

MEDION Australia Pty Ltd
ACN 105 611 330

The Manager
National Interests Section
Australian Communications and Media Authority
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Suite 802, 11 Help Street
CHATSWOOD NSW 2067

8 October 2024

Dear Manager

Telecommunications (Emergency Call Service) Amendment Determination 2024 (No. 1)

MEDION Australia Pty Ltd (**MEDION**) welcomes the opportunity to provide feedback on the proposed *Telecommunications (Emergency Call Service) Amendment Determination 2024 (No. 1)* (**Determination**). MEDION's detailed submission is attached.

MVNOs play an important role in giving consumers choice, and affordable access to mobile services. MEDION is Australia's largest MVNO. While MEDION does represent any other MVNO, it anticipates that its submission will apply in most cases.

MEDION recognises the importance of ensuring that customers can access emergency services and understands why the ACMA has been directed to act promptly in the context of the impending shutdown of Australia's 3G mobile telephone services.

However MEDION has conducted a detailed analysis of the Determination, and has assessed the practicalities of compliance by 1 November 2024. MEDION's assessment is that:

- In its current form, the Determination is unworkable.
- As discussed in MEDION's attached submission, the Determination raises many complex technical issues that would need to be solved. In some cases, it is possible that there is no feasible solution.
- Even if all identified issues could be resolved, the technical changes required to achieve compliance cannot be implemented within the envisaged 38 day time frame.

Critical matters that will be apparent from MEDION's submission are that, as an MVNO, MEDION:

- neither owns nor operates any telecommunications infrastructure;
- has no visibility on data necessary to comply with the Determination;
- will be wholly dependent on its MNO Wholesaler for access to that data – *assuming that the data is available to the MNO Wholesaler*.

The Determination as it currently stands does not require MNO wholesalers to enable MVNOs to comply with it. That omission must be addressed to ensure that a healthy and dynamic MVNO sector can comply.

Complex changes such as those envisaged by the Determination benefit from a collaborative and widespread consultation, to develop realistic ways to achieve the desired objective. MEDION would welcome the opportunity to engage with the ACMA further in this regard.

If the ACMA wishes to discuss any aspect of this submission, I can be contacted at

[REDACTED]

Yours sincerely

[REDACTED]

Derek Cummins
Managing Director, MEDION Australia

MEDION SUBMISSION
Telecommunications (Emergency Call Service) Amendment Determination 2024 (No. 1)
8 October 2024

Executive summary

This submission demonstrates that compliance with the above Determination would be, at best, technically fraught and perhaps technically impossible. It demonstrates that there is no possibility of compliant solutions being in place by 1 November 2024. It identifies deficiencies in the Determination that militate against its stated objectives.

Dictionary

ACMA means the Australian Communications and Media Authority.

BYO device means a mobile phone that is (or is to be) used with a service but is not supplied by the provider of that service.

Carriage service means the same as in the Telco Act.

Carrier means the same as in the Telco Act.

Compliant device means a mobile phone that has been configured to be able to access the emergency call service using both the provider's own mobile network and, if the provider's own mobile network is unavailable, the mobile network of other carriage service providers who provide carriage services to the public.

CSP means carriage service provider within the meaning of the Telco Act.

Customer means the same as in the Telco Act.

ECS Determination and **Determination** mean the draft *Telecommunications (Emergency Call Service) Amendment Determination 2024 (No. 1)*.

Emergency call service means the same as in the Telco Act.

IMEI means International Mobile Equipment Identity, a 15-17-digit code given to every mobile phone.

MEDION means MEDION Australia Pty Ltd ACN 106 611 330.

MNO means a Mobile Network Operator, which is a carrier that owns and operates a mobile network.

MNO Wholesaler means an MNO that provides wholesale access to its mobile network, to MVNOs that resell mobile services to customers. Telstra is an MNO Wholesaler.

Mobile phone means the same as in the Determination.

MVNO means Mobile Virtual Network Operator, which is a CSP that resells services on the network of an MNO Wholesaler.

Non-compliant device means a mobile phone that has not been configured to call the emergency call service.

Order and service management systems means the systems that an MNO Wholesaler makes available for MEDION to connect to (using a third-party IT enablement solution) which facilitate the placing and managing of orders (such as activation of a mobile service, adding plans, PAYG credit) and managing services supplied by Telstra (such as sharing service-related

information such as usage/remaining balance for plan inclusions, provisioning product features such as voicemail, barring/unbarring service features, suspending/disconnecting services).

Prepaid service or prepaid mobile service means a mobile service where customers pay for access to the mobile service before using it.

Provider means a CSP that provides a service to a customer under a contract between the CSP and the customer.

