

Annex

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

Report on Public Consultation

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* The Annexes have been uploaded to the website of the Commerce and Economic Development Bureau
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Chapter 1: Introduction

- 1.1 Person-to-Person telemarketing calls (P2P calls) are marketing telephone calls involving interpersonal communication with a view to promoting goods or services to customers. These calls are common in Hong Kong and other jurisdictions to mainly serve the purpose of conveying marketing and business information to customers to facilitate commercial transactions.
- 1.2 As the wide and proliferated use of these commercial calls has caused nuisance to the public and raised the public's concern, the Government conducted a public consultation from 11 May to 31 July 2017 on strengthening the regulation of P2P calls to collect public views.
- 1.3 Copies of the consultation paper were distributed through District Offices, and its e-version was uploaded to the websites of the Commerce and Economic Development Bureau (CEDB) and GovHK for public viewing. We proactively sent letters to different concern groups and stakeholders, including the 18 District Councils, the Office of the Privacy Commissioner for Personal Data (PCPD), the Consumer Council, the Competition Commission, trade associations whose members make P2P calls, companies operating call-filtering applications (apps) for smartphones, etc., to invite their views. During the public consultation, the Secretary for Commerce and Economic Development also attended the meeting of the Legislative Council (LegCo) Panel on Information Technology and Broadcasting to explain the consultation paper to LegCo Members and solicit their views.
- 1.4 During the consultation period, we received 3 709 submissions¹. Among them -
 - (a) 253 were non-template submissions from individuals (**Annex A**)²;
 - (b) 32 were non-template submissions from groups/organisations/enterprises, including -
 - (i) 18 submissions from trade associations/enterprises (**Annex B1**);

¹ Twenty-three overdue submissions were received after the consultation period.

² Submissions with the same content and from the same person were counted as one submission.

- (ii) eight submissions from political parties/political bodies/ LegCo Members, including one enclosing 4 121 signatures of the public (**Annex B2**); and
 - (iii) six submissions from other organisations (**Annex B3**).
- (c) 3 426 copies from five template submissions/questionnaires³ -
- (i) Template A (**Annex C1**): a template submission, with three copies from anonymous persons;
 - (ii) Template B (**Annex C2**): a template submission, with 1 284 copies from individual members of the beauty sector;
 - (iii) Template C (**Annex C3**): a template submission, with 13 copies from individual members of the beauty sector;
 - (iv) Template D (**Annex C4**): a template questionnaire, with 1 852 copies from the “opinion generator” of LegCo Member Hon Charles Mok; and
 - (v) Template E (**Annex C5**): a template questionnaire, with 380 copies from anonymous persons.

1.5 This report consolidates views and suggestions from different sectors and stakeholders on strengthening regulation of P2P calls. Due to limited space, the main text of this report does not include exhaustively all the views received, but all the original written submissions are included in the annexes. If there is any inconsistency, the originals in the annexes shall prevail.

³ One of the template questionnaires has both Chinese and English versions. The two versions are counted as one template.

Chapter 2: Views Received on Different Options

2.1 In the consultation paper, we set out an objective analysis of three possible options for strengthening regulation of P2P calls. They were -

Option 1: Improving trade-specific self-regulatory regimes;
Option 2: Promoting call-filtering apps in smartphones; and
Option 3: Establishing a statutory Do-not-call Register.

2.2 This chapter summarises views received on the three options.

Option 1: Improving Trade-specific Self-regulatory Regimes

2.3 Currently, four sectors (finance, insurance, telecommunications and call centres) have established their respective self-regulatory regimes.

2.4 The self-regulatory regimes of the four sectors are built on codes of practice drawn up and issued by their respective trade associations⁴. These codes of practice specify guidelines and best practices for observance by members of the sectors concerned, including restrictions on calling hours, need to reveal identity of the telemarketers and pledge to honour unsubscribe requests.

2.5 To enhance the current regime, the consultation paper pointed out that the trades might introduce additional measures to encourage members to adhere to the codes of practice and establish formal complaint handling procedures for reporting of non-compliant P2P calls. The number of complaints received could also be made public from time to time to raise transparency. Tightening up the existing codes of practice and extending the regimes to more trades/businesses could also be considered.

Submissions from individuals

2.6 Among the 253 non-template submissions from individuals, none supports the option of improving trade-specific self-regulatory regimes⁵.

