or company) they would like to receive;
and

(d) other than the calls specifically selected, all other calls are blocked.

2.4 If the Government favours the implementation of such a system after taking into account responses received from this consultation, HKAB would support a separate consultation on measures proposed by the Government in addressing its shortcomings included those raised in paragraphs 2.1 to 2.3 above.

3 Other suggestions

Q(d) Other Suggestions

Please refer to our comment in paragraph 1.3 in respect of focusing on the specific calls and known industries generally responsible for nuisance calls.



香港化粧品同業協會
The Cosmetic & Perfumery Association of Hong Kong Ltd.

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日期：2017年7月25日
事項：有關「規管人對人促銷電話展開公眾諮詢」

敬啟者：

政府即日起就加強規管人對人促銷電話展開公眾諮詢，文件提出3個可行方案，包括由個別行業設實務守則自行規管、透過智能電話來電過濾應用程式攔截、以及透過立法設立拒收訊息登記冊。

本會明白社會就人對人促銷電話帶來滋擾的關注，但亦要考慮社會上不同界別的意見，以及對保障個人資料、正常營銷活動、及對從業員就業的影響等。基於上述原因，我們認為3個方案中，第1及2項：由個別行業設實務守則自行規管、透過智能電話來電過濾應用程式攔截較為可取，對第3項建議則表達強烈反對。事實上，目前的人對人促銷電話情況並不太嚴重，加上手機過濾應用程式的應用亦非常普遍，電話帶來的滋擾已減至很低。而借助立法去處理一些本合法的商業行為，將做成非常壞的先例，違反自由市場的正常規律。以上是本會及業界的意見，希望局要審慎考慮整體經濟的未來路向。

*如有查詢，請聯絡本人 9018 7476 或本會秘書處 2366 8801

何紹忠上
香港化粧品同業協會會長

B 015

The DTC Association

(The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies)

存款公司公會 (香港有限制牌照銀行及接受存款公司公會)

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Our Ref.: 20/00/00

28th July, 2017 (Fri)

AS (B) 3

Mr. Patrick Lee *[Signature]*
Commerce and Economic Development Bureau,
Communications and Creative Industries Branch,
B Division, 21/F., West Wing, Central Government Offices,
2 Tim Mei Avenue, Tamar, HONG KONG.
(Fax: 2827 6646; Pages Faxed: 2)

Dear Mr Lee,

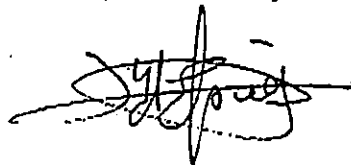
Public Consultation on Strengthening the Regulation of Person-to-Person Telemarketing Calls

Thank you for your email of 11th May, 2017 (Thu) regarding captioned subject.

We have received a response from one of our Association members. The content of this reply is herewith attached as appendix to the present letter.

Thank you for your kind attention,

Yours Sincerely



Pui-Chong LUND
Association Secretary

Encl.

Acting Chairman : Huat Oon LEE ☎ : 2525 9351

Vice-Chairman : Lourdes A. SALAZAR ☎ : 2846 2288

Association Secretary : P.C. LUND 龍沛智 ☎ : 2526 4079

Incorporated Under the Companies Ordinance of Hong Kong and Limited by Guarantee

根據香港公司條例成立之有限保證法團

The DTC Association 存款公司公會

Appendix

We would prefer a non-statutory regime for enhancing the regulation of P2P telemarketing calls. The reason is that the implementation of the statutory regime for regulating P2P calls increases the overall cost to the consumers and the industry. A statutory approach will also have limitations on operators calling from other jurisdictions. Also, Option for call-filtering Applications in Smartphones is more preferable as recipients have the right to accept or reject the call from P2P telemarketers. This option would better strike the balance between the interests of recipients and P2P telemarketers.



致： 香港特別行政區政府
商務及經濟發展局
邱騰華局長, GBS, JP

邱局長尊鑒：

就「加強規管人對人促銷電話」諮詢文件
呈交商務及經濟發展局的意見書

商務及經濟發展局發表諮詢文件，就加強規管人對人促銷電話提出三個方案，包括立法及非立法方式的可能規管方案，供公眾考慮。諮詢文件內三個方案分別是：

- 1) 改善行業的自行規管制度
- 2) 推廣在智能電話使用來電過濾應用程式
- 3) 設立法定拒收訊息登記冊

由於美容業界也有使用人對人電話促銷，本會對此諮詢文件特別關注，就每方案對美容業營運的影響作深入討論。

本會認同改善行業的自行規管制度，美容業界透過電話向潛在消費者提供美容服務之訊息，是希望維持營商空間、增廣客源，進一步與消費者訂立公平的服務合約。現在大部分市民已熟悉利用各種智能電話應用程式，因此美容業界普遍接受諮詢文件內首兩個方案。

但本會反對第三個方案“設立法定拒收訊息登記冊”：市民一旦主動登記，任何行業的人對人促銷電話，均不得致電，否則電話促銷者必須承受刑事或民事法律責任。此方案如果實行立法，雖然有即時阻嚇作用，減少以本港電話推銷產品及服務，可惜嚴重影響電話促銷員的生計同時，未能阻攔非本港撥出或採用迴避規管技術之促銷電話，市民也難於向這類電話促銷者追究刑事或民事法律責任。本港美容業大多數為中小企業，他們的生存空間會被扼殺；此方案既未能幫助消費者，也影響本港美容業發展，長遠更損害本港經濟增長。

鑒於公眾諮詢於今天截止，香港美容業總會就美容業界對第三個方案的反對聲音向閣下反映，希望閣下將本會意見包含於制訂未來路向，發展一套平衡各方利益的有效方案。

專此奉達！

香港美容業總會
第七屆執行委員會

主席 趙小玲

二零一七年七月三十一日

副本致：香港美容業總會會長 李國麟議員 SBS, JP



香港國際專業美容師協會
HK Association of Professional Aestheticians International
Address: PO. Box No. 78720 Mongkok, Kowloon.
E-mail : apaihk@gmail.com Website : www.apai.org.hk

B 017

日期： 2017年7月30日
事項： 有關「規管人對人促銷電話展開公眾諮詢」

敬啟者：

政府就加強規管人對人促銷電話展開公眾諮詢，文件提出3個可行方案，包括由個別行業設實務守則自行規管、透過智能電話來電過濾應用程式攔截、以及透過立法設立拒收訊息登記冊。

本會認為各業界應加強從業員的培訓，提昇業內人士對相關問題的認識及了解，明白對客人帶來的滋擾，更透過行業的自律規管行為，配以強化的電話過濾功能，以達到減輕問題的同時，又能發揮營銷的實際效果，是為上策。

而立法管制，必為從業員帶來不必要的「有機犯刑」的恐懼，加重此問題對立的嚴重性，不但疾礙了自由商業社會此類非常一般的促銷活動，更促進了社會對立的風氣，本會絕不苟同。

*如有查詢，請聯終本人 94010788 或 apaihk@gmail.com

潘佩芬上
香港國際美容師協會會長

Our Ref: Lv036/17

4 July 2017

By Email only (p2pcalls@cedb.gov.hk)

Commerce and Economic Development Bureau
Communications and Creative Industries Branch
B Division, 21/F, West Wing, Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear sirs

**Public Consultation on Strengthening the Regulation of
Person-to-Person Telemarketing Calls**

Thank you for your e-mail of 11 May 2017 inviting our Members to provide comments on the above consultation.

A total of 17 insurance companies responded to our survey. Their responses to the questions raised in the consultation paper together with additional comments and/or suggestions are detailed in the attached summary.

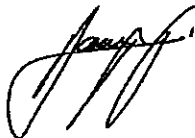
Furthermore, we would like to provide the following supplementary views for your information / consideration:-

Telephone communication between insurance companies and their customers is not restricted to marketing activities. In fact, it has always been an efficient channel for insurance companies to remind their clients of the need to arrange renewal of the policies before their expiries.

For life insurance policies, it is a regulatory requirement for Insurers to arrange post sales calls to the policyholders for re-confirmation of their full understanding of the policy coverage and some specific terms and conditions.

This being the case, any measures for further strengthening of the P2P telemarketing activities must take into consideration of such legitimate business needs.

Yours sincerely



Harry Wong
Chairman of Task Force on the Review of the PDPO

c.c. The Hon K P Chan
Mr Andrew Wong, Permanent Secretary for Financial Services and the Treasury

Comments on Consultation on Strengthening the Regulation of Person-to-Person Telemarketing Calls

Total no. of respondents: 17 member companies

		Yes (member companies)	No (member companies)
1.	Do you prefer a statutory regime, i.e. Do-not-call Register, for enhancing the regulation of P2P telemarketing calls?	3	13
2.	As the establishment of a statutory Do-not-call Register will take time, do you prefer to have some non-statutory measures in place in the interim (those set out in Q3)?	3	--
3.	Which of the following non-statutory option do you prefer?		
	Option 1 – Trade Specific Self-regulatory Regime	11	2
	Option 2 – Call-filtering Applications in Smartphones	1	8

Other suggestions

- ♦ Modification of Option 2 "Call-filtering Applications in Smartphones"
Call Filtering Application to be provided by regulatory body is suggested. It could rename to "Trusted Marketing Call". Companies in P2P business are required to register with the regulatory body and register the outbound number and categorize the services provided. This could (1) increase the data base comprehensiveness and accuracy and (2) minimize personal data leakage since personal data is handled by one service provider. However, the development of call-filtering app should contain anti-reverse look-up function so that user's phone number may not be accessed by third party.
- ♦ Do-not-call-Register, is less preferred. Given if it has to be adopted, it is suggested to establish sector-specific registers for public to choose to reject calls by individual sectors instead of all.

Comments / Questions:

- ♦ The existing self-regulatory regime in insurance industry has been established for long period of time under which HKFI has been actively playing self-regulatory role that enables insurance industry to enjoy a high degree of self-regulation. The self-regulatory regime in insurance industry is widely recognized by the government, with strong cohesion established among Insurers for the purpose to protect the interest of policy holders. Under the existing regime, so far we do not aware serious complaints or grievance from the general public with regard to the P2P calls made by insurance companies.

Furthermore, we understand that almost all of insurance companies in Hong Kong are the members of the HKFI, in this connection, we perceive that the Trade Specific Self-regulatory Regime will cover all insurers.

We welcome to set out regime for the public benefit in order to reduce nuisance because it may help strengthen public confidence in the insurance industry. However, to achieve win-win situation, we urge the

Government strikes a balance between addressing the public concern and the adverse implications to the business activities and employment. We worry that if the statutory Do-not-call Register is adopted, it will tremendously decrease business transactions arising from P2P calls and causes corporates give up this mode of marketing eventually.

In view of the above, we opine that the Trade Specific Self-regulatory Regime is more practical and administratively workable in insurance industry and most importantly balances the interest of the public and corporates.

Under the self-regulatory regime, we propose the following measures in order to reduce nuisance to the public:

- 1) No more than one call should be made to the same individual within two months.;
- 2) P2P call is only allowed from 9:00am to 8:00 pm (Monday to Friday) and 9:00am to 2:00pm (Sat). Sunday and public holiday are forbidden to make any P2P calls.
- 3) Self-regulatory body (i.e. the HKFI) may establish complaint handling procedures for reporting unwelcomed P2P calls and exercise disciplinary action if any insurer breaches the code of practice.

- ♦ The compliance cost of a trade-specific self-regulatory regime ("Option 1") is comparatively lower than the other options. Option 1 in turn helps enable the sustainability of telemarketing activities.
- ♦ The insurance industry has been subject to a self-regulated code of practice. The continuous adoption of this option will cause the least disturbance to the industry. Concrete evidence suggesting ineffectiveness of the existing approach is necessary to warrant any further strengthening of the current regulatory regime.

- ♦ Support an industry association Self-regulatory Regime and that the P2P Telemarketing Code of Practice Certification should be mandatory.
- ♦ Support a registration regime, coupled with the certification mechanism that all operators will need to be compliant to the Code of Practice and be traceable.
- ♦ Oppose the establishment of a cross-sectorial or sector-specific do-not-call registry on person-to-person marketing warm calls.
- ♦ The establishment of "cold call only" and sector-specific do-not-call registers on person-to-person marketing calls would be acceptable if an expiry date to be associated with the number registered. And sanctions could be enforced towards off-shore; non-compliant telemarketers
- ♦ Propose the beneficiary / principals of the cold call to be held responsible for the offence related irrespective of where the call was generated.
- ♦ It is the responsibility of the authority concerned to tackle the crimes using marketing calls as a tool and channel for the illegal acts.

- ♦ Figures from country which have similar legal system in Hong Kong, the enforcement actions is only 0.02-0.03% of complaint cases, thus the effectiveness is a great concern.
- ♦ Trade specific self-regulatory Regime is the feasible alternative, the overall monitoring cost on compliance is relatively low where it still keeps the telemarketing industry survive.

- ♦ Since the implementation of the PDPO in 2013, there is already a legal requirement for the industry to maintain the opt-out pool and get clear customer consensus before doing any direct marketing and customer is provided with various facilities to make their opt-out request any time. Thus, the P2P calls have already been regulated by the PDPD law and People who do not like to receive P2P calls would already installed the Call-filtering applications in their Smartphones.

