



**Submission to the public consultation
on Eligibility requirements for
registration on the Do Not Call Register
(September 2008)**

Prepared by Galexia



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This report has been written by Galexia.

Document Purpose

This document was submitted to the 2008 public consultation on the [Eligibility requirements for registration on the Do Not Call Register](#).

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1. Introduction

Galexia welcomes the opportunity to comment on this proposal. The Do Not Call Register has been a great success – and extending the eligibility requirements to include organisations will benefit not only organisations who do not wish to be contacted with direct marketing offers, but also the direct marketing businesses who wish to increase their efficiency by not contacting unreceptive organisations.

2. Options

2.1. Option One: Allow registration of all telephone numbers

Should all telephone numbers be eligible to be listed on the Do Not Call Register? Why/why not?

Yes.

Galexia submits that, on balance, the benefits to organisations of being able to register their phone numbers outweighs the costs to the direct marketing industry.

It is worth noting that a similar position was taken concerning the eligibility of corporations for registration on the Telephone Preference Service in the United Kingdom following the public consultation for the Privacy and Electronic Communications (EC Directive) Regulations 2003,¹ which raised similar issues to those raised in this Discussion Paper. In its response to the public consultation, the Government's position was that, on balancing these issues, corporations *should* have the right to register on the Telephone Preference Service. Corporations were nevertheless excluded from registration – but only on the grounds that time was needed for business to adapt to the Regulations and for the corporate registration system to be developed. The Government made a commitment to allow corporate registration under future regulations,² and in 2004 introduced the Corporate Telephone Preference Service³ under the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2004.⁴

¹ The Privacy and Electronic Communications (EC Directive) Regulations 2003 (UK), <<http://www.opsi.gov.uk/si/si2003/20032426.htm>>.

² UK Department for Business, Enterprise & Regulatory Reform, *Implementation of the Directive On Privacy And Electronic Communications: Government's Response To Consultation*, 18 September 2003, pages 9–10, <<http://www.berr.gov.uk/files/file14998.pdf>>.

³ <<http://www.tpsonline.org.uk/ctps/what/>>

⁴ The Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2004 (UK), <<http://www.opsi.gov.uk/si/si2004/20041039.htm>>.

Galexia's submission on this point is:

- (i) allowing organisations to register relieves a burden on organisations that receive direct marketing calls;
- (ii) that there is a benefit to direct marketers in being able to wash their lists of those organisations who will be unreceptive to their calls;
- (iii) government regulation is necessary to achieve these benefits.

More generally, although there is a need for businesses to promote their products and services, this does not necessitate the use of disruptive and costly direct marketing techniques – the targets of direct marketing (whether individuals or organisations) should be able to go about their own business, rather than losing their time to others.

Costs to the receiving organisation

As noted in the Discussion Paper, there are costs for organisations in dealing with unsolicited marketing calls – both the direct cost of the extra resources (including employees) needed to respond to these calls, and the indirect cost of business opportunities lost through the unavailability of these resources. These costs were noted in the case of small businesses (where they are felt most strongly) in the Explanatory Memorandum to the *Do Not Call Bill 2006*:

Many small businesses indicated that unsolicited telemarketing call approaches are time consuming and costly for their businesses as they use valuable resources that congest fax and telephone lines potentially resulting in loss of business opportunities.⁵

Galexia's own experience is that *on no occasion* have we availed ourselves of any product or service offered through an unsolicited marketing call. An overwhelming proportion of the calls we receive offer telecommunications or information systems services, both of which we have long since obtained – through known and trusted suppliers with whom we have long-standing relationships. Presumably, this is the case for the majority of established organisations.

Moreover, it is often difficult to distinguish initially between an unsolicited marketing call and a genuine, desirable call (including personal calls, potential clients, etc). Some unsolicited marketing calls can be easily identified as such by the use of vague terms like 'the communications manager', but potential clients, sponsors, etc., lacking knowledge of personnel within an organisation, may also seek to speak to a particular role, rather than a particular person.

Additionally, unsolicited marketing callers often have access to basic information about core staff (as could be provided by a website). Indeed, in Galexia's experience, a number of these callers employ a deliberate tactic of asking for staff on a first-name basis. Asking a caller persistent questions in order to determine the nature of the call can potentially damage future business relations.

Finally, many unsolicited marketing calls are deceptive, rude, or evasive, failing to directly state the purpose of the call, and refusing to elaborate when asked – in a word, annoying.

⁵ Do Not Call Register Bill 2006, Explanatory Memorandum, page 12.
<[http://www.comlaw.gov.au/ComLaw/Legislation/Bills1.nsf/0/775239055212937DCA25717E000D3103/\\$file/06068em.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/Bills1.nsf/0/775239055212937DCA25717E000D3103/$file/06068em.pdf)>.