⁴ In 2010, the then Office of the Telecommunications Authority formulated a Benchmark Code of Practice on Person-to-Person Marketing Calls (“Benchmark Code”). Trade associations then drew up and issued their respective codes of practice with reference to the Benchmark Code.

⁵ One of the submissions mentioned that it did not support self-regulation, but then said that it supported Option 1 (i.e. self-regulatory regimes). Given the conflicting views, that submission is not counted as supporting self-regulatory regimes.

2. 7 These submissions generally consider that there is no need to strengthen or extend the self-regulatory regimes as the regimes have proven ineffective over the years for lacking of sufficient deterrent effect, nor have the trades demonstrated sufficient self-discipline in adherence. Instead, other options with greater deterrent effect (e.g. legislation) should be adopted to strengthen the regulation of P2P calls.

Group submissions

Trade associations/enterprises

2. 8 Among the 18 submissions from trade associations/enterprises, the vast majority (17 submission or 94%), especially trade associations or groups⁶ currently participating in the self-regulatory regimes, support the self-regulatory regimes and opine that the current system of trade-specific codes of practice has been effective.
2. 9 These supporting views point out that the number of complaints against P2P calls has dropped after implementation of the self-regulatory regimes, and that members of the sectors are generally compliant. As such, other means to strengthen the regulation should not be required.
2. 10 These views also consider self-regulatory regimes flexible as they can be adapted to suit the specific circumstances of different trades, so as to better meet the practical needs of the trades concerned without impacting much on the existing business operation.
2. 11 Two submissions further suggest that a mandatory accreditation system should be put in place in addition to self-regulation to require participating enterprises to conduct regular reviews to ensure compliance with the codes of practice.
2. 12 In addition, three trade associations of the beauty sector⁷ (which is not one of the sectors participating in the self-regulatory regimes) indicate support in their submissions for the self-regulatory regimes and suggest extending such regimes to the beauty sector to improve the sector's

⁶ Trade associations which participate in self-regulatory regimes include the Hong Kong Call Centre Association, the Communications Association of Hong Kong, the Hong Kong Association of Banks, the DTC Association and the Hong Kong Federation of Insurers.

⁷ The trade associations include the Federation of Beauty Industry (H.K.), the HK Association of Professional Aestheticians International and the Cosmetic & Perfumery Association of Hong Kong Limited.

telemarketing practices, so as to minimise nuisance caused to the public while not considerably altering the modes of operation and marketing of the sector.

Political parties/political bodies/LegCo Members

2. 13 Among the eight submissions from political parties/political bodies/LegCo Members, the majority (seven)⁸ do not support the option of improving trade-specific self-regulatory regimes.
2. 14 These political parties/political bodies/LegCo Members consider that the public favours a statutory approach for regulating P2P calls. Self-regulation means maintaining the status quo which has proven ineffective, and trades that are considered most problematic (such as the beauty sector and money lenders) have not participated in such regimes. Of these respondents, Hon Charles Mok states that among the 1 755 responses canvassed by his “opinion generator”⁹, about 78% considered self-regulation completely ineffective. The submission from the New Century Forum states that over 60% of the respondents of their telephone opinion poll had requested P2P call telemarketers to stop calling, but about 90% still received calls from the same companies thereafter. The New Century Forum therefore questions the effectiveness of the option of self-regulatory regimes.
2. 15 On the contrary, the Liberal Party opines that the option of trade-specific self-regulatory regimes is more flexible, as it does not require a lengthy legislative process, and trades can revise their codes of practice in a swift manner to suit any changes in circumstances. The Liberal Party considers that the implementation of the self-regulatory regimes in the past several years shows that the trades are willing to comply with the codes of practice. The drop in the number of complaints against P2P calls received by the CEDB and the Office of the Communications Authority also shows the effectiveness of the self-regulatory regimes. Therefore, the Liberal Party supports extending such regimes to other trades.

⁸ Including the submissions of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), the New People’s Party, the New Century Forum, the Roundtable, the NeoDemocrats, LegCo Member Hon Charles Mok of the functional constituency of information technology, and a motion of the Sai Kung District Council.

⁹ These responses are Template D, a template questionnaire.