Service means the same as in the Determination.

Starter pack means a SIM card sold by an MNO or MVNO, purchased by customers to enable provisioning of a new mobile service, which could be either prepaid or postpaid.

Telco Act means the *Telecommunications Act 1997*.

Telstra means Telstra Limited ABN 64 086 174 781 trading as *Telstra Wholesale*.

Telstra wholesale network and network means the mobile voice and data network made available by Telstra (in its capacity as an MNO Wholesaler) to MVNOs, including MEDION.

Third-party IT enablement systems means the third-party software systems used by MEDION to connect to Telstra's order and service management systems, manage customer billing, customer accounts, customer messaging, provide online customer account management portal.

Background

- 1 MEDION is Australia's largest MVNO. MVNOs play an important role in society by providing consumers with choice, and often offer more competitive pricing than MNOs.
- 2 MEDION neither owns nor operates any telecommunications infrastructure, and nor does it have the skills to do so. MEDION mobile services are supplied by means of its MNO Wholesaler, Telstra.
- 3 MEDION does not supply mobile phones. All its customers use BYO devices. MEDION does not know what make or model of BYO device a customer uses, or how it is configured.

Overview of relevant MEDION's role and corresponding technical capabilities

- 4 It is important to understand the role, and corresponding technical capabilities, of MEDION as an MVNO.
- 5 MEDION's mobile service is a resold wholesale service on the Telstra wholesale network.
- 6 All aspects of the operation of the network and the actual provision of mobile service to customers are carried out and controlled by the MNO Wholesaler. Through third-party IT enablement systems, MEDION can place orders with the MNO Wholesaler to activate/deactivate a service onto the network, assign a service to a particular plan, add credit to an account and manage the provision/decommission of various network features such as voicemail.
- 7 All network information associated with a MEDION service is captured and controlled by the MNO Wholesaler. Some network information is made available to MEDION to

enable it to manage its customers. The type of information currently available to MEDION includes confirmation of the service status, confirmation of and active plans associated with a service, credit balance expiration date of service and any associated plans and service usage information. Again, this information is exchanged through third-party IT enablement systems.

- 8 The MNO Wholesaler does not currently provide MEDION with any information about the make, model or configuration of a customer's BYO device¹. Importantly, MEDION is not aware that:
- (a) the MNO Wholesaler currently obtains any such information;
 - (b) it is even possible for the MNO Wholesaler to obtain any such information:
 - (i) before a device is active on the network; or
 - (ii) after a device becomes active on the network.
 - (c) if it is possible for the MNO Wholesaler to obtain any such information, how reliably accurate the information would be.

The ACMA is uniquely placed to assist the MVNO industry to deal with these uncertainties.

Technical capabilities needed to comply with the Determination

- 9 To meet the requirements of the Determination, MEDION would need to create at least the following technical capabilities:
- (a) the ability to determine, prior to activating a new mobile service, what BYO device a customer proposed to use;
 - (b) the ability to identify the BYO device being used with an active MEDION mobile service;
 - (c) the real-time ability to identify when a BYO device connected to an existing MEDION service changes (e.g. the customer with an existing mobile service inserts their MEDION SIM card into a different device);
 - (d) the ability to determine real-time if a BYO device is a compliant or non-compliant device;
 - (e) the capability, during the activation process, to advise a customer if their mobile phone is a non-compliant device and provide required information;
 - (f) the ability to discontinue an activation order if MEDION becomes aware that the BYO device the customer proposes to use with a new service is a non-compliant device;
 - (g) the ability when required to identify and send messages to an existing customer when their BYO device becomes a non-compliant device;
 - (h) the ability to cease carriage services to a customer who proposes to use a non-compliant device to access the network;

¹ Other than the limited and ad hoc type of information described in paragraph 20.

- (i) the ability to send notifications required by the Determination when it is identified that a BYO device associated with an existing mobile service becomes a non-compliant device;
- (j) the ability to cease carriage service to an existing customer whose BYO device has become a non-compliant device, after prescribed notifications have occurred;
- (k) the ability to identify if a customer is a foreign traveller and to allow an override function to allow service for up to 60 days even if the BYO device that they propose to use is a non-compliant device;
- (l) the ability to cease service 60 days after a foreign traveller has connected a non-compliant device;

Real-time automation of many of these key capabilities will be required to ensure compliance with the Determination, because manual batch management of communications and provisioning/deprovisioning supply of carriage services would present an unacceptably high-risk of human error.

