

WHARF T&T LIMITED (“WTT”)

SUBMISSION IN RESPONSE TO THE TELECOMMUNICATIONS AUTHORITY’S (THE “TA”) CONSULTATION PAPER (THE “CONSULTATION PAPER”), DATED 7 SEPTEMBER 2007, ON THE CODE OF PRACTICE UNDER THE UNSOLICITED ELECTRONIC MESSAGES ORDINANCE (“THE ORDINANCE”)

10 OCTOBER 2007

INTRODUCTION

1. WTT welcomes the opportunity to submit its views on the Consultation Paper issued by the TA on 7 September 2007 in relation to the draft Code of Practice (“CoP”) under the Ordinance.
2. In response to the community’s growing concern over unsolicited electronic messages, the Government has enacted the Ordinance in May 2007. Coming into effect via two phases, the Ordinance aims at striking a balance between respecting the right of a recipient to refuse further unsolicited electronic messages and allowing development of legitimate electronic marketing in Hong Kong.
3. As stated in the Consultation Paper, Phase One of the implementation of the Ordinance, which includes provisions concerning the use of unscrupulous techniques to reach out to more recipients and fraudulent and other illicit activities related to the sending of multiple commercial electronic messages, has come into effect starting from 1 June 2007.
4. Insofar, information available in the public domain has suggested that unsolicited-electronic-messages-related complaints filed by the public to the Office of the Telecommunications Authority (“OFTA”) have already exceeded 900. Official sources have indicated that a significant portion of that 900 falls under the provisions effective upon Phase Two.
5. With Phase Two of the implementation of the Ordinance expected to commence later this year, the TA is inviting views and comments on the draft CoP. The draft CoP aims at providing guidance to the rules for senders of commercial electronic messages. Specifically, the draft CoP provides guidance on a) presentation of sender information, b) choice of unsubscribe facility, and c) presentation of unsubscribe facility statement.

OUR VIEWS

6. In general, WTT believes that the TA is moving in a right direction by setting out her guidance, via the CoP, on the rules for senders of commercial electronic

messages. From the senders' perspective, having an accurate understanding on the rules prior to their enforcement will help to lower compliance cost and thereby encourage efficient compliance among all senders irrespective of their compliance resources. On the receivers' side, seeing an aligned standard applied across commercial electronic messages would help to minimize potential confusions on what can be expected from the Ordinance. For the TA herself, having better informed senders and receivers could minimize enforcement costs and resources spent on invalid complaints.

7. Pertaining to specific questions raised in the Consultation Paper as repeated below, WTT submits as follows:

Question (1): Are there any other matters or things which you consider should be included in paragraphs 6.1-6.5 to provide more practical guidance to the senders of commercial electronic messages in relation to the presentation of sender information? If yes, please provide reasons for your proposed additions.

8. In respect of the presentation of sender information, we think the relevant sections of the CoP are sufficient to allow the presentation to be clearly conveyed to receivers. We therefore have no further comment on this question.

Question (2): Are there any other matters or things which you consider should be included in paragraphs 6.1-6.5 to provide more protection to the recipients' interests? If yes, please provide reasons for your proposed additions.

9. We have no comment on this question.

Question (3): In relation to an SMS message (paragraph 6.4), do you agree with the proposed format of presenting the sender's contact telephone number? Furthermore, do you agree that, in case of a long SMS message that is split into two or more transmissions, the sender information must be included in the first transmission of the SMS message? If not, please propose amendments to this paragraph and provide explanations to substantiate the proposed amendments.

10. We have no objection to the proposed format of presenting the sender's contact telephone number in an SMS message as outlined in paragraph 6.4 of the CoP. Regarding a long SMS message that is split into two or more transmissions, we however do not agree with the TA's proposal that "the sender information must be included in the first transmission of the SMS message". It should be obvious that senders of electronic commercial messages are commercially driven to capture the attentions of their targeted receivers. Naturally, the first transmission of a commercial SMS messages is more ready in capturing receivers' attentions than transmissions thereafter (i.e. the first transmissions of long SMS messages tend to

have more commercial impact than the transmissions after). Given the length limitation associated to each SMS transmission, senders would have every incentive to economize each word they use in the first transmissions in order to maximize the commercial impact of their SMS messages. In this light, we submit that senders of commercial SMS messages should not be forced to place their contact information in the first transmission of their SMS messages.

