Legal and Regulatory Update

Death of the cold call?

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Abstract

This is a brief update commenting on the uncertain future of outbound telemarketing as a means of customer acquisition. It examines the impact of legislation and customer resistance on the viability of outbound calling and poses the view that, if drastic action is not taken soon, the practice will cease to be economically viable within five years.

Introduction

Life is getting tough in the outbound telemarketing industry. Consumer resistance is rising, causing sales conversion rates to nosedive. More crucially, the pool of people available to be called is drying up fast, as individuals and businesses find new ways to avoid contact. A recent report¹ suggests time is running out for cold-call telemarketing. Unless the industry acts now to bring about fundamental change, outbound telemarketing as a means of new customer acquisition will cease to be viable within less than five years.

This paper reviews the changes and trends that are bringing this doomsday scenario forward and advises companies on how to survive it.

Unwanted telephone calls from companies overly eager to sell their products or services are among the most universally hated aspects of modern life. But, despite that, the calls keep coming. In fact, the telemarketing industry seems to be locked in a policy of proliferation. The number of outbound calls in the UK increased by around 15 per cent in 2003; a growth pattern which, according to Datamonitor,² was mirrored across Europe. New technologies such as predictive diallers, designed to increase speed and productivity, are adding to the problem, fuelling ever more rapid growth in call volumes and giving rise to the 'silent call' phenomenon that is fuelling customer frustration and opt out.

Today the industry faces what economists would call a 'dilemma of the commons'; one in which every market player is confronted by a shared threat that imperils their future and that they exacerbate by acting in individual rather than collective interests. It is a situation Europe's fishermen, who have watched fish stocks diminish to almost irrecoverable levels, would recognise. If all fishermen restrained themselves, each would benefit from enlarged fish stocks in the future. But individuals see no point in holding back unless their competitors do the same. Most fishermen, acting in their own interests, have decreased their net gauge and fished ever more determinedly to maintain their catch. In the same way, individual telemarketers, by stepping up their campaigns to maintain meagre returns, are doing irreparable damage from which they and their industry are unlikely to recover.

Keywords: outbound telemarketing, cold calling, Telephone Preference Service (TPS), do not call, predictive diallers, legislation

Consumer resistance to outbound calling

Silent calls fuelling outbound resistance

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**Economic viability of
outbound sales
calling is declining**

The threat to cold-call telemarketing is real. Research contained in *Death of the Cold Call*³ makes it clear that within five years its economic viability will be lost. But the damage is likely to spread further. Legislation and regulation rarely distinguish between good practice and bad. New rules introduced to curb the worst excesses of the industry could impinge upon all areas of outbound activity.

The threat to telemarketing comes from two directions — increased regulation designed to protect the customer interest, coupled with the simple market dynamic of customer resistance. As both grow exponentially the industry's survival chances are diminishing fast. Let us see how each of these will impact.

The threat of legislation and regulation

Around £3bn worth of goods and services are sold in the UK every year by a telemarketing industry that employs over 14,000 people. But it is an industry that is in danger of being legislated out of existence.

The Telephone Preference Service (TPS), which allows consumers to opt out of unsolicited sales and marketing calls by adding their phone numbers to a register, has attracted 5.25 million numbers — 24 per cent of British households. The situation could be worse: the service, administered by the Direct Marketing Association (DMA), is underpromoted and lacks teeth. There have been no fines for breaches of the rules in the legislation's six-year history, despite the fact that around 12,000 TPS members a year complain of unwanted calls. In the USA in 2003 the introduction of a similar 'do not call' (DNC) list coincided with a strong consumer lobby, which fuelled media and political interest in the issue. On the day the list opened 7 million Americans signed up. By August 2003 the number had grown to 30 million. By March 2004 more than half (57 per cent) of all adult American's were covered by the list.

It would be madness not to assume that the same could happen here if consumers mobilised an aggressive campaign or if promotion of the list were stepped up. The pressure for the UK government to take action to protect the consumer will grow and, if the UK does not act, an appeal to Europe — where legislation is generally tougher — cannot be ruled out. Across Europe countries fall into one of two categories, 'opt in' or 'opt out'. At present the UK sits within the 'opt out' group, which means consumers have actively to register their desire not to be contacted by telemarketers. In the 'opt in' group, which includes Germany and Italy, it is illegal for a company to call a consumer without their express permission to do so. It is not difficult to imagine that such draconian legislation could be introduced here.

Meanwhile, the TPS has been extended to businesses and is gathering subscribers fast. And the spectre of industry-specific legislation raised its head in October 2004, when a ban on the cold selling of mortgage products was introduced by the Financial Services Authority (FSA). It seems likely that this will set a trend in other areas of financial services, or in sectors such as energy and telecommunications, where the need to counter consumer concerns about mis-selling and sharp practice has become pressing.

