

INFRINGEMENT NOTICE

NOTICE UNDER SECTION 572E OF THE *TELECOMMUNICATIONS ACT 1997* (CTH)

To: **Medion Australia Pty Ltd**
ACN 106 611 330
Suite 802
11 Help Street
Chatswood NSW 2067
Attention: Derek Cummins, Managing Director

I, Tanya Farrell, am an authorised infringement notice officer of the Australian Communications and Media Authority for the purposes of section 572L of the *Telecommunications Act 1997* (the **Act**).

I have reasonable grounds to believe that Medion Australia Pty Ltd ACN 106 611 330 (**Medion**), in its capacity as a carriage service provider (**CSP**), has contravened subsection 101(1) of the Act being a civil penalty provision (**the contraventions**). Details of the contraventions are outlined below.

I give Medion this Infringement Notice under section 572E of the Act in relation to the alleged contraventions.

In giving this Infringement Notice I have had regard to the *Telecommunications (Infringement Notices) Guidelines 2022*.

Details of the contraventions

It is alleged that Medion contravened:

- section 8 of the *Telecommunications Service Provider (Customer Identity Authentication) Determination 2022* (the **Determination**) by failing to confirm, prior to undertaking the first high-risk customer transaction during a high-risk customer interaction, that the person requesting a high-risk customer transaction is the customer or the customer's authorised representative, by using an applicable identity authentication process
- section 101 of the Act provides that a service provider must comply with the service provider rules that apply to the provider. Section 98 provides that this includes the rules set out in a service provider determination in force under section 99
- the Determination is a service provider determination in force under section 99 of the Act
- in contravening section 8 of the Determination, it is also alleged that Medion has contravened section 101 of the Act
- section 8 of the Determination is a listed infringement notice provision for the purpose of subsections 572E(5) and (7) of the Act.

Schedule 1 to this Infringement Notice sets out brief details of the alleged contraventions.

Penalty payable under this Infringement Notice

In accordance with section 572G of the Act, the penalty payable under this Infringement Notice is \$259,440. The penalty has been calculated as set out in the table in Schedule 2 to this Infringement Notice.

Time for payment of the penalty

The penalty should be paid **within 28 days** after the day on which this Infringement Notice is given.

The penalty should be paid to the Australian Communications and Media Authority, on behalf of the Commonwealth, into the account below within 28 days of receipt of the Notice.

Please include the narration "Medion - IN" with your payment.

ABN:	[REDACTED]
Financial Institution:	[REDACTED]
Branch:	[REDACTED]
BSB:	[REDACTED]
Account Number:	[REDACTED]
Account Name:	[REDACTED]

You may ask for additional time to pay. Any request should be made to me as soon as possible, and no later than 28 days after the date this Infringement Notice is given.

If the penalty is paid

If you pay the penalty specified in this Infringement Notice within the time for payment (being within 28 days after the day on which this Infringement Notice is given, or, if applicable, within the longer period allowed under paragraph 572F(1)(d)(ii) of the Act) and the Infringement Notice is not withdrawn, the matter will not be dealt with by the Federal Court of Australia under Part 31 of the Act. Your liability for the alleged contraventions, the subject of this Infringement Notice, will be discharged. No further proceedings will be taken with respect to the alleged contraventions.

Payment does not equate to a finding that the contraventions occurred. Payment is not an admission of liability.

If the penalty is not paid

If you do not pay the penalty within the time for payment, the ACMA may take action for the alleged contraventions.

That action may include the institution of civil penalty proceedings in the Federal Court. The penalties that the Court can impose are potentially significantly higher than that in an Infringement Notice (see section 570 of the Act).

Withdrawal of the infringement notice


The ACMA may withdraw this Infringement Notice. It may do so of its own volition or upon your request. To be effective the withdrawal must occur within 28 days after the Infringement Notice was given.

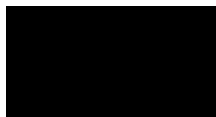
If you wish to apply for withdrawal of the Infringement Notice, you should write to me as soon as practicable setting out the reasons for the request.

If the Infringement Notice is withdrawn after the penalty is paid, the penalty will be refunded.

Please note that if this Infringement Notice is withdrawn, the ACMA may consider taking action for the alleged contravention(s), the subject of this Infringement Notice.

Enquiries concerning the Infringement Notice

If you have any enquiries or questions about this Infringement Notice contact me on 



Signature (Authorised Infringement Notice Officer)

Tanya Farrell
A/Executive Manager
Unsolicited Communications & Scams Branch
26 October 2023

SCHEDULE 1

Details of each of the alleged contraventions

In accordance with section 572F of the *Telecommunications Act 1997* (the **Act**), brief details of the alleged contraventions are set out below.