Other organisations

2. 16 The Consumer Council states that according to its experience, self-regulatory regimes are unable to balance the interests of the trades and the public. The current self-regulatory regimes inconvenience consumers as such regimes are not regulated by a unified central authority and consumers have to ask individual companies one by one not to make P2P calls.
2. 17 PCPD also holds similar views. It considers that self-regulatory regimes would serve well as an interim measure, but the effectiveness of such regimes hinges on self-discipline of members of the trades while there seems to be a lack of industry organisations or strong cohesion in many of the relevant trades. It also notes the need for consumers to ask individual companies one by one not to make P2P calls under such regimes. All these dampen the effectiveness of trade-specific self-regulatory regimes in mitigating the nuisance caused by P2P calls.
2. 18 The Competition Commission does not indicate preference for any of the three options listed in the consultation paper, and says that if the Government were to strengthen regulation by codes of practice, impacts on market competition, e.g. restriction on pricing and marketing conduct of industry participants, should be avoided.

Template submissions/ questionnaires

2. 19 Among the template submissions/questionnaires received, Template A does not express views on this option, Template D considers that this option does not have sufficient deterrent effect, while Template B, Template C and Template E support improving trade-specific self-regulatory regimes.
2. 20 Template B points out that the beauty sector, having a unique mode of operation, is different from other trades, and therefore should be allowed to draw up a trade-specific code of practice. The template points out that compared to the legislative approach, the cost for compliance with trade-specific codes of practice is lower, the time required for preparation and implementation shorter and the impact on the established modes of operation and marketing of the beauty sector smaller.

Option 2: Improving Call-filtering Applications in Smartphones

2. 21 In Hong Kong, there are already a handful of rather widely-used call-filtering smartphone apps. These apps alert call recipients to possible P2P calls, so that the recipients can decide whether to decline the calls.
2. 22 In the consultation paper, we proposed that the call-filtering apps might be improved with funding support or other forms of support by the Government, and that the Government might promote wider use of such apps.

Submissions from individuals

2. 23 Among the non-template submissions (250) from individuals which support stepping up regulation by legislation, around 40% (110) agree that given the lengthy legislative process, smartphone call-filtering apps should be enhanced in the interim.
2. 24 These submissions generally consider that although call-filtering apps are not a long-term solution for P2P calls, they could help users who do not want to receive such calls screen out such calls in the interim. As such, it is worthwhile to promote their use before completion of the legislative process.
2. 25 Around 20% (48) of these submissions, however, consider that if the Government were to deal with P2P calls by legislation, there is no need to expend extra time and efforts on studying the option of promoting call-filtering apps.

Group submissions

Trade associations/enterprises

2. 26 Among the 18 submissions from trade associations/enterprises, slightly less than half (8) support both the options of improving call-filtering apps in smartphones and improving self-regulatory regimes at the same time.
2. 27 Two submissions consider that while blocking P2P calls, call-filtering apps should also “whitelist” calls from government or public service bodies such as hospitals so that users would not miss such important calls.

2. 28 One submission objects to the option of smartphones call-filtering apps, considering the option inherently defective in according protection for such apps are not available for fixed-line phones and non-smart mobile phones.
2. 29 Among the submissions from companies developing call-filtering apps, some (four) recommend that the Government consider improving the accuracy of the databases of these apps by e.g. encouraging government departments, telecommunications service operators and private companies or organisations to provide their telephone numbers to the apps operators. Some companies suggest that the Government should engage third parties to conduct accreditation for these apps to raise the public's confidence in using them. Regarding government subsidy, some of the companies consider that such would enhance the quality and functions of the apps, but some opine that government subsidy is not necessary as they do not develop those apps for monetary gains; while some opine that monetary subsidies will only attract companies which want to enter the market with that government subsidy or publicity, and would not help improve the databases.

Political parties/political bodies/LegCo Members

2. 30 Among the eight submissions from political parties/political bodies/LegCo Members, the majority (six)¹⁰ support the option of smartphone call-filtering apps.
2. 31 These submissions consider that the Government should adopt a multi-pronged approach in dealing with the issues of P2P calls, and call-filtering apps can play a supplementary role in screening out some P2P calls.
2. 32 The submission from Hon Charles Mok states that the views canvassed by his "opinion generator" indicated that around 87% of the respondents agreed that the Government could consider ways to improve the accuracy of such apps in respect of identifying e.g. caller-identification spoofing, voice over Internet protocol, calls from other jurisdictions etc.; while 60% of the respondents agreed that requirements and guidelines for protecting privacy should be drawn up and information on apps

¹⁰ Including the submissions of DAB, the New People's Party, the New Century Forum, the NeoDemocrats, the Liberal Party and LegCo Member Hon Charles Mok of the functional constituency of information technology.

meeting such criteria should be publicised.