- ♦ Option 1 – Effectiveness relies heavily on its member coverage and their commitment in complying with CoP.
 - ♦ Option 3 – Separation of “cold call” and “warm call” in the Do Not Call Register to minimize the impact of telemarketers and disturbance to the general public.
 - ♦ A self-regulated broad-based Do-not-call Register – In view of the diversity of businesses and the huge number of SMEs in Hong Kong, the cost and manpower involved of individual trade association will be high.
 - ♦ Assigning Specific Prefixes to Telemarketers – Generate a high demand for phone numbers, reduce flexibility in assigning and create adverse impact on existing 8-digit numbering plan. It's also time consuming and involves high implementation cost.
-
- ♦ Other than regulating companies of specific sector such as financial services related e.g. bank, finance and insurance, CEDB should think of ways to control non-licensed organization to ensure a level playing field. More importantly is how to manage spoofing, VoIP, cold-calling, etc.
-
- ♦ Given the latest technology like VOIP and caller ID spoofing can circumvent other possible options of strengthening the governance of P2P calls, trade specific self-regulatory regime is likely the most appropriate approach to deal with the issue at this moment of time. It brings in quick, efficient and fewer resources requirement to implement. To boost the result of this approach, recommend to encourage the organizations/companies which are out of the current trade specific self-regulatory regime to adapt the approach during their P2P calling business.
-
- ♦ In addition to the Code of Practice for P2P telemarketing calls, which serves as guideline for different industries, the tightened PDPO in 2013, specifically in relation to direct marketing, took further steps to control marketing activities. As you would be aware, the revised PDPO requires explicit consent for any future direct marketing and, in our view, people are more aware of the way in which their personal data may be used and their choice to receive marketing promotions (eg via marketing calls) or not.
 - ♦ In addition to the above, the increase in technology/phone apps provide people with options to adopt their preferred course of call filtering. Thus, in our view, Trade Specific self-regulatory regimes should be appropriate as we view it reduces the impact of employment in telemarketing but also maintains the free market environment in Hong Kong.

政黨／政團／立法會議員的非範本式意見書

**Non-template Submissions from
Political Parties/Political Bodies/ LegCo Members**

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(4)



親自遞交

商務及經濟發展局
局長
邱騰華先生

邱先生：

要求政府早日立法規管人對人促銷電話

促銷電話指透過人與人直接溝通，向市民推廣產品或服務的促銷電話。在2010年，電訊管理局制定了《人對人促銷電話實務守則》（下稱「守則」），並鼓勵有關業界採用實務守則的建議，包括致電時間、需顯示電話促銷者的身分及承諾從取消接收要求等。

不過，現時守則所訂下的建議根本並不健全，亦沒有法律規管。貴局近日發表了《加強規管人對人促銷電話諮詢文件》，收集公眾對政府加強規管促銷電話的意見。根據 貴局委託顧問進行的公眾調查中，有 96%受訪者認為人對人促銷電話在某程度上構成滋擾或帶來不便。86%的受訪者認為，有需要把人對人促銷電話的規管範圍擴大至所有行業，當中有 67%的受訪者支持以立法方式規管。

根據上述調查結果，普遍市民希望政府以立法規管促銷電話，而促銷電話亦對市民的生活構成造成一定影響。因此，我們認為政府有必要有立法以規管人對人促銷電話。我們亦認為諮詢文件所提出的其他措施亦可同步進行，例如制定其他實務守則。針對一些由境外打出的促銷電話，我們認為應該研究聘用這些海外促銷電話的公司亦要付上一定責任，以確保有關人對人電話促銷行為受到法律規管。

就以上事宜，煩請 貴局跟進不誤，如有任何查詢，歡迎致電 2177 6908 與我們聯絡。有勞之處，不勝銘感！

新民主同盟

范國威議員 黎銘澤議員

鍾錦麟議員 呂文光議員

梁里議員 林少忠議員

馮岩安社區主任 胡耀昌社區主任 葉海城社區主任

謹啟

2017年7月4日

葉銘澤西貢區議員辦事處

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Rec'd on 28/7

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商務及經濟發展局
通訊及創意產業科
常任秘書長
何淑兒女士

尊敬的何女士：

「實政圓桌」就加強規管人對人促銷電話公眾諮詢提交意見

近年，市民受人對人促銷電話滋擾的情況嚴重，市民的不滿日益增加，促銷電話既影響工作，亦影響生活，更有市民因拒絕接聽促銷電話而錯過重要電話。根據商務及經濟發展局去年委託顧問公司進行研究（下稱「顧問研究」），就有關人對人促銷電話進行業界調查顯示，42 家受訪公司每日合共打出約 21 萬個人對人促銷電話，數量之多令市民不勝其煩，但政府一直未有積極處理。就此，「實政圓桌」現提出以下建議供閣下參考。

在規管方案的原則性問題上，「實政圓桌」認為只有以立法方式加強規管才會見效。促銷電話行業非常分散，從極大到極小規模、公司內部門或外判進行都有，自行規管方式根本沒可能規管整個行業，到最後只會變相懲罰自律者，而令不守規矩者得益。其次，絕大部分市民亦早已在智能



電話上安裝了坊間的來電過濾應用程式，惟人對人促銷電話的號碼眾多，過濾表更新速度追不上業界使用新號碼的速度，難以確保程式的準確性和及時性，故效用有限。

立法需時並不是不立法的理由，解決這問題的方法應是政府在諮詢完結後，盡快完成相關程序，提交草案予立法會審議，而不是採取沒有效用的方案。事實上，根據顧問研究的公眾調查結果顯示，接近七成的受訪者均支持以立法方式規管人對人促銷電話，可見立法方案在社會上得到廣泛支持，立法會亦會根據民意盡快通過法案。

關於諮詢文件中的建議立法方案，設立法定拒收訊息登記冊，以禁止電話促銷者撥打登記冊上的號碼，「實政圓桌」原則上同意。但知道業界有聲音認為此舉會大大打擊他們的業務，所以同時建議政府立法為電話促銷者指配特定「字頭」號碼，以茲識別。市民收到有關「字頭」號碼來電時，可根據個人意願決定是否接聽，將決定權還給市民。如果電話促銷者使用非特定「字頭」號碼作人對人促銷電話之用，可被檢控。「實政圓桌」相信絕少數人會蓄意違反法例，而這取決於相關罰則是否具阻嚇性。

政府當局在諮詢文件中曾指此建議為不可行的方案，原因是「指配特定『字頭』號碼將令電話號碼需求上升，降低規管當局指配號碼的靈活性，對現行的八位號碼計劃造成負面影響。」「實政圓桌」曾就此諮詢相關專業人士，他指出政府可以指配多位「字頭」（例如三位：AAA45678）以減少受影響的號碼數目，所以此建議絕對可行。事實上諮詢文件發表後，時任商務及經濟發展局局長蘇錦樑先生亦公開表示此建議可行。

（NOW 新聞 2017 年 5 月 13 日 蘇錦樑：可考慮為促銷電話編配特定字



實政圓桌

ROUNDTABLE

頭：<http://news.now.com/home/local/player?newsId=220969&refer=Share>）。

至於以非登記電話或海外電話避過監管的問題，屬執法問題，所有法例都會有不法份子意圖避過監管，這並不是不立法的理由，反而應該詳細考慮罰則，以增加違規的成本及風險。

最近，「實政圓桌」曾於多區就此收集市民意見，市民反應踴躍，結果共有 4123 名市民簽名支持為電話促銷者指配特定「字頭」號碼的建議（隨文附上），政府應慎重聆聽有關聲音。

「實政圓桌」

葵青區議員徐曉杰

葵青區議員吳家超

荃灣區議員鄭捷彬

元朗區議員陳思靜

屯門區議員朱耀華

屯門區議員蘇嘉雯

立法會議員及荃灣區議員田北辰

新民黨
《加強規管人對人促銷電話諮詢文件》意見書

背景

1. 隨著全球數碼化的大趨勢，本港的資訊科技應用發展迅速。智能電話於本港已極為普及。根據政府統計處的調查，本港約有 5 468 600 名 10 歲及以上的人士擁有智能手機，佔所有 10 歲及以上人士的 85.8%¹，市民能夠通過智能電話裝置隨時接收不同類型的電子訊息。
2. 流動通訊服務的發展為市場推廣及促銷提供新的途徑，但市民卻容易受到各類型非應邀電子訊息及來電影響，甚至構成滋擾。根據通訊事務管理局（時為「電訊管理局」）的資料，2004，05 及 06 年分別收到 400，3,600 及 2,800 宗有關濫發電話的投訴²。
3. 近年社會有聲音認為，市民收到的推廣及促銷電話數量太多，對日常生活造成滋擾，因此要求當局加強人對人促銷電話的規管。
4. 新民黨贊成以立法方式加強規管人對人促銷電話的規管。我們認為有效的規管制度不單能夠減少促銷電話對市民的滋擾，同時能降低業界濫發「垃圾訊息」的誘因，提高市場效率，反而能夠為推廣及促銷活動帶來更大經濟效益。
5. 綜觀海外經驗，各國正致力完善電子私隱保障制度，以配合數碼經濟發展策略，提高競爭力。然而本港政府只著眼表面上的遵從成本而未有考慮宏觀的經濟效益，顯示政府在推展數碼經濟上極為短視。
6. 新民黨認為在政府提出的三個方案中，以立法方式成立拒收訊息登記冊最為可取。我們期望當局在設立法定拒收登記冊外，參考海外做法，提高法例的阻嚇力度，並研究引入提高來電辨識度的措施，讓消費者過濾不必要的促銷電話。

世界發展趨勢

7. 為了平衡電子通訊的發展及個人私隱，全球不少先進地區於 2000 年起就電子市場推廣進行法定監管。歐盟於 2002 年訂立隱私權和電子通訊指令(EU 2002/58/EC)(下稱「指令」)，針對電子通訊的發展而修訂了私隱保護制度³。為了配合歐盟單一電子市場策略 (Digital Single Market) 的發展，因此歐洲議會最近正修訂內容，以完善電子私隱保障制度。
8. 各國對於如何界定電子訊息、預錄訊息及人對人電話，似乎沒有劃一的準則。根據美國聯邦貿易委員會 2016 年發出的指引，由機械自動

¹ 政府統計處，主題性住戶統計調查 第 62 號報告書，2017 年 4 月，
<http://www.statistics.gov.hk/pub/B11302622017XXXXB0100.pdf>

² 電訊管理局，《非應邀電子訊息條例》《非應邀電子訊息條例》業界簡報會，2007 年 7 月，
http://tel_archives.ofca.gov.hk/zh/uem/briefing_ad_20070717.pdf

³ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002L0058&from=EN>

撥打的人對人促銷電話與其他電子訊息一樣，除非事先獲得同意，否則一律被禁止⁴。而英國則規定，不得向以在已表明拒受相關訊息的人撥打人對人促銷電話及靜音電話⁵。歐盟委託顧問進行的「指令」檢討報告指出，業界認為指令中第 13 條對非應邀促銷電話 (unsolicited calls) 定義含糊不清⁶。

9. 綜合歐美經驗，各國並沒有將數碼經濟發展及監管電子促銷活動置於對立面，反而相當重視對消費者私隱的保障，更將打擊濫發資訊及確保公眾免受電子促銷活動騷擾列為主要政策目標之一。
10. 政府委託顧問進行的研究調查了 17 個不同的地區，發現 16 個地區有就人對人促銷電話進行法定規管，當中 12 個國家設有拒收登記冊。以歐盟為例，「指令」規定成員國就人對人促銷電話設立法定拒收或接收登記冊(Opt in/Opt out)⁷，讓消費者選擇是否接收產品或服務資訊。
11. 為提高執法效力及提高阻嚇力，歐盟正研究推出法令，除了改善促銷電話的辨識度外，更建議大幅提高罰款金額⁸。而英國則於 2015 年修改法例以降低針對滋擾電話的執法門檻⁹。
12. 整體而言，隨著科技發展及市場轉變，先進經濟體系一直更新及完善制度，決心減少未經允許的電子促銷活動，包括人對人促銷電話對市民的滋擾。香港作為國際金融及商業中心，有必要追上國際發展，避免落後於大勢。

本地情況

13. 為減少了電子推廣及促銷訊息對市民的影響，政府於 2007 年訂立《非應邀電子訊息條例》(第 593 章)以規管電子商業訊息，包括傳真、短訊、電郵及預錄電話訊息等。根據該條例，通訊事務管理局獲授權設立 3 個拒收登記冊，包括傳真、短訊及預錄電話訊息。

⁴ Federal Communication Commission, Public Notice – Telephone Consumer Protection Act Robocall and Text Rules, Biennial Reminder for Political Campaigns about Robocall and Text Abuse, https://apps.fcc.gov/edocs_public/attachmatch/DA-16-264A1.pdf

⁵ House of Commons Library, Nuisance Calls: Unsolicited sales and marketing, and silent calls, Briefing Paper Number CBP06033, 23 November 2016, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06033#fullreport>

⁶ Evaluation and review of Directive 2002/58 on privacy and the electronic communication sector, Final Report: A study prepared for the European Commission DG Communications Networks, p.105

⁷ Direct Marketing: impacts of the draft e-privacy regulation, February 2017, http://pwc.blogs.com/data_protection/2017/02/direct-marketing-impacts-of-the-draft-e-privacy-regulation-.html

⁸ Direct Marketing: impacts of the draft e-privacy regulation, February 2017, http://pwc.blogs.com/data_protection/2017/02/direct-marketing-impacts-of-the-draft-e-privacy-regulation-.html

⁹ Gov.UK, Government cracks down on nuisance calling companies, Press Release, 20 February 2015, <https://www.gov.uk/government/news/government-cracks-down-on-nuisance-calling-companies>

