



**eRx Script Exchange Pty Ltd –  
Application for revocation of AA1000472 and the substitution of  
authorisation AA1000628  
Interim authorisation decision  
15 December 2022**

**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 15 November 2022.
2. Interim authorisation is granted to enable eRx, IP MDS Pty Ltd/ Operations MDS Pty Ltd (**MDS**) and Symbion Pty Ltd trading as Minfos (**Minfos**) to give effect to the Proposed Conduct (defined at paragraph 13) which broadly gives effect to a revenue sharing arrangement to facilitate the interoperability of Conformant Prescription Delivery Services (**CPDS**) in the exchange of electronic scripts.
3. The ACCC has decided to suspend the operation of authorisation AA1000472 and has granted interim authorisation in substitution for the authorisation suspended.
4. Interim authorisation commences immediately and remains in place until it is revoked, the application for re-authorisation is withdrawn or the date the ACCC's final determination comes into effect.

**Background**

5. eRx and MDS operate the only two CPDS that currently operate in Australia. However, Minfos intends to build and operate a third CPDS in the Australian market and has indicated it is willing and able to do so by late 2022/early 2023. The existing CPDS network is designed for two CPDS providers and if Minfos is to enter the market, a rebuild of the infrastructure supporting the exchange of CPDS data is required.
6. CPDS, formerly known as electronic pharmaceutical prescription exchange system or PES, are computer systems, programs and equipment which are used to communicate electronic prescription information between doctors and pharmacies. The prescription exchange system used by the doctor is called the 'originating CPDS' and prescription exchange system used at the pharmacy is called the 'dispensing CPDS'.
7. eRx and MDS each operate originating and dispensing CPDS. Minfos is expected to operate both originating and dispensing CPDS.
8. 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 2013 when the first authorisation was granted, the uptake of electronic prescriptions was hampered because the existing CPDS were not interoperable.
9. With two CPDS 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. For example, where a doctor is signed up to the eRx originating CPDS and the patient presents to a pharmacy that is signed up to the MDS dispensing CPDS, or vice versa.

10. 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.
11. eRx submits that to appropriately accommodate Minfos, new and enhanced infrastructure, referred to as the Interoperability Services Bus (**ISB**), is required. The ISB will enable interoperability between the systems used by eRx, MDS and Minfos as well as other prospective new entrants who may wish to provide a CPDS in future. The ISB is being developed by Medication Knowledge Pty Ltd (**MK**) which is a joint venture between the parent companies of eRx and MDS. MK will also host the ISB and provide technical support and related services to eRx, MDS and Minfos.

### **The application for re-authorisation**

12. eRx has lodged an application to revoke authorisation AA1000472 and to substitute authorisation AA1000628 for the one revoked. Authorisation AA1000472 expires on 30 June 2025. Re-authorisation is for the substantially similar conduct as currently authorised under AA1000472 but to allow the inclusion of Minfos.
13. Specifically, eRx seeks re-authorisation until 30 June 2025 to give effect to:
  - (a) the revenue sharing arrangement that will underpin the exchange of prescription data between its CPDS and those of MDS and Minfos. The purpose of the revenue sharing arrangement is to allow eRx to continue operating its CPDS interoperably with MDS's CPDS and Minfos' CPDS
  - (b) the fixing, controlling or maintaining of the fees that MK will charge for its services to eRx, MDS and Minfos. The purpose of this arrangement is to ensure all CPDS operators are charged service fees on the same basis in circumstances where the parent companies of eRx and MDS together own and control MK, such that there may otherwise be an incentive for MK to set service fees that are commercially disadvantageous to Minfos. This arrangement is intrinsically linked to the revenue sharing arrangement, ensuring that the cost of using the service is common to all parties.

#### **(the Proposed Conduct)**

14. The ACCC originally authorised the revenue sharing arrangement on 7 March 2013 and again on 27 September 2017 and most recently on 10 December 2020.

### **The authorisation process**

15. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (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**

16. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the Proposed Conduct while the ACCC is considering the substantive application.
17. eRx requested interim authorisation on the basis that:
  - interim authorisation would permit entry by Minfos as soon as possible in circumstances where Minfos has indicated that it is willing and able to become a third provider of Conformant Prescription Delivery Services by late 2022/early 2023

- the current authorisation is limited to the exchange of data to the two incumbents unless and until it is revoked and substituted
- without also having the capacity to exchange data with eRx and MDS, Minfos will be unable to offer a competitive service to its prospective customers. As such, it will be barred from effective entry
- accelerating Minfos' ability to become a competing provider will not only enhance competition, but it will also enable pharmacies, medical practitioners and ultimately consumers to benefit from increased choice within the market, with its attendant advantages for efficiency and innovation.

### **Consultation**

18. The ACCC invited submissions from a range of potentially interested parties.<sup>1</sup> To date, the ACCC has received no submissions in relation to the application.
19. 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](http://www.accc.gov.au/authorisations).

### **Reasons for decision**

20. In granting interim authorisation, the ACCC considers that:
- The proposed conduct does not constitute a substantial change to the conduct previously authorised and supports the inclusion of an additional CPDS provider as contemplated under the previous authorisation.
  - Allowing the parties to expand their revenue sharing agreement will allow the entry of a third CPDS provider, enhancing competition in the relevant markets.
  - Without interim authorisation Minfos will not be able to become a CPDS provider without having the capacity to exchange data through the interoperable systems of eRx and MDS. Without interim authorisation the status quo under the existing authorisation would see eRx and MDS unlikely to face any new entrant.
  - Granting interim authorisation is likely to create public benefits in the form of increased choice for pharmacies, medical practitioners and ultimately consumers and provide increased efficiencies and innovation.

### **Reconsideration of interim authorisation**

21. 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.

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<sup>1</sup> A list of the parties consulted and the public submissions received is available from the ACCC's public register [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).