2. 33 The submission from the Roundtable says that while many users have already installed call-filtering apps, the effectiveness of such apps is limited as filter updates of such apps can hardly catch up with the swift and massive rollout of new numbers used by the trades making P2P calls; it is hard to ensure such apps' accuracy and timeliness.

Other organisations

2. 34 The Consumer Council supports adopting the option of improving call-filtering apps as an interim measure, but has concerns over possible privacy issues of such apps and considers that such apps should be barred from obtaining or using any information stored in the users' phones. The Council submits that should there be no effective measure in place to safeguard personal data, it would have reservation about this option.
2. 35 PCPD also supports improving call-filtering apps as an interim measure. Noting that there were previously incidents of such apps leaking personal data of their users, PCPD stresses the need to ensure sufficient safeguard to protect users' personal data when promoting use of such apps. It also points out that people benefiting from this option would be limited as the apps are not available for fixed-line telephones and elderly people do not usually use smartphones.

Template submissions/ questionnaires

2. 36 Template A and Template B do not express views on this option, while Template C, Template D and Template E support this option.
2. 37 Template D considers that requirements and guidelines for privacy should be drawn up, apps which meet such criteria should be publicised and studies should be conducted to improve the accuracy of such apps in respect of identifying caller-identification spoofing, voice over Internet protocol and calls from other jurisdictions.
2. 38 Template E points out that this option is not legislative regulation and would not attract legal liability for telemarketers.

Option 3: Establishing a Statutory Do-not-call Register

2. 39 A Do-not-call Register is normally established by law. Phone users who do not want to receive P2P calls may register their phone numbers with

the Register. Telemarketers are prohibited from calling the numbers listed on the Register.

Submissions from individuals

- 2. 40 Among the 253 non-template submissions from individuals, the majority (193) support establishment of a statutory Do-not-call Register.
- 2. 41 These submissions generally consider statutory regulation more effective for its provision of sufficient deterrent effect. A Do-not-call Register allows users to decide whether to receive P2P calls or whether to receive P2P calls from companies of their choice, thereby providing phone users with both safeguard and flexibility.
- 2. 42 Among the submissions supporting establishment of a Do-not-call Register, a few (nine) further suggest that the Register should be operated by sectors and that the public may choose not to receive P2P calls from certain sectors, while continue to receive calls from other sectors.
- 2. 43 Some submissions (17) also consider that as the vast majority of the public are unwilling to receive P2P calls, prohibition of P2P call should be made applicable across the board without necessitating the need for registration of phone numbers. Alternatively, only those who wish to receive P2P calls should be required to register their phone numbers with the Register, and telemarketers should be prohibited from calling those not on the list.

Group submissions

Trade associations/enterprises

- 2. 44 Among the 18 submissions from trade associations/enterprises, all of them are in clear opposition to establishment of a statutory Do-not-call Register.
- 2. 45 These submissions generally contend that regulation of P2P calls by legislation will seriously hamper normal business operation and marketing, and will in particular increase the publicity costs for micro enterprises and small and medium-sized enterprises (SMEs). Furthermore, with the increasing cost and decreasing effectiveness of P2P calls, some enterprises will need to turn to other publicity means, which may also bring about adverse impacts on employment

opportunities and livelihoods of P2P call telemarketers.

2. 46 Some trade associations/enterprises stress that overseas experiences show enormous difficulties in enforcement as regulation by legislation has various limitations, e.g. difficulties in detecting calls from other jurisdictions and collecting evidence, possible use of technology to circumvent regulation, etc., which would render this option ineffective in eliminating nuisance caused to the public by P2P calls.
2. 47 Two submissions from trade associations/enterprises mention that under the Personal Data (Privacy) Ordinance, the collection, use and transfer of personal data with regard to P2P calls are already strictly regulated. Further strengthening of regulation is inappropriate and will seriously affect operation of the relevant trades.
2. 48 Another two submissions from trade associations/enterprises propose that should the Government eventually decide to establish a statutory Do-not-call Register, consideration should be given to recognise the effectiveness of the existing self-regulatory regimes by providing certain exemptions. Another business organisation submits that even if the Government were to establish such a Register, as phone numbers might change hands, phone numbers on the Register should be made to lapse after a certain period say two to three years, after which users would have to re-register their numbers with the Do-not-call Register.