Achieving the required technical capabilities

- 10 For MEDION to develop the necessary technical capabilities at least the following need to occur:
 - (a) Extensive analysis will be required to determine how the requirements could be implemented.
 - (b) Most of the core requirements will require information and functionality to be made available to MEDION by its MNO Wholesaler and MEDION would not be able to assess how to implement the changes till its MNO Wholesaler made available information to advise MEDION of changes to the order and service management systems.
 - (c) Once MEDION's MNO Wholesaler provides information about updates to its order and service management systems, MEDION can assess the technical changes required for its own systems. This will allow MEDION to implement the necessary developments to meet the Determination's requirements.
- 11 It is obvious that compliance with the Determination will require complex changes to the systems of both MEDION and the MNO Wholesaler.
- 12 To the best of MEDION's knowledge, no solution to meet the requirements of the Determination has currently been identified. Even if a solution is identified, MEDION's experience is that the scale and complexity of the requirements indicate a systems development project that would likely take months to complete.
- 13 The complexity and scale of the changes needed to re-engineer critical interfaces between MEDION's CRM systems and the Wholesale MNO's systems, as well as implementing a range of other necessary changes within MEDION's CRM systems is also likely to take months. Based on experience MEDION has had in developing technical requirements of this scale, it is estimated that timeframe needed to implement all the necessary changes would be at least 6 months.
- 14 Based on the above: even if it were technically possible to develop functionality needed to meet the requirements of the Determination, there is no viable pathway

that would see MEDION able to implement the necessary technical changes required to comply with the Determination by 1 November 2024.

Determining if a BYO device is configured to access the emergency call service

- 15 To meet the requirements of the Determination, a CSP needs to be able to determine if a mobile phone is configured to access the emergency call service on both:
 - (a) its own network (in the case of an MNO) or its MNO Wholesaler's network (in the case of an MVNO); and
 - (b) the other mobile networks.
- 16 The first step in being able to determine if a mobile phone can access the emergency call service is to determine if it is a mobile phone or another kind of device.
- 17 Using information such as a device's IMEI, a CSP's can (in theory) reconcile it with information from a range of sources about the device make and model to determine if the device is a mobile phone or some other type of device. But given the number of potential devices available globally, not all devices will be able to be identified by a CSP.
- 18 In practice, being able to determine if a mobile phone is configured to be able access the emergency call service on all Australian mobile networks presents several complex challenges that need to be properly analysed and understood. Some of the challenges are:
 - (a) Unless every mobile phone that could potentially be used to access an Australian mobile network were tested on all mobile networks, a CSP could never be certain 100% of the time if the mobile phone was a compliant or non-compliant device.
 - (b) A range of configuration factors could influence a mobile phone's ability to access the emergency call service such as software settings and different bands used by carriers. Some of these factors may not be able to be identified.
 - (c) It is entirely possible that a particular mobile phone make and model sold in Australia has been configured to access the emergency call service but an overseas configuration for the same make and model that has sourced directly from an overseas market by a customer or sold in Australia by a retailer who sources stock from overseas suppliers is not configured to access the emergency call service. Neither a customer nor a CSP may be able to detect the difference.
- 19 The requirements of the Determination apply a mobile phone's configuration status for both a CSP's own network (or that of its MNO Wholesaler) and the mobile networks of other providers, which has the following implications:
 - (a) A CSP needs to know which mobile phones can access the emergency call service on its own network (or that of its MNO Wholesaler) and other providers' mobile networks.
 - (b) The only possible way that all CSPs could meet the criteria to identify if a device would be compliant on both its own and other providers' mobile networks would be to develop a centralised reference for all networks that identifies all known devices that are, or could be, connected to them and their emergency call service configuration status. The following would need to be considered:

- (i) The reference resource, in whatever form it takes would need to be available to all CSPs. It would need to be updated on an ongoing basis as new mobile phones capable of connecting to an Australian network were launched or detected.
 - (ii) Given the co-dependency inherent with CSPs needing to know the emergency call service configuration status for mobile phones on each other network, MEDION believe information sharing and access obligations are critical items that must be addressed in the Determination.
 - (c) In any case, for reasons outlined in paragraph 18 it may not always be possible to determine for every mobile phone whether it was a compliant device or not.
 - (d) A significant complication with the requirement for a mobile phone to be a compliant device on both a CSP's own and other providers' mobile networks would occur if a particular mobile phone is a compliant device on one network (*Network A*) but the same mobile phone is a non-compliant device on a different network (*Network B*). This scenario would result in the following:
 - (i) Network A's carrier would have to designate it as a non-compliant device, even though it can access the emergency call service on the network its service is offered on.
 - (ii) Any CSP using Network A would not be able to offer a new service to any new customers proposing to use the mobile phone to access its service.
 - (iii) Any CSP using Network A would have to take action in line with section 63 and 64 of the Determination with its own customers using the mobile phone.
 - (e) All of this may apply to a mobile phone that is perfectly capable of accessing the emergency call service, but because a different network has not tested it or it is not configured to access emergency call service on that network, many customers may be impacted on a different network where it is a compliant device.
 - (f) Whilst many mobile phones will be able to be confirmed as compliant devices across all networks, factors like carrier-exclusive mobile phones, specific carrier network and configuration settings could all give rise to this scenario occurring. It is possible that this captures many more devices than current indications of devices that are being identified as part of the Telstra and Optus networks 3G shutdowns are indicating may not be configured to access the emergency call service.
- 20 MEDION's own experience with the management of the 3G shut down helps illustrate the challenges associated with identifying which devices can access the emergency call service.
- (a) As an MVNO who uses the Telstra Wholesale network, MEDION customers will be impacted by the planned closure of the Telstra wholesale 3G network currently scheduled for 28 October 2024.
 - (b) To assist with identifying customers who may be impacted by the 3G shutdown, MEDION's MNO Wholesaler has provided MEDION with lists of its customers whose ability to access the emergency call service may be impacted by the

shutdown. It is important to note that MEDION understands its MNO Wholesaler has no automated means to produce these lists and production of these lists involves manual extraction of network data, interrogation and matching of records and segmenting it to wholesale customers so it can be supplied to MEDION in spreadsheet format. In no way does this indicate this work could be automated in a manner needed to overcome the technical challenges MEDION have outlined earlier in this submission.

- (c) Through *ad hoc* updates over a period of several months, MEDION have observed the number of customers that are being identified as potentially impacted increases with each iteration as more devices are being identified through various verification methods as having a non-compliant device.
 - (d) Many devices impacted are 4G devices, who may not be able to access the emergency call service after the 3G shutdown due to configuration settings.
 - (e) This highlights the difficulty with maintaining a comprehensive record of which mobile phones are or are not configured to access the emergency call service and that it will be an ongoing challenge.
- 21 Consumers can obtain a mobile phone from a wide range of sourced including:
- (a) Purchasing them from a CSP who offers handsets as part of their product offering. Customers will either purchase typically purchase the mobile phone as part of a service bundle where they pay for the mobile phone in instalments or purchase the device outright.
 - (b) Buying from a non-CSP retailer (either online or at a retail store). The supplier of the mobile phones in this case may be:
 - (i) the manufacturer or their Australian distributor
 - (ii) an overseas supplier, which could be at a higher risk of instances where a mobile phone may not be configured to be able to access the emergency call service;
 - (c) sourcing a mobile phone directly from overseas supply sources themselves.
- 22 There is no requirement for a consumer to purchase a mobile phone in conjunction with a new mobile carriage service. It is estimated that over 60% of prepaid/postpaid mobile services in Australia connected their service with a BYO device. Many CSPs who are MVNOs offer their mobile service on a BYO device basis, including MEDION.
- 23 The only way a CSP could be certain that a mobile phone is configured to access its own and other mobile networks would be to allow only mobile phones it controls and has tested on all networks to access its service. This approach would significantly impact the current competitive landscape, which does not lock consumers into sourcing mobile phones from a CSP or require customers to purchase a mobile phone as a condition of obtaining a new mobile service. Such a change would hinder consumers' ability to switch providers, often done to obtain more competitively priced mobile services.

Mobile phone definition

- 24 Whilst the ordinary meaning of a *mobile phone* is sufficiently well understood today, over time this may change. On this basis a definition or guidelines as to what primary

functionality a mobile phone performs should be included to provide clarity to the industry.

- 25 The Determination should include a clear statement clarifying that it does not intend to capture devices such as Internet of Things (IoT) devices, medical devices, or mobile internet modems. These devices, whose primary purpose differs from that of a mobile phone, should be explicitly excluded from the scope of the Determination.

Section 62: Identification of mobile devices that cannot access the emergency call service – new customers

