



Hong Kong CSL Limited submission

in response to the consultation paper entitled:

“Proposal to Contain the Problem of Unsolicited Electronic Messages”

25 October 2004

1 Introduction

1.1 Hong Kong CSL Limited (“CSL”) is pleased to provide its comments on the consultation paper entitled “Proposals to Contain The Problem of Unsolicited Electronic Messages”, issued by the Office of the Telecommunications Authority (“OFTA”) on 25 June 2004 (“**Consultation Paper**”). CSL limits its remarks to unsolicited electronic messages which may be transmitted via a mobile telecommunications network, namely SMS and MMS.

2 Lack of evidence of an increase in unsolicited SMS/MMS

2.1 There are a number of places in the Consultation Paper where OFTA suggests there has been an increase in unsolicited SMS and MMS. In particular, in paragraph 2 OFTA states “the trend of sending unsolicited promotion messages via the use of short messaging service (SMS) and multi-media messaging service (MMS) on mobile phones is on the rise”. In paragraph 6, OFTA states “unsolicited electronic messages taking the form of SMS and MMS on mobile phones...are also getting more popular” and in paragraph 30, OFTA states “the increase in SMS traffic during the past couple of years has no doubt led to an increase in unsolicited SMS and MMS”.

2.2 It is unclear on what basis OFTA takes these positions and many questions arise from such statements. For instance, why does a mere increase in SMS traffic mean there is “no doubt” there has been an increase in unsolicited SMS? Further, what is the relationship between an increase in SMS traffic and unsolicited MMS? Why would an

increase in SMS traffic necessarily lead to there being “no doubt” that there has been an increase in unsolicited MMS? What does “on the rise” mean in real percentage terms? Similarly, what is the meaning of “getting more popular”? Getting more popular relative to what other period in time? 10 years ago, 5 years ago or six months ago?

- 2.3 CSL queries what evidence OFTA has to back-up its “no doubt”, “on the rise” and “getting more popular” assertions. Whilst the Consultation Paper presents many statistics relating to unsolicited messages sent via fax and email, there is a complete lack of statistics provided about unsolicited messages sent by SMS and MMS. Unless OFTA can provide meaningful statistics and evidence to back-up its claims, it should not make unsubstantiated claims.
- 2.4 CSL requests OFTA to provide the public with the source of its statements so the industry and public can assess whether any real problem exists.

3 Lack of complaints

- 3.1 CSL is interested for OFTA to provide evidence about the level of unsolicited electronic messages sent by SMS and MMS as, from CSL’s perspective (and in response to OFTA’s invitation to submit comments as set out in paragraph 34) there is no evidence of a large number (or even a significant number) of consumers receiving unsolicited electronic messages by SMS or MMS. CSL has analysed the complaints received by it from customers and the number of complaints relating to unsolicited electronic messages is not even significant enough to warrant a separate classification.

4 Existing measures and their effectiveness

- 4.1 In paragraphs 35 to 67, OFTA identifies what it views as the existing measures which relate to the transmission of unsolicited electronic messages and rates the effectiveness of the measures.
- 4.2 Unfortunately, OFTA fails to include the licence conditions which are contained in the existing mobile carrier licences as one of the existing measures. As OFTA would know, under Special Condition 22 (Unsolicited Advertising) of all existing 3G mobile carrier licences, a 3G mobile carrier licensee is prohibited from using the public telecommunications network service “for the transmission of messages or communications comprised in any unsolicited advertising or unsolicited promotional

information”. Failure to comply with this Special Condition would be a breach of CSL’s 3G licence and the Telecommunications Authority (“TA”) has ample tools at his disposal to make it unattractive for CSL to engage in activities prohibited by the licence.

4.3 With respect to the Inter-Operator Short Message Service (“IOSMS”) Code of Practice (“COP”) mentioned by OFTA in paragraph 53 of the Consultation Paper there are a number of matters which OFTA has failed to recognise. These are set out below.