**Legislations covering
outbound calling**

**Tightening of laws
anticipated**

The DMA's powers are unquestionably limited. The worst excesses are committed by companies which neither join the DMA nor sign up to its guidelines and, at present, there are no means of forcing them to do so. The good efforts of some companies are being undermined by non-compliant rogue operators which plough on regardless, destroying the industry's chances of restoring consumer confidence and favour.

Growing consumer resistance

Regulatory developments pose a serious threat to outbound calling, but there is a more insidious problem that is even harder to overcome. Quite simply, consumers are becoming so resistant to cold calls that sales conversion rates are plummeting.

CM Insight research conducted among telemarketing practitioners shows that:

Effect of consumer resistance on effectiveness of outbound calling

- 40 per cent of telemarketers have experienced falling sales from telemarketing in the past 12 months — a trend that is expected to continue (Figure 1)
- 40 per cent say it has become harder to get through to people in the last 12 months — 36.5 per cent expect the situation to worsen (Figure 2)
- 57 per cent expect the public to become less accepting of cold calls and more negative in their responses in the short to medium term (Figure 3)
- 73 per cent expect legislation and regulation from the UK and Europe to become increasingly restrictive — making it harder to call people (Figure 4).

It may sound insane but, as success rates fall, the temptation for telemarketers to make ever more calls grows exponentially, as they struggle to meet targets. But today consumer data represent a finite and diminishing resource. Consider: there are currently more than 14,000 outbound agents in the UK — sufficient to call every household in the country three times a month. Clearly the data pool is being severely over-fished. CM Insight recently heard from an outsourced service provider

Figure 1: Conversion rates are falling fast

Figure 2: It is getting harder to contact decision makers

Figure 3: Practitioners expect public negativity to increase

who was managing to make one sale every 20 hours instead of one sale every four hours, which was his target. His experience demonstrates a sad truth; even those at the coalface are finding it hard to predict the falling trends.

And, while it is getting increasingly difficult to get a result from telemarketing calls, it is also getting easier for consumers to avoid the calls in the first place. They do so not just by joining the TPS but by using new technologies available in the marketplace which bar calls with no caller line identifier (CLI), where the CLI is not recognised or where predictive diallers are being used. More simply, consumers are using their answer machines to vet and control calls and more are opting to be ex-directory: 50 per cent of UK households are ex-directory today, up from 25 per cent in 1999.

How consumers avoid or reject calls

Figure 4: Practitioners expect regulatory and legislative restrictions to increase

As the number of consumers — and businesses — available to be called diminishes, and the cost of reaching them escalates, businesses will quickly come to the realisation that there is simply no point continuing. The ocean of sales opportunities will, quite simply, have dried up.

The route out

No company can afford to stand idly by while the scenario described here relentlessly unfolds. The best course of action will differ for each company, largely driven by its level of dependency on outbound telemarketing as a means of customer acquisition. But companies must act now to plan for a future in which they may not be able to win new customers by phone.

First, they must count the cost of bad practice: if a bad call offends a customer there is more at stake than a wasted call — the whole lifetime value of that client is lost. Second, they must adopt best practice in all telemarketing activities to stave off further legislation and to reduce customer frustration. Third, they must work to lessen their dependency on cold calling — focusing on growing business with existing customers and using their advocacy to win new ones. Finally, they must work hard to win consumer trust by treating customers with respect and consideration — that means only making calls when they have the recipient's permission to do so.

There must also be changes to the way the TPS operates. First, the regulation must be seen to have teeth, with the perpetrators of bad practice being publicly punished. Secondly, the regulation must give consumers choice — instead of a blanket ban on all telemarketing calls it should allow consumers to choose times of day when they are willing to

**What companies
can do**

**Call for regulatory
progress**

be contacted and select the types of organisations they would be willing to be called by — banks no, charities yes, for example. Building flexibility into the TPS system will help maintain its viability and go some way towards prolonging the life of outbound customer acquisition.

But the most important step companies can take is to reduce their dependency on the cold call. The pursuit of sales at any cost is the poor practice mantra of the telemarketing industry. Far from creating wealth, many outbound operations are actively destroying the foundations of the businesses they purport to serve by eroding brand value and corporate reputation. Companies must examine how they interact with customers and prospects. What channels do they currently use to contact them? How often and for what reason? How can other points of contact be utilised as sales opportunities? That means understanding not just the effectiveness of each contact but the organisation's ability to take advantage of them.

If companies do not take action now to reduce their dependency upon cold calling, the author predicts that action will be forced upon them in time. This activity will become economically unviable. The only real question to answer is whether and to what extent that scenario will damage your business.

References

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