MSIA
MEDICAL SOFTWARE
INDUSTRY ASSOCIATION

Submission to ACCC

AA1000641

Authorisation to Fred IT Group

Date: Friday, 23rd June 2023

Contact: Emma Hossack | ceo@msia.com.au | 0413 483 096
BA (Hons), LLB, LLM


1stGroup
Adventist HealthCare
AlayaCare
ALCIDION
5Faces
altura health
ANNUO
MedicAlert
Clinicalabs
AutoMed Systems
BESTMED
Best Practice
caps Clinic
CARDIHAB
careMonitor
CHAMONIX
citadel health
CIVICA
clintel
cloudburst
COMPACT
SYSTEMS AUSTRALIA
comrad
Corum Health
COVIU
Cubiko
Dedalus
Doctors on Demand
smart rooms
eHealthWise
episoft
eRx script exchange
eucalyptus
EXTENSIA
feros care
foxo
FRED
GARDIAN
Genie Solutions
MedicalDirector
HALO
Health Intersections
Health Metrics
HEALTH TEAMS
HealthEngine
Health Link
RxONE
HELLO SUNDAY MORNING
HLLS.
HotDoc
cutting edge
Hyland
icare
illuminate
SOX
SURGICAL ORDER
InfoMedix
Infoxchange
iCIMS
InterSystems
Creative data technology
Intrahealth
kestral
leecare
lysn
MANAGE MY HEALTH
McCauley Software
MedAdvisor
Dox
Medical Records
medical objects
medi map
Medipass
MediRecords
MediSecure
MEDITECH EXPANSE
MEDrefer
medtech
OUTCOME HEALTH
Melbourne Genomics
MetaOptima
MIMS
MODEUS
monkey
Mountaintop Systems
MPS CONNECT
NET HEALTH
NEXT PRACTICE
PPMP
PRACTICE MANAGEMENT SOFTWARE
NPS MEDICINEWISE
Ocean
OEXA
ONE PASSPORT
ORACLE
ORIDASHI
ORION HEALTH
packapill
palcare
pencs
PERSON CENTRED SOFTWARE
PHARMHOS
PLINY
POS WORKS
pro medicus
Provider Assist
Qscan
RLDatix
Roche
rose mary
Scrypt.
simple retail
SmartHealth
audit4
SONIC HEALTHCARE
Stat
SURGICAL PARTNERS
minfos
HEALTH
THE CLINICIAN
TOUCH STONE
AutumnCare
varian
visionflex
VISUAL OUTCOMES
vitalhub
Care Evolved
webstercare
xestro
Z SOFTWARE
ZEDMED
Ocean2
zable health

Submission in Support of the Application by the Fred IT Group for Final Authorisation AA1000641.

The Medical Software Industry Association Ltd ("MSIA") represents over 165 companies across Australia, and appreciates the chance to engage in this consultation to allow transition discussions to occur with approval from the ACCC.

The MSIA made an earlier submission in respect of the interim authorisation, about which a decision was made on 21 June 2023. The reasons provided in the MSIA's earlier submission continue to be valid considerations for all parties, as will be clarified below. However, the submission by the Department of Health and Aged Care is correct in its statement that delays or failure to obtain authorisation for the *Proposed Conduct*, will not affect the procurement decision.

Furthermore, delays to the grant of an authorisation could negatively affect payments otherwise due to Medisecure customers. Delays could also prolong the current uncertainty in respect of the steps required for the least disruptive transition for all parties, including consumers, involved in electronic prescribing in Australia.

Meaningful consideration of and attention to all the concerns raised in MSIA's earlier submission cannot be thoroughly addressed by the Fred IT Group or the Government until discussions take place to provide clarity to complex details. These include specific and related legal issues, such as the status of Medication Knowledge agreements, safety, security, timelines, privacy, governance, treatment on non-PBS scripts technical and commercial matters which affect the entire electronic prescribing ecosystem which comprises the national infrastructure.

In summary, for the reasons mentioned, the MSIA supports authorisation of the Proposed Conduct. This is so that all the issues affecting the electronic prescribing ecosystem can be openly discussed between relevant parties. Furthermore, the authorisation will enable progress, and possible resolution of the specific issues which are detailed below. These affect the providers of prescribing, dispensing, hospital and consumer facing technologies.

Specific Areas for Attention Should the Authorisation be Granted.

The following examples signal the importance of urgent discussions between all parties to avoid unintended consequences including patient privacy, safety, and security, as well as productivity and efficiency of key national health infrastructure.

Dispensing Systems and Pharmacies.