For the avoidance of doubt, paragraph 6.4 of the CoP should expressly state that a sender's contact information (i.e. a telephone number preceded by the terms “查詢 EN” or “EN 查詢” or “查詢 ENQ” or “ENQ 查詢”) contained in the body text of a commercial SMS message is “interchangeable” by the same telephone number stated in the address field with/without the aforementioned terms.

Question (4): Do you agree with the unsubscribe facilities proposed in paragraphs 8.1(a), 8.2(a) and 8.3(a)? If not, please explain in details and make alternative proposal(s).

11. We have no objection to the unsubscribe facilities proposed in paragraphs 8.1(a), 8.2(a) and 8.3(a) of the CoP.

Question (5): Are there any other matters or things which you consider should be included in paragraphs 8.1(b), 8.2(b), 8.3(b), 8.4 and 8.5 to provide more practical guidance to the senders of commercial electronic messages in relation to the presentation of unsubscribe facility statement? If yes, please provide reasons for your proposed additions.

12. We have no further comment to paragraphs 8.1(b), 8.2(b), 8.3(b) and 8.5. For paragraph 8.4, we submit that for the avoidance of doubt, it should expressly state that the unsubscribe facility statement (i.e. a telephone number preceded by the terms “取消 UN” or “UN 取消” or “取消 CNL” or “CNL 取消”) contained in the body text of a commercial SMS message is “interchangeable” with the same telephone number stated in the address field with/without the aforementioned terms.

Question (6): Are there any other matters or things which you consider should be included in paragraphs 8.1(b), 8.2(b), 8.3(b), 8.4 and 8.5 to provide more protection to recipients' interests. If yes, please provide reasons for your proposed additions.

13. We have no comment to this question.

Question (7): In relation to an SMS message (paragraph 8.4), do you agree with the proposed format of presenting the telephone number which serves as the unsubscribe facility? Furthermore, do you agree that, in case of a long SMS message that is split into two or more transmissions, the unsubscribe

facility statement must be included in the first transmission of the SMS message? If not, please propose amendments to this paragraph and provide explanations to substantiate the proposed amendments.

14. For a long SMS message that is split into two or more transmissions, we do not agree with the TA's proposal that "the unsubscribe facility statement must be included in the first transmission of the SMS message". Paragraph 10 of this submission has already explained that the first transmissions of long SMS messages tend to have more commercial impact than the transmissions thereafter. Again, we opine that given the length limitation associated to each SMS transmission, senders would have every incentive to economize each word they use in the first transmissions of their SMS messages in order to maximize their commercial impact – in turn, this means most senders would prefer to place their unsubscribe facility statements at a later transmission of a long SMS message.

On the other hand, if a receiver of a commercial SMS message does not mind to uptake the effort to unsubscribe, it should not take the receiver much more effort to find the unsubscribe facility statement at the second transmission, or so forth, of the SMS message. We therefore submit that senders of commercial SMS messages should not be forced to place their unsubscribe facility statements in the first transmission of their SMS messages.

Question (8): Do you agree with the performance level of the unsubscribe facility specified in paragraph 8.6 (i.e. should not drop or busy out more than 10% of incoming calls to the telephone or facsimile number measured over a period of 24 hours per day for 5 consecutive calendar days)? If not, please propose amendments to the performance level and provide explanations to substantiate the proposed amendments.

15. While we have no objection to the TA's proposition that the unsubscribe facility should be readily available for use by the receivers of commercial electronic messages, we submit that the performance level of the facility should be reasonably commensurate with the senders' experience and abilities to comply with the UEMO. In other words, rather than imposing an outright 10% cap for dropping or busy out unsubscription calls across the board, the TA can allow different performance standards for senders of different size (e.g. MNCs and SMEs) at the initial stage and from there to align different standards into a common figure across the board in a phased manner.

CONCLUSION

16. We acknowledge the TA's intention to provide clear guidance to the rules for senders of commercial electronic messages. Notwithstanding the objections and concerns raised above, we believe the draft CoP has in general provided clear operational guidance on a) presentation of sender information, b) choice of unsubscribe facility, and c) presentation of unsubscribe facility statement.

17. Given that the draft CoP is primarily written for providing operational guidance to the senders of commercial electronic messages, we believe the TA should provide further guidance into the content of the messages as well as with a focus on the receivers of those messages.
18. Finally we suggest the TA to uptake an on-going review of the CoP in light of the experience gained through its implementation to ensure that the CoP continues to be practical and balanced.

Submitted by WTT
10 October 2007