14. 為了平衡電話使用者及正常電子促銷活動的發展，當局並未將人對人促銷電話納入《非應邀電子訊息條例》中，只以自願性質的業界自行規管。
15. 現時當局通過《個人資料（私隱）條例》（第 486 章）監管人對人促銷電話。於 2013 年實施的修訂禁止資料使用者在沒有獲得當事人同意下，使用其個人資料作直接促銷。
16. 現時當局只依靠自願性業界實務守則規管人對人促銷電話。四個打出大部份人對人促銷電話的行業（即金融、保險、電訊及電話中心），已於 2010 年引入由電訊管理局制定的《人對人促銷電話實務守則》，鼓勵業界落實致電時間、來電顯示及取消接受等建議。
17. 現時有關非應邀商業電子訊息的投訴，由商務及經濟發展局、通訊事務管理局及個人資料私隱專員公署處理。雖然 2016 年截獲的投訴數字較過去每年平均約 2000 宗下跌至 1221 宗，但現時電話用戶平均每周收到 8.6 個促銷電話¹⁰，較 2008 年飆升 2.6 倍。
18. 根據政府委托顧問公司進行的研究，受訪的 42 間公司每日打出約 210 000 個促銷電話。而根據該研究，顧問推算約有 7000 人正直接或間接從事與人對人促銷電話相關工作。
19. 然而有業界指出，相關統計方式未有計區分非應邀電話(unsolicited call，俗稱「冷電話」或“cold call”)及事前已取得同意的電話，估計本港每日實際上有多達 400 萬推銷電話¹¹。值得注意的是，人對人促銷電話只包括商業性質的來電，並不包括無聲來電及滋擾來電。
20. 諮詢文件引用顧問的調查，指出人對人促銷電話的成功交易率為 10%。但翻查業界調查的受訪者樣本，有 40%的受訪者為銀行，而且未能區分這些是否事前取得當事人同意的促銷電話，相關數據的代表性及準確性成疑，有可能跨大了成功交易率。
21. 根據現時規定，違反《非應邀電子訊息條例》可被罰款\$100,000。而違反《2012 年個人資料(私隱)(修訂)條例》的規定而在直接促銷中使用個人資料，最高刑罰是罰款 50 萬元及監禁 3 年。如違反行為涉及為得利益而提供個人資料，最高刑罰是罰款 100 萬元及監禁 5 年¹²。

¹⁰ 立法會資料研究組，數據透視：規管非應邀訊息及來電，<http://www.legco.gov.hk/research-publications/chinese/1617issh30-regulation-on-unsolicited-messages-and-calls-20170626-c.pdf>

¹¹ 【新聞稿】莫乃光要求加強規管人對人促銷電話 推出網上工具籲市民踴躍回應諮詢，
<https://www.charlesmok.hk/%E9%87%8D%E8%A6%81%E6%B6%88%E6%81%AF/%E3%80%90%E6%96%B0%E8%81%9E%E7%A8%BF%E3%80%91%E8%8E%AB%E4%B9%83%E5%85%89%E8%A6%81%E6%B1%82%E5%8A%A0%E5%BC%B7%E8%A6%8F%E7%AE%A1%E4%BA%BA%E5%B0%8D%E4%BA%BA%E4%BF%83%E9%8A%B7%E9%9B%BB%E8%A9%B1-%E6%8E%A8/>

¹² 立法會四題：規管人對人促銷電話，2014 年 11 月 20 日，
<http://www.info.gov.hk/gia/general/201411/20/P201411200449.htm>

加強監管人對人促銷電話的需要

22. 雖然未能量化人對人促銷電話的影響，但為市民構成的不便及滋擾，包括接聽電話的時間及在境外接聽相關電話的費用，已引致一定的經濟損失及社會成本，因此有必要完善監管機制。
23. 回應市民訴求—公眾對透過立法監管人對人促銷電話已有共識。顧問報告的調查發現，96.4%的受訪者認為人對人促銷電話構成滋擾或不便，而 67.4%的受訪者支持立法規管¹³。
24. 提高市場推廣的經濟效率—有經濟學者指出，在沒有規管的情況下，促銷者往往濫發促銷訊息，對消費者施加「界外效應」(Externality)，即招致社會成本而卻不需直接承擔相關責任，反而令消費者對所有電子促銷活動卻步¹⁴。政府進行的兩次調查亦顯示，雖然市民收到的促銷電話上升，但成功交易率卻下降，顯示資訊泛濫反而拖低人對人促銷電話的效益。相關學者團隊以美國的拒收登記冊進行研究，發現拒收登記冊剔走對促銷資訊不感興趣的消費者，反而能夠提高促銷活動的效率，或有助提升交易率。
25. 配合數碼經濟的策略發展—歐盟的文件指出，提升市民對於個人資料保密性(confidentiality)的信心，與促進數碼經濟發展相輔相成。香港有必要進一步完善電子私隱的保障制度，在數碼經濟發展方面追上國際趨勢。
26. 提高消費者權益—在現時的制度下，消費者無權選擇是否接收人對人促銷電話中的資訊。既然《非應邀電子訊息條例》已賦權當局成立拒收包括傳真、短訊及預錄電話訊息的登記冊，當局有責任讓消費者識別所有類型的電子促銷資訊。

各方案的優劣

27. 我們相信，完善人對人促銷電話的保障，對減少對市民的滋擾、提升消費者權益、促進數碼經濟發展、保障個人私隱及提升市場推廣效益均有正面影響，規管方式應該能夠滿足以上目標。就此，我們對政府諮詢文件中列出的三個方案有以下回應：
28. 方案一
 - a) 依靠行業自行規管形同維持現狀，而市民收到的人對人促銷電話持續上升，成功交易率卻下降，反映行業自行規管成效不彰。
 - b) 海外經驗顯示，依靠行業自行規管的成效極為有限。經濟合作暨發展組織的報告指出，美國自 1985 年起已就直銷電話設立

¹³ 立法會資訊科技及廣播事務委員會討論文件，匯報有關人對人促銷電話的調查結果，2016 年 4 月 11 日，<http://www.legco.gov.hk/yr15-16/chinese/panels/itb/papers/itb20160411cb4-816-5-c.pdf>

¹⁴ 許佳龍，建「來電者名單」監管直接促銷，信報，2010 年 12 月 14 日，<http://ihome.ust.hk/~klhui/op-ed/2010%20-%20HKEJ.pdf>

自願性質的拒收登記冊，由美國直復營銷協會(Direct Marketing Association) 管理，然而當地政府認為相關登記冊的成效極低，因此於 2003 年設立具民事罰則的制度¹⁵，並由聯邦貿易委員會(Federal Trade Commission) 負責執行。歐盟委托顧問進行的研究亦指出，自願監管對減少非應邀促銷活動成效有限。

- c) 行業自行規管的遵從成本雖然較低，若人對人促銷電話的效應持續下降，整個行業亦可能持續萎縮，長遠亦會為正從事相關工作的 7000 人構成影響。
- d) 方案一不論在減少對市民滋擾及提升市場推廣效益方面的成效有限，因此我們認為不值得支持。

29. 方案二

- a) 方案二建議以來電過濾應用程式，讓消費者攔截不受歡迎的來電。方案的確能夠協助消費者辨識人對人促銷電話，同時剔除對促銷資訊不感興趣的消費者，有助改善消費者權益，相信能夠提高促銷活動的效率。
- b) 然而這類型應用程式可能設有「逆向檢索」功能，公開使用者的個人資料，對保障個人私隱構成直接威脅。社會對來電過濾的信心亦受到打擊。
- c) 正如諮詢文件指出，方案二無法覆蓋固網電話及非智能電話。由於所有市民應同樣享有過濾不受歡迎來電的權利，只採納方案二會做成不公平的情況，未能全面保障公眾利益，因此方案只能夠發揮輔助功能。

30. 方案三

- a) 以立法方式設立拒收登記冊，預計對減少滋擾方面的成效顯著，有效回應市民規管人對人促銷電話的訴求。非應邀電子訊息拒收登記冊的登記數目由 2008 年的 150 萬個上升至 2016 年的 290 萬個。同期的投訴數字由 8792 個下降至 791 個¹⁶，顯示登記冊在減少非應邀電子訊息的成效明顯。
- b) 根據經濟學理論，拒收登記冊直接有助減低「界外效應」，減少市場上的垃圾資訊，對提高電子促銷活動的效益有正面作用。
- c) 有意見認為可透過海外電話中心及網絡電話等方式繞過拒收登記冊。事實上，不少國家的制度確保聘請境外電話中心的企業就違規行為負責，而有部份科技公司亦擁有攔截網絡電話的技術，因此這些問題並非不能克服。

¹⁵ OECD, Industry Self-Regulation: Role and Use in Supporting Consumer Interests, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP\(2014\)4/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP(2014)4/FINAL&docLanguage=En)

¹⁶ 立法會資料研究組，數據透視：規管非應邀訊息及來電，<http://www.legco.gov.hk/research-publications/chinese/1617issh30-regulation-on-unsolicited-messages-and-calls-20170626-c.pdf>

- d) 我們理解舉證難度的確不容低估，但正如上文所述，海外不少先進地區提高阻嚇力度，以減少不受歡迎促銷電話對市民的滋擾。成功執法比率低或執法困難不應成為不立法的理由。

建議

- 31. 業界及市民對於以立法方式規管人對人促銷電話有共識，為了令減低市民日常的不便及滋擾，同時令電子促銷活動得以健康發展，我們建議：
 - a) 盡快透過修改《非應邀電子訊息條例》，為人對人促銷電話設立拒受登記冊（即方案三）；
 - b) 研究改善來電過濾應用程式，提高人對人促銷電話的辨適度，令沒有使用拒受登記冊的市民按個人需要選擇促銷資訊（即改良方案二）；
 - c) 訂立清晰的人對人促銷的定義，包括無聲電話及滋擾電話，而取得當事人同意的促銷電話及商業機構之間的促銷電話應獲豁免；
 - d) 為保障學術自由，應訂明研究調查機構及非牟利團體並不在監管之列；
 - e) 全面檢討《非應邀電子訊息條例》，參考海外做法，將刑責擴展至促銷電話最終受惠者，並研究降低定罪門檻及提高罰款，以加強阻嚇作用。

總結

- 32. 新民黨認為，在衡量市民訴求及業界長遠利益後，以立法方式規管人對人促銷電話最為合理。我們促請政府以公眾利益為首要考慮，保障市民免受不必要的滋擾。
- 33. 正如業界公開指出，當局對「人對人促銷電話」的定義並不全面，對電子私隱的保障亦落後國際。我們促請政府檢視現時的政策框架對消費者的保障，為迎接數碼經濟的挑戰做好準備。

2017年7月



就《加強規管人對人促銷電話公眾諮詢》的回應

民建聯歡迎政府就加強規管人對人促銷電話開展公眾參與，並期望當局在期間能鼓勵更多市民討論這項民生議題，收集更廣泛的民意。

縱使政府在 2007 年實施《非應邀電子訊息條例》，並設立《拒收訊息登記冊》，規管發送商業電子信息，包括傳真、電郵、短訊及預錄電話信息，惟真人促銷電話則除外，令市民多年來仍然深受促銷電話問題困擾。

鑒於行業的自行規管制度多年來未能解決問題，民建聯建議政府以立法方式以及手機過濾應用程式改善情況，令相關的商業活動具促銷空間之餘，也能減少對市民的滋擾，加強保障市民的權益。相關建議如下：

1. 擴大《非應邀電子訊息條例》及《拒收訊息登記冊》的適用範圍

將《非應邀電子訊息條例》及《拒收訊息登記冊》的適用範圍擴大至人對人的電子推銷活動，並禁止商業機構向登記冊上的市民隨機發出真人促銷電話。另一方面，研究在登記冊的適用範圍中豁免暖電(即依據致電者與收訊人的過去或現行業務或客戶關係而打出的人對人促銷電話)的可行性，在市民權益和業界運作之間取得平衡。

2. 提供免費手機過濾應用程式

為市民提供免費手機過濾應用程式，提醒接電者，讓接電者決定是否攔截有關來電，進一步保障市民免收促銷電話的自由。

3. 加強跨境交流處理跨境致電促銷問題

加強跨境交流、合作，與其他執法機關建立區域或國際合作機制，以監管由境外撥出的促銷電話。

4. 加強公眾宣傳

加強宣傳市民面對促銷機構時的權益，亦提醒市民，如果不想繼續收到同一促銷機構的電話，應明確要求對方停止使用其個人資料再作電話促銷用途。

5. 研究編配特別號碼或字頭予促銷電話

研究把特別電話號碼或字頭編配予電話促銷從業者的可能性，讓市民更容易分辨這類電話，從而決定接聽與否。



新論壇

人對人促銷電話滋擾意見調查報告

2017 年 7 月 31 日

1. 前言

新論壇在 2017 年 7 月初，用音頻電話隨機抽樣成功訪問了約 626 名市民，了解他們對人對人促銷電話的意見，詳細結果如下：

2. 主要調查結果

2.1 六成四人一週內收到真人促銷電話 一成六人一週收逾六個

- 調查發現，63.8%受訪者在過去一週內曾經接獲人對人促銷電話，當中 16% 更是收到 6 個或以上，反映這些促銷電話極為普遍；(見表 1)
- 與 2015 年同類調查相比，在過去一週內曾經接獲人對人促銷電話的受訪者比例從 55% 上升至 63.8%，一週內收到 6 個或以上的比例從 12% 上升至 16.0%。(見表 1)

2.2 九成半受訪者感滋擾 要求停止致電但電話照打

- 在表示有收到人對人促銷電話的受訪者當中，68.8%受訪者表示收到的人對人促銷電話是“非常滋擾”，26.8%認為“有啲滋擾”，認為“無乜滋擾”的僅有 3.1%，反映受訪者對這類電話的接受程度極低；(見表 2)
- 面對持續的滋擾，雖然有 63.2%受訪者表示有要求對方停止再致電(見表 3)，但當中高達 87.6%竟然有試過再次接獲同一間公司的電話，較 2015 年的調查還要高出 7.6 個百份點，這亦反映這些公司並沒有按受訪者要求，將個人資料刪除；(見表 4)