Political parties/political bodies/LegCo Members

2. 49 Among the eight submissions received from political parties/political bodies/LegCo Members, the majority (seven)¹¹ support early establishment of a statutory Do-not-call Register.
2. 50 These submissions consider that the statutory approach offers the highest deterrent effect and is the most effective option. Submission from the New Century Forum states that half of the respondents from its telephone opinion poll supported establishment of a Do-not-call Register. Hon Charles Mok states that over 73% of the responses canvassed by his “opinion generator” agreed to cover P2P calls in the Do-not-call Register to ban all trades from conducting telemarketing. The Roundtable says that the time required for introducing legislation and

¹¹ Including the submissions of DAB, the New People’s Party, the New Century Forum, the NeoDemocrats, the Roundtable, LegCo Member Hon Charles Mok of the functional constituency of information technology, and a motion of the Sai Kung District Council.

the enforcement difficulties are not valid reasons to defy the legislative approach.

2. 51 The submission from the New People's Party opines that as the Do-not-call Register could reduce the spam information in the market, it could have positive impact on raising the efficiency of telemarketing, and that registration with the Do-not-call Register should be made simple and user-friendly.
2. 52 The Liberal Party does not support establishment of a statutory Do-not-call Register. It considers that an across-the-board legislative regulation should not be taken lightly as it would affect all trades and all sectors, the business environment and livelihoods of the telemarketers. As micro enterprises and SMEs have limited resources, many of them (e.g. upper floor shops) would have difficulties attracting customers by other means than telemarketing. If compliance cost were to increase due to the legislation, these enterprises might be driven out of the market for their lack of promotional channels to get new customers, which might in turn enable monopolisation of the market by big players. The Liberal Party also sets out in its submission the limitations of statutory regulation in enforcement drawing on overseas experiences, e.g. difficulties in detecting calls from overseas and collecting evidence, possible use of technology to circumvent regulation, etc.

Other organisations

2. 53 The Consumer Council supports establishment of a Do-not-call Register. For the operation of the Register, it considers that this Do-not-call Register for P2P calls should have the same enforcement agency as the one currently under the Unsolicited Electronic Messages Ordinance (Cap. 593) for the sake of administrative convenience. Exemptions should be carefully granted to balance the risk of abuse and the public needs for critical public services. Also, the Council suggests that the Government should draw up a standard code of practice to guide the telemarketers for compliance with the statutory requirements, and that the Do-not-call Register should be kept simple and user-friendly.
2. 54 PCPD agrees that establishment of a Do-not-call Register would be the most effective and consumer-friendly option amongst all, for such a Register offers users a "one-stop shop" to opt out of all P2P calls. Such a statutory Do-not-call Register would also provide a mechanism to sanction non-compliance, and increase the cost-effectiveness of telemarketing by screening out users who are not interested in P2P calls

at all.

Template submissions/ questionnaires

- 2. 55 Template A and Template B are in support of the proposal, while Template C, Template D and Template E are against the proposal.
- 2. 56 Template B considers that more resources should be allocated to the enforcement agency of the Do-not-call Register for handling complaints, conducting investigations and enforcement.

Chapter 3: Other Suggestions Received

- 3.1 Apart from the three options mentioned in Chapter 2, the consultation paper also invited the public to express other suggestions on the subject.
- 3.2 This Chapter summarises the major suggestions received.

