中西區區議會文件第 32 /2015 號附件一

關注人對人促銷電話的規管問題

<u>香港個人資料私隱專員公署的回覆:</u>

貴區議會於2015年2月23日的來函已收妥。得悉 貴區議會將會討論人對人促銷電話的規管問題,公署表示歡迎。公署亦有留意到新世紀論壇在2月10日公佈的「市民對規管人對人促銷電話意見調查」結果。事實上,這次的結果與公署在2014年8月公佈「人對人直銷電話進行公眾意見調查」¹的結果大致相若,顯示當局有必要認真考慮修訂《非應邀電子訊息條例》,擴大《拒收訊息登記冊》的涵蓋範圍,把人對人電話也納入規管。

公署理解各方持分者對人對人促銷電話的規管有不同的立場,過去數 月已經在傳媒和多個渠道對不同的意見作出了回應。公署把這些回應 以「問答」形式列出,請參閱附件²。現就貴區議會成員提出其中兩 條相關問題,回覆如下:

(1) 針對人對人促銷電話,個人資料私隱專員公署會如何落實引入 「拒收人對人促銷電話登記冊」?

自 2010 年開始,公署已要求政府當局考慮把人對人直銷電話納入現時的《拒收訊息登記冊》。《拒收訊息登記冊》是由商務及經濟發展局(「商經局」)轄下的通訊事務管理局負責管理,電話用戶可向它登記其電話號碼,拒絕接收非應邀商業電子訊息,包括傳真、短訊和預先錄製電話訊息,但現時不包括人對人電話。其實,當局要擴大現行的《拒收訊息登記冊》使之涵蓋人對人電話,只需依據《非應邀電子訊息條例》第7條,在憲報刊登公告,便可迅速生效。

公署強調,擬議在《非應邀電子訊息條例》下的《拒收訊息登記冊》 涵蓋人對人電話,其特殊之處,不是現時私隱條例有關規管直銷活動 的條文所能替代,而兩條例是有互補的功效。

¹在2014年3月委託香港大學社會科學研究中心進行 www.pcpd.org.hk/english/resources_centre/publications/files/p2p_survey_e.pdf ²曾刊登於 2014 年 12 月的私隱專員公署通訊

首先,在《非應邀電子訊息條例》下的《拒收訊息登記冊》可以規管 所有人對人直銷電話,無論來電有否涉及個人資料。但《個人資料(私 隱)條例》(「私隱條例」)只適用於涉及收集及使用個人資料的電話。

再者,《拒收訊息登記冊》若涵蓋人對人電話,通訊事務管理局可提供一站式服務,市民在源頭一次過便可登記拒收所有促銷電話。不論來電是否涉及個人資料,市民都可拒收。

相反,根據「私隱條例」,市民在行使拒收訊息的權利時,只可在收到直銷電話後,逐一地向直銷商提出,或在直銷商已經違反私隱條例(若適合)的情形時向公署作出投訴,但這些都只是「亡羊補牢」的方法。

若促銷電話涉及個人資料的收集,由公署制訂另一個拒收訊息登記冊,即是由兩個不同機構(通訊事務管理局與公署)分別管理兩個拒收訊息登記冊,實在不利有效地運用公共資料。這個安排更肯定使公眾感到混亂,對消費者造成不便。

公署知悉立法會資訊科技及廣播事務委員會曾於2015年1月12日的會議上討論人對人促銷電話的議題。商經局表示理解到該議題十分複雜,決定要再了解全面的實況。公署得悉商經局將會委託顧問進行一項調查,搜集公眾、商界及業界對規管人對人促銷電話的意見,就業情況和該行業的營運資料,以及其他地區近來針對人對人促銷電話的規管措施。商經局預計調查會在今年上半年完成,然後才再因應調查的結果,可能就規管建議進行公眾諮詢。3

(2) 個人資料私隱專員公署如何加強針對人對人促銷電話滋擾的執法?

