

**PDPC's Public Consultation on Managing Unsolicited Commercial
Messages and the Provision of Guidance to Support Innovation in the
Digital Economy**

GLAXOSMITHKLINE PTE LTD

23 Rochester Park
Singapore 139234
Frederick Tay
Legal Affairs Manager
frederick.x.tay@gsk.com

Question 1: What are your views on the proposed scope and applicability of the DNC Provisions and the Spam Control Provisions?

Not sure how the new act will look like but does not make sense to have two separate provisions in the same act dealing with messages from different media channels. Would propose to combine the two provisions and have a generic clause against unsolicited messages under any media channel and that the same exceptions (i.e. consent was obtained) to apply to both. The crux of the restriction should be to define upfront what messages will fall within scope regarding the media channels for e.g. to state all unsolicited transmission and subsequent receipt by consumers of messages in whatever channel should be in breach of the combined act save where consents have been obtained upfront.

Question 2: What are your views on including commercial text messages sent using IM identifiers under the Spam Control Provisions?

Even with IM, there is a common identifier such as email address or phone number. That could be the common identifier which can be placed within the DRC. Any reason why email addresses cannot be included within the DRC?

With the inclusion of commercial text messages sent through IM identifiers within scope of the new act, it is important to ensure that this only refers to unsolicited text messages and not solicited ones i.e. that the SCA provisions in the new act only regulates unsolicited text messages. Otherwise, it could cause confusion on the need to restrict messages to be singular rather than “in bulk” and negate the effectiveness of provision of “consent”.

Question 3: What are your views on the proposed reduction of the period for effecting withdrawal of consent to 10 business days, in line with the period to effect an unsubscribe request under the Spam Control Provisions?

Just to clarify – if we are considering the provisions in light of unsolicited messages, is it appropriate to discuss this Question 3 for the purpose of this consultation given that where unsolicited messages are relevant, there is no concern about consents? It is not clear what is the intention by reviewing this at this forum and it must be clear that the comments / responses provided herein are only in relation to unsolicited messages and not solicited messages.

In any case, where an individual is asking for withdrawal of consent or to unsubscribe from the messages via email or any channels, it will take the company some time to understand first what and where the individuals' information are being used for and then communicating to the individual the implications of withdrawing the consent followed by responses from the individual about whether consents are to be withdrawn from all accounts and all messages or only some. This will then be followed eventually by withdrawing the consents. For a large organization, this potentially can take 2 weeks or more. For smaller companies with limited resources, this may take even more time.

Propose to retain the 30 days for effecting withdrawal of consents.

Question 4: What are your views on prohibiting the use of dictionary attack and address harvesting software for sending of commercial messages to all telephone numbers, IM identifiers and email addresses?

No further comments in relation to this query.

Question 5: Should B2B marketing messages be subject to the requirements under the DNC Provisions, in alignment with the coverage under the Spam Control Provisions?

It is not necessary to create an express provision to cover B2B marketing messages. In relation to the issue that was raised as part of the consultation, all organisations who are keen to send unsolicited messages should in all instances check the DNC to ensure that the number was not listed there in the DNC.

If the organization has any reason to think that the number registered in the DNC is a corporate number and therefore possible to continue sending messages notwithstanding, then it will be for that organization to have to prove so. To propose otherwise would have created inconsistency between the new Act and what is permitted under the PDPA i.e. B2B messages are not regulated under the PDPA.

Question 6: What are your views on the proposal for the DNC Provisions to be enforced under an administrative regime?

For an organization perspective, it will definitely be a good approach but it is not clear how this will pan out given that any action brought before the civil court is part of judiciary discretion so any financial penalties, sanctions proposed by the PDPC should at best be persuasive but not binding? Are there any current legislations that are enforced under an administrative regime that we can consider? Will it be similar to a self-regulating regime where each relevant industry will mandate the sanctions? If that is the case, do we need a new legislation or can this be provided via a guideline?

There is currently the Protection from Harassment Act – will there be an appropriate forum then for the proposed SCA provisions to be parked under the PHA instead since the nuisance that is being created as a result of spam messages is something akin to creating distress?

Question 7: What are your views on the proposed obligation to communicate accurate DNCR results, and liability on third-party checkers for any infringements of the DNC Provisions resulting from inaccurate information they provided?

No further comments in relation to this query.

Question 8: What are your views on the proposed prohibition of resale of results of telephone numbers checked with the DNCR?

No further comments in relation to this query.

Question 9: What are your views on the proposed deeming provision?

Not sure how this presumption will work – if we adopt the proposed deeming provision, does it mean that all organisations will just get their employees to be a subscriber and send out the messages? In such instance, will the subscriber be caught under the act given that the PDPA only regulates sending of data by organisations and not individuals in their personal capacity?

Question 10: What are your views on the proposed Enhanced Practical Guidance framework?

It is definitely a great opportunity to propose a EPG framework given that this aspect of the law is rather nuance in Singapore and any guidance will be useful. However, we do have a number of considerations which we have set out below:

- (a) we note that at paragraph 7.5, it was mentioned that the regulatory relief at paragraph 7.3 will only apply to the entity to which the EPG is being assessed for. We seek clarification on whether such provision would mean that any determination and/or relief will only apply to the applicant who has submitted an application for EPG? This may not be practical not just from the industry perspective but also from the PDPC perspective. From the industry perspective, where the query is complex, it generally involved multiple parties. Further in most instances, the company may not undertake the project on its own and will outsource certain projects but given that it is not the principal in the process, it remains liable for the actions of the subcontractor. In such instances where there are multiple parties involved, to what extent can the relief / determination provided be restricted only to one entity?
- (b) at paragraph 7.1(b), it was stated that the EPG determination may not be valid if the information provided by the organization for determination is “no longer accurate”. Please clarify how will this condition be enforced. An organization cannot possibly factor for all factual scenarios when it submit a matter for EPG determination, hence given that facts can change with time, it will be difficult to argue that the determination is rendered invalid just when the facts have changed. At the least, we should include terms like “materially inaccurate” and the inaccuracies must be fundamental to the determination, not just any inaccuracies which will render the determination invalid.

Conclusion

The proposals may not be that relevant to ourselves as a pharmaceutical company given that our messages are unlikely to be unsolicited. Accordingly, it will be preferable if it can be made clear that the new Act that combines both the DNC and the SCA provisions are only applicable to unsolicited messages given that the consent requirement that pervades solicited messages are more than sufficient to negate the need to have SCA-type provisions.