- Dispensing software companies are concerned about the contract terms of a sole Prescription Delivery Service ("**PDS**") in Australia as these are not publicly available.
    - If dispensing software companies do not contract with the sole PDS their pharmacy customers would not be able to dispense a material portion of PBS prescriptions.
    - The electronic prescription conformance profile released by Australian Digital Health Agency ("**ADHA**") mandates that dispensing vendors connect to an approved PDS.
    - Key areas of potential concern raised by dispensing software companies include:
        - Warranties and indemnities;
        - Clauses that impose exclusivity;
        - Clauses that may limit dispensing vendor's ability to charge their customers;
        - Clauses that may force vendors to share commercially sensitive data with their competitor (given the sole PDS provider also operates a dispensing system).
- Dispensing software companies would be forced into accepting unknown and unnegotiable contract terms from Medication Knowledge (a related party to the PDS companies).
    - If they do not contract with Medication Knowledge, their pharmacy customers would not be able to dispense a material portion of PBS prescriptions via the Active Script List technology.
    - The electronic prescription conformance profile released by ADHA mandates that dispensing software company connect to the Active Script List.
    - Key areas of potential concern raised by vendors:
        - Fees charged by Medication Knowledge;
        - Warranties and indemnities;
        - Clauses that impose exclusivity;
        - Clauses that may limit dispensing software company's ability to charge their customers for electronic prescription functionality.
- Dispensing software companies are concerned at a decline in service levels from a sole PDS provider.
    - A lack of competition in the PDS market may lead to lower service levels for dispensing vendors where technical issues arise.
    - Desirable to have negotiated transparent, fair, and reasonable service levels and notification systems.
- Dispensing software companies are concerned that a sole PDS provider, where that entity is also a provider of dispensing software, may use this market power to unfairly compete in the dispensing system market and / or disadvantage its competitors in dealings around PDS support and innovation.
    - E.g., Sole PDS provider could use its knowledge of the system and Government's innovation agenda to advantage its own dispensing system where support issues arise, new conformance is required or opportunities to be first to market with new functionality arise.
    - E.g., Both the sole PDS provider's dispensing system and a competitor system require technical support for an outage. The sole PDS provider may preference support for their own system over their competitor.

- Pharmacies could be forced into accepting terms and conditions imposed by a sole PDS to access electronic prescriptions for their patients and also to fulfil their obligations under state-based schemes, such as *SafeScript* in Victoria.

- Pharmacies may be disadvantaged by the terms imposed by a sole provider. For example, if such terms were to impose exclusive use provisions. Exclusive use provisions may block innovative businesses from entering the PDS market for private prescriptions, for example.

Prescriber Software Companies and their Clinician clients

Impacts on prescriber software companies are similar to the above, but also include the following:

- Clinics have contracted IT services and most need to install out of business hours. Limited times are available and there will be a cost to clinics.

- Many clinicians and clinics chose their PDS based on preferred service response times and onboarding experiences. Some are not willing to return to the alternate provider and are willing to stay and pay a fee.

- Registration process is one clinic at a time only at a time rate of 5-10min per registration. For larger clinic groups, it amounts to over five hours of work just to register. If there are terms for a bulk register, they need to be made urgently available for end users.

- Continuity of care concerns in relation to failed SMS delivery due to performance issues with the existing Medication Knowledge SMS service. No service lookup or ability to confirm SMS has been successfully sent via the current Medication K knowledge service. This resulted in a number of vendors creating their own controlled service. Recommended the creation of a new API for vendors to query.

- Maintenance, overheads, and lag-time for onboarding and offboarding providers. This is due to requirement of registering per doctor not per clinic.

- Ongoing outages appear to be increasing without notification to end users and technical partners.

- Performance and scalability concerns for existing infrastructure with more load, specifically the MyHR uploader for eRx.

- Confusion over what is contracted with Medication Knowledge. In order to currently access both the SMS and eMail token service currently it is via Medication Knowledge. It requires software companies to sign a contract and pay $5000. It also provides access to the ASL API. If a prescribing company chooses not to provide ASL access which is optional, they may need to pay $5k for access to the only SMS and eMail service available.

- Concerns about equal and transparent access and control of development environments.
    - EG – Need to ensure that Software companies with more than one product in the market with existing legal entity-based MK contracts are not barred access to the sole PDS test environments for development purposes over extended periods, pending agreement to separate additional MK contract for the second product at an additional 5k fee.

Other Health Technology System Participants.

- Software providers of mobile intermediary applications are in some cases concerned that a sole PDS provider may use this market power to unfairly compete.
    - For example, the functionality of the WhatsApp script ordering functionality into the market is not uniformly available to all companies.

Hospitals Software Companies

- The original contracts required the EMR software company to warrant the data presented on the prescription. This is not possible, as it is the hospitals that are the “owners” of the data and are legally responsible.

- Hospitals prefer not to get billed for the SMS charges, and then have to on-bill that to their sites. Hospitals usually host eRx adapters in their network and do not host an eRx instance to cover their entire client base which aggregates all sites into one.

- This SMS issue may evaporate if the government directly pays eRx. However, the warranties on the hospital EMR vendors could continue to be an issue in the agreements, terms of which have not been circulated.