- 26 Starter packs used to obtain a new mobile service are widely available through online channels or in a range of retail sales outlets which include telecommunications specialist stores (e.g. a Telstra Shop), general retailers, supermarket, convenience stores, petrol stations and so on. In many if not most cases, customers will complete an activation process to provision their mobile service themselves online or by contacting a CSP's call centre.
- 27 The activation process typically involves obtaining the customer's personal details, capturing SIM card profile information, selecting a service plan, and verifying the customer's identity. If the customer is porting or transferring an existing mobile number, additional security verifications are performed. Once all details are captured, the customer submits their request. The CSP's systems then provision the mobile service. For an MVNO like MEDION, this involves submitting workflows to the MNO Wholesaler's order provisioning systems. MEDION's process for provisioning a new mobile service aligns with these standard steps.
- 28 Once all the steps listed in paragraph 27 have been completed the mobile service becomes active and the SIM card when inserted into a device will be capable of accessing a mobile carriage service offered by the network that the SIM has been connected to.
- 29 There is no requirement to have the SIM card inserted into the device to provision the mobile service. In fact, for customers porting or transferring their service from another CSP, it is often impractical to insert the new SIM card before the service is activated on the network. These customers typically continue using their original SIM card and mobile phone until they lose connection with their previous CSP, at which point they switch to the new SIM card. This approach ensures a seamless transition between providers.
- 30 To comply with the Determination before supplying a new mobile service, the only feasible approach would be to require customers, during the activation process, to confirm that their intended mobile phone is configured to access the emergency call service. This confirmation would need to cover both the CSP's own network and other networks. This has several implications that impacts the effectiveness achieving the Determinations objectives:
 - (a) Customers may not know if their device is compliant. To determine this, they might attempt to call the emergency service network, potentially placing unnecessary additional load on the emergency call service.
 - (b) Many customers particularly those who are less technologically literate, such as some older or vulnerable individuals, may struggle to determine if their mobile

phone is configured to access the emergency call service across all Australian mobile networks. This would have the following implications:

- (A) Add additional barriers to access mobile service or switching providers to access an alternative service for a range of reasons – a key one being affordability.
 - (B) Results in higher error rates with misidentified devices being entered.
 - (c) It would be easy to circumvent the requirements by providing false information.
 - (d) There will be cases where the device may not be known or available at the time of the mobile service activation which would either create additional barriers for consumers or result in misidentification to proceed with the mobile service activation.
 - (e) The possibility that there are many devices that for reasons outlined earlier in this submission their ability to access the emergency call service could not be determined, where this occurs this would cause a great deal of customer confusion and prevent customers from switching providers or lead to misidentification to proceed with the customer's mobile service activation.
 - (f) There would be no technical way to ensure the mobile phone they identified that they were proposing to use was the mobile phone they used to access the network when their mobile service becomes active.
- 31 It is MEDION's view that the challenges outlined in paragraph 30 will have the effect that self-identification will not be an effective way to meet the objectives of the Determination due to likelihood of high error rate and that the measures can easily be circumvented by a customer whose mobile phone is a non-compliant device.
- 32 Other ways to achieve the requirements of the Determination could be:
- (a) Only allow a new mobile service to be provisioned when being sold with a compliant device. Clearly this would have an adverse effect on market competition and place unreasonable additional costs on consumers who wish to switch providers and should not be contemplated.
 - (b) Only allow a new mobile service to be provisioned in an assisted sales channel where an agent could confirm if the mobile phone was a compliant device. As well as having an adverse impact on market competition, this would not guarantee that the SIM card will not be inserted into a non-compliant device once active on a network.
 - (c) Develop a solution that registers the first device recognised with a new service and take action if it is identified as non-compliant. However, this approach faces significant technical challenges. Even if feasible, it could only be implemented by carriers, not MVNOs. Moreover, device recognition would often occur after the service has been activated, as customers typically insert the SIM card into their phone after the service is provisioned. This timing issue complicates compliance with the Determination's requirements.
- 33 MEDION does not consider any of the options identified in paragraphs 31 or 32 to be viable for meeting the Determination's requirements. The only feasible solution is customer self-identification, which, as outlined in paragraph 30, would be highly ineffective and undermine the Determination's objectives. Additionally, implementing

such procedures would incur significant costs, while being prone to errors and easy to bypass.

