

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission given for
the purposes of section 87B

by

Medion Australia Pty Limited

(ACN 106 611 330)

Persons giving this undertaking

1. This undertaking is given to the Australian Competition & Consumer Commission (ACCC) by Medion Australia Pty Limited (ACN 106 611 330) (**Medion**) of Level 4, 621 Pacific Highway, St Leonards New South Wales 2065 for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

Background

2. Medion is a company incorporated in New South Wales under the *Corporations Act 2001* (Cth).
3. Medion supplies pre-paid mobile phone products and services for personal and residential use under the brand name “ALDImobile”. Medion is the registrant of the website www.aldimobile.com.au (**ALDImobile Website**).
4. Between 14 September 2013 and 15 November 2013 (**Relevant Period**):
 - 4.1. Medion offered “pay-as-you-go” mobile plans and additional mobile packages under the brand name ALDImobile on the ALDImobile Website; and
 - 4.2. customers who had an active “pay-as-you-go” plan were eligible to purchase the “Unlimited Pack”, an additional mobile package containing extra voice call minutes, SMS, MMS and data.
5. During the Relevant Period, Medion represented on the ALDImobile Website that the “Unlimited Pack” provided customers with 30 days of unlimited:
 - 5.1. standard national calls to fixed lines and mobiles;
 - 5.2. calls to 13/1300/1800 numbers;
 - 5.3. voicemail; and
 - 5.4. standard national SMS and MMS

(together, the **Unlimited Features**),

subject to the Acceptable Use Policy for activations and recharges from 14 September 2013 (**AUP**) and for personal use only.

6. In fact, during the Relevant Period, the Unlimited Features in the “Unlimited Pack” were subject to the following usage limits, as outlined in the AUP:
 - 6.1. per day;
 - 6.1.1. 480 minutes of voice calls;
 - 6.1.2. 500 SMS; and
 - 6.1.3. 100 MMS,
 - 6.2. over three consecutive days;
 - 6.2.1. 300 minutes of voice calls per day; and
 - 6.2.2. 300 SMS per day;
 - 6.3. over a 30 day period;
 - 6.3.1. 2,500 minutes of voice calls;
 - 6.3.2. 2,000 SMS; and
 - 6.3.3. 500 MMS.
7. The ACCC considers there to be a significant disparity between the headline statement that the Unlimited Features were unlimited for a 30 day period and the usage limits imposed by the AUP, and accordingly considers that by engaging in the conduct described in paragraphs 4 to 6, Medion was likely to have contravened sections 18 and 29(1)(g) of the Australian Consumer Law (being Schedule 2 of the CCA) (ACL).
8. Medion admits that, by engaging in the conduct described in paragraphs 4 to 6, it is likely to have contravened the following sections of the ACL:
 - 8.1. section 18 which prohibits misleading or deceptive conduct or conduct that is likely to mislead or deceive; and
 - 8.2. section 29(1)(g) which prohibits the making of false or misleading representations that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits.
9. In response to the ACCC’s concerns, Medion has:
 - 9.1. removed the description “unlimited” from the ALDImobile Website;
 - 9.2. changed the name of the “Unlimited Pack” to “\$35 Plan”;
 - 9.3. reviewed its other digital material to ensure that there are no references to “unlimited” where usage limits apply; and
 - 9.4. offered the ACCC this undertaking pursuant section 87B of the CCA to resolve this matter.

Commencement of undertaking

10. This undertaking comes into effect when:
 - 10.1. the undertaking is executed by Medion; and
 - 10.2. the ACCC accepts the undertaking so executed.
11. Upon the commencement of this undertaking, Medion undertakes to assume the obligations set out in paragraphs 12 to 14 below.

Undertakings

12. Medion undertakes for the purposes of section 87B of the CCA that it will not:
 - 12.1. for a period of three years, use the term “unlimited” in connection with mobile phone products or services (offered under the brand name ALDImobile or any other brand name owned or used by Medion) that are subject to usage limits or restrictions.
13. Medion undertakes for the purposes of section 87B of the CCA that it will:
 - 13.1. within 14 days from the date of this undertaking coming into effect, at its own expense, publish or cause to be published a corrective notice accessible through the ALDImobile Website for a period of 30 days:
 - 13.1.1. in the form and terms outlined in **Annexure A**; and
 - 13.1.2. with the specifications outlined in **Annexure B**,

