



Australian Government
Department of Health and Ageing

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AUST. COMPETITION & CONSUMER COMMISSION CANBERRA
19 NOV 2012

DEPUTY SECRETARY

Mr Brian Cassidy
Chief Executive Officer
Australian Competition and Consumer Commission
GPO Box 3131 Canberra ACT 2601

Dear Mr Cassidy

Application for Authorisation
MediSecure Pty Ltd & eRx Script Exchange Pty Ltd

I refer to the application being made to the ACCC for an authorisation to enter into a contract between the two parties named above. I have read a copy of the proposed Form B application, a copy of which is attached to this letter (Attachment A).

The Agreement, the subject of the application, is being entered into as a consequence of the parties having agreed with the Commonwealth through this Department to make their respective Prescription Exchange Services interoperable. The Agreement gives commercial effect to the interoperability outcome sought by this Department.

The reasons for this arrangement are set out in Section A of the Schedule to the Standard Funding Agreement entered into with each of the applicants dated 29 June 2012, a copy of which I understand will be submitted to support the application. That Section accurately describes the reasons for the creation of a widespread system for the use of electronic prescriptions.

The effecting of interoperability between these systems is a direct consequence of the policy outcomes sought by this Department. In giving effect to the Government's policy in ehealth, which is for the general benefit of the Australian community and for ongoing maintenance of the health system, this Department is of the view that electronic prescriptions are an essential component in any ehealth system.

This Department believes that the achievement of interoperability between the two Prescriptions Exchange Services is in the public interest because it will improve the management of medications for Australians and create efficiencies in pharmacies by facilitating the widespread use of electronic prescriptions by medical practitioners and pharmacists.

This Department therefore supports authorisation of the proposed agreement on the basis that it would enable an essential part of the framework required for the creation of the electronic prescription system.



Paul Madden
Deputy Secretary, Chief Information and Knowledge Officer

15 November 2012

Form B

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON THE BACK OF THIS FORM

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)

eRx Script Exchange Pty Ltd (ACN 132 844 658)

- (b) Short description of businesses carried on by applicant:
(Refer to direction 3)

The applicant operates an electronic pharmaceutical prescription exchange system, the development of which has been funded by the Commonwealth of Australia under the Fifth Community Pharmacy Agreement.

- (c) Addresses in Australia for service of documents on the applicant:

Rx Script Exchange Pty Ltd: 20 Trenerry Crescent, Abbotsford, Victoria, 3067

2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

Authorisation is sought by the applicant to enter into a contract (Commercial Interchange Agreement) which has the purpose of enabling the applicant to make its prescription exchange system (PES) interoperable with MediSecure Pty Ltd's (MDS) PES. Clause 14 of the proposed contract, which is the subject of this application, is attached and marked as **annexure A**.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:
(Refer to direction 4)

Clause 14 provides that, following the introduction of interoperability, the applicant will share equally in the fee which is charged to a pharmacy user by the PES to which the pharmacy is connected for a prescription that has originated on the PES of the other party.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

The provision by the applicant and MDS of the services of their respective PESs for use by pharmaceutical prescribers (usually doctors) and dispensers (usually pharmacists), which are capable of carrying electronic messages between doctors and pharmacists to facilitate the dispensing of pharmaceutical prescriptions safely, accurately, quickly and securely, and associated computerised record keeping and other information systems and processes.

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Authorisation is requested until such time as the contract made between the applicant and MDS referred to in paragraph 2(a) above has terminated, expired or otherwise been brought to an end. An interim authorisation is sought to allow the applicant and MDS to commence the interoperability of their respective PESs with effect from 3 December 2012.

3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Name: MediSecure Pty Ltd ACN 132 172 957

Address: 127 Erskine Street, Middle Park, Victoria, 3206

Business: MDS operates an electronic pharmaceutical prescription exchange system, the development of which has been funded by the Commonwealth of Australia under the Fifth Community Pharmacy Agreement.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

Not applicable.

4. Public benefit claims

- (a) Arguments in support of authorisation:
(Refer to direction 6)

The Commonwealth of Australia (as represented by the Department of Health and Ageing (DOHA)) in the Standard Funding Agreement signed on 29 June 2012 (a true copy of which is attached to this application and marked as **annexure B**) states that:

"The Department wants to significantly improve the uptake and use of electronic prescriptions¹. Currently, if a prescriber lodges an electronic prescription for a patient with a PES, patients may be able to have their prescription downloaded by a pharmacy through the pharmacy accessing the PES. However, this occurs only where the pharmacy software connects to the PES where the prescription was lodged by the prescriber. There is currently no connection between the two PESs to enable a pharmacy connected to one PES to access electronic prescriptions held by the other.

Supporting the uptake and use of electronic prescriptions is a significant policy component of the Fifth Community Pharmacy Agreement. It aims to improve the quality use of medicines through supporting the use of electronic transfer of prescriptions. The expected outcome is that the prescriber provides an electronic prescription that is accessible by pharmacies so that they do not have to re-key the information, leading to a reduction in transcription errors. The policy is forecast to

¹ The Fifth Community Pharmacy Agreement definition of an electronic prescription applies: "An 'electronic prescription' means an electronic prescription which is generated in accordance with a process by which a prescription is electronically generated by a prescriber, authenticated (electronically signed), securely transmitted (either directly or indirectly) for dispensing and supply, seamlessly integrated into the pharmacy dispensing software and, in the case of Pharmaceutical Benefits Scheme (PBS) prescriptions, is available to be electronically sent to Medicare Australia for claiming purposes. This definition does not preclude the use of paper-based processes to support ePrescribing activity."

have broad improvements to healthcare, in particular medication management which will reduce unnecessary burden on the health system, as well as providing for a general workload reduction for both prescribers and dispensers (pharmacies).