1. Background

- 1.1. Medion Australia Pty Ltd ACN 106 611 330 (**Medion**) is an Australian proprietary limited company, limited by shares, with a registered office at Suite 802, 11 Help Street, Chatswood NSW 2067.
- 1.2. Medion supplies telecommunications services (being listed carriage services) to the public. It is a carriage service provider (**CSP**) within the meaning of section 87 of the Act.
- 1.3. As a CSP, the Telecommunications Service Provider (Customer Identity Authentication) Determination 2022 (the **Determination**) applies to Medion.
- 1.4. On 19 April 2023, the ACMA commenced an investigation into Medion's compliance with the Determination.

2. Matters giving rise to the Notice

- 2.1. Information obtained from Medion by the ACMA in the course of its investigation indicated that between 1 November 2022 and 3 January 2023, Medion did not use two identity authentication processes prior to undertaking the first high-risk customer transaction during each high-risk customer interaction for at least 19 of its active carriage services.

3. Details of the contraventions

- 3.1. Section 8 of the Determination provides that, subject to section 12, prior to undertaking the first high-risk customer transaction in the course of a high-risk customer interaction, a CSP for a telecommunications service must confirm the requesting person is the customer, or the customer's authorised representative, for the service by using the identity authentication process or processes in section 9, or if applicable, section 10 or section 11.
- 3.2. Subsection 9(1) of the Determination provides that, where a high-risk customer interaction is initiated by the requesting person, a CSP for the telecommunications service must use one of the identity authentication processes described in subsection 9(1) and must comply with subsection 9(3).
- 3.3. Subsection 9(3) of the Determination describes the second identity authentication processes that can be used by a CSP to confirm the person requesting a high-risk customer transaction is the customer or the customer's authorised representative.
- 3.4. Medion submitted that it required two account information authenticators from requesting persons, which the ACMA found satisfies identity authentication process requirements under subsection 9(1) of the Determination.
- 3.5. Medion submitted that it failed to use an identity authentication process under subsection 9(3) of the Determination because a system bug in its online channel allowed a requesting person to complete a SIM swap

request via an alternative pathway, without receiving a unique verification code¹.

- 3.6. Therefore, the ACMA has reasonable grounds to believe that between 1 November 2022 and 3 January 2023, Medion contravened section 8 of the Determination because it did not use an identity authentication process or processes under subsection 9(3) of the Determination.
- 3.7. In contravening the Determination, it is alleged Medion has also contravened subsection 101(1) of the Act, which requires a CSP to comply with service provider rules. The rules set out in the Determination are service provider rules as it is a determination in force under section 99 of the Act (subsection 98(1)).
- 3.8. Subsection 101(1) of the Act is a civil penalty provision (subsection 101(3) of the Act).
- 3.9. Section 8 of the Determination is a listed infringement notice provision for the purposes of section 572E of the Act (see the Telecommunications (Infringement Notices) Guidelines 2022).

4. The amount of the penalty

- 4.1. The total penalty specified in the Infringement Notice is \$259,440 calculated in accordance with section 572G of the Act, as shown in the table at Schedule 2 below.

¹ The ACMA found Medion's unique verification code to be an identity authentication process which satisfies the requirement under subsection 9(3)(c) of the Determination.

SCHEDULE 2

Penalties for alleged contraventions of section 8 of the Determination being contraventions of subsection 101(1) of the *Telecommunications Act 1997*

Item	Date of alleged contravention	Public number associated with a service for which an applicable identity authentication process was not used	Penalty Units ²	Penalty
1	1/11/2022	██████████	60	\$13,320
2	3/11/2022	██████████	60	\$13,320
3	24/11/2022	██████████	60	\$13,320
4	29/11/2022	██████████	60	\$13,320
5	3/12/2022	██████████	60	\$13,320
6	7/12/2022	██████████	60	\$13,320
7	11/12/2022	██████████	60	\$13,320
8	15/12/2022	██████████	60	\$13,320
9	15/12/2022	██████████	60	\$13,320
10	15/12/2022	██████████	60	\$13,320
11	16/12/2023	██████████	60	\$13,320
12	17/12/2023	██████████	60	\$13,320
13	18/12/2023	██████████	60	\$13,320
14	19/12/2023	██████████	60	\$13,320
15	23/12/2022	██████████	60	\$13,320
16	29/12/2022	██████████	60	\$13,320
17	31/12/2022	██████████	60	\$13,320
18	2/01/2023	██████████	60	\$16,500
19	3/01/2023	██████████	60	\$16,500
TOTAL				\$259,440

² The value of a penalty unit at the time of most of the contraventions is \$222. Subsection 572G(1)(b) specifies that an infringement notice given to a body corporate must be a pecuniary penalty equal to 60 penalty units. Therefore 60 penalty units x \$222 = \$13,320. The value of a penalty unit increased to \$275 from 1 January 2023. Therefore 60 penalty units x \$275 = \$16,500.