

COVER PAGE

**PUBLIC CONSULTATION ON PROPOSED ADVISORY GUIDELINES
ON APPLICATION OF THE PDPA IN THE
REAL ESTATE AGENCY & TELECOMMUNICATION SECTORS**

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CONSUMERS ASSOCIATION OF SINGAPORE (CASE)

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1. General Comments on the DNC provisions affecting both industry sectors of Real Estate Agency and Telecommunication

The Consumers Association of Singapore (“CASE”) thanks the Commission for the opportunity to comment on the proposed Advisory Guidelines on the application of the Personal Data Protection Act (“PDPA”) for the industry sectors of real estate agency and telecommunication.

CASE wishes to comment on the Do-Not-Call (“DNC”) and DNC exemption provisions relating to them.

We note that the Personal Data Protection (Exemption from Section 43) Order 2013 (S.817/2013) (“Exemption Order”) applies to both industry sectors, thereby allowing real estate and telecommunication organisations to text or fax consumers marketing in cases where they have an ongoing relationship with the consumer. The Exemption Order as made on 24 December 2013 has a pronounced effect on consumers of both industry sectors.

2.1 Direct consumer protective function by DNC

Notwithstanding that the PDPA recognises both the right of the consumers to protect their personal data and the need of organisations for personal data, CASE is of the opinion that the balancing of these two competing interest is directed

specifically to the specific acts of collection, use and disclosure of personal data (S3 PDPA). Such “balancing” of competing interests, was particularly applicable to the data protection provisions under the PDPA, but not necessarily for the DNC provisions under the same Act.

This is because the DNC activity per se does not involve any collection, use or disclosure of personal data. Rather, the DNC is a deterrent function in the PDPA against disruptive communication by the organisation to the consumer.

The DNC function is self-evident, which is to cut down on consumers from having to be disturbed by organisations marketing their products and services. Therefore, the DNC feature in the PDPA holds a direct consumer protective benefit.

2.2 Strict definition and limited application on “ongoing relationship”

By the PDPA enacted in 2012, Parliament has already contemplated on scenarios of organisations with any “ongoing commercial relationship” with the consumer (Eighth Schedule Clause 1(e)(i) – (iii) PDPA). It has provided a restricted application for these; organisations with an ongoing relationship do not need to check with the DNC Register in only three specified scenarios.

They are, where the sole purpose of such messages is (1) to notify concerning a change in the terms or features of the ongoing terms of arrangement with the organisation (which includes subscription, membership, account, loan, etc); (2) to notify concerning a change in the standing or status of the recipient of the message;

and (3) to provide at regular periodic intervals, account balance information or other type of account statement with respect to the ongoing commercial relationship.

The Act is clear right from the start that no specified message to a Singapore telephone number could be sent by an organisation, without first checking with the DNC Register (S43 PDPA) whether with or without any ongoing relationship.

As such, this restricted application in the PDPA should be respected and safeguarded for the benefit of the consumer. In our view, there should not be extraneous “exemption” in the first place, even if procedurally allowable (by S62 PDPA), to add-on to the existing PDPA framework.

2.3 Consumers now to opt-out individually on each contacting organisation

It is noted that the concept of the “ongoing relationship” in the Advisory Guidelines for the Real Estate Agency Sector and Telecommunication Sector has been elaborated upon, although not exhaustively. It is clear that whether an organisation and a consumer has an ongoing relationship is a question of fact and therefore a matter of context.

There will inevitably be grey areas on what would legitimately and confidently define an ongoing relationship is with a consumer. In such instances, CASE strongly urges that there should be a strict approach and restricted application especially in light of the context of the Exemption Order. Based on the illustrations used in the Guidelines, that would appear to be the intention of the Commission as well.

In conclusion, we urge your Commission to apply a purposive approach in enforcing the protective benefits for the consumer.

Thank you.