subject only to variations first agreed to by the ACCC in writing (**Website Corrective Notice**); and
 - 13.2. within 14 days of publication of the Website Corrective Notice, provide the ACCC with a copy of the Website Corrective Notice together with details of publication (including the date of publication and the URL of the page on which the Website Corrective Notice is published).
14. Medion undertakes for the purposes of section 87B of the CCA that it will:
 - 14.1. within 3 months of the date of this undertaking coming into effect, at its own expense, establish and implement a Competition and Consumer Law Compliance Program (**Compliance Program**) in accordance with the requirements set out in **Annexure C**, being a program designed to minimise Medion’s risk of future breaches of sections 18 and 29 of the ACL and to ensure Medion’s awareness of its responsibilities and obligations under the ACL;
 - 14.2. maintain and continue to implement the Compliance Program for a period of two years; and
 - 14.3. provide, at its own expense, a copy of any documents required by the ACCC in accordance with **Annexure C**.

Acknowledgements

15. Medion acknowledges that:

- 15.1. the ACCC will make this undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
- 15.2. the ACCC will, from time to time, make public reference to this undertaking including in news media statements and ACCC publications;
- 15.3. this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and
- 15.4. a summary of the Compliance Program Review Reports referred to in **Annexure C** may be held with this undertaking in the public register.

Executed by

Medion Australia Pty Limited (ACN 106 611 330) and by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*.

.....
Secretary/Director
GREGOR ASCHOFF

.....
Director

This 24th day of February 2014

**ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION PURSUANT TO SECTION 87B OF THE *COMPETITION AND
CONSUMER ACT 2010*.**

.....
Rodney Graham Sims

Chairman

This 3rd day of March 2014

ANNEXURE A

CORRECTIVE NOTICE



Misleading Representations Regarding Features in the ALDImobile Unlimited Pack

Between 14 September 2013 and 15 November 2013, Medion represented on the ALDImobile website www.aldimobile.com.au that its Unlimited Pack provided customers with 30 days of unlimited standard national calls to fixed lines and mobiles, unlimited calls to 13/1300/1800 numbers, unlimited voicemail and unlimited standard national SMS and MMS when, as a result of limits imposed by the ALDImobile "Acceptable Use Policy" this was not the case.

In response to concerns raised by the Australian Competition and Consumer Commission, Medion has admitted that by making the above representations it is likely to have contravened sections 18 and 29(1)(g) of the ACL and has offered the ACCC a court enforceable undertaking (available at www.accc.gov.au). The undertaking requires Medion to publish this corrective notice, to refrain from using the description "unlimited" in connection with products or services that are subject to usage limits or restrictions, and to implement a compliance program to ensure that this kind of conduct does not occur again.



Australian
Competition &
Consumer
Commission

This Corrective Notice has been paid for by Medion pursuant to an undertaking accepted by the ACCC.

ANNEXURE B

1. The Website Corrective Notice is accessible by a prominent one-click hyperlink displayed in the top third of the homepage of the ALDImobile Website entitled “CORRECTIVE NOTICE” with the following minimum specifications:
 - 1.1. the words “CORRECTIVE NOTICE” are to be in uppercase, 18 point, bold, black, times new roman font on a white background, centred and in a black bordered box;
 - 1.2. the words “Click here for further information” are to be 14 point, black, times new roman font on a white background and centred below the words “CORRECTIVE NOTICE” in the same bordered box;
 - 1.3. the bordered box is to be at least 255 pixels wide by 60 pixels high; and
 - 1.4. the bordered box and its contents, including white space, is to operate in the form of a one-click hyperlink to the Website Corrective Notice,
2. The Website Corrective Notice:
 - 2.1. is at least 540 pixels wide by 500 pixels high;
 - 2.2. has a banner at the top with the words “CORRECTIVE NOTICE” appearing in the centre in not less than 14 point white font on a black background;
 - 2.3. is legible and in black, times new roman font on a white background and justified left;
 - 2.4. displays the body of the text in at least 10 point font;
 - 2.5. has a black border that is 3 pixels wide;
 - 2.6. displays the “ALDImobile provided by MEDIONmobile” logo in colour, centred at the top of the page, and at least 60 pixels high;
 - 2.7. displays the Commonwealth and ACCC logos in colour, centred and at least 60 pixels high at the bottom of the page;
 - 2.8. is displayed on a stand-alone webpage that is coded in standard “HTML” format;
 - 2.9. is not displayed as a “pop-up” or “pop-under” window;
 - 2.10. refers to the ACCC website (www.accc.gov.au) in the form of a hyperlink to that website; and
 - 2.11. is maintained on the ALDImobile Website for a period of at least 30 consecutive days;

ANNEXURE C

COMPETITION AND CONSUMER LAW COMPLIANCE PROGRAM

LEVEL 2

Medion will establish a Competition and Consumer Law Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within one month of this Undertaking coming into effect, Medion will appoint a Director or a Senior Manager of the business to be responsible for the development, implementation and maintenance of the Compliance Program (the **Compliance Officer**).