2.3 受訪者支持加強規管 過半人支持設立拒收訊息登記冊

- 問到受訪者是否同意政府收緊人對人促銷電話的規管，88.0%受訪者表示“非常同意”及“同意”，6.3%表示“一半半”，2.7%表示“唔同意”及“非常唔同意”。(見表 5)
- 關於政府現正進行的諮詢，考慮如何收緊人對人促銷電話規管的三個方案中，56.1%表示“支持設立拒收訊息登記冊，以法例規管人對人促銷電話”，22.4%表示“支持使用來電過濾應用程式為智能電話過濾人對人促銷電話”，19.8%表示“支持成立業界規管制度，讓使用人對人電話促銷的公司自我約束”。(見表 6)



3. 總結

調查發現，受訪者經常接收到人對人促銷電話，情況比 2 年前更嚴重。人對人促銷電話對受訪者帶來極大的滋擾，絕大多數受訪者同意政府收緊人對人促銷電話的規管，在三個諮詢方案中，過半人支持設立拒收訊息登記冊。

4. 建議

4.1 盡快設立拒收人對人促銷電話登記冊

- 針對不涉及個人資料的直接促銷電話的“無王管”問題，政府以從二零一零年年底起，鼓勵幾個使用電話促銷的主要行業(包括金融業、保險業、電訊業和電話中心)推行自我規管計劃。但根據是次調查，六成受訪者表示有要求對方停止再致電，但近九成竟然有試過再次接獲同一間公司的電話，這亦反映這些公司並沒有按受訪者要求，將個人資料刪除，反映行業自我規管效果強差人意。縱然不排除會有市民偶爾想接受人對人促銷電話，但政府不能就此“隻眼開隻眼閉”，漠視不欲接收促銷電話的市民。故此新論壇建議政府應該仿效“拒收信息登記冊”，研究設立拒收人對人促銷電話登記冊，讓不想接受人對人促銷電話的市民可以選擇登記。

4.2 加強個人私隱條例的規管及執法工作

- 根據個人私隱條例，在當事人要求停止下，促銷機構仍然使用當事人資料，最高罰則可達五十萬港幣及三年監禁。儘管類似的違規情況十分普遍，但私隱專員公署表示執法工作困難，而有部份電話更涉及境外打出的電話，只有極少數檢控個案。新論壇認為，目前的情況難以對違規者發揮應有的阻嚇力，故此建議公署研究修訂個人私隱條例（第 486 章）的規管範圍，以及加強執法工作，以更有效處理人對人促銷電話中使用個人資料的問題。

4.3 加強針對市民的宣傳及教育

- 同時教育市民認清自己有拒收人對人促銷電話的權利；另一方面，個人私隱專員公署應該繼續教育市民如何避免個人資料被不當使用，例如對管有自己個人私隱資料的服務提供商戶，在簽約時應留意有關條文。



表列數據

表1. 請問你喺過去七天有冇收到真人促銷電話呢

	頻次	百份比	2015年調查數據 (百份比)
冇收過	202	32.3%	40%
收過1至3個	210	33.5%	27%
收過4至5個	90	14.3%	16%
收到6個或以上	100	16.0%	12%
唔記得，無意見	24	3.9%	4%
總計	626	100.0	100%

**表2. 你認為，呢啲真人促銷電話，對你帶來幾大滋擾呢
(只限有收過真人促銷電話受訪者)**

	頻次	百份比
非常滋擾	275	68.8%
有啲滋擾	107	26.8%
無乜滋擾	12	3.1%
唔清楚，無意見	5	1.2%
總計	400	100.0%

**表3. 你喺接到呢啲電話時，你有冇試過要求對方唔好再打比你？
(只限有收過真人促銷電話受訪者)**

	頻次	百份比	2015年調查數據 (百份比)
有試過	253	63.2	69%
冇試過	126	31.6	27%
唔記得，無意見	21	5.2	4%
總計	400	100.0	100%



表4. 咁對方有冇再打過比你

(只限有收過真人促銷電話，並要求對方不再致電受訪者)

	頻次	百份比	2015年調查數據 (百份比)
有試過	221	87.6	80%
冇試過	17	6.7	9%
唔記得，無意見	15	5.7	12%
總計	253	100.0	100%

表5. 政府現正諮詢公眾，考慮收緊人對人促銷電話嘅規管，你有幾同意政府應該盡快收緊人對人促銷電話嘅規管呢

	頻次	百份比
非常同意	447	71.5%
同意	103	16.5%
一半半	40	6.3%
唔同意	12	1.9%
非常唔同意	5	.8%
唔清楚，無意見	19	3.0%
總計	626	100.0

表6. 就以上三個方案，你比較支持邊一個方案呢？

(只限同意規管受訪者)

	頻次	百份比
支持設立拒收訊息登記冊，以法例規管人對人促銷電話	331	56.1
支持使用來電過濾應用程式為智能電話過濾人對人促銷電話	132	22.4
支持成交業界規管制度，等使用人對人電話促銷的公司自我約束	117	19.8
唔清楚，無意見	10	1.8
總計	590	100%



受訪者背景資料

教育程度	頻次	百份比
小學或以下	92	14.8
中學或預科	283	45.2
大專或以上	251	40.1
總計	626	100.0

階層	頻次	百份比
基層	334	53.4
中產	194	31.0
上層	22	3.5
唔清楚，無意見	76	12.1
總計	626	100.0

性別	頻次	百份比
男	285	45.5
女	341	54.5
總計	626	100.0

年齡層	頻次	百份比
15-19	32	5.1
20-24	43	6.9
25-29	50	8.0
30-34	57	9.1
35-39	57	9.1
40-44	57	9.1
45-49	56	9.0
50-54	63	10.1
55-59	61	9.8
60-64	50	8.1
65-69	40	6.4
70-74	23	3.7
75-79	20	3.2
80-84	17	2.7
總計	626	100.0

自由黨就「加強規管人對人促銷電話」公眾諮詢的回應

概況

1. 近年香港營商環境屢遇挑戰，各行各業都積極尋求生存空間。尤其面對零售和商業用地不足，租金、人工等成本飆升，政府規管繁多等重重難關，眾多中小微企早已感到百上加斤，難以承擔。我們希望政府制訂一些影響工商業的政策時，能貫徹特首的政綱方針，盡量為中小企「拆牆鬆綁」，避免不必要的過度規管，讓他們有多點生存和發展空間。
2. 自 2007 年底實施《非應邀電子訊息條例》後，發送商業電子訊息，包括預錄電話訊息、短訊、傳真、電郵等均受監管，工商業的宣傳規模已經大幅收窄。其後由 2011 年起，打出大部分人對人促銷電話的四個行業，即金融、保險、電訊和電話促銷中心，亦開始遵守《自願性業界實務守則》，多年來可見一定成效，相關業界一直努力配合社會情況，力求平衡營商需要和市民對促銷電話的意見。
3. 再者，《個人資料(私隱)條例》在 2013 年修訂後，禁止在沒有得到資料當事人明確同意的情況下，使用其個人資料作任何直接促銷活動(包括人對人促銷電話)，若干電話促銷活動(特別是 Warm Call)已受到法例規管。
4. 惟對於社會上有意見要求進一步加強規管促銷電話以減少滋擾，自由黨亦表示理解，故建議當局可考慮以「非立法方式」加強規管，以期在尊重接電者權利和合法商業活動需要之間，取得適當平衡。

回應重點 --

要顧及業界生計和對中小微企的影響

5. 自由黨不支持立法設立「拒收訊息登記冊」(即諮詢文件所載的方案三)，主要原因是這種一刀切的立法規管方式，禁止**所有行業**的電話促銷者撥打登記冊上的號碼，涉及範圍廣及各行各業，對營商環境難免造成一定影響，實不應輕率施行。

6. 正如諮詢文件指出，一旦實施這方案，本港目前約 7,000 名電話促銷員的生計肯定首當其衝。而且相關企業須要時常將持有的電話號碼與「拒收訊息登記冊」核對以免違法，行政成本增加，對中小微企造成的影響必然遠較對大企業的為大。
7. 事實上，大企業財力豐厚，要應付有關額外成本固然綽綽有餘，即使不使用電話促銷，也大可轉用其他促銷途徑，如在連鎖店裡、電視或多媒體上賣廣告，繼續開拓客源。相反，中小微企受資源所限，經營本已相當艱苦，有不少企業(例如樓上舖)不透過電話渠道，更難以招徠客戶；若遵行成本增加，對他們只會是雪上加霜，最終很可能在缺乏宣傳開拓客源的情況下而被淘汰，長遠只會助長大企業壟斷市場的問題。

立法規管存在局限

8. 正如諮詢文件指出，立法規管表面上可增加阻嚇性，但實際上存在不少局限，例如從境外打出電話、證據蒐集困難，以及違規者採用迴避規管技術(如更改來電號碼顯示及網絡電話技術)，均可嚴重影響有關方案的執行和成效。
9. 海外實際經驗亦證明執法相當困難。一旦有人干犯有關條例，便需要蒐證以符合刑事訴訟準則，而且市民須錄音及出庭作證，過程耗時甚多，令人卻步，故未必人人願意作出舉報。
10. 再者，詐騙電話日益猖獗，亦可能令部分市民連帶對所有陌生來電感到煩擾。當中有些個案就正是有不法之徒冒充美容公司促銷進行詐騙。可是縱然採用方案三，亦無法杜絕詐騙電話，因為它們大多從內地甚至東南亞國家打出，冒充本港入境處、金融機構、銀行等向受害者騙財。立法規管根本對這些境外非法活動起不到作用，反而只會連累靠電話渠道做正當生意的中小微企。

現行自律守則和法例有一定成效

11. 相比之下，諮詢文件所載的方案一(個別行業的自行規管制度)無須經過冗長的立法程序，相關業界可迅速因應實際情況變化來修訂守則，明顯較有彈性，成效亦不差。上述四個行業的商會於 2011 年發出的《自願性業界實務守則》，當中列明：

- 合理致電時間（電話應只限於早上九時至晚上十時之間打出）；
 - **遵從取消接收要求；**
 - **制訂內部拒收電話名單；**
 - 如察覺收訊人身處外地，須要盡快終止通話或掛斷電話等。
12. 幾年下來的實踐證明，有關業界都是願意遵行守則。守則已列明，接電者可提出拒接要求，業界應會遵從。事實上，商務及經濟發展局和通訊事務管理局接獲的相關查詢和投訴數字，由2012年的2,010宗下降至2016年648宗，正反映出現時的業界自行規管模式具一定成效，日後著實可考慮將自行規管範圍推展至另一些業界。
13. 除此之外，《個人資料（私隱）條例》自2013年修訂後，法定規管範圍亦已涵蓋很大部分的人對人促銷電話，包括佔了總數逾八成的 Warm Call。根據法例，市民提供個人資料時，可向商戶表示是否希望接收推廣資訊，又可隨時口頭或書面要求資料使用者停止使用其個人資料作直接促銷，違者須負刑責。
14. 惟現實上，雖然現行已有《私隱條例》和四個業界自律守則的保障，但是普羅市民仍然未必清楚知道既有的拒接相關電話的權利。相信只要當局加強教育和宣傳，讓市民充分明白有關權利，可自行選擇向個別商戶表示拒絕接收推廣資訊，已經能夠大大減少滋擾。

補以「來電過濾應用程式」

15. 除了以上保障，政府亦可考慮同時採用諮詢文件所載的方案二，鼓勵市民利用智能電話的來電過濾應用程式，阻隔其他種類的不受歡迎來電，包括詐騙電話。只要政府向相關軟件公司施加嚴格的保障個人資料條款和作出密切監管，並且考慮提供若干支援，相信有助鼓勵有關應用程式更廣泛使用、讓市民有效阻隔不歡迎來電之餘，亦可釋除市民對軟件公司如何處理用戶個人資料的疑慮。

總結

16. 對於如何加強規管人對人促銷電話，自由黨認為現階段輕率採用一刀切立法方式，並非對症下藥之策，反令相關業界僱員生計大受打擊，更進一步堵塞中小微企的宣傳渠道，長遠削弱本

港商業發展，並違反自由經濟市場的原則。

17. 為回應市民的關注，我們認為當局採用方案一（個別行業的自行規管制度）和方案二（智能電話的來電過濾應用程式），再配合廣泛宣傳和教育，提升市民如何適切處理陌生來電的認知，就已足夠應對問題，並且在尊重收訊人權利和讓合法電子促銷活動在本港發展兩者之間，取得適當的平衡。



商務及經濟發展局
通訊及創意產業科
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莫乃光議員就政府加強規管人對人促銷電話之意見書

政府以往透過《人對人促銷電話實務守則》、《個人資料(私隱)條例》(第486章)及《非應邀電子訊息條例》(第593章)規管人對人促銷電話,然而實務守則只屬自願性質,私隱條例不規管不涉及掌握個人資料的人對人促銷電話,《非應邀電子訊息條例》則沒有涵蓋人對人促銷電話,監管成效不彰,導致今對市民構成滋擾有增無減,甚至影響日常生活,明顯需要當局加強監管。就政府提出《加強規管人對人促銷電話諮詢文件》,本人回應如下:

一) 政府低估促銷電話數字及擾民程度

當局文件指在公眾調查中,86%受訪者贊成規管所有行業的人對人促銷電話,67%受訪者支持以立法方式規管。政府的公眾調查方式是否將 cold call 和 warm call 促銷電話一併計算,對兩者不作區分,甚或只用 warm call 公司提供的資料?