- 34 MEDION believe that the requirements to identify if a device a customer proposes to use prior to accessing a mobile carriage service is configured to access the emergency call service are inoperable. Addressing the objectives of the Determination should be focused on managing mobile phones once connected to a mobile network.
- 35 The role retailers of mobile phones play needs to also be considered in ensuring mobile phones that are sold in Australia are configured to access the emergency call service. Under the current draft of the Determination there is no obligation on a retailer to only sell mobile phones that are configured to access the emergency call service. The following needs careful consideration:
- (a) Whilst many large reputable retailers are likely to adapt the product sourcing strategies once it becomes apparent there will be restrictions of supply of mobile services to those mobile phones, some will not. For some retailers, sourcing stock from overseas suppliers is a key strategy often used to offer a wider range of products or lower prices compared to sourcing through Australian distributors.
 - (b) In any case, it is likely to take time for the implications of the Determination to have an impact on what mobile phones can access mobile networks to become clear and the necessary corrections in product sourcing strategies to flow through to the market.
 - (c) Customers could be financially disadvantaged having purchased a mobile phone from retailer that will not work on an Australian network.
 - (d) Under the current draft of the Determination, CSPs will be responsible for bearing the cost of stopping non-compliant devices from being used with a carriage service. Large retailers, whose profits from selling these devices may well exceed the profits smaller CSPs may make will shoulder none of the responsibility for ensuring mobile phones sold in Australia are able to access the emergency call service.
 - (e) It is MEDION's view that the ACMA should seek to examine what regulatory powers it has that could regulate the sale of mobile phones in Australia to ensure the mobile phones sold and imported into Australia are configured to access the emergency call service on all networks. If the ACMA has no jurisdiction over these matters, options for other Commonwealth bodies to regulate in this area should be examined.
 - (f) Even if sale of mobile phones in Australia were regulated, the ability for consumers to purchase directly from overseas sources would not entirely eradicate the challenges.

Section 63: Notification requirements and restriction on supply – new customers

- 36 Notwithstanding MEDION's view outlined in paragraph 34 that the requirements associated with new customer notification and restrictions on supply for a non-compliant device are inoperable, the requirement for a CSP to: "provide the customer with information about alternative mobile phones that are available, including information about alternative low cost or no cost mobile phones that can access the

emergency call service” are problematic for MEDION (or any CSP who does not sell mobile phones) because:

- (a) MEDION does not sell mobile phones and therefore is not able to advise customers about what phones may or may not be available or their pricing. Making such representations, if they are found to be false could put MEDION in breach of Australian Consumer Law obligations or create other liabilities.
 - (b) The only role MEDION could reasonably play is to provide general advice about the type of retail outlets that they could try to source a mobile phone from.
 - (c) Even directing customers to a retail outlet would be problematic as there is no guarantee the retailer will sell only mobile phones configured the access the emergency call service on all Australian mobile networks. This further strengthens the need for mobile phone functionality requirements to be regulated at the source of supply.
- 37 MEDION submits that any requirements regarding communication obligations in the Determination must accurately reflect the dynamics of a market where not all CSPs offer mobile phones.

Section 64: Identification of mobile devices that can no longer access the emergency call service – existing customers

- 38 To the best of MEDION’s knowledge, approximately 100K current mobile services may have a mobile phone not capable of calling the emergency call service active on the network on 1 November 2024. This figure does not include 3G devices on the assumption the Telstra 3G network will have shut down as planned on 28 October 2024 and those devices will not be capable of being supplied with any network service from that date.
- 39 As outlined in earlier parts of its submission, MEDION is wholly reliant on its MNO Wholesaler to detect what mobile phone is being used with a customer’s mobile service and for them to make that information available to MEDION.
- 40 There are a range of complex matters which may prevent a CSP from being able to determine for each mobile phone that is associated with an existing mobile service if it is a compliant device. How these requirements operate need more careful analysis, and any final version of the Determination needs to address the situation where a CSP cannot always determine a mobile phone’s status.

Section 65: Notification requirements and restrictions on supply when a mobile device can no longer access the emergency call service – existing customers

- 41 The requirements to stop supplying service are problematic and need close examination and correction for the Determination to operate effectively.
- (a) Under the current drafting of the Determination, at the point at which MEDION identify that a mobile phone an existing customer is using becomes not able to access the emergency call service of any of its MNO Wholesaler’s network and other providers’ networks MEDION must:
 - (i) act in accordance with section 65(a) to *“Promptly send a notification to the end-user or customer advising that the mobile phone is no longer configured to be able to access the emergency call service and all carriage*

services supplied by the provider in connection with the mobile phone will be disabled after 28 days”;

