

Case Reference	R/E/I/058
Title	Golden Bytes' Failure to Disclose Terms and Conditions of "Go Mango" Puzzle Game and Charging for Unsolicited Service
Case Opened	4 July 2006
Case Closed	9 November 2006
Complainant	IDA initiated enforcement proceeding
Respondent	Golden Bytes Interactive Pte Ltd ("Golden Bytes")
Case Summary	<p>It was brought to IDA's attention that when an End User participated in a football contest advertised on the television, the End User was subscribed to Golden Bytes' "Go Mango" puzzle game. However, it was not stated in the advertisement that participation in the football contest would lead to the subscription to Golden Bytes' "Go Mango" puzzle game and the End User would subsequently be charged for the puzzle games.</p> <p>Golden Bytes had therefore charged the End User for a service that the latter had not consented to receiving.</p>
IDA's Determination	<p>Based on IDA's investigation, IDA determined that Golden Bytes had breached Sections 3.2.2 and 3.3.3 (read with Section 3.3) of the Code, summarised as follows:</p> <p><i>Section 3.2.2 requires a licensee to disclose to End Users, in advance, the price and non-price terms governing the provision of a telecommunication service.</i></p> <p><i>Section 3.3.3 requires a licensee to provide in its End User Service Agreement that End Users will not be required to pay for any telecommunication service that the End User did not consent to receiving. In addition, Section 3.3 clearly states that IDA will treat a licensee's willful, reckless, or repeated failure to fulfill such obligation as a contravention of this Code.</i></p> <p>Golden Bytes took the position that the "Go Mango" puzzle game was not a service provided directly by Golden Bytes as it was operated by a third party provider. As such, Golden Bytes merely acted as a gateway for the third party provider to provide the "Go Mango" puzzle game. It had</p>

no direct control over the operation of the service.

Golden Bytes also stated that it required all its third party providers to be responsible for ensuring that their services are in compliance with the rules and regulations set by IDA. Resulting from this incident, Golden Bytes had immediately suspended the third party provider's service. It also undertook to cease broadcasting promotional messages for the "Go Mango" puzzle game until the third party provider complied with the relevant Code provisions.

IDA did not accept such a defence. By collecting the charges for the service (as stated on the bills issued to customers), Golden Bytes had held itself out as the provider of the service and was therefore solely responsible for it. In addition, Golden Bytes had represented to IDA in its licence registration that it was the provider of the service and accordingly, was solely answerable to IDA as the relevant licensee providing the said service. It was not relevant what arrangements Golden Bytes had made with third party content providers/operators in the background as these were not transparent to IDA and consumers. As such, Golden Bytes remained wholly responsible for any defaults which they committed.

Nevertheless, IDA noted that Golden Bytes had taken action to immediately suspend the "Go Mango" puzzle game upon notification of the Code contravention and refunded the wrongful charges to the End User.

Based on the above, IDA concluded that Golden Bytes had breached Sections 3.2.2 and 3.3.3 (read with Section 3.3) of the Code. IDA issued a warning letter to Golden Bytes in view of these mitigating factors:

- (a) This was the first time Golden Bytes had committed the breach;
- (b) Only one complaint was received by IDA in respect of this breach; and
- (c) Golden Bytes had acted immediately to suspend the third party provider's "Go Mango" puzzle game upon receipt of notice of the Code contravention from IDA and refunded the amount wrongfully charged to the End User.