- (a) Although voluntary in nature, the 2G mobile network operators (“MNOs”) have been complying with the COP and there is no evidence that the voluntary nature of the COP has not been effective in limiting the amount of unsolicited SMS being sent between networks.
- (b) OFTA wrote to the MNOs in March 2004 seeking to extend the scope of the COP to 3G mobile carrier licensees and mobile virtual network operators and CSL understands OFTA has written to these entities seeking compliance with the COP. If OFTA did not believe the COP was an adequate and effective measure to combat unsolicited SMS, why did it seek to extend the COP to other parties ?
- (c) Some MNOs (including CSL) have prohibited its customers from not only sending promotional IOSMS (as required by the COP) but also from sending unsolicited SMS to any third party. This includes other CSL customers and rebuts OFTA’s view that the COP does not cover intra-operator unsolicited messages. OFTA is aware of the terms of each MNO’s customer contracts as it required the MNOs in 2002 to provide a copy of its reference customer contract to it pursuant to the ‘Code of Practice for the Service Contracts for Public Mobile Radiotelephone Services.
- (d) CSL is required to comply with its obligations as a data user and direct marketer under the Personal Data (Privacy) Ordinance (“PDPO”). OFTA’s view that the COP “does not prevent an operator from sending unsolicited messages to its own customers” is not an issue as CSL is required to comply with section 34(1) of the PDPO and provide individuals with an opportunity to “opt-out” from receiving direct marketing material. CSL provides this option to its customers in the application form of its customer contract and does not

send electronic messages to those customers who have chosen not to receive promotional communications from it.

- 4.4 As such, it is CSL's view that there is already a sufficient body of industry self-regulatory initiatives, licence conditions and legislation to adequately regulate unsolicited electronic messages and therefore additional regulation for mobile operators through legislation is not required.

5 Industry co-operation

- 5.1 In response to paragraph 71, CSL agrees with OFTA's proposal for industry co-operation to be introduced and spam problems to be dealt with by industry self-regulation rather than further legislation (if such actions are necessary in other sectors of the telecommunications industry in Hong Kong).
- 5.2 In respect of the compilation of a common blacklist of spammers, CSL is of the view that such a procedure will not meet the intended objective of preventing or stopping unsolicited electronic messages. A spammer will merely keep changing its origination source or identity to get around a blacklist and so the blacklist will not contain a comprehensive list of spammers.

6 Users' education

- 6.1 In response to paragraph 75 and possible information campaigns about spam to create awareness amongst, and provide accurate information and useful resources to, consumers, CSL is of the view its customers are cognisant of mobile spam as CSL's standard customer agreements have provisions relating to steps which CSL will take in connection with unsolicited electronic messages.
- 6.2 However, when looking at the broader Hong Kong telecommunications industry, CSL believes OFTA should play a role in assisting with the problem of any spam. OFTA has traditionally acted as a channel for developing and disseminating information to customers and consumers expect to be educated by the regulator about consumer issues. In addition, given that consumers' advocate, the Consumer Council is also intimately involved in informing and alerting customers about consumer issues, it should be involved with any campaigns which are developed. CSL would be willing to consider getting involved in any government initiatives which may be developed.

7 Technical solutions

- 7.1 In response to paragraph 78, CSL does agree with the principle that technical solutions should be reviewed, and new technology assessed as it becomes available, in an attempt block unsolicited electronic messages, however current technical solutions will not prevent senders from sending unsolicited electronic messages. For example, most of the existing wireless-related technology only has an impact after unsolicited electronic messages have been sent (by means of assessing certain parameters including patterns/volumes), however by then the damage has already been done as the message has been sent out. Although the technology does block the message before it gets to the recipient, a spammer may keep changing origination source or identity to get around being blocked by the technology as mentioned in above paragraph 5.2.

8 Legislation

- 8.1 In response to paragraph 83, CSL agrees with the principle that no person should send unsolicited electronic messages unless consent has been obtained and regards the issue of great importance to the general telecommunications industry in Hong Kong. We are of the view that the telecommunications industry in Hong Kong can take steps to prevent or minimise the amount of unsolicited electronic messages, however enacting anti-spam legislation may not lead to a significant drop in spam as most of the spammers are difficult to locate for the reasons described in this response and a significant amount of spam originates from outside Hong Kong.
- 8.2 Further, enacting anti-spam legislation will impose a substantial financial burden on the mobile operators while not delivering meaningful results. As previously stated, there is no evidence that within the mobile telecommunications industry there is a problem with unsolicited electronic messages, especially given the initiatives which have already been implemented by the industry and existing regulatory and legislative mechanisms. As such, CSL believes that it is unnecessary to burden the mobile operators with yet more regulation when it is unwarranted. Until there is clear evidence that there is a need to impose additional regulations on mobile operators in relation to unsolicited electronic messages, CSL urges the TA to refrain from any further regulation in this area.

9 Confidentiality

- 9.1 CSL does not regard any part of this submission as confidential and has no objection to it being published or disclosed to third parties.