Advantages to direct marketers

As noted in the Discussion Paper, there is an advantage to direct marketers in having a wash list of organisations that do not want to be contacted. It is likely that an organisation which is determined enough to avoid direct marketing calls to actively opt out by registering would not accept any direct marketing offers. It is therefore in the interests of both these organisations *and* the direct marketers that no time or resources are wasted on making calls to these contacts.

Self-regulation is insufficient

In accordance with best practice, regulation should only be introduced if it is necessary – Galexia suggests that, in this case, it is necessary.⁶ Given that direct marketing to organisations is a problem, it must be solved either through regulation or industry. The Do Not Mail File⁷ is an example of the direct marketing industry's self-regulation – under the ADMA Code of Practice, ADMA members must not send addressed and unsolicited mail to an individual on the File.

ADMA offers a handful benefits to be derived from using the File:

- Direct marketing is more likely to be successful if restricted to those who have expressly opted out are not contacted;
- If those who do not wish to receive direct marketing mail are not contacted, they will not complain to ADMA, ACMA, the Privacy Commissioner, the press, or government;
- For those in the direct marketing industry who trade contact lists, the lists may be more effective, and thus more valuable, if they have been washed against the file; and
- Use of the File demonstrates a 'commitment to quality one-to-one marketing and customer satisfaction'.

Such a self-regulatory scheme, if applied to direct marketing phone calls (including calls to companies and other organisations), would be an insufficient response to the problem.

First, marketing calls received by Galexia (and presumably by most organisations) are not from established, recognised brands whose reputation will suffer as a result of the annoyance – a business in this position is less likely to use direct marketing since customers will seek out their products and services – but rather from essentially anonymous companies that may or may not be heard from again.

Second, ADMA is only in a position to deal with ADMA members. To complain, the recipient of a call would therefore need, in the first place, the knowledge and time (and hence resources) to discover whether the call was made from an ADMA member; and in the second place, the time to lodge a complaint with ADMA and pursue the complaint through ADMA's dispute resolution mechanisms. Few businesses would invest this time into pursuing a single complaint – better to simply lose the time taken responding to the call and then return to business.

⁶ For a discussion of best practice regulatory models, see Galexia, *Consumer Protection in the Communications Industry: Moving to best practice*, issues paper prepared for CHOICE for the Telecommunications Consumer Representation Stakeholder Forum, May 2008, <http://www.galexia.com/public/research/articles/research_articles-sub03.html>.

⁷ <<http://www.adma.com.au/asp/index.asp?pgid=1984>>

Third, the only repercussions for a direct marketing business contacting an individual who is on the File is loss of status as an ADMA member. For the individual who has received directed marketing despite being on the File, this is a small remedy, and consumers have no reason to be confident that the threat of losing ADMA membership is a sufficient incentive for companies to abide by the File – a business without ADMA membership may still directly market.

An extension of the Do Not Call registration requirements to allow registration of any number would avoid these limits of self-regulation by providing a widely-known, enforceable requirement not to directly market to a number on the Register.

Should the eligibility requirements for registration be expanded to allow the registration of numbers beginning with '1'?

Yes.

In addition to the arguments for allowing registration of all numbers, numbers beginning with '1' should be eligible for registration given the nature and common usage of these numbers, as set out in the Telecommunications Numbering Plan 1997.⁸ The numbers fall broadly into three categories:

- 'Emergency numbers' (such as 106 and 112);
- 'Service numbers' (such as 1221 for faults, 1222 for call cost enquiries, 1223 for directory assistance, and the 125- prefix for operator assisted services); and
- 'Business numbers' generally used for customer service (13-, 1300-, 180x- and 190x- numbers).

Emergency numbers should be eligible for registration in any case (a point discussed below), but it is clear that none of these numbers should be of interest to direct marketers. Any decision to buy a product or service being offered by a direct marketer should be made by someone in a managerial position, not by an employee whose role is to handle emergency or service calls.

Perhaps more than a standard business number, the use of 1- numbers for direct marketing poses an additional cost on the target. Whereas a standard business number will generally not be in constant use (and thus a direct marketing call *might* be made when the number is not in use) 1- numbers are generally used in contexts where constant use can be expected – for instance, as a company's technical support contact point. Allowing these numbers to be tied up for direct marketing calls thus represents a loss of customer access to the company, potentially costing the company a new customer, or damaging its reputation with existing customers.

Finally, in some cases the costs of calls to several of these numbers are higher than a standard call and being able to wash them from a call list is a benefit to the direct marketer. In other cases the costs are born by the recipient - thus a call from a direct marketer creates an additional direct financial burden.