Suggestion 1: Assigning Specific Prefixes to Telemarketers

- 3.3 Twenty-three submissions from individuals, three group submissions (including submissions from DAB and Hon Charles Mok respectively, and submission from the Roundtable which attaches 4 121 signatures) and one template questionnaire (Template D) suggest that the Government should require telemarketers to be registered and be assigned specific telephone prefixes for making P2P calls, so that phone users can easily identify P2P calls and decide whether to answer those calls.
- 3.4 The consultation paper stated that assigning specific prefixes to telemarketers would generate a higher demand for telephone numbers and create adverse impact on the existing 8-digit numbering plan. In response to this, one group submission (from the Roundtable) suggests that the Government could consider assigning multi-digit telephone prefixes to telemarketers (e.g. three-digit prefixes: XXX1 2345) to minimise impact on supply of telephone numbers.
- 3.5 PCPD states that while it is not in a position to comment on the impacts of the proposal of assigning specific prefixes on the 8-digit numbering plan, it considers that the Government should explore the possibility of requiring telecommunications service providers by law to assign specific prefixes to telemarketers.
- 3.6 The Consumer Council does not agree with the proposal to assign specific telephone prefixes to telemarketers. It is of the view that supply of telephone numbers under the current 8-digit numbering plan has already been tight, it would be unsatisfactory to assign specific prefixes to telemarketers as this could further shorten the life span of the 8-digit numbering plan incurring huge social cost.

Suggestion 2: Imposing Criminal Liability on the Final Beneficiaries of P2P Calls

- 3.7 Currently, many companies which wish to conduct commercial promotion through P2P calls would make the calls through third parties

(such as call centres).

- 3.8 Five submissions from individuals, three group submissions and one template questionnaire (Template D) point out that the final beneficiaries of P2P calls are usually companies which authorise the making of such calls. Should P2P calls be regulated by legislation, apart from the frontline telemarketers, the companies being final beneficiaries of the calls should also bear the criminal liability so as to curb P2P calls at source.
- 3.9 The said submissions consider that if the final beneficiaries were also made liable, then even if the P2P calls were made from overseas by telemarketers or agents, the enforcement agency could still enforce the law against those final beneficiaries, plugging the loophole of difficult enforcement outside Hong Kong.

Suggestion 3: Separating P2P Calls With and Without Using Personal Data

- 3.10 Generally speaking, telemarketers can make P2P calls either randomly or to specific targeted phone users with use of personal data.
- 3.11 Eight submissions from individuals, seven group submissions and one template questionnaire (Template D) are of the view that the Government's regulation should focus on random P2P calls without use of personal data (so-called "cold calls"). These submissions point out that targeted P2P calls with use of personal data ("warm calls") have their business values and do not necessarily cause nuisance. Warm calls are generally made to existing customers of the companies and have a better chance in procuring business transactions. As such, warm calls should be handled separately from random cold calls, or should be exempted from regulation altogether.
- 3.12 The Consumer Council, however, points out that from its past experiences of handling complaint cases relating to P2P calls, many people were unable to distinguish whether a P2P call was a random cold call or a targeted warm call with use of personal data previously supplied to a company. The Council therefore considers it impractical to separate the handlings of cold calls and warm calls for this would bring about enforcement difficulties.

Suggestion 4: "White List" for Important Calls

- 3.13 Phone users who are against P2P calls answer calls selectively and may

decline incoming calls from unknown sources altogether.

3. 14 Two group submissions are of the view that the Government should provide a “White List” of important telephone numbers (e.g. hospitals, emergency service authorities, etc.), so that the public would not miss important calls. Companies which develop call-filtering apps also express wish to have the Government and public authorities and companies to provide verified phone numbers to enhance the database of the apps so that they could remind the public to answer those calls.

Suggestion 5: Strengthening Public Education

3. 15 Five group submissions urge the Government to strengthen public education on, e.g. the right to lodge request not to receive further P2P calls, the awareness of personal data protection and signs of suspicious calls. These submissions consider that should the public know P2P calls better, they should be able to handle such calls better.

Chapter 4: Conclusion

- 4.1 P2P calls are a common mode of commercial promotion in Hong Kong. We understand that different sectors have different or even contradictory views on how to strengthen the regulation of P2P calls. Drawing on the practical and enforcement experiences of regulating P2P calls in other jurisdictions, we have to accept that whichever the regulatory approach, there could be no guarantee of eradication of circumvention by P2P call telemarketers.

- 4.2 We are very thankful for the participation by the public and the stakeholders in the consultation exercise. The views and suggestions received in the consultation has helped the Government gauge better the expectations of the society at large, thereby providing a sound basis for us to more forward to improve the regulation of P2P calls.