2008年起成立資料庫收集推銷電話數據的 HKJunkCall.com 創辦人胡文翰指出,政府報告估算推銷電話數目時只考慮 warm call (已有往來),而資料庫數據顯示實際上 cold call (沒有往來)數量比 warm call 多達十倍,質疑當局嚴重低估 cold call 電話對市民的滋擾。諮詢文件引述政府 2015 年顧問報告,該報告指在業界調查中有 42 家受訪公司表示每日打出大約 21 萬個人對人促銷電話,然而胡引述 2013 年有報章與精算師合作推算每月有 1 億推銷電話,若以一個月四週共 25 個工作天計算,即每日約 400 萬個。按 hkjunkcall.com 資料庫收集資料,若計



及 cold call 電話，本港每日實際上有多達 400 萬個銷電話，比政府的估算多十數倍，可見政府在顧問報告中嚴重低估市民實際受滋擾的情況。我在 7 月 10 日開始以網上表格幫助市民提出意見，截止 7 月 31 日收到 1775 個回應，當中有 8 成以上市民平均每天收到 1 個或以上促銷電話，當中更有 30% 市民(541 人)每天收到 2-3 個或以上。

業界早已指出香港本地絕大多數機構只做 warm call，而令市民最反感的是 cold call。政府有必要清楚解釋在文件中是否只計算了 warm call 資料，如屬實便有誇大促銷電話的重要及有效性之嫌。另外，政府特別指出人對人促銷電話平均交易成功率和從事直接/間接撥打人對人促銷電話的人數，令人懷疑政府是否傾向維持現狀，沒有決心杜絕令市民感到困擾的人對人促銷電話。

根據消費者委員會的電話促銷消費者投訴統計，2014 年的投訴數字接近 500 宗，涉及金額三百多萬，至 2016 年回落至 200 多宗。然而，儘管投訴數字下降，並不反映市民接收的滋擾電話減少或是業界比以往自律，可能是反映消費者對滋擾促銷電話的警覺性提高，拒絕接聽電話及完成交易，故沒有金錢損失。就滋擾程度而言實際上是有增無減，令市民十分煩厭。

二) cold call 公司逃避規管 構成滋擾妨礙正常商業活動

近年 cold call 公司手法層出不窮，例如不斷轉換號碼逃避攔截，虛構公司/產品名稱、假冒其他公司、假冒進行服務評分/問卷、送禮/中獎通知等，令市民難以杜絕。雖然根據《個人資料(私隱)條例》可拒收直銷訊息，事實上來電者身份無法核實，重複要求停止致電後亦沒有作用，投訴無門。即使 cold call 公司使用更改來電號碼顯示、網絡電話技術和境外來電等新技術為追查帶來挑戰，但執法困難絕非不立法規管的理由。



相較之下，warm call 公司向已有往來客戶跟進服務或推銷新產品，由於會先分析客戶的資料及預估其需要，推銷適合個別顧客的產品，成功率較高，屬正常商業活動。

我的意見生成器中 79%市民表示收到來電為 cold call 較多。政府必須認真處理不受歡迎、手法不道德的 cold call 以撥亂反正，提升市民對正常電話商業運作的信心，令各方受惠。

三) 對政府提出的方案的評價

政府提出的方案

方案一：個別行業的自行規管制度目前已經在部份行業實行，但促銷電話問題最嚴重的行業例如美容服務及借貸等均全部沒有參與，因此效用有限。我意見生成器收集所得，有 78%(1379 人)的市民認為方案一完全沒有作用。

方案二：來電過濾應用程式市面甚多，但 cold call 公司用不同方法規避，而部份境外開發者提供的程式被發現有私隱問題，需要處理。這些程式限制多，亦非所有人都會選用，網上生成器收集所得，有 87%(1538 人)的市民認同政府可研究協助程式提高準確度，辨認更改來電號碼顯示、網絡電話、境外來電等，亦有 60%(1066 人)認同應訂出私隱要求和指引，宣傳使用符合準則的程式。

方案三：將拒收訊息登記冊擴展至人對人促銷電話是唯一可能有效用的方案，但必須令登記方式更方便使用，例如開發網上表格方便市民登記。就此，意見生成器有 73%的市民認為應禁止所有行業進行電話騷擾 (1,300 人) 及贊成非應繳電子訊息拒收清單擴展至人對人促銷 (1,288 人)，另有 56%(996 人) 認為應增撥資源給負責管理的機構，協助處理市民投訴、進行調查和執法。



莫乃光
CHARLES MOK

立法會議員 (資訊科技界)
Legislative Councillor (IT)



《非應邀電子訊息條例》十年經驗顯示，投訴後舉證和定罪門檻高，形同『無牙老虎』，難以將傳真和短訊濫用者都繩之於法。政府加強規管應將整條條例全面檢討，提高規管制度的成效。當局應考慮就非應邀電話訂立登記制度，規定所有會撥出非應邀電話的公司/機構需要登記，並有責任就撥出電話作出記錄。登記資料可在政府相關網頁公開讓市民查閱。登記同時亦要同意一些條款，例如有 Opt-out 機制、規定撥出電話的時段等。

四) 其他建議

不應忽略非商業交易性質的非應邀來電：從市民角度，任何非應邀電話都可能構成騷擾，除了這次訪問中的業界，不少非應邀來電是非商業運作，例如財務中介、政黨宣傳、問卷調查、市場調查、假中獎通知等等，這類電話不應被排除於諮詢之外，而應一併考慮。

評估《非應邀電子訊息登記冊》被濫用作撥打人對人推銷電話的情況：有市民反映市面有不法人士利用登記冊內容多次轉手、複製、再造、「過冷河」後(把資料閒置一段時間逃避監察)用作人對人推銷電話。除了增加罰則，當局應該加強抽查和加強保護市民個人資料的措施。

由機器自動撥出的即時掛線電話騷擾：除人對人促銷電話外，市面也出現往往半夜來電立即掛線的電話，受騷擾的市民數以萬計。由於來電者不是真人，甚至沒有來電顯示，沒有通話內容，根本無法追查。這種不負責任的行為，希望政府能加以正視。



改善登記《非應邀電子訊息登記冊》方式：目前市民需致電熱線進行登記，日後應提供更方便的登記方式，例如可使用智能電話進行網上登記，並加入登記選項，讓市民選擇時段、行業拒收或完全拒收促銷來電，以減少滋擾及保障消費者選擇，同時需加強宣傳推廣以提高市民認知和登記率。

五) 打擊擾民電話的實際建議

過往業界已提出多個方案，但政府文件並沒提及：

第一，編配指定字頭號碼給電話促銷者。通訊局的號碼編配政策中，「4」字頭號碼使用率甚低，政府指缺乏電話號碼並不成立。

第二，針對促銷電話最終受惠者的刑責。過往業界建議針對人對人促銷電話的受惠機構例如企業施加罰則以提高阻嚇作用，但建議被政府漠視。

總結建議：

- 立法設立拒收登記冊打擊 Cold Call 推銷電話騷擾
- 政府聘請第三方向應用程式進行認證並加以推廣
- 刑責擴展至最終受惠公司/受惠人
- 指配指定的「字頭」號碼給電話促銷者
- 通訊辦正視虛假號碼問題
- 提供方便提出投訴的渠道如網上投訴表格，供市民使用

政府諮詢文件淡化立法方案成效，同時誇大促銷電話重要及效用，卻忽視對市民造成的滋擾，憂慮最終諮詢後選取方案不足以解決問題。我認為必須把刑責擴展至最終受惠公司/受惠人才能使法例產生阻嚇作用，並和編配指定號碼字頭予電話促銷者，以有法律約束力方式規管，堵塞現存監管漏洞。

2017 年 7 月 31 日

致：西貢區議會
主席及全體委員

二零一七年七月四日(星期二)
西貢區議會全體會議上提出的動議
要求政府早日立法規管人對人促銷電話

背景:

促銷電話指透過人與人直接溝通，向市民推廣產品或服務的促銷電話。在2010年，電訊管理局制定了《人對人促銷電話實務守則》（下稱「守則」），並鼓勵有關業界採用實務守則的建議，包括致電時間、需顯示電話促銷者的身分及承諾遵從取消接收要求等。不過，現時守則所訂下的建議根本並不健全，亦沒有法律規管。

商務及經濟發展局近日發表了《加強規管人對人促銷電話諮詢文件》，收集公眾對政府加強規管促銷電話的意見。根據商務及經濟發展局委託顧問進行的公眾調查中，有96%受訪者認為人對人促銷電話在某程度上構成滋擾或帶來不便。86%的受訪者認為，有需要把人對人促銷電話的規管範圍擴大至所有行業，當中有67%的受訪者支持以立法方式規管。

根據上述調查結果，普遍市民希望政府以立法規管促銷電話，而促銷電話亦對市民的生活構成造成一定影響。因此，我們認為政府有必要有立法以規管人對人促銷電話。我們亦認為諮詢文件所提出的其他措施亦可同步進行，例如制定其他實務守則。針對一些由境外打出的促銷電話，我們認為應該研究聘用這些海外促銷電話的公司亦要付上一定責任，以確保有關人對人電話促銷行為受到法律規管。

動議措辭：要求政府早日立法規管人對人促銷電話

（已蓋章）

動議人： 范國威

（已蓋章） （已蓋章） （已蓋章） （已蓋章） （已蓋章）

和議人： 鍾錦麟 梁 里 黎銘澤 呂文光 林少忠

二零一七年六月十九日

其他團體的非範本式意見書
Non-template Submissions from Other Organisations

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Serial No.

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消費者委員會
Consumer Council

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個人資料私隱專員公署
Privacy Commission of Personal Data Hong Kong

B029

東區協進社
The Society for the Coordination & Promotion of
Eastern District

B030

垃圾電話關注組
Junk call concern group

B031

競爭事務委員會
Competition Commission

B032

荃灣鄉事委員會
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消費者委員會 CONSUMER COUNCIL
香港 · HONG KONG

國際消費者聯會
執委會及理事會成員
EXECUTIVE AND
COUNCIL MEMBER OF
CONSUMERS
INTERNATIONAL

來函檔號 YOUR REF.

本函檔號 OUR REF. CC 1/257/PTPD

31 July 2017

Commerce and Economic Development Bureau,
Communications and Creative Industries Branch,
B Division, 21/F, West Wing, Central Government
Offices, 2 Tim Mei Avenue, Tamar, Hong Kong

Dear Sir/Madam,

Re: Strengthening the Regulation of Person-to-Person Telemarketing Calls

The captioned Consultation refers. Please find attached the views of the Consumer Council on "Strengthening the Regulation of Person-to-Person Telemarketing Calls" for Bureau's consideration.

Should you have any queries on the issue, please feel free to contact Mr. Victor Hung, Head, Planning and Trade Practices Division at 2856 8554 or via email: victorhung@consumer.org.hk

Yours faithfully,

Gilly WONG
Chief Executive
Consumer Council

Encl.

CONSUMER COUNCIL

Submission to the Commerce and Economic Development Bureau on Strengthening the Regulation of Person-to-Person Telemarketing

31 July 2017

1. The Consumer Council (the Council) is pleased to provide its views, from the perspective of consumer protection, on the public consultation put forward by Commerce and Economic Development Bureau (CEDB) on "Strengthening the Regulation of Person-to-Person (P2P) Telemarketing Calls" in Hong Kong. The proliferated use of P2P commercial advertising calls and the nuisance caused by such calls have aroused huge public concern. In response to those concerns, although individual trades in Hong Kong have put in place some self-regulatory measures, the pleas for more stringent controls over P2P telemarketing calls has been intensified. To protect consumer's privacy, the Council would like to provide the following views for the Government to consider.

Hong Kong Needs a Statutory Regime for P2P Telemarketing Calls

2. From the public surveys conducted respectively by the Privacy Commissioner for Personal Data ("PCPD") in 2014 and the Government in 2015, it was found that majority of respondents perceived P2P telemarketing calls negatively and fewer and fewer respondents reported any gains from the call. Many respondents of these surveys found that the P2P telemarketing calls were very disturbing to daily lives and became a big nuisance, leading to a strong public call for a more stringent regulatory regime to govern these calls.

3. The Council believes a statutory regime for P2P telemarketing call is necessary to address the concerns of the public. However, it is obvious that for business convenience the industry prefers self-regulation. From the Council's experience, self-regulation would not be effective to balance industry against

public interests. According to CEDB's 2015 study, over 96% of the respondents still regarded P2P telemarketing calls as nuisance. The tailor-made codes of practices implemented since 2011 obviously failed to tackle the problem. The public demand for mandatory regulation of P2P telemarketing calls remains high.

4. Besides, any self-regulation regime is premised on customer's initiatives to make opt-out requests to telemarketers. At present, consumers have to opt out one company by another. This fragmented registration arrangement is very user-unfriendly and without sufficient deterrent effect on non-compliance would further demotivate consumers to act proactively.

5. In addition, the fragmented nature of P2P telemarketing call services market makes it difficult to coordinate sufficient number of services providers in the trade to enable a meaningful self-regulatory regime. Some overseas governments started with self-regulatory regime initially have changed to mandatory regime in view of the unsatisfactory outcome. The Council believes that Hong Kong should follow the international development and consider introducing a statutory regime in regulating P2P telemarketing calls.

All P2P Telemarketing Calls Should Be Regulated

6. P2P telemarketing calls involving personal data are regulated under Personal Data (Privacy) Ordinance ("PDPO"). Some people argued that P2P telemarketing calls (usually denoted as "warm calls") using personal data made are already subject to legal requirements, and therefore marketers need to take specific actions such as obtaining consent before making the calls. They suggested that any proposed regulation should only be applied to "cold calls", which made by telemarketers to phone number randomly generated without using personal data of the recipients; and, in other words, "warm calls" should be exempted.

