

Case Reference	R/E/I/052
Title	mTouche's unauthorised use of End User Service Information ("EUSI") and charges for unsolicited Chinese New Year SMS Greetings ("CNY greetings")
Case Opened	17 February 2006
Case Closed	12 April 2006
Complainant	IDA-initiated enforcement proceeding
Respondent	mTouche Pte Ltd ("mTouche")
Case Summary	<p>In February 2006, IDA received close to 200 complaints from mobile end users about being wrongly billed by mTouche for unsolicited CNY greetings. The CNY greetings were received between 30 January and 5 February 2006.</p> <p>During IDA's investigation into the incident, mTouche claimed that the CNY greetings were sent by its China-based corporate customer, MyGlobalfun Inc. ("Globalfun"), and were meant to be free of charge. However, due to a mistake in the charging setting during the SMS message dispatch process, about 300,000 mobile end users were subsequently charged \$1 each for the message. After realising the error, mTouche worked with the mobile operators (who are mTouche's billing agents) to reverse the charges. mTouche also apologised publicly in the local newspapers for the error.</p> <p>IDA suspended mTouche's SBO Class Licence for 6 months, with effect from 21 February 2006, for breach of its licence condition. mTouche had breached the licence condition when it let Globalfun send out chargeable messages. mTouche was only licensed to allow its corporate customers to send free messages.</p> <p>IDA also initiated enforcement proceedings against mTouche for possible contravention of various provisions in the Telecom Competition Code 2005 ("Code").</p>
IDA's Determination	<p>IDA determined that mTouche had breached the following Code provisions:</p> <p>(a) <i>Section 3.2.2 – Duty to Disclose Prices, Terms and Conditions</i></p> <p>Licensees are required to disclose to End Users the</p>

prices, terms and conditions of a service, prior to providing the service.

mTouche confirmed that the recipients of the CNY greetings were its customers. IDA deemed the CNY greetings a telecom service provided by mTouche. Accordingly, mTouche would be required to inform these customers of the prices, terms and conditions of the service prior to provisioning. However, mTouche had failed to inform these affected customers that they would be charged for the CNY greetings received prior to its provision of the CNY greetings service to them.

Hence, IDA found mTouche in breach of Section 3.2.2 of the Code. mTouche's claim that the charging was accidental would only serve as a consideration when IDA determined the penalty to be imposed on mTouche for contravening this Code provision.

(b) Section 3.2.6.2 – Prohibition on Unauthorised Use of EUSI

Section 3.2.6.1 of the Code defines EUSI as including, amongst other information, "*the End User's telephone number*". Licensees are required under Section 3.2.6.2 to ensure that "*unless the End User has provided prior consent, the Licensee will not use the EUSI for any purpose other than*" the limited purposes specified in Section 3.2.6.2 (i.e. planning, provisioning and billing; managing bad debt; preventing fraud; facilitating interconnection and inter-operability, etc).

mTouche admitted that it had allowed Globalfun access to its customer database (i.e., the mobile phone numbers) in order to send the CNY greetings.

mTouche's disclosure of the mobile phone numbers to Globalfun clearly falls outside the scope of the authorised purposes under Section 3.2.6.2. Accordingly, mTouche should have obtained the consent of the relevant customers before such disclosure. By failing to do so, IDA found mTouche in breach of Section 3.2.6.2 of the Code.

(c) Section 3.3.3 - No Charges for Unsolicited Telecommunications Service

Section 3.3.3 specifically requires that none of mTouche's end users are "*required to pay*" for any

telecom services which they did not consent to receiving.

mTouche claimed that Section 3.3.3 had no application to the incident because the billing errors were reversed and all the affected mobile customers have been fully refunded.

IDA rejected mTouche's claim as customers of SingTel Mobile and M1 were billed for the CNY greetings which they had not consented to receiving, and some of these mobile customers did make upfront payment of the \$1 charge as stated in their bills.

mTouche had also acted recklessly by not taking the necessary measures to ensure that Globalfun did not send out chargeable SMS. mTouche's claim that the charging was the result of a mistake by Globalfun and that mTouche took action to reverse the charges and refund those end users who were billed for the CNY greetings were at most mitigating factors when IDA determined the penalty to be imposed on mTouche for breaching this Code provision. However, IDA also noted that this was mTouche's second contravention of this particular Code provision.

Based on the above facts, IDA concluded that mTouche had breached Section 3.3.3 of the Code.

A financial penalty of **S\$150,000** was imposed on mTouche for breaching Sections 3.2.2, 3.2.6.2 and 3.3.3 of the Code, taking into consideration the flagrant and deliberate breach of its duty by mTouche and the disclosure involving almost 300,000 mobile numbers of individuals. The financial penalty is, however, without prejudice to IDA's right to take further action against mTouche, including but not limited to the cancellation of mTouche's licences, should it subsequently be established that the charging for the CNY greetings was deliberately carried out with the knowledge or involvement of mTouche.