



eRx Script Exchange Pty Ltd –application for authorisation A91579

Interim authorisation decision

7 June 2017

Decision

The Australian Competition and Consumer Commission (the ACCC) has granted interim authorisation in respect of the application for authorisation lodged by eRx Script Exchange Pty Ltd (**eRx**) on 28 April 2017.

Interim authorisation is granted to enable eRx to continue to give effect to a revenue sharing arrangement with IP MDS Pty Ltd (formerly MediSecure Pty Ltd) (**MDS**). The revenue sharing arrangement facilitates the interoperability between the parties' electronic pharmaceutical prescription exchange systems.

Interim authorisation commences immediately and remains in place unless it is revoked or the date the ACCC's final determination comes into effect.

The application for authorisation

eRx seeks authorisation to continue to give effect to a revenue sharing arrangement which underpins the operation of its electronic pharmaceutical prescription exchange system.

eRx and MDS operate the only two prescription exchange systems that currently exist in Australia. **eRx** was established in 2009 and is a wholly owned subsidiary of the Fred IT Group. In 2013, Telstra acquired 50 per cent of the Fred IT Group, which is also part owned by the Pharmacy Guild of Australia. **MDS** is a private Australian company, established in 2009. In 2016, MDS merged with Simple Retail, a pharmacy software company.

Prescription exchange systems are computer systems, programs and equipment which communicate electronic prescription information between doctors and pharmacies. The prescription exchange system used by the doctor is called the '**originating PES**' and the prescription exchange system used at the pharmacy is called the '**dispensing PES**'.

The Australian Government has been encouraging uptake of electronic prescriptions to improve healthcare outcomes, including by avoiding pharmacies having to re-key the information on prescriptions, which reduces the number of transcription errors. Prior to 2012, the uptake of electronic prescriptions was hampered because the existing prescription exchange systems were not interoperable.

With two prescription exchange systems operating in Australia, an agreement between them (and the Australian Government, through the Department of Health) was necessary to allow

prescriptions to be put into one system and taken out of the other – where a doctor is signed up to one system and the patient presents to a pharmacy that is signed up to the other system. As part of the Australian Government's Interoperability Project, electronic prescriptions can now be accessed by all pharmacies, no matter which prescription exchange system the prescription originated on. Interoperability continues to be a policy component of the Sixth Pharmacy Agreement, with funding continuing until 30 June 2020.

Underpinning interoperability, the 'revenue sharing arrangement' for which authorisation is sought is set out in Clause 14 of a Commercial Interchange Agreement between eRx and MDS. Clause 14 provides that eRx and MDS agree to share equally in the fee which is charged to the pharmacy and Australian Government by the owner of the 'dispensing PES' for each prescription that originated on the prescription exchange system of the other party (the '**revenue sharing arrangement**').

The arrangement was originally authorised by the ACCC on 7 March 2013. That authorisation is due to expire on 30 June 2017. The revenue sharing arrangement has not changed since that time.

eRx seeks authorisation to extend the operation of the revenue sharing arrangement for a further three years, until 30 June 2020, being the end of the current pharmacy agreement.

The authorisation process

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

Section 91 of the Act allows the ACCC to grant interim authorisation where the ACCC considers it appropriate to allow the parties to engage in the conduct while the ACCC is considering the substantive application for authorisation.

eRx requested interim authorisation on the basis that the existing authorisation expires on 30 June 2017. Interim authorisation would allow eRx and MDS to continue to operate their respective prescription exchange systems interoperably while the ACCC considers the merits of the substantive application for authorisation.

Consultation

The ACCC sought submissions from interested parties potentially affected by this application for authorisation, including pharmacy associations, the Australian Medical Association, Rural Doctors Association and the Australian Government Department of Health.

The ACCC did not receive any submissions from interested parties which specifically commented on eRx's request for interim authorisation. At this time, the ACCC has received one public submission from the Pharmacy Guild of Australia (a part owner of eRx) in relation to the substantive application for authorisation. It supports the continued operation of the revenue sharing arrangement between eRx and MDS in order to ensure the interoperability of their respective prescription exchange systems.

The ACCC notes that at the time of lodging the application for authorisation, eRx attached a letter from the Australian Government Department of Health which supports the ongoing operation of the revenue sharing arrangement between eRx and MDS.

Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website [www.accc.gov.au/Authorisations public registers](http://www.accc.gov.au/Authorisations_public_registers).

Reasons for decision

In granting interim authorisation, the ACCC has taken into account:

- allowing the parties to continue to give effect to the revenue sharing arrangement under interim authorisation will maintain the status quo for the industry
- denying interim authorisation could have an adverse impact on the operation and use of electronic prescriptions within pharmacies and
- there is unlikely to be a significant impact on competition from the revenue sharing arrangement during the period of interim authorisation.

Reconsideration of interim authorisation

The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.