7. Over the years, the Council received many complaints related to P2P marketers claiming that they were sales representatives of the banks, telecommunications service providers or beauty service providers of the call recipients. Many of the complainants could not ascertain whether telemarketers actually represented the company to which they had provided their personal data and had given the consent. It is unlikely that consumers when receiving the call, be able to distinguish clearly whether it is a “cold call” or a “warm call”. If the “warm call” is exempted, some marketers might take advantage of the exemption to claim they have already obtained the consent of the call recipient. This will affect the effectiveness of mandatory regulation in curbing the nuisance caused by unwanted P2P telemarketing calls. Furthermore, it could be anticipated that an aggrieved consumer will find it difficult to prove that the call was “cold”. This difficulty in discharging the burden of proof would be a barrier to enforcement.

Which Statutory Regulatory Regime

8. The Council noted that some advocated that the Government should assign specific number prefixes for P2P telemarketing calls for ease of identification by consumers. The telemarketers should also register with the Communication Authority as the enforcement agency of the registrar. This can address part of the nuisance problems caused by unwanted P2P telemarketing calls.

9. Since 1995 Hong Kong has adopted an 8-digit telecommunications numbering plan and the demand for telecommunications numbers continues to rise as telecommunications services have become mature in Hong Kong. The expansion of mobile services, through proliferation of prepaid mobile service and the advent of future generation mobile services, such as the Internet of Things and fifth generation mobile service, is particularly phenomenal. In fact, the amount of 8-digit numbers available for allocation to telecommunications services is already highly stretched.

10. The Council is concerned that assigning specific prefixes to telemarketer could shorten the life span of the existing 8-digit numbering plan and would not optimize the effectiveness of the current system. The social cost of upgrading the telecommunications numbering system, i.e. to a 9 or 10 digit numbering plan, is significant and it is not fair and desirable to see all telecommunications service users of Hong Kong have to bear such cost while other alternatives are available in the market in addressing the malpractices of P2P telemarketing problem.

11. Out of three proposals presented in the Consultation Paper, the Council supports the establishment of a Do-not-call Register via legislation to prohibit telemarketers to have access to the numbers listed on the Register. The Council believes that if the Register is equipped with the following features, it will help tackle the public concerns of nuisance from local P2P telemarketing calls.

- i. The Do-not-call register for P2P telemarketing calls and Do-not-call register under Unsolicited Electronic Messages Ordinance should be administrated by the same agency. This offers convenience for consumers to register and avoids the hassle of going through different administrative procedures and interfaces from two different authorities;
- ii. Exemptions should be carefully granted to balance the risk of abuse and the genuine public needs for certain mission critical services for organizations operated in the public interest;
- iii. A code of practice should be in place to clearly guiding telemarketers to comply with the laws in their marketing behaviour and conduct. This will help to address the core issue of nuisance by P2P telemarketing call; and
- iv. Furthermore, the registration system should be user-friendly, and offer the right to consumers to select which industry P2P telemarketing calls

should be blocked and when to allow access according to their own need under the Do-not-call register.

Non- Statutory Measures in Place in the Interim

12. The establishment of a statutory Do-not-call Register is a long term solution and it takes time to implement. Therefore to ease the current situation the Council supports the second proposal under the Consultation Paper, i.e. to have the Government to facilitate development of call-filtering applications as an interim solution so that consumers could have more reliable tools to filter the P2P telemarketing calls. The Council has to emphasize that the privacy of the consumer should not be compromised and stringent security safeguards should be upheld in designing the filter applications. The public should also have free access and right of cancellation in using the applications.

13. In views of the filter application cases of "DC Caller" and "Cheetah Mobile", the Council is highly concerned with the underlying privacy risk for these call-filtering applications. Access and use by software developers the information collected from phone books of users' phone devices which installed the call-filtering applications should not be permitted. Without effective measures to govern the compliance of the requirements, the Council would have reservations on sparing public fund for this initiative as the outcome will be questionable.

14. Business-to-business calls should be well defined to avoid dispute. Although the focus of the consultation resides with P2P telemarketing calls, under Part 6A of the Personal Data (Privacy) Ordinance that regulates direct marketing made to specific individuals by using their personal data (e.g. phone numbers and names), grey areas may emerge in the case where telemarketers make the calls according to the business capacity or identity of the individuals. This could even possibly constitute as a defence. The Council would urge the Government to clarify the nature of a business-to-business telemarketing call

that would be exempted and define properly the scope of exemption under the legislation.

15. The Council fully understands that mandatory Do-not-call register is not a panacea to the nuisance problem of P2P telemarketing call. Complementary education effort to empower consumers to protect themselves against the malpractice of P2P telemarketing is necessary. Only by doing so, the consumers could have a good sense to select and judge the validity of the call, and stay away from malpractices subsequent to listening these calls. While society is reaching its consensus on the solution of P2P telemarketing issue, the Government should engage traders and the related enforcement agencies proactively to address concerns of consumers on nuisance and privacy issues of P2P telemarketing calls before the Do-not-call register is put in place.



香港個人資料私隱專員公署
Privacy Commissioner
for Personal Data, Hong Kong

Our Ref.: PCPD(O)25/25/161/185 pt.1

31 July 2017

By Fax (2827 6646 – 25 pages) & By Post

Commerce and Economic Development Bureau
Communications and Creative Industries Branch
B Division, 21/F, West Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

URGENT

Dear Sirs,

**Public Consultation on Strengthening the Regulation of Person-to-Person
Telemarketing Calls**

I refer to the captioned public consultation and send herewith the Submission from the Privacy Commissioner for Personal Data, Hong Kong for your consideration.

If you have any questions, please feel free to contact the undersigned at 2877 7139.

Yours faithfully,

(Sandra LIU)

Senior Legal Counsel

for Privacy Commissioner for Personal Data, Hong Kong

Encl.

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12樓 12/F 13樓 13/F 20樓 20/F

PCPD's Submission in response to the
Consultation on Strengthening the Regulation of
Person-to-Person Telemarketing Calls

This submission is made by the Privacy Commissioner for Personal Data ("PCPD") in response to the Public Consultation carried out by the Commerce and Economic Development Bureau ("CEDB") on Strengthening the Regulation of Person-to-Person Telemarketing Calls in Hong Kong ("Consultation Paper") in May 2017.

General Comments

2. One of the main issues highlighted in the Consultation Paper is that the wide and proliferated use of person-to-person ("P2P") telemarketing calls and the consequential nuisance have caused public concerns.

3. As the regulator to protect individuals' privacy in relation to personal data under the Personal Data (Privacy) Ordinance (Cap 486) ("PDPO"), the PCPD would offer views from the perspective of personal data privacy protection only. The PDPO is principle-based aiming at, *inter alia*, regulating activities involving the collection, holding, processing and use of the personal data by individuals (data subjects) and organisations (data users) in the course of activities including economic and commercial activities. Whether a commercial activity is or should be a normal or lawful activity *per se* is a policy or legal issue which is beyond the remit of the statutory powers of the PCPD. The PDPO

does not prohibit marketing activities but regulate them. It is therefore not the PCPD's position to seek to prohibit marketing activities by P2P telemarketing calls generally. The PCPD is mindful that the proposed regulatory framework should not be inconsistent with the principles and requirements under the PDPO and any other interests of the stakeholders should not be unduly compromised, including those in relation to the free flow of information, information and communication technology and economic development. Given the increased public concerns about the nuisance caused as a result of the proliferation of P2P telemarketing calls, the PCPD supports the Administration in taking steps to strengthen the regulation as detailed in the Consultation Paper.

4. The Consultation Paper sets out 3 possible options to strengthen controls over the conduct of P2P telemarketing calls, i.e. (i) trade specific self-regulatory regime, (ii) call-filtering applications in smartphones, and (iii) statutory regime through setting up a Do-not-call register. As explained in the Consultation Paper, there are pros and cons for each of these three options, and the PCPD acknowledges that it is also important to consider the cost effectiveness in analysing these options in light of overseas experience as well.

5. The PCPD agrees that there is no one or quick fix for the problem. Hence, a multi-pronged problem solving approach should be considered. In gist, the PCPD supports the setting up of a statutory Do-not-call register in the long run, and recommends the implementation of the other two options proposed, as well as other appropriate measures in the interim. Detailed observations and comments on these three options and interim measures are discussed in the ensuing paragraphs.

Specific questions raised in the Consultation Paper

(a) Do you prefer a statutory or non-statutory regime for enhancing the regulation of P2P telemarketing calls?

6. The PCPD submits that a statutory regime for P2P telemarketing calls is ultimately the effective regulatory means, taking into account all factors including deterrence.

Background

7. It is important to note from the outset that P2P telemarketing calls which remain unregulated are mainly those made by telemarketers employing phone numbers randomly generated without using other data of the recipients (which are commonly referred to as “cold calls”). Strictly speaking, most of these cold calls are B2P calls. It is not clear whether B2B calls are also included in this consultation exercise. That said, where personal data is involved, whether in P2P, B2P or B2B calls, the PCPD’s observations and comments would apply as appropriate.

8. Currently, electronic commercial messages (e.g. fax, SMS, pre-recorded voice or video telephone calls) sent to phone numbers, fax numbers, and email addresses are already governed by the Unsolicited Electronic Messages Ordinance (Cap 593) (“UEMO”). Any individual may register and unsubscribe from unwanted electronic messages. P2P telemarketing calls are nevertheless

not included in the remit of the UEMO which was enacted in 2007. Particularly, Schedule 1 to the UEMO has explicitly excluded P2P telemarketing calls to reflect the then Administration's intent to leave room for legitimate marketing activities in the form of P2P telephone calls, which were then considered as creating limited nuisance as compared with pre-recorded messages¹.

9. The regime introduced under Part 6A of the PDPO in 2013 has tightened up regulation on telemarketing calls made to specified individuals by using their personal data (e.g. phone numbers and names). Telemarketers and organisations hiring them are required to comply with the legal requirements which include taking specified actions² (i.e. providing individuals with prescribed information about the intended marketing activities) and obtaining consent before using the personal data for direct marketing purposes³. Furthermore, they are required to honour customers' opt-out requests⁴. Failure to comply with the above requirements under the PDPO may attract criminal liabilities⁵.

10. Since the implementation of Part 6A of the PDPO in April 2013, the PCPD has received and handled complaints relating to direct marketing approach by telephone calls as follows:-

¹ See paragraph 12 of LegCo Paper (LC Paper No. CB(1)1559/06-07) (<http://www.legco.gov.hk/yr06-07/english/hc/papers/hc0511cb1-1559-e.pdf>)

² Section 35C and 35J of the PDPO.

³ Section 35E and 35K of the PDPO.

⁴ Section 35G and 35L of the PDPO.

⁵ It is an offence for a data user to use or provide personal data to another person for use in direct marketing without taking the specified actions or obtaining the data subject's consent (section 35C(1) and 35E(1)). An offender is liable on conviction to a maximum fine of HK\$500,000 and to imprisonment for 3 years (section 35C(5) and 35E(4)). If the non-compliance relates to the provision of personal data to another person for use in direct marketing for gain, the penalty level is raised to a maximum fine of HK\$1,000,000 and to imprisonment for 5 years (section 35J(5) and 35K(4)).

Year	Number of complaints concerning direct marketing by telephone calls	Number of referrals to the Police	Number of convictions*
2013/14	302	12	0
2014/15	186	11	0
2015/16	215	25	3
2016/17	285	101	3
2017/18 (April - May)	20	2	0

(*6 out of 9 total convictions concerning offences under Part 6A of the PDPO relate to direct marketing calls.)

11. The majority of the complaints received concerns (i) the banking and insurance sector, (ii) the beauty sector, and (iii) the telecommunications sector.

12. The low conviction figure of the direct marketing offences under Part 6A of the PDPO is attributable to a number of factors. Although the PCPD's referrals to the Police were triggered by the establishment of a *prima facie* case, prosecution of some of these referred cases were not preferred after criminal investigations by the Police. From the PCPD's regulatory experience, many of the complainants cannot ascertain whether their personal data is involved resulting in the evidential difficulties in establishing either a *prima facie* case or conviction. Thus, this type of P2P telemarketing calls (even made by identifiable callers) is beyond the ambit of the PDPO, and there seems to exist a lacuna in the current regulatory regime.

13. The Consultation Paper states that according to the consultancy study commissioned by the CEDB in 2015⁶, there were about 7,000 employees in Hong Kong who were directly or indirectly engaged in making P2P telemarketing calls, and that according to the Public Survey (as part of the consultancy study), 10% of those who responded to P2P telemarketing calls had made commercial transactions as a result.

14. It is unclear from the Consultation Paper if the above percentage reflects cold calls only (i.e. P2P telemarketing calls without using personal data of the recipients other than the phone numbers). The PCPD makes no submission on the weight that should be attached to the economic value and benefit of P2P telemarketing calls. Suffice it to say that the study revealed that the percentage of successful deals conducted through P2P telemarketing call had dropped from 21% (in 2008)⁷ to 10% (in 2015). Arguably, it reflects a downturn of the economic benefit achieved by such marketing model. Needless to say, the economic benefit (if any) must be properly balanced against the protection of other interests, including the individual's fundamental right of protecting his own personal data privacy.

Option 1 – Strengthening trade specific self-regulatory regime

15. This option relates to the strengthening of tailor-made codes of practice to cope with P2P telemarketing calls by specific trades themselves. As pointed

⁶ The study covered both surveys with the general public (Public Survey) and the business sector and industry (Industry Survey) (see pages 5-8 of the Consultation Paper).

⁷ See paragraph 20 in LC Paper No.CB(1) 240/09-10(04) for a similar consultancy study conducted in 2008 (<http://www.legco.gov.hk/yr09-10/english/panels/itb/papers/itb1109cb1-240-4-e.pdf>)

out in the Consultation Paper, the effectiveness of this self-regulatory regime hinges upon the coverage, willingness and commitment of the members of specific trades.

