
David Hatfield
Director
Competition Exemptions
Your ref: AA1000641

26 May 2023

Dear Mr Hatfield

Application for authorisation AA1000641 Interested Party Consultation

Thank you for the opportunity to participate in consultation on the above Application and Interim Authorisation.

The Medical Software Industry Association Ltd (“MSIA”) represents over 165 Member health software companies, many of which participate in the ePrescribing ecosystem, including our members Fred IT and Medisecure.

The MSIA and many of our members have participated at each stage of the lengthy process that has led to Fred IT being awarded sole Prescription Delivery Service (PDS) provider. Some of our members have benefited, and some will be negatively impacted in the short and long term. As a member-based industry association our role is to advocate for a fair, innovative and sustainable health software industry in Australia.

Although the MSIA and many of our members have advocated for a continuation of the existing successful ETP model, we accept that a policy decision has been made to select a single provider and we will continue to work with our members, the Department of Health and Australian Digital Health Agency to ensure a workable outcome.

With regard to the Application for Interim Authorisation, the MSIA argues that the ACCC should be allowed to fully investigate anti-competitive impacts of the proposed arrangement as soon as possible. That is, that the Interim Authorisation should not proceed as proposed.

We do so on the basis that:

1. The proposed ‘interim’ arrangements are irreversible. The ACCC assessment should complete in full before vendors and care providers are forced to adopt new commercial terms, technical settings and data flows.
 - a. For some, the ‘interim’ arrangements will necessitate investment in technical development, data surrender, new commercial terms and change management, and for others their businesses may cease to exist with merely six weeks notice;
 - b. ACCC consideration of the substantive application cannot be meaningful if interim arrangements are already in place. This may erode the authority and impact of the ACCC in this case;
2. Competition impacts have not been sufficiently understood and addressed.
 - a. The framing of the competition matter as being confined to Fred IT relationship with Medisecure grossly misunderstands the nature of the interdependent ETP ecosystem. For example, control of data and system access (APIs and other interfaces) is commercially material to all system participants, and industry expects the ACCC to consider the whole commercial ecosystem, rather than the narrow framing suggested in the application;
 - b. Direct competitors being forced to contract with Fred IT is unacceptable and it is hard to imagine this would be accepted in any other industry;
 - c. Proposed exclusivity embedded in contracts between healthcare providers and Fred IT is inappropriate and contrary to competitive principles; and
 - d. The contracts are not available for consideration by parties expected to contract with Fred IT under the new model within weeks. Withholding these contracts until after the irreversible ‘interim’ arrangements are in place is coercive and does not demonstrate good faith.

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3. Allowing more time for transition will not result in the negative patient safety or prescription access consequences claimed in the application. On the contrary, maintenance of the status quo for a reasonable period will allow for greater continuity of service; and
 4. Although outside the purview of the ACCC, the with only six weeks' notice, there are significant operational barriers to adoption of the new model as proposed, including proper consideration of commercial terms, data governance assessment, risk mitigation, and opportunity for customer engagement. These barriers only add to the pressure and coercion of other system participants.

The MSIA strongly urges the ACCC to conduct its full investigation as soon as possible and before any structural changes are implemented, including:

1. A full review that addresses the above issues;
1. As part of this assessment we encourage consideration of the relationship between the supposed cost savings for the Department in the context of direct costs and losses of industry participants. This may include analysis of the BCG Report commissioned by the Department but which has not been made available to industry;
2. Form a view of how governance arrangements for the eventual model might address the competitive disparities into the future. We urge the ACCC to recommend a permanent governance framework that addresses current and future competitive tension between Fred IT and other industry members with regard to the function of the PDS.
3. Consider that given the value of data and analytics for all parties in healthcare, concentration of data and access would warrant specific ACCC and OAIC review.

We offer to work with the ACCC to provide deidentified case studies to demonstrate the competitive dynamics and unintended consequences for industry and for healthcare providers.

Fred IT and Medisecure have been in operation for over a decade, and each have loyal customers. If a transition is to take place, it would be beneficial for industry, providers, the government and all Australians, for it to occur openly and transparently.

In summary, once transition is underway, it is too late to conduct a meaningful review. We look forward to further engagement about the ACCC review and how a new model can be refined and implemented in a safe, fair and sustainable way in an appropriate timeframe. Thank you for your consideration and please do not hesitate to contact us.

Yours sincerely



Robert Best

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