⁸ Telecommunications Numbering Plan 1997 (Cth), <<http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200506356>>; see also ACMA's summary of these numbers at <http://www.acma.gov.au/WEB/STANDARD/pc=PC_1681>.

In your view, what will be the cost to the telemarketing industry of allowing the registration of all telephone numbers on the Register?

There are, of course, interests to be considered in addition to that of the target companies. Direct marketing has been established as an accepted business practice (albeit an unpopular one amongst its targets), and thus any modifications to the registration requirements may have an impact on the telemarketing sector.

Most notably, in order to wash their contact lists against the Register, direct marketing businesses would have to pay a subscription cost. However, taking the current subscription fees⁹ as a guide, these fees are low – AU\$2140 would be sufficient to allow washing of every business number in New South Wales (the state with the highest number, at 549,968, of registered businesses in 2008)¹⁰ – a cost of less than AU\$0.004 per business.¹¹ At these scales, the costs of accessing the Register are offset by a small fraction of direct marketing calls being successful.

Where fewer businesses are to be contacted, the cost of accessing the Register is even smaller (AU\$74 for up to 20,000 numbers, and free for up to 500 numbers). This should be contrasted with the cost to a business of receiving and rejecting direct marketing calls – ten person-minutes lost to a business through answering direct marketing calls may be equivalent to AU\$5-6 in wages alone.

Coupled with the benefits of not contacting those businesses that have registered (who are unlikely to purchase the product or service), this cost to direct marketing businesses is easily offset by the substantial benefits – to both direct marketers and their targets – of allowing registration of business numbers.

2.1.1. *Everyday business-to-business (B2B) communications*

If small business telephone numbers were able to be registered, should telemarketers still be able to call them about goods and services that are directly or substantially related to their business? Why/why not?

Such exceptions appear problematic, and should not be introduced, primarily because the phrase ‘directly or substantially related’ is too vague. The majority of small businesses use IT or telecommunications in their operations, for example, and so direct marketing of IT or telecommunications products and services might be considered to be ‘directly or substantially related’.

Presumably, determining whether a particular product was ‘directly or substantially related’ to the target business would fall to the marketer – who has limited knowledge of the target business, and an unavoidable bias towards determining that the call is appropriate.

⁹ Do Not Call Register (Access Fees) Amendment Determination 2008 (No. 1), <<http://fedlaw.gov.au/comlaw/legislation/legislativeinstrument1.nsf/b68b36cfc8b63e0eca256f8500060bc7/c5b0a095f679fe50ca25747200834bbd>>.

¹⁰ <<http://www.asic.gov.au/asic/asic.nsf/byheadline/2008+company+registration+statistics>>.

¹¹ This result is based on Register subscription type C, at \$340, giving access to 100,000 numbers, with an additional cost of AU\$0.004 for each additional number. Subscription type D, costing \$3000 and giving access to 1,000,000 numbers, would enable washing of every business number in NSW at approximately \$0.0054 per business.

How might everyday B2B communications and professional telemarketing be distinguished?

As with the definition of ‘directly or substantially related’, the distinction between ‘everyday B2B communications’ and ‘professional telemarketing’ is vague at best. A plumbing supplies business might indeed have a product of interest to a plumber – but that plumber will likely already have a set of providers of plumbing supplies, in which case a ‘B2B communication’ offering a product will be unnecessary, redundant, and unwanted.

Galexia’s experience of ‘B2B communications’ in this sense has been that they are indistinguishable from ‘professional telemarketing’ – indeed, this has on a number of occasion led to extra loss of time as ‘professional telemarketing’ calls are dealt with on the (mistaken) basis that they are of interest to the company.

2.1.2. *Alternatives to allowing all telephone numbers on the Register*

Allow registration of emergency service numbers

If the option to allow all telephone numbers is not adopted, should emergency service telephone numbers be eligible to register instead? Why/why not?

Yes.

Tying up phone lines used for emergency services creates an unacceptable risk to those who would use the services for their intended purpose – potentially resulting in injuries, deaths, or property damage that might otherwise have been avoided.

Furthermore, it is unrealistic for a direct marketer to expect to find a willing customer when calling an emergency number. An attempt to sell a product or service to an emergency organisation would be better directed towards the management of that organisation, not the emergency call operators.

For the purposes of the Register, what do you consider an ‘emergency’ organisation should be?

Clearly, any organisation whose services directly prevent loss of life or substantial property damage should fall under the ‘emergency’ category – this would include the police, fire, and ambulance services, and should also include hospitals, state emergency services, mental health hotlines, etc. Given that the interests to be balanced here are life and property on the one hand and the business interests in being able to contact a relatively small number of additional organisations on the other, the definition should be broad enough to include borderline cases.