- (ii) repeat this message every 7 days, with the timeframe for disabling of supply being adjusted accordingly (e.g. 21 days, 14 days, 7 days);
 - (iii) finally, MEDION restrict supply in the following prescribed manner:
“Between 8 and 15 days after sending the fourth notification under paragraph (2)(d), the carriage service provider must cease to supply any carriage services to the end-user in connection with the mobile phone”.
- (b) The drafting requires a CSP to cease supply in connection with “the” mobile phone. It assumes that a CSP can block supply the individual mobile phone device itself (without blocking any other mobile phone that the SIM card used to access that mobile service may be inserted into). For this to happen the following needs to be in place:
- (i) A CSP would have to be able to identify not only the make and model through a code such as the IMEI number but have access a unique identifier that identified the individual mobile phone itself from all other mobile phones of the same make and model.
 - (ii) The requirement is to cease supply to the mobile phone. Even if the individual mobile phone itself could be identified, a CSP would then need the ability to cease supply only to that individual mobile phone, not any other mobile phone that the SIM card associated with that customer’s service may be inserted into.
 - (iii) It is not clear what would happen if that mobile phone stopped being used with the customer’s mobile service prior to the point at which a CSP needs to restrict supply and is no longer active on the network, and therefore presumably able to be to have supply to that mobile phone restricted.
 - (iv) MEDION have no knowledge of as to whether is it possible to (a) identify the individual device associated with a service and (b) if there is a solution where supply of carriage service can be blocked only for that specific mobile phone. If such capability existed, MEDION would be wholly reliant on its MNO Wholesaler being able to make the functionality available to MEDION. In any case, should such functionality be possible, it would not be available on 1 November 2024.
- (c) If there is no technical ability to cease supply of a carriage service to an individual mobile phone, the only alternative would be to suspend or terminate the mobile service itself. These obviously creates several undesirable outcomes for customers including:
- (i) loss of access to their mobile service entirely; including ability to port or transfer to another CSP;
 - (ii) no clear pathway if they later obtain a compliant device for it to be recognised and suspension lifted;
 - (iii) if a mobile service termination is the only technical solution available to a CSP, once a service has been terminated, it cannot be recovered;

- (iv) the notification framework in section 65(2) would need to be amended to reflect any changes in approach and make allowances for ceasing updates and action if a customer moved to a compliant device.
- 42 MEDION has outlined earlier in its submission the complexities in identifying and determining if a mobile phone is configured to access the emergency call service. An important factor to appreciate is that there is potential that if a CSP cannot determine one way or another if a mobile phone is a compliant device, they may have to designate any mobile phone that they cannot confirm as compliant as a non-compliant device to comply with the Determination. In a market where more than 60% of mobile services have a BYO device this prevents a very real risk that a much larger number of customers are caught in these requirements, even if they have a mobile phone configured to access the emergency call service.
- 43 The requirement to restrict access to supply of carriage service presents complex technical issues that require further analysis and engagement with the industry. Unless there is a technical solution to identify an individual mobile phone and restrict supply at individual device level the only mechanisms available are mobile service suspensions and or terminations which has a range of other undesirable impacts for impacted customers and could conflict with other obligations CSP's have regarding customer access rights to the service.
- 44 For any notifications to existing customers, the requirement for a CSP to include the following: "carriage service provider must also include in each notification information about alternative mobile phones that are available, including information about alternative low cost or no cost mobile phones that can access the emergency call service" is problematic for MEDION (or any CSP who does not sell mobile phones) because:
 - (a) MEDION does not sell mobile phones and therefore is not able to advise customers about what phones may or may not be available or their pricing. Making such representations if false could put MEDION in breach of Australian Consumer Law obligations or create other liabilities.
 - (b) The only role MEDION could reasonably play is to provide general advice about the type of retail outlets that they could try to source a mobile phone from.
 - (c) Even directing customers to a retail outlet would be problematic as there is no guarantee the retailer will sell only mobile phones configured to access the emergency call service on all Australian mobile networks. This further strengthens the need for mobile phone functionality requirements to be regulated at the source of supply.

Section 67: Exception – foreign travellers in Australia

- 45 The main ways that a foreign traveller access mobile carriage services when visiting Australia are:
 - (a) roaming onto an Australian network with their existing overseas carrier; if their overseas carrier offers this ability; or
 - (b) obtaining an Australian CSP's mobile service, typically a prepaid service, and using that service whilst visiting Australia.

- 46 As a non-carrier CSP, MEDION play no role in the provisioning of a mobile carriage service for customers roaming onto an Australian network. As a CSP offering a prepaid mobile service, it is likely some foreign travellers would purchase a MEDION starter pack to access a mobile carriage service during their time in Australia. MEDION has not conducted any analysis to determine the proportion of new customers who are foreign travellers but estimate it would be a very small percentage of customers who connect a new service to MEDION.
- 47 Notwithstanding MEDION's view outlined in paragraph 34 that the Determination's requirements associated with new customer notification and restrictions on supply for a non-compliant device are not feasible; should these requirements proceed, the following challenges would need addressing:
- (a) In addition to the complexity already outlined in developing CSPs' systems to handle the general requirements needed to meet the Determination, additional complex development would be needed to manage this exemption to handle later restrictions on supply once the exemption period ended.
 - (b) It is very probable that the only way to cease supply to a mobile phone is the suspend or terminate the mobile service itself.
- 48 A CSP would have to carefully consider if the additional costs and operational complexity outweighed the benefits of providing a mobile service this type of customer. Some CSPs may choose not to manage this exemption.
- 49 Many foreign travellers rely on a local prepaid mobile service when travelling. These requirements could frustrate many foreign travellers and reduce the range of CSPs willing to offer a service to them. Ultimately this could harm Australia's reputation as a travel destination in international markets.