公署從2013年4月1日到2015年1月31日,共收到469宗有關使用個人資料的人對人直銷活動投訴。但我們相信這數字僅代表冰山一角。

自從2013年4月1日起,根據修訂的私隱條例,直銷商必須採取特定步驟,向目標顧客推廣直銷前,必須先獲得他們的同意。當直銷商第一次向顧客推廣時,需要知會顧客有權拒收這類直銷訊息,顧客隨後隨時都可提出拒收要求,而直銷商必須依從顧客的要求不再發出直銷訊息。若直銷商不依從這些要求,可構成罪行。公署收到這些涉嫌違例

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³立法會 CB(4)324/14-15(03)號文件

的投訴後,會轉交警方作刑事調查和考慮檢控。自2013年4月1日起, 我們已轉交21宗投訴給警方,但至今未有首宗檢控個案。

公署明白單靠警方執法,會有困難,例如追查該由哪間公司負責這些 香港境外的來電,便有一定難度。

要應付這些問題,需要多方合作。例如,公署已跟律政司和警務處的管理層展開對話,解決調查這些境外來電遇到的困難,希望透過跨機構合作,於適當時間在調查和執法上有所突破。

毫無疑問,直銷電話對市民構成重大滋擾。公署本著以公眾利益為重, 會繼續積極與政府和業界合作。

我們相信上述資料和附件已能清楚解釋公署的立場,因此不會派代表出席於三月十九日舉行的區議會會議。

(二零一五年三月六日收到)

中西區區議會秘書處 二零一五年三月

有問有答:人對人直銷電話

Questions and Answers: Person-to-person ("P2P") Telemarketing Calls

問 1: 2014 的數字怎樣與 2008 年的數字作比較?

答 1:數字反映人對人直銷電話的數量 再趨上升,更多人表示對這類電 話反感:

	2008	2014
曾接收人對人直銷電話的受訪者	84%	91%
估計每星期收到六個或以上 電話的受訪者	8%	23%
以「對來電者表明無興趣」 來回應人對人直銷電話的受 訪者	43%	49%
會「先聆聽資訊再決定是否 有興趣」的受訪者	46%	28%
不聆聽資訊便立即中斷電話 的受訪者	11% (最多)	21%
表示人對人直銷電話構成不 便的受訪者	81%	81%
表示人對人直銷電話帶來不 便的受訪者,其中進一步指 這些電話構成滋擾 ¹	_	99%

問 2: 但這些電話肯定會為某些人帶來 一些好處?

答 2: 2014 年的數字顯示更少人從人對 人直銷電話中得到好處:

	2008	2014
從一些人對人直銷電話中得 到好處的受訪者	13%	6%
在一些電話中有作出商業交 易的受訪者	21%	16%

問 3:2014 年的數字在統計上是否可 靠?

答 3:大部分上述提及的數字均是可 靠的;今次 2014 年的調查, 通訊辦在 2008 年的調查,是由 同一研究中心進行。詳細報告 可 在 www.pcpd.org.hk/english/ resources_centre/publications/ surveys/files/p2p_survey_e.pdf 下載,當中亦包括了比較 2008 年與 2014 年兩次調查結果是 的顯著性檢定測試。調查結果果顯 可置疑的大圖畫:這類電 就多或少的得益,但卻要大不數 人忍受滋擾,而且這趨勢正在轉 得熾熱。

問 4:加強監管人對人直銷電話會否影響數以萬計直銷電話業務從業員 的生計? 問 5:金融服務業、保險業、電訊業及 直銷電話中心的自我規管是否足 以減少對公眾造成的滋擾?

答 5: 現時並沒有強制規定電話促銷商須加入這些行業的聯會,遵守由這些聯會制定的守則亦屬自願性質。

問 6:設立拒收人對人直銷電話登記冊 的建議未必可有效地打擊從香港 境外打來的電話,尤其是當電話 不涉及使用個人資料。

答 6: 值得考慮的建議是,由本地直銷電話行業建立認證制度,以提高業界的專業水平。獲認證的直銷中心可向政府當局爭取使用經認可的、獨有的四位數字字頭電話號碼,與未獲認證的直銷中心(包括在境外操作的)區分開來。

問 7: 2013 年的條例修訂對直銷活動的 規管是否足以阻止不必要的人對 人直銷電話?

答 7:條例只適用於涉及使用個報子 2014年的清色 2014年的清色 2014年的清色 2014年的,27%受用個報子 受問 27%受制 2014年前,只有 301年, 101年, 101

務,消費者從一開始便可一次過 拒絕所有不願接收的直銷電話。 條例的規管與設立拒收人對人直 銷電話登記冊,有互補功效。

問 8: 人對人直銷電話登記冊附設於由 通訊辦監管的《非應邀電子訊息 條例》,還是於由公署監管的條 例會比較可行?

Q1: How do the 2014 figures compare with the 2008 figures?