A key component of this policy is the payment of an “Electronic Prescription Fee” (EPF) which is being used in the early years to defray part of the costs to pharmacy associated with accessing or downloading and electronic prescription. The value of the EPF is set through consultation with the Pharmacy Guild of Australia (which is a signatory to the Fifth Community Pharmacy Agreement with the Australian Government).

The success of the policy is measured by the uptake and use of electronic prescriptions, with all eligible electronic prescriptions² attracting a payment of the EPF to the pharmacy. A PES vendor charges pharmacies based on the number of electronic prescriptions and repeats transferred through its service. Currently this charge is 15 cents, the same as the EPF. This charge is currently paid to the relevant PES and a proportion is subsequently paid onto partner vendors of pharmacy and general practitioner desktop software by the PES based on agreements between the PES and the other vendors involved in the electronic prescription supply chain.

The number of eligible electronic prescriptions for 2011-12 is less than expected. Early analysis has revealed that there are large numbers of electronic prescriptions being lodged to the PES by prescribers, but the number being downloaded by dispensers is quite low. The main cause identified is that the patient presents to a pharmacy which is not connected to the PES containing the electronic prescription.

The purpose of this Project is to allow electronic prescriptions to be accessed by all pharmacies regardless of which PES the electronic prescription was lodged with. To achieve this outcome, the Participant and MediSecure must work together, and share all information necessary, to create interoperability between their systems to achieve interim interoperability³ by no later than 24 December 2012 in advance of conformance

² An ‘eligible electronic prescription’ means:

- (a) it is a PBS or RPBS prescription (including prescriptions for items priced below the maximum general patient contribution as defined in the *National Health Act 1953*) dispensed by an approved supplier that is generated electronically in accordance with the process described in the definition of ‘electronic prescription’ contained in this Schedule and with the National eHealth Transition Authority specification for the Electronic Transfer of Prescriptions, or
 - (b) a repeat authorisation and/or a deferred supply authorisation:
 - (i) downloaded from a PES; and
 - (ii) related to an original electronic prescription satisfying (a)
- and
- (c) the electronic prescription is processed through a Prescription Exchange Service; and
 - (d) if the electronic prescription relates to an item priced below the maximum General patient contribution as defined in the *National Health Act 1953*, the following information in the electronic prescription has been validated and, if necessary, corrected by the approved supplier:
 - (i) the patient’s name;
 - (ii) the patient’s Medicare number;
 - (iii) information about the prescription (including the date of prescribing and supply, the PBS code number, the drug name and form, the quantity dispensed and the number of repeats);
 - (iv) the prescriber approval number; and
 - (v) the approved supplier number.

³ Interim interoperability is defined in clause 1 of the Agreement: it means that PESs are able to exchange electronic prescriptions by

with Australian Technical Specifications for the Electronic Transfer of Prescriptions (ETP).

Full PES interoperability, conformant with Australian Technical Specifications for the Electronic Transfer of Prescriptions, and subsequent Australian Standards, will follow the completion of this Project.

This Agreement facilitates this work by providing for:

- a capital investment contribution; and
- direct per eligible electronic prescription payments (the “PES Electronic Prescription Fee” (PEPF)) to PESs.

Under an interoperable environment PESs will be able to share prescriptions and repeats. The EPF is currently paid to the pharmacy which then pays the PES which held the downloaded prescription. The Participant must negotiate with MediSecure an acceptable “Inter-PES Transaction Fee” to ensure that the PEPF is appropriately apportioned in circumstances where different PESs hold the original electronic prescription and connect to the pharmacy that dispenses the prescription.”

Under clause 14 of the proposed contract the parties will share equally in the Commercial Fee so as to eliminate any incentive which might otherwise exist for either of them to seek to ensure that prescriptions which have originated on their system (i.e. at the point of original prescribing) remain on their system at the point of dispensing (i.e. in the pharmacy). Interoperability is best promoted if neither party has any economic or commercial incentive to seek to capture or retain prescriptions down to the point of dispensing (at which point payments are made and received for the pharmaceuticals, including the costs associated with their supply).

Additional submissions in support of the public benefits of the Interoperability Project, and the need to ensure that the applicant’s interests in respect of the success of the project remain aligned through the equal sharing of the Commonwealth’s fees, are contained in **annexure B**.

- (b) Facts and evidence relied upon in support of these claims:

The Commonwealth Funding Agreement dated 29 June 2012 a true copy of which is attached to this application and marked as **annexure B**.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any

restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 7)

See **annexure B**

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

(Refer to direction 8)

There are submitted to be no public detriments arising out of the contract, for the reasons identified in **annexure B**

- (b) Facts and evidence relevant to these detriments:

N/A

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

No.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(Refer to direction 9)

N/A

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

N/A

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

N/A

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

N/A

- (c) If so, by whom or on whose behalf are those other applications being made?

N/A

9. Further information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Mr David Freemantle, 20 Trenerry Crescent, Abbotsford, Victoria, 3067

Dated.....

Signed by/on behalf of the applicant

For eRx Script Exchange Pty Ltd:

.....
(Signature)

.....
(Full Name)

.....
(Position in Organisation)

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.

7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.