



Australian
Competition &
Consumer
Commission

eRx Script Exchange Pty Ltd –application for revocation and substitution (re-authorisation) AA1000472

Interim authorisation decision

4 June 2020

Decision

1. The Australian Competition and Consumer Commission (the ACCC) has granted interim authorisation in respect of the application for re-authorisation lodged by eRx Script Exchange Pty Ltd (**eRx**) on 2 March 2020.
2. The ACCC has suspended the operation of the existing authorisation which is due to expire on 30 June 2020 and has granted interim authorisation in its place. The interim authorisation enables eRx to continue to give effect to a revenue sharing arrangement with IP MDS Pty Ltd (formerly MediSecure Pty Ltd) (**MDS**) which is outlined at paragraph 10). The revenue sharing arrangement facilitates the interoperability between the parties' electronic pharmaceutical prescription exchange systems (**PES**).
3. Interim authorisation commences immediately and remains in place until it is revoked, or the date on which the application for revocation and substitution is withdrawn, or the date the ACCC's final determination comes into effect.

The application for authorisation

4. eRx and MDS operate the only two PES 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. The Pharmacy Guild of Australia is the other shareholder. **MDS** is a private Australian company, established in 2009. In 2016, MDS merged with Simple Retail, a pharmacy software company.
5. PES are computer systems, programs and equipment which are used to communicate electronic prescription information between doctors and pharmacies. Until the recent introduction of electronic prescribing, PES were only used in conjunction with traditional paper based prescriptions. However, the architecture to support electronic prescribing has drawn on the capabilities of the two PES currently operating in Australia. The prescription exchange system used by the doctor is called the '**originating PES**' and prescription exchange system used at the pharmacy is called the '**dispensing PES**'.
6. eRx and MDS each operate originating and dispensing PESs.
7. The Australian Government has been moving towards electronic prescribing 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 PES were not interoperable.

8. With two PES 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 but the patient then presents to a pharmacy that is signed up to the other system. For example, where a doctor is signed up to the eRx originating PES and the pharmacy is signed up to the MDS dispensing PES, or vice versa.
9. 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. Underpinning this project, eRx and MDS negotiated a Commercial Interchange Agreement.
10. eRx seeks re-authorisation to continue to give effect to Clause 14 of the Commercial Interchange Agreement which states:

eRx and MDS agree that before a technical solution for interoperability can be found, a commercial interchange agreement must be struck between the parties. eRx and MDS agree that where a QP (Qualifying Prescription) is collected by one PES and dispensed by any other PES, the interchange fee will be:

- a. the Originating PES will receive 50% of the Commercial Fee; and
- b. the Dispensing PES will receive 50% of the Commercial Fee.

(the **revenue sharing arrangement**)

11. Clause 14 provides that eRx and MDS agree to share equally in the fee which is charged to the pharmacy by the owner of the 'dispensing PES' for each prescription that originated on the prescription exchange system of the other party.
12. eRx submits that the aim of the revenue sharing arrangement is to eliminate any incentive which might otherwise exist for either prescription exchange system provider to ensure that prescriptions which originate on their system (used by a doctor) remain on their system at the point of dispensing in a pharmacy, which is where payments are made and received for the pharmaceuticals. This ensures patients are free to fulfil prescriptions at a pharmacy of their choice.
13. Eligible transactions through PES are currently funded by the Australian Government through the Sixth Community Pharmacy Agreement until 30 June 2020. The Department of Health held roundtable meetings for the Seventh Community Pharmacy Agreement in July and November 2019. The Seventh Community Pharmacy Agreement is yet to be finalised.
14. eRx seeks re-authorisation to extend the operation of the revenue sharing arrangement for a further five years, until 30 June 2025, which eRx submits is the anticipated end of the Seventh Community Pharmacy Agreement.
15. The revenue sharing arrangement was originally authorised by the ACCC on 7 March 2013 and again on 27 September 2017. The current authorisation is due to expire on 30 June 2020.

The authorisation process

16. 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

17. 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 re-authorisation.
18. eRx requested interim authorisation as the existing authorisation expires on 30 June 2020. Interim authorisation would allow eRx and MDS to continue to operate their respective PES interoperably while the ACCC considers the merits of the substantive application for re-authorisation.

Consultation

19. The ACCC sought submissions from interested parties potentially affected by this application for re-authorisation, including pharmacy associations, the Australian Medical Association, Rural Doctors Association and the Australian Government Department of Health.
20. The ACCC did not receive any submissions from interested parties which specifically commented on eRx's request for interim authorisation. The ACCC received two submissions in relation to the substantive application:
- The Medical Software Industry Association expressed support for the arrangements, particularly in the context of COVID-19.
 - An anonymous interested party, that describes itself as a potential new supplier of a prescription exchange system. The interested party is concerned that the arrangements entrench a duopoly rather than promoting innovation and competition between systems alongside the recent legislative changes that allow electronic prescribing.
21. Further information in relation to the application for re-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.

Reasons for decision

22. The ACCC has decided to suspend the operation of the existing authorisation and to grant interim authorisation in its place. The interim authorisation is granted to the revenue sharing arrangement outlined in paragraph 10 above.
23. In granting interim authorisation, the ACCC considers that:
- allowing the parties to continue to give effect to the revenue sharing arrangement under the interim authorisation will maintain the status quo while the ACCC assesses

the application for re-authorisation. The revenue sharing arrangement has not changed since authorisation was granted to the arrangement in 2013.

- denying interim authorisation could have an adverse impact on the current operation and use of prescription exchange services within pharmacies
- notwithstanding the concerns raised in relation to potential new entry, the ACCC considers that there is unlikely to be a significant impact on competition from the revenue sharing arrangement during the period of interim authorisation. Both eRx and MDS have advised they will extend the Commercial Interchange Agreement to a prospective new supplier of pharmaceutical prescription exchange software.

24. The ACCC will consider the concerns raised in relation to potential new entry further as part of its assessment about whether to grant re-authorisation.

Reconsideration of interim authorisation

25. 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.