16. It is noted that there seems to be a lack of trade association or strong cohesion in many industries involved in P2P telemarketing calls. The diversified and versatile market features may render this option inherently or structurally inadequate in terms of the coverage. Paragraph 4.6 of the Consultation Paper suggests that trade associations administering the codes of practice should set up and enforce their own sanctions against non-compliant members (e.g. suspension or disqualification of membership, public condemnation, etc.). However, the benchmark Code of Practice on Person-to-Person Marketing Calls (annexed to the Consultation Paper) does not appear to address the consequences and sanctions of non-compliance, and this lack of effective deterrent effect could probably undermine the effectiveness of self-regulation. Self-discipline of members of the trade appears to be a key element for the self-regulatory regime. According to the Consultation Paper, the self-regulatory regime has been implemented since about June 2011, and yet the CEDB's 2015 study also reveals that 96% of the respondents regard P2P telemarketing calls as nuisance and the public aspiration for regulation is still high. In view of these observations and findings, this self-regulatory option alone does not appear to be capable of taking the case of addressing the nuisance further.

17. In addition, this option is premised on customers' initiative to make opt-out requests to telemarketers. Customers have to opt-out one by one,

company by company. This fragmented opt-out requirement is understandably inconvenient and far from satisfactory from a customer's perspective, and the lack of deterrent effect for non-compliance further reduces the customer's readiness and initiative to so opt-out. In view of the similar unsatisfactory outcome of adopting the codes of practice or fragmented registers maintained by specific trades, some overseas jurisdictions have ultimately switched to the establishment of a statutory Do-not-call register.

Option 2 – Improving call-filtering applications in smartphone

18. This option calls for the Administration's collaboration with software companies to improve and promote the wider use of call-filtering applications. The Consultation Paper suggests that funding or other mode of support should be provided to encourage wider usage of such applications which aim to enhance the blockage function by the increased voluntary reporting of telemarketing phone numbers.

19. One of the drawbacks of this proposal is that it is not in a position to deal with P2P telemarketing calls made to fixed line, and many senior citizens still do not use mobile or smartphones. Secondly, as revealed by previous incidents handled by the PCPD, the underlying privacy risks for these call-filtering or tracing applications cannot be underestimated. In general, the privacy concern associated with this sort of applications is the collection and consolidation of the information from the users' phonebooks to form a large database for commercial purpose (e.g. a "reverse look-up" directory) without giving notice to the relevant individuals or obtaining their consent. The

transparency of the personal data handling procedures and privacy policies of these applications are other concerns.

20. In November 2016, three mobile applications (i.e. “Sync.Me”, “Truecaller” and “CM Security”) with call-blocking function were reported to have collected the contact information from the phonebooks in users’ smartphones. The contact information was then consolidated and held on the databases of the developers of the applications for public search. More recently, in mid May 2017, it was widely reported that subscribers may search the phone numbers of identified individuals by the “DU Caller” applications developed in the mainland.

21. Given the commercial value associated with the database compiled by the developers of the applications, the general public’s concerns about the mishandling of such databases are valid and real. To gain public trust and confidence in using the call-filtering applications, the extent of the Administration’s involvement in the development and operation of the applications may need to be further deliberated. The PCPD considers that encouragement for wider use of call-filtering or tracing functions without adequate, sufficient and effective oversight would not cure the defect or mischief.

Option 3 – Establishing a Do-not-call register

22. The PCPD is of the view that statutory regulation of P2P telemarketing calls by way of establishing a Do-not-call register is the most effective and consumer-friendly option amongst all three options though longer time is

required for legislating and its subsequent setting up. The strengths of this option include (i) offering individuals (data subjects, including customers) with an “one-stop shop” for registering opt-outs for all P2P telemarketing calls orienting from data users (including commercial entities), (ii) sanctioning non-compliance by an appropriate authority, and (iii) increasing the cost-effectiveness of telemarketing by screening out those customers who would not enter into any transactions at the end of day.

23. According to PCPD’s regulatory experience, a substantial percentage of the direct marketing cases (15%) relates to failure to honour opt-out requests made to the callers. Moreover, a majority of these “opt-out” cases cannot be pursued further due to the lack of evidence in proving the prior opt-out requests.

24. A regulatory regime substantiated by a centralised Do-not-call register would, in PCPD’s view, facilitate the ease of proof and effective enforcement for the relevant regulatory authority administering the proposed Do-not-call register on P2P telemarketing calls.

25. The PCPD acknowledges that a statutorily regulated Do-not-call register is not a panacea, and a basket of solutions may be required to address the problem. As pointed out in paragraph 2.3 of the Consultation Paper, most of the jurisdictions examined⁸ by the Administration have established a Do-not-call register to cope with P2P telemarketing calls instead of self-regulation within the specific trade.

⁸ These jurisdictions are India, Israel, Japan, Korea, Singapore, Australia, New Zealand, South Africa, the Netherlands, the United Kingdom, Canada, the United States, Argentina, Mainland China, Macau and Taiwan.

Personal or business telephone number

26. In the United States, the National Do-not-call Registry is governed by the Federal Communications Commission and Federal Trade Commission pursuant to the *Telephone Consumer Protection Act of 1991* and the *Telemarketing Consumer Fraud and Abuse Prevention Act of 1994* respectively. Previously, companies were required to maintain their own opt-out lists which were found to be ineffective. The special feature of this centralised U.S. National Do-not-call Registry is that only personal telephone numbers registered under an individual's name can be placed on the National Do-not-call registry⁹, which enables solicitation of normal business transactions through telemarketing calls made to numbers registered under the name of a company without causing nuisance to any individuals.

27. This feature is also observed in India's system. The Telecom Regulatory Authority of India has put in place the Telecom Unsolicited Commercial Communications Regulation, 2007 for tracking down the unwanted telemarketing calls. The Regulation was launched after the consultation had been conducted by the Telecom Regulatory Authority on unsolicited commercial communications (in 2006). Prior to that, some banks and service providers in India had instituted their own Do-not-call registers where subscribers could volunteer to sign up. However, this registration system was criticised as fragmented and inconvenient since subscribers had to register with different

⁹ §64.1200 of Telecommunication Act
(<https://www.ecfr.gov/cgi-bin/text-idx?rgn=div6&node=47:3.0.1.1.11.12>)

institutions, and not comprehensive as there were telemarketers not connected with such institutions¹⁰.

28. In Singapore, both personal and business phone numbers may be registered, so that business organisations can also opt-out receiving telemarketing calls. Not only may a commercial establishment opt to register its numbers with the Do-not-call register but also give explicit consent to those organisations it prefers for marketing purposes. Like its counterpart in India, the centralised Do-not-call register in Singapore started its operation in 2014 after a public consultation in view of the ineffectiveness of voluntary trade specific guidelines¹¹.

Entire or Partial blockage

29. Another question is whether P2P telemarketing calls made to all sectors should be blocked once registered with the proposed Do-not-call register, or that flexibility should be allowed for individuals to select the specific industries for the “unsubscribe” provisions to apply (or not to apply). In India, the National Do-not-call Register (known as National Customer Preference Register) is operated by the Telecom Regulatory Authority pursuant to the Indian Telecom Commercial Communications Preference Regulations 2010. Customers are given the choice to block entirely all calls, or to opt for partial blockage specifying the category of industry such as banking/ insurance/ financial

¹⁰ See the Consultation Paper on Unsolicited Commercial Communication dated 20 November 2006 (<http://www.trai.gov.in/consultation-paper-unsolicited-commercial-communication>).

¹¹ See paragraph 3.10 of the Public Consultation Issued by Ministry of Information, Communications and the Arts on Framework Details for the Establishment of a National Do-not-call Registry (<https://www.mci.gov.sg/public-consultations/public-consultation-items/public-consultation-on-the-proposed-do-not-call-dnc-registry?page=2>).

products/ credit cards, real estate, education, health, consumer goods and automobiles, communication/ broadcasting/ entertainment/ IT, tourism and leisure, etc¹². This feature allows customers to receive information about specific categories of products or services that they are genuinely interested in. It may also increase the chance of successful telemarketing attempts to target customers.

30. Partial blockage will likely increase the operation or administration costs, but it gives flexibility to both the consumers and telemarketers. It has also been suggested by some stakeholders in the telemarketing industry that a flexible approach of this nature should be adopted for the regulatory regime.

Consent and Exemptions

31. Another regulatory model commonly adopted overseas (e.g. Singapore) is to allow registered users to give their subsequent consent to specific organisation(s). Application of the “unsubscribe” provisions will cease if the registered users subsequently give consent, despite the prior registration with the Do-not-call register¹³. There are specific exemptions and organisations that operate in the public interest may also be unsubscribed. For example, a message (including voice call) which is necessary to respond to an emergency that threatens the life, health or safety of any individual, and a message (including voice call) sent for the sole purpose to conduct research or survey are

¹² See Schedule I of the Telecom Commercial Communications Customer Preference Regulations, 2010 (<http://www.nccprai.gov.in/nccpreistry/regulation1diccndiv.pdf>).

¹³ For the current regime under the UEMO, register users may provide consent to the sending of electronic messages (see section 10 of UEMO).

exempted under the 8th Schedule of the Singapore *Personal Data Protection Act 2012*.

Implementation and Enforcement Issues

32. Paragraphs 5.5 to 5.11 of the Consultation Paper list out a number of implementation and enforcement issues regarding this option which include:-

- Difficulty in collecting evidence and ways to circumvent the regulatory regime (e.g. caller-ID spoofing, VoIP calls from overseas jurisdictions, etc.); and
- Calls originating from overseas jurisdictions.

33. The PCPD notes the difficulties in dealing with cases involving a cross-border or cross-boundary element. The notorious one is that the regulatory regime under the UEMO can only deal with electronic messages with a Hong Kong link¹⁴. As suggested in paragraph 5.10 of the Consultation Paper,

¹⁴ Section 3 of the UEMO

(1) For the purposes of this Ordinance, a commercial electronic message has a Hong Kong link if, and only if—

- (a) the message originates in Hong Kong;
- (b) the individual or organization who sent the message or authorized the sending of the message is—
 - (i) an individual who is physically present in Hong Kong when the message is sent;
 - (ii) an organization (other than a Hong Kong company) that is carrying on business or activities in Hong Kong when the message is sent; or
 - (iii) a Hong Kong company;
- (c) the telecommunications device that is used to access the message is located in Hong Kong;
- (d) the registered user of the electronic address to which the message is sent is—
 - (i) an individual who is physically present in Hong Kong when the message is accessed; or
 - (ii) an organization that is carrying on business or activities in Hong Kong when the message is accessed; or
- (e) the message is sent to an electronic address that is allocated or assigned by the Authority.

(2) For the purposes of subsection (1)(b), (c), (d) and (e), it is immaterial whether the commercial electronic message originates in Hong Kong or elsewhere.

(3) For the purposes of subsection (1)(b)(iii), it is immaterial whether the commercial electronic message is sent, or is authorized to be sent, from Hong Kong or elsewhere.

the level of cross-border (or cross-boundary) collaboration by law enforcement agencies to cope with P2P telemarketing calls is not the same as the other criminal offences (such as fraud or scams), and it depends on the relevant laws of the overseas jurisdictions. In this regard, consideration may be given to strengthen the interoperability in respect of the relevant enforcement or intelligence sharing through international network. It is noted that the Communications Authority is a member of the Unsolicited Communications Enforcement Network¹⁵. For international cooperation arrangement, a similar regulatory framework amongst jurisdictions may enhance enforcement and reciprocal assistance.

34. It is generally accepted that there is no silver bullet for all problems. Indeed the above enforcement issues of overseas calls and circumvention methods also exist in the other two non-statutory options. Hence, the implementation and enforcement difficulties of a statutory regime should not be overstated.

(b) If you opt for a statutory regime, do you prefer to have some non-statutory measures in place in the interim (e.g. trade specific self-regulatory regime or call-filtering applications in smartphones)?

35. The PCPD supports the thinking that the three suggested options should not be mutually exclusive. It is indeed worth considering the two non-statutory options (i.e. trade specific self-regulatory regime and call-filtering applications in smartphones) as transitional or interim measures. A multi-pronged problem

¹⁵ For more information on the area of cooperation, please see: <https://www.ucenet.org/>.

solving approach can only be conducive to protecting personal data privacy in a timely and effective manner.

36. Insofar as the trade specific self-regulatory regime is concerned, the Administration may consider adopting a pragmatic approach in setting the priority of industries for promoting self-regulation. It should also be noted that it has been suggested by legislators during a meeting of the Panel on Information Technology and Broadcasting held on 10 July 2017 that the numbers of complaints concerning P2P telemarketing calls in the beauty and finance sectors are the highest, according to the stakeholders in the fields¹⁶. The PCPD has issued guidelines/ information leaflets¹⁷ for data protection on these fronts and would stand ready to offer any other assistance that the industries may deem necessary.

Registration of telemarketers, applying specified pre-fix to telemarketers and accredited system

37. Paragraphs 4.31 to 4.36 of the Consultation Paper state that assigning prefixes to telemarketers is considered not feasible for a number of reasons, including (i) new law and registration system for telemarketers will be required for implementation, and (ii) the proposal will generate a higher demand for

¹⁶ The discussion is available at Legislative Council's website:
<http://www.legco.gov.hk/yr16-17/english/panels/itb/agenda/itb20170710.htm>.

¹⁷ See the "Guidance on the Proper Handling of Customers' Personal Data for the Beauty Industry" (available at: https://www.pcpd.org.hk/english/resources_centre/publications/files/BeautyIndustry_ENG.pdf); and the "Guidance on the Proper Handling of Customers' Personal Data for the Banking Industry" (available at: https://www.pcpd.org.hk/english/resources_centre/publications/files/GN_banking_e.pdf), both issued by the PCPD.

telephone numbers and create adverse impact on the existing 8-digit numbering plan.