Feasibility and cost

- 50 Throughout its submission, MEDION has identified several challenges that make the feasibility of implementing these requirements problematic and require further review in order to develop requirements which *might* be successfully implemented. These include:
- (a) There is no current technical method to determine what BYO device a customer will use with a new mobile service. In many cases the supply of the mobile carriage service will commence before the SIM card is even inserted into the device that it will be used with it.
 - (b) If a mobile phone make and model are known, it may not always be possible to identify if that device is configured to be able to access the emergency call service on all Australian networks.
 - (c) In an unrestricted marketplace where customers can obtain a mobile phone from a range of sources; the ability for a CSP to know of every device and its configuration status that may connect or is already connected to their network seems unlikely. The only alternative is to restrict supply to a mobile phone that a CSP controls the supply of, which would have an adverse impact on market competition for both mobile phones and access to mobile services.

- (d) Other factors may impact a mobile phone's ability to access the emergency call service, such as software settings and network setting that may not be able to be detected by a carrier.
 - (e) There is no technical capability available to restrict supply of a carriage service at an individual device level. The only capability available to MEDION to restrict supply to a non-compliant device being used with a MEDION service would be to suspend or terminate the entire mobile service itself, depriving the customer of access to any carriage service and loss of their mobile number.
 - (f) CSPs such as MEDION who do not sell mobile phones are not able to notify customers about availability of any type of mobile phone and its associated pricing.
- 51 A CSP who is a non-carrier CSP (i.e. an MVNO) will be reliant on their MNO Wholesaler to make available information and functionality needed to meet many of the requirements of the Determination. MEDION does not yet know when this will be possible. The changes in an MNO Wholesaler's systems would be complex and the costs would be high.
- 52 Until MNO Wholsalers advise their associated MVNOs of how the functionality in their order and service management systems could be made available to the MVNO, the MVNO is not able to analyse what changes would be needed in its own CRM systems. Even with this limitation, the changes will be complex and MEDION is likely to need at least 6 months to implement, based on previous development projects MEDION has commissioned.
- 53 As it currently stands, there is no viable pathway available to MEDION to make the necessary technical changes to comply with the Determination by 1 November 2024, which is less than 6 weeks from the date the draft of the Determination was published.

Additional/preferable requirements

- 54 Throughout this submission, MEDION has highlighted the many dependencies an MVNO has on the MNO Wholesaler whose mobile network it uses. Without access to the information and functionality controlled by the carrier, an MVNO cannot meet the requirements of the Determination. The MVNO market plays a crucial role in maintaining a dynamic and competitive mobile landscape, currently accounting for 11% of the total handheld mobile market and 18% of the prepaid market. Therefore, MEDION submits that the Determination must require MNO Wholesalers to provide the necessary information and functionality to MVNOs, enabling them to comply with the Determination.
- 55 A definition of what "configured" to be able to access the emergency call service is required. A mobile phone may be capable of being able to access the emergency call service but for a range of reasons it may not be configured. It could be the customer has changed the settings themselves and is not detectable (e.g. they have turned off all calling function as they only wish to use the mobile phone to access the internet).
- 56 The Determination must allow for situations where, despite a CSP's best efforts, it cannot reliably determine whether a mobile phone is configured to access the emergency call service on its own or another provider's network. Without such allowances, the only safe option would be for the CSP to classify any device with an

unknown status as non-compliant, which could lead to widespread adverse consequences, including:

- (a) Many more mobile phones could be refused activation and service, even if they could in fact access the emergency call service, simply because a CSP cannot confirm their status.
- (b) This would also limit the range of available mobile phones and sales channels to those where CSPs can verify a phone's status, negatively impacting competition and leading to reduced consumer choice and higher prices.

57 Restricting supply raises a range of complex issues that require thorough analysis to assess their feasibility and potential consequences, many of which are not yet fully understood. MEDION believes that a more appropriate approach would be to focus on communicating with customers whose devices may be non-compliant, rather than imposing supply restrictions, given the potential for unintended consequences outlined in this submission. However, if supply restrictions remain part of the final determination, the following must be considered:

- (a) How to handle situations where there is no technical capability to restrict supply at the individual handset level.
- (b) If suspending or terminating the entire mobile service is the only option, the implications for other obligations that CSPs have under relevant codes, determinations, and industry standards must be evaluated and addressed.