The assignment of emergency numbers under the Telecommunications Numbering Plan 1997 should *not* be used as an exhaustive definition of ‘emergency’ organisations. Too many critical services use numbers that fall outside these assignments (for example, Beyond Blue uses a 1300- prefix).

Registration of small business numbers

If the option to allow all telephone numbers is not adopted, should small business telephone numbers be eligible to register instead? Why/why not?

Yes.

The costs of responding to unsolicited marketing calls are felt more strongly by small businesses. With fewer resources than large organisations, the time taken (and consequently, the resources used) to respond to unsolicited marketing calls is proportionately much greater for small businesses.

Additionally, as the size of a business decreases, so too does the gap between business and consumer – the owner of a small sole-proprietor business faces many of the same concerns as an individual consumer (pressure marketing, etc) and should be able to avail themselves of similar protection from unsolicited marketing.

2.2. Option Two: Allow registration of all fax numbers

Should the Government expand the Register to allow the registration of all fax numbers? Why/why not?

Yes.

The same arguments for allowing registration of all telephone numbers apply to allowing registration of fax numbers. Although organisations may lose less person-hours to faxmarketing (since an unwanted offer can simply be dropped into a recycling bin) there is an additional cost in fax paper and toner – both in monetary and environmental terms.

There may also be an additional benefit to direct marketing businesses in allowing registration of fax numbers – marketing faxes are more easily disposed of than marketing phone calls, and so the likelihood of successfully marketing to unwilling organisations by fax is even smaller than the likelihood of successfully marketing to these organisations by phone. Allowing registration of fax numbers thus improves the efficiency of faxmarketing just as allowing registration of telephone numbers improves the efficiency of telephone marketing.

For reasons outlined above, a self-regulatory approach along the lines of ADMA's Do Not Mail File, as has been suggested to the Government (the Do Not Fax Service¹²) would be an inadequate response, at the least because there is no incentive for businesses to bind themselves.

In your view, what will be the cost to the faxmarketing industry of allowing the registration of all fax numbers on the Register?

Since faxes can be sent without significant human effort, the cost of faxmarketing may be less than the cost of telephone marketing, and the proportional cost of accessing the Register may therefore be higher. The absolute cost is nevertheless quite low, as discussed above, and is outweighed by the wasted resources generated by faxmarketing.

¹² <<http://www.adma.com.au/asp/index.asp?pgid=2025&cid=11021&id=2245>>

2.2.1. Alternatives to allowing all fax numbers on the Register

If the option to allow the registration all fax numbers on the Register is not adopted, should registration of small business fax numbers be allowed instead? Why/why not?

Yes.

As with direct telephone marketing, the proportional cost of faxmarketing to small businesses is proportionally higher than the cost to large organisations.

3. Conclusion

Do you have any other comments regarding potential changes to the eligibility requirements for registration on the Do Not Call Register?

Although beyond the stated scope of the Discussion Paper, Galexia submits that registration on the Do Not Call Register should not expire after 3 years, as it currently does under s 17 of the *Do Not Call Register Act 2006*. Although the desire to remove unused or transferred numbers is appreciated, two points bear mentioning:

- (i) the consequences of having unused numbers on the list are minimal – given the relatively few numbers being abandoned or transferred compared to the number of stable telephone numbers, and given that there was such a large response to the Do Not Call Register when it was first introduced, it seems unlikely that direct marketing businesses would suffer due to receptive individuals or organisations having their numbers registered without their knowledge;
- (ii) mechanisms are available to remove unused or transferred numbers from the Register – either the active seeking out of these numbers by the Register maintainers (the approach taken in the US under s 5 of the *Do-Not-Call Improvement Act 2007*¹³) or the more passive approach of removing numbers when they come to the attention of the Register maintainers (the approach taken in the UK under reg 26 of the Privacy and Electronic Communications (EC Directive) Regulations 2003¹⁴).

The United States Do-Not-Call Register, which originally had a five-year registration duration, now has permanent registration following an amendment under the *Do-Not-Call Improvement Act 2007*.¹⁵

¹³ *Do-Not-Call Improvement Act 2007* (US), <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ187.110.pdf>.

¹⁴ The Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2004 (UK), <<http://www.opsi.gov.uk/si/si2004/20041039.htm>>.

¹⁵ US Federal Trade Commission, *Do Not Call Registrations Permanent and Fees Telemarketers Pay to Access Registry Set*, 10 April 2008, <<http://www.ftc.gov/opa/2008/04/dncfyi.shtm>>.