38. In the absence of further statistics and related information, the PCPD is not in a position to comment on the high demand for specific telephone numbers and adverse impact on the existing 8-digit numbering plan. It has however been noted that some commentators suggest that the use of the pre-fix “4” in telephone numbers under the existing policy of the office of the Communications Authority is relatively low.

39. Telecommunications service providers in India are imposed with the statutory obligations to assign pre-fixes to telemarketers, and the telemarketers are required to register their names online with the National Telemarketer Register¹⁸. While a statutory framework takes time, the Administration may consider the feasibility of requesting telecommunications service providers to assign specific pre-fix to telemarketers. The relevant terms and conditions may be included in service contracts to enable the telecommunications service providers to assign pre-fixes to P2P telemarketers who are in demand of high volume call services. This measure offers a wide coverage over telemarketers for different industries and trade, and the Administration is invited to further explore this as an interim measure.

40. To encourage telemarketers to be compliant, an accreditation or certification system may also be set up in the telemarketing industry to

¹⁸ See Chapter III and Schedule III of the Telecom Commercial Communications Customer Preference Regulations, 2010 (<http://www.nccptrai.gov.in/nccpreistry/regulation1dicndiv.pdf>).

demonstrate their good track record on their compliance with the code of practice and its strategy regarding personal data privacy protection (e.g. in honouring customers' opt out requests).

(c) Other suggestions

(i) The proposed statutory regime to be implemented under the UEMO

41. There is little doubt that a user-friendly statutory framework for a Do-not-call register will be welcomed by the data subjects. At present, the office of the Communications Authority administers and enforces the Do-not-call registers for unsolicited electronic messages under the UEMO, and it would seem to be more straight-forward and less confusing for the P2P telemarketing calls recipients to apply to the same regulatory authority for registration for the nuisance calls. Furthermore, with the current Do-not-call registers under the UEMO, to expand the scope to include P2P telemarketing calls rather than setting up a new regulatory scheme whether under the PDPO or a specific legislation would seem to have relatively less resources implication.

42. During the legislative stage of the UEMO, the Administration once pointed out that if it was decided in future to bring P2P telemarketing calls into the ambit of the UEMO, such decision could be effected expeditiously under clause 6 of the then Bill (i.e. the current section 7 of the UEMO) by amending Schedule 1 by way of publishing a notice in the gazette, it being a subsidiary

legislation subject to the scrutiny of the Legislative Council¹⁹. In this regard, the Administration may review the situation and adopt the most appropriate approach in effecting legislative amendment.

(ii) *The proposed statutory regime to be included in the PDPO*

43. The PDPO was enacted to protect the privacy of individual's personal data. Since the majority of P2P telemarketing calls, such as cold calls without mentioning the name of the recipients, do not involve the recipients' personal data within the definition of the legislation, amendment to the PDPO is required to give effect to the intention of including P2P telemarketing calls in the protection net, given that the calls inevitably involve a contact number of the recipients and link to the recipients. It will naturally take time to complete the legislative process²⁰.

44. If the policy decision is to have the PCPD charged with the regulatory responsibility for the proposed Do-not-call register, the PCPD would also seek to strengthen the sanctioning power of the PCPD so as to enhance the effectiveness of enforcement. As indicated in the preceding paragraphs, there are few successful convictions for the offences under the direct marketing provisions in Part 6A of the PDPO. Out of the 9 convictions so far, the highest fine imposed was HK\$30,000, the penalty level having been raised in April 2013 to a maximum fine of HK\$1,000,000 and an imprisonment for 5 years where the

¹⁹ See paragraph 12 of LegCo Paper (LC Paper No. CB(1)1559/06-07) (<http://www.legco.gov.hk/yr06-07/english/hc/papers/hc0511cb1-1559-e.pdf>)

²⁰ In this regard, it is noted that the Singapore *Personal Data Protection Act 2012* provides a separate and distinct part on Do-not-call register. The purpose of the Act is described as "an Act to govern the collection, use and disclosure of personal data by organisations, and to establish Do Not Call Register and to provide for its administration, and for matters connected therewith...."

non-compliance relates to the provision of personal data to another person for use in direct marketing for gain.

45. To give effect to deterrence in light of the gravity and prevalence of the nuisance calls as highlighted in paragraph 1.14 of the Consultation Paper, the PCPD would revive his previous proposal of empowering him to impose administrative fines on data users for serious contraventions of the PDPO²¹. One main advantage is that even if no affected victims are willing to go through a criminal trial, the PCPD may still take into account the overall practice of an offending party making P2P telemarketing calls and the total number of affected individuals when deciding the proper and appropriate monetary penalty independent of court procedure. Imposing administrative fines by regulatory authorities is not novel in Hong Kong. Some statutory bodies such as the Hong Kong Monetary Authority, the Securities and Futures Commission, the Mandatory Provident Fund Schemes Authority and the Insurance Authority are also empowered to impose monetary penalties administratively²².

46. Imposing administrative fines by data protection authorities is not uncommon in other jurisdictions either. It is noted that the European Union's General Data Protection Regulation (which will take effect from 25 May 2018) empowers European Union's data protection authorities to impose increased administrative fines on data users or controllers and processors for contravention

²¹ The PCPD made this proposal in the last ordinance review exercise in 2010. For details, please see paragraphs 9.1 to 9.10 under Proposal 39 of the PCPD's Submission in response to the "Report on Public Consultation on Review of the Personal Data (Privacy) Ordinance" at: https://www.pcpd.org.hk/english/enforcement/response/files/PCPD_submission_311210.pdf

²² See section 203A of the Securities and Futures Ordinance (Cap 571); sections 194 and 196 of the Securities and Futures Ordinance (Cap 571); section 34ZW of the Mandatory Provident Fund Schemes Ordinance (Cap 485); and section 41P of the Insurance Ordinance (Cap 41).

of the regulations. A fine with upper level as high as €20 million (roughly HK\$160 million) or 4% of the total worldwide annual turnover of preceding financial year million, whichever is higher, is set to be enforced in all member states of the European Union²³. Currently, some data protection authorities in common law jurisdictions such as the United Kingdom Information Commissioner and the Singapore Personal Data Privacy Commissioner are already vested with the power to impose administrative fines. For example, in March 2017, the United Kingdom Information Commissioner imposed a monetary penalty of £270,000 (roughly HK\$2.45 million) on a company that made 22 million nuisance calls²⁴.

(iii) Building up a culture of protecting and respecting personal data privacy through education, promotion and Privacy Management Programme

47. Education and promotion are no less important than enforcement in addressing the problems arising from the nuisance caused by P2P telemarketing calls. The PCPD believes that education and promotion will help increase awareness and understanding of the existing and proposed regulatory framework with a view to building up a culture to protect and respect personal data privacy.

48. The PCPD also advocates the adoption by data users of a proactive strategy, the Privacy Management Programme (“PMP”), which aims to help the data users manage privacy and data protection responsibly and demonstrate their commitment to good corporate governance.

²³ See Article 83 of the European Union’s General Data Protection Regulation.

²⁴ See the details from ICO’s website:
<https://ico.org.uk/action-weve-taken/enforcement/media-tactics-ltd-mpn/>.

49. PMP serves as a strategic framework to assist an organisation in constructing a robust privacy infrastructure and service designs, supported by on-going reviews and monitoring process to facilitate compliance with the requirements under the PDPO. It involves top management's commitment to ensure that data privacy is built in by design for all policies, initiatives, programmes and services. Details of the draft PMP are set out in the "*Privacy Management Programme: A Best Practice Guide*" issued by the PCPD²⁵. It is planned that the finalised PMP, with the relevant guidance and toolkits, will be made available for public adoption upon the conclusion of a consultancy report and pilot test conducted in selective governmental organisations in the near future.

Conclusion

50. The PCPD fully appreciates that complex issues are involved in abating the nuisance caused by unwanted P2P telemarketing calls, which can only be addressed with determination and efforts on the part of all stakeholders.

51. The nuisance has persisted for quite some time not only in Hong Kong but also other jurisdictions. The general consensus seems that the problem should be addressed and any lacuna or loopholes in the relevant laws and regulatory frameworks should be plugged properly without delay. The concerns of P2P telemarketing calls relate to whether those receiving the calls (cold calls

²⁵ See the "*Privacy Management Programme: A Best Practice Guide*" issued by the PCPD (available at: http://www.pcpd.org.hk/english/resources_centre/publications/files/PMP_guide_e.pdf).

included) are in a position to keep their own personal data (personal contact numbers included) under their own control, and their wish not to receive the calls are respected. Invariably, it is a matter of notification and consent, transparency and trust. Direct marketing activities involving personal data not being banned but regulated, the PCPD remains mindful that P2P telemarketing calls should be regulated without unduly compromising the economic contribution the telemarketing industry may make. It is essentially a balancing exercise between the protection of one's own personal data in terms of contact number and the legitimate use of personal data by others in the interest of economic, information and communications technology development. The proposed establishment of a new Do-not-call register seems to satisfy the proportionality test by giving individuals (data subjects) the option to stop the organisations (data users or controllers) from using their contact numbers in promoting goods and services even though their other personal data (such as names) are not involved. Establishing such a register by legislation clearly ensures certainty, clarity and deterrence, particularly with the inclusion of administrative fines. Restoring the proposed register back to the existing UEMO Do-not-call framework has its own advantages but the PCPD is well poised to take it up as and when the Administration deems proper and appropriate.

52. The advantages of the other two options proposed to address the problem of unwanted nuisance P2P telemarketing calls (i.e. strengthening trade specific self-regulatory regime and imposing call-filtering applications in smartphone) seem to be outweighed by their structural and technical weaknesses, their lack of comprehensiveness and effectiveness, as well as current and potential privacy risks. That said, they should be capable of serving as interim

or transitional measures until the new statutory Do-not-call register is put in place ultimately.

53. In addition to supporting the establishment of a new statutory Do-not-call register for P2P telemarketing calls, the PCPD remains duty bound to continue to educate and promote awareness and understanding of personal data privacy protection laws and framework including those relating to the P2P telemarketing calls amongst all stakeholders (data subjects and data users), and the adoption of PMP as and when it is ready to be launched. Interoperability with overseas data protection authorities in tackling cross-border or cross-boundary data issues (P2P telemarketing calls included) will continue to be strengthened, too.

The Privacy Commissioner for Personal Data, Hong Kong

July 2017



Urgent Return receipt Sign Encrypt

加強規管人對人促銷電話諮詢文件之意見

to: p2pcalls@cedb.gov.hk

27/07/2017 10:55

Cc:

Please respond to

敬啟者：

本會是東區協進社屬下的公共事務小組，本小組贊同以立法方式的方案加強規管人對人促銷電話。

(已留署名)

(已留職銜)

TEL : (已留電話)

通訊地址： (已留地址)



Urgent Return receipt Sign Encrypt
p2pcall consultation

to: p2pcalls@cedb.gov.hk

21/05/2017 11:29

Option 3 do not call register should be set up as soon as possible.

The 7000 telemarketers involve in p2p calls are making their living on the basis of other's loss in terms of roaming charges when the call receivers are not in hong kong as well as the loss of productivity while answering the unwanted calls.

The telemarketers should not be taken into consideration as they are doing more harm than benefit to most of the phone users.

regards

junk call concern group

Get for



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to: p2pcalls@cedb.gov.hk

08/06/2017 17:38

Cc:

Consultation on Person-to-Person Telemarketing Calls
Communications and Creative Industries Branch
Commerce and Economic Development Bureau

Dear Sir / Madam

Thank you for providing the Competition Commission (Commission) with information about the current public consultation on strengthening the regulation of person-to-person telemarketing calls.

The Commission has no specific views on the various options outlined in the consultation paper.

However, as a general comment the Commission would note that if the government decides to pursue a non-statutory regulatory regime such as a code of practice, care should be taken when drafting such a code to avoid the risk of impacting on competition. Provisions in codes which restrict the pricing or marketing conduct of industry participants may raise concerns under the Competition Ordinance. The Commission may be able to assist by reviewing any draft code should such an arrangement be proposed in due course.

Yours sincerely

(Name provided)

(Title provided)

Tel :

Fax :

Email :

Competition Commission (Hong Kong)

競爭事務委員會 (香港)

荃灣鄉事委員會
(已留地址)

電話：

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荃三十字 第 304 號

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環境衛生主任
曾俊文先生
曾偉強先生

交通運輸主任
劉偉輝先生

公共關係主任
何偉明先生

敬啟者：

電話促銷本來是開拓商機的一種策略，然而市面上很多商家為了營業額不惜濫用這種策略，以失實的銷售手法和技巧誤導消費者。有見及此，希望政府能夠加強打擊違反商業條例的商戶，以及加強保護個人私隱的措施。並規定商戶在使用個人資料作直銷產品及服務前，必須得到資料當事人的同意，並有權拒絕任何推銷訊息。

現時市面上，很多便利店及街鋪很輕易便購得電話卡，過程並不須要登記，這個漏洞正助長商戶或不法份子透過此卡進行促銷或電話行騙。有見及此，希望政府對電話公司售賣流動電話卡方式進行管制；同時希望政府與警方保持緊密聯繫，加強宣傳意識，教育市民慎防電話騙案。

消費者該如何避免促銷電話滋擾呢？相信目前只能「治標」，只要商家定期更換促銷電話號碼，推銷來電仍然是無孔不入，不能「治本」。希望政府同電話公司達成共識，先商討如何制止電話卡給濫用，再循序漸進解決延伸所發生的問題！

(已蓋章)

荃灣鄉事委員會

主席：(已蓋章)(已簽署)

副主席：(已蓋章)

(已蓋章)

二零一七年五月廿日