A1: They show a growing preponderance of the calls, with more people responding negatively to the calls:

	2008	2014
Proportion of respondents receiving calls	84%	91%
Frequency of calls as assessed by proportion of respondents receiving 6 or more calls per week	8%	23%
Proportion of respondents indicating to the caller they were not interested	43%	49%
Proportion of respondents who would listen to the caller before deciding if they were interested	46%	28%
Proportion of respondents who would discontinue the call without listening to the caller	11% (at most)	21%
Proportion of respondents reporting that the calls had caused inconvenience to them	81%	81%
Proportion of respondents reporting inconvenience who considered the calls had caused nuisance to them ¹	_	99%

- Q2: But surely the calls must have brought some benefits to some people?
- A2: The 2014 figures show fewer people reported gains from the calls:

	2008	2014
Proportion of respondents who had derived benefits from some (not all) of the calls	13%	6%
Proportion of respondents who had concluded commercial transactions during some (not all) of the calls	21%	16%

- Q3: Are the 2014 figures statistically valid?
- Yes, for most of the figures A3: quoted above. The researcher the PCPD commissioned to undertake the 2014 survey was the same researcher who undertook the 2008 survey. The statistical testing of the 2014 survey results and the difference between the 2008 and 2014 results are found in the full report at www.pcpd. org.hk/english/resources_ centre/publications/surveys/ files/p2p_survey_e.pdf. The broad picture revealed by the survey results is indisputable, namely, while the P2P calls have successfully brought benefits to a relatively small proportion of the population, the majority has been caused nuisance and the trend is worsening.
- Q4: Any tightening of the regulation of P2P calls would affect adversely the employment and livelihood of tens of thousands of people engaged in the telemarketing industry?
- A4: The cost of maintaining the status quo is the inconvenience and nuisance caused to the majority of the population. This contrasts with the position in Singapore where a do-not-call register (for P2P calls, text messages and fax messages) was

set up in early 2014 and, in an effort to enrich the value of the jobs in the domestic economy, they do not mind a reduction in the low value-add telemarketing activities. If Hong Kong follows suit, the worry about loss in jobs could be addressed by allowing a suitably long period for the transition. The proposed register could even be implemented on a sector by sector basis rather than on a full-scale basis. Assistance could be provided to the affected employees to upskill themselves to take up higher value-add jobs.

- Q5: Has self-regulation by the finance, insurance, telecommunications and call centres been successful in minimising the nuisance caused to the public?
- A5: It is not mandatory for telemarketers to join the trade associations of these sectors. Compliance with the relevant codes of practice drawn up by these associations is voluntary.
- Q6: The proposed register would be ineffective to curb calls made outside Hong Kong, particularly if the calls are made without the use of personal data.
- A6: The setting up of an accreditation system by the local telemarketing industry to raise the professional standards of its members is worth considering. Accredited callers could distinguish themselves from non-accredited callers (including those operating from outside Hong Kong) by using telephone lines bearing unique and readily-recognised prefixes (to be specially assigned by the Government).
- Q7: Are the new provisions under the Ordinance good enough to deter unwanted P2P calls?
- A7: The Ordinance is engaged only when the calls involve the use of personal data. The

2014 survey revealed that only 27% respondents reported that over half of the calls they received specified their names, implying that the problem of P2P calls is due more to cold calls not involving the use of personal data. The advantage of the proposed register is that it can cover all calls, including randomly generated calls without the use of personal data. Further, under the Ordinance, the consent to receive marketing messages and the subsequent exercise of opting-out are arranged on a company by company basis. By contrast, the proposed register is a one-stopshop that enables the consumer to opt out of all unwanted telemarketing calls at one go and at the outset. Regulation under the Ordinance and setting up of the proposed register can complement each other.

- A8: Is it easier for the proposed register to be set up under the Unsolicited Electronic Messages Ordinance ("UEMO") and administered by the OFCA, or under the Ordinance and administered by the PCPD?
- Q8: The UEMO option should be easier. The UEMO is so structured that if it is decided in future to bring P2P calls into its ambit, such decision could be effected expeditiously by way of an amendment notice published in the Gazette under section 7. Besides, as OFCA is already administering a do-not-call register for SMS, pre-recorded messages and fax messages, it would be administratively expedient for them to take on P2P calls. The administering of the P2P call register by PDPO would not be conducive to the efficient use of public funds and the public would certainly find the arrangement confusing and less than customer-friendly. [

^{1.} 基數為曾收到人對人直銷電話的受訪者,並不包括那些從不認為直銷電話構成不便的受訪者。

All respondents who had received P2P calls, excluding those who never considered that P2P calls caused inconvenience to them.