

LCQ11: Regulation of person-to-person telemarketing calls

Following is a question by the Hon Shiu Ka-fai and a written reply by the Secretary for Commerce and Economic Development, Mr Edward Yau, in the Legislative Council today (June 26):

Question:

The Unsolicited Electronic Messages Ordinance (Cap. 593) implemented since December 2007 regulates the sending of commercial electronic messages, but it is not applicable to person-to-person (P2P) telemarketing calls. Last year, the Government proposed to bring such calls within the ambit of the Ordinance and establish a do-not-call register (the Register) for such calls. Under the proposed regulatory arrangement, no person shall make telemarketing calls to those telephone numbers on the Register, unless the caller has obtained prior consent from the recipient. In this connection, will the Government inform this Council:

(1) given that during the time when the relevant bill was scrutinised by this Council in 2007, the Hon Wong Ting-kwong had proposed Committee Stage amendments (CSAs) to bring P2P telemarketing calls under regulation, with an exemption for those telemarketing calls to persons made pursuant to a previous or current business or client relationship (but the CSAs concerned were not incorporated into Cap. 593), and recently the Government has indicated, in reply to my enquiries, that the proposed regulatory arrangement will be similar to the concept of the CSAs proposed by that Member back then, whether the Government can confirm if the proposed regulatory arrangement will include this exemption;

(2) as Cap. 593 provides that "consent" means (a) express consent or (b) consent that can reasonably be inferred from the conduct of the individual or organisation concerned, and the Government has indicated that it will, by making reference to such meaning, define the "consent" under the proposed regulatory arrangement, whether the Government has studied if it can be inferred from a person's conduct of giving out business cards on social occasions that the person has given consent to the recipients of the business cards to make telephone calls to that person in future to introduce products or services;

(3) given that the listing of telephone numbers on the Register will take effect 10 working days after registration, and that companies will have to arrange manpower to check regularly (say, weekly) the telephone numbers of existing and potential clients against those in the Register, so as to avoid breaching the law by mistakenly calling a telephone number on the Register, whether the Government has assessed: (i) the obstacles to economic activities that will be caused by such checking work, and (ii) the manpower and time to be spent on performing such work weekly by companies which have hundreds or thousands of telephone numbers of existing and potential clients; if it has

assessed, of the outcome; if not, whether it will conduct such an assessment expeditiously;

(4) of the measures to be put in place for alleviating the compliance costs for micro, small and medium enterprises to be brought about by the implementation of the proposed regulatory arrangement; and

(5) as there are views that the proposed regulatory arrangement cannot eradicate telemarketing calls from overseas and those pretended to have come from legitimate financial institutions, whether the Government has assessed if adopting non-legislative approaches, such as promoting the use of call-filtering applications and educating the public on how to handle telemarketing calls, will be more effective than enacting legislation; if it has not assessed, of the reasons for that?

Reply :

President,

In recent years, person-to-person telemarketing calls (P2P calls) have caused nuisance to many members of the public. There are growing demands for strengthening the regulation of such calls. Based on the views collected in a public consultation conducted by the Government in mid-2017 and further to the discussions at the relevant Panels of the Legislative Council, the Government proposes to regulate P2P calls by legislation through amending the Unsolicited Electronic Messages Ordinance (Cap. 593) (UEMO). The Government is now drafting the legislative provisions. We will maintain close contact with the industries, with a view to striking a balance between minimising nuisances caused by P2P calls and reducing compliance cost of the trade.

Our reply to the various parts of the question is as follows:

(1) The existing UEMO aims to, through an "opt-out" arrangement supported by do-not-call registers, allow members of the public to avoid nuisances by opting for not receiving unsolicited electronic messages (UEMs). Nevertheless, for a user who has not registered with the do-not-call registers or has not clearly indicated his intention not to receive such messages, the trade can still send marketing messages to such user provided that certain requirements (e.g. provision of sender identity) have been complied with.

Moreover, Schedule 1 to the UEMO exempts certain types of ordinary business communications, such as information relating to product maintenance or updating, information relating to business transactions agreed between a recipient and a sender, employment-related information, etc. A sender may send such messages without the need to obtain the recipient's prior consent. The Government propose that the future legislative framework for regulating P2P calls, sharing similar nature with electronic messages, should adopt the same principles in regulating P2P calls.

In other words, if a phone user has given consent for receiving marketing calls from a certain marketer, that marketer may make calls to that

phone user regardless of whether the latter is the marketer's current or previous client, or whether the latter has already registered her/ his phone number with the Register.

(2) Making reference to the practice of regulating UEMs under the existing UEMO, whether exchanging contact information or giving out business cards on social occasions constitutes "consent" depends on whether the concerned recipient has indicated agreement (either express consent or consent inferred from conduct) to receive P2P calls from the concerned organisation during the process of exchanging contact information or business cards.

(3) and (4) The Government's objective of regulating P2P calls by legislation is to provide an option to members of the public who would like to avoid nuisances by not receiving such calls. To users who are willing to receive such calls, the trade may still make marketing calls to them as long as certain basic requirements have been complied with. The Government note that some trade sectors have established their own codes of practice on Person-to-Person Marketing Calls and requested members of their respective sectors to comply with.

We understand that the establishment of the Register may increase operational cost of the trade, and may also bring certain impact on the mode of operation. The trade may also need some time to adapt during the early stage of implementation. In drafting the Bill, the Commerce and Economic Development Bureau will engage the trade, with a view to striking a balance between concerns of the trade and the public interest. Moreover, with reference to the arrangements for regulating UEMs under the existing UEMO, if the bill is passed, the Government will formulate codes of practice to provide clear guidance to the trade. The Office of the Communications Authority (OFCA) will also, by making reference to the arrangements for implementing the UEMO, enable companies making P2P calls to apply conveniently to OFCA for subscription accounts, so that companies may at any time use and download phone numbers in the Register for screening and updating their call lists in order to comply with the legislative requirements.

(5) In addition to formulating legislative proposals, the Government will also take forward non-legislative measures. OFCA will enhance public education to remind smartphone users of the option to download call filtering applications and the related points to note, including user terms and conditions, permission requests, etc.

Moreover, the Government will educate the public through various channels, for instance, incorporating brief introductions for the elderly on the means to reject or filter phone calls and the points to note in the syllabus of the related courses provided by the Elder Academies.