



**Submissions in relation to the  
Consultation Paper on Code of Practice under the Unsolicited  
Electronic Messages Ordinance (Cap. 593)**

9 October 2007

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## **DEFINITIONS**

*Consultation Paper* means the paper entitled *Code of Practice under the Unsolicited Electronic Messages Ordinance (Cap. 593)* dated 7 September 2007.

*Guidelines* means the proposed guidelines as set out in the Consultation Paper.

*OFTA* means the Office of the Telecommunications Authority.

*PCCW* means PCCW Limited and its associated group entities.

*TA* means the Telecommunications Authority.

*UEMO* means the Unsolicited Electronic Messages Ordinance Cap 593

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## INTRODUCTION

1. PCCW is pleased to make submissions to the TA with regard to the Consultation Paper.
2. This consultation represents an opportunity for the TA to gain further insight into the practical realities faced by businesses in ensuring compliance with the UEMO.
3. This statement is not made light-handedly and is predicated on the fact that the submissions made during this process are unlikely to be made by “spammers” but rather are derived from enterprises engaged in, or wishing to engage in legitimate electronic marketing activities; activities that the UEMO was never designed to curtail or restrict.
4. To ignore the submissions is to risk curtailing these legitimate marketing activities and hence restrict commercial enterprise.

## GENERAL COMMENTS

5. PCCW welcomes the introduction of the Guidelines but this is qualified by the comments herein and in that the TA must ensure that the Guidelines are a “living” document. The UEMO is a new ordinance and it brings a new concept to Hong Kong and as such there are bound to be teething problems with its interpretation, application and compliance.
6. It is for that reason that the Guidelines must be subject to further and regular public consultation in order to ensure that the requirements set out in the Guidelines do not impede or interfere with legitimate electronic marketing practices.
7. We would recommend that the Guidelines be reviewed within 12 months of being published or when, if and as required by circumstances.
8. In relation to any mandatory requirements as promulgated by the Guidelines it is PCCW’s belief that the Guidelines should avoid using mandatory language in that an operator must use a certain type of unsubscribe method etc., rather, it should be left to each individual operator to ascertain what method to best employ. The Guidelines should be restricted to merely stating what the objectives to be achieved are in compliance with the UEMO- i.e. as per the type of language used in 6.5(b) of the Guidelines:

“Reasonably visible... separate and distinguishable... displayed long enough...”

This is the manner in which the Guidelines should be formulated so as to avoid the creation of costly and expensive compliance requirements that may not necessarily “future proof” in that newer technologies might emerge that make these mandatory requirements redundant.

In the event that the Guidelines are written to mandate specific requirements, we would suggest that in the event that a sender is thought to be in breach of the Guidelines when sending messages (but not necessarily in breach of the UEMO or regulations), that the TA look to the effect of the transgressing conduct as opposed to the breach per se, given that conduct, in contravention of the Guidelines might not be in breach of the UEMO and regulations nor the cause of any harm or mischief to the recipient.

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## COMMENTS ON THE GUIDELINES

9. In relation to 6.4 (c) PCCW believes that given the limited space available in an SMS message that it is more appropriate that the term “EN” be utilised

10. In response to the individual questions, we submit, as appropriate, the following:

### **Question (4)**

#### Paragraph 8.1(a)

PCCW believes that the Guidelines should provide, in relation to messages sent by facsimile, that the unsubscribe facility should not be mandated or restricted to including a facsimile number. The unsubscribe facility and the method of communication should not, be mandated and the mechanism, (save for requirements of ease of use by message recipient etc.) by which the unsubscription is communicated should be left for the message sender to decide upon.

The reason for this is that the administrative requirements to receive, collect, process and store large volumes of faxed unsubscribe requests may place an inappropriate financial burden that will render such legitimate marketing practices as uneconomic. The placement of such a burden on commercial enterprises when there are other viable alternatives available (such as email) which will achieve the exact same outcome as that which would be achieved by the mandated outcome is simply not appropriate and uncommercial.

Our comments in relation to the requirement of mandatory communication method in relation to paragraphs 8.2(a) is the same as that outlined above for 8.1(a).

In relation to 8.3(a) of the Guidelines, the requirement for the unsubscribe facility to be activated by a one-digit number is too technically specific. We would ask whether the TA has conducted any research into the likelihood that all message senders are able comply with this specific requirement and the cost of that compliance.

The requirements of the Guidelines with regard to this type of unsubscribe facility should be that it is functional for the user without being too onerous for the provider and the mechanism be left for individual operators to determine in a way that is both financially viable and within the Guidelines and UEMO.

## **CONCLUSION**

11. Whilst PCCW is supportive of guidelines we would invite the TA to make minor, but still important modifications as suggested herein.