Compliance Officer Training

2. Within three months of the Undertaking coming into effect, Medion will ensure that the Compliance Officer has attended practical training delivered by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law which focuses on sections 18 and 29 of the ACL.
3. Within 14 days of completion of training, Medion will provide the ACCC with a written statement from the compliance professional or legal practitioner who conducts the training which confirms the completion of the training in accordance with paragraph 2 above.

Staff Training

4. Medion will ensure that all employees of Medion whose duties could result in possible breaches of sections 18 and 29 of the ACL receive regular (at least once a year) practical training administered by the Compliance Officer (once trained) or a qualified compliance professional or legal practitioner with expertise in competition and consumer law that focuses on sections 18 and 29 of the ACL.

Complaints Handling

5. Medion will develop procedures for recording, storing and responding to competition and consumer law complaints, and provide the ACCC with an outline of these procedures, within two months of this Undertaking coming into effect.

Reporting to Board / Senior Management

6. Medion will ensure that the Compliance Officer reports to Medion's directors or governing body every 12 months on the continuing effectiveness of the Compliance Program.

Review

7. Medion will, at its own expense, cause an annual review of the Compliance Program (**the Review**) to be carried out in accordance with each of the following requirements:
 - 7.1. **Scope of the Review** – Medion will ensure that the Review is broad and rigorous enough to:
 - 7.1.1. provide Medion and the ACCC with a supportable verification that Medion has in place a Compliance Program that complies with the requirements of this Undertaking and is suitable for the size and structure of Medion; and
 - 7.1.2. provide the Review Report and opinions detailed at paragraph 9 below.
 - 7.2. **Independence of Reviewer** – Medion will ensure that the Review is carried out by a suitably qualified, independent compliance professional with expertise in trade practices law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
 - 7.2.1. did not design or implement the Compliance Program;
 - 7.2.2. is not a present or past staff member or director of Medion;
 - 7.2.3. has not acted and does not act for Medion in any competition and consumer law related matters;
 - 7.2.4. has not and does not act for or consult to Medion or provide other services on competition and consumer law related matters other than Compliance Program reviewing; and
 - 7.2.5. has no significant shareholding or other interests in Medion.
 - 7.3. **Evidence** – Medion will use its best endeavours to ensure that the Review is conducted on the basis that the Reviewer has access to all relevant sources of information in Medion's possession or control, including without limitation:
 - 7.3.1. enquiries of any employees, representatives, agents and stakeholders of Medion; and
 - 7.3.2. documents created by Medion's consultants, legal practitioners and accountants for use in Medion's Compliance Program;
 - 7.4. Medion will ensure that the first Review is completed within one year and one month of this Undertaking coming into effect and that each subsequent Review is completed within one year thereafter.

Reporting

8. Medion will use its best endeavours to ensure that the Reviewer sets out the findings of the Review in a Compliance Program Review Report, which will provide specific information regarding the scope of the Review and the effectiveness of the Compliance Program including:
 - 8.1. details of the evidence gathered and examined during the Review;

- 8.2. the name and relevant experience of the person appointed as Medion's Compliance Officer;
 - 8.3. the Reviewer's opinion on whether Medion has in place effective staff training and complaints handling programs that comply with the requirements of this Undertaking; and
 - 8.4. actions recommended by the Reviewer to ensure the continuing effectiveness of Medion's Compliance Program.
9. Medion will use its best endeavours to ensure that each Compliance Program Review Report is completed and provided to Medion within one month of completion of the Review.
10. Medion will provide a copy of the Compliance Program Review Report to the ACCC within 14 days of its receipt from the Reviewer.
11. Medion will implement promptly and with due diligence any recommendations made by the Reviewer or required by the ACCC that are reasonably necessary to ensure that Medion maintains and continues to develop the Compliance Program in accordance with the requirements of this Undertaking.
12. If requested by the ACCC, Medion will, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.
13. If the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Medion will, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and provide a copy of the resulting Compliance Program Review Report to the ACCC.