

30 June 2016

Australian Competition and Consumer Commission
GPO Box 3648
Sydney NSW 2001

By email: adjudication@acc.gov.au

Dear Sir/Madam

Please find attached a Notification of Exclusive Dealing (Form G) for Anytime Australia Pty Ltd. The notification relates to the acquisition of specific building, construction and project management supplies by Anytime Fitness franchisees from certain authorised suppliers.

The lodgement form of \$100 has been paid by credit card via your online payment system.

Yours Sincerely

A handwritten signature in black ink, appearing to read "Jordan Smith".

Jordan Smith
Legal Counsel
Anytime Australia Pty Ltd

Form G

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) **Name of person giving notice:**

N99178 *Anytime Australia Pty Ltd, ACN 131 035 491 (Anytime Australia)*

(b) **Short description of business carried on by that person:**

*Anytime Australia has the master franchise rights in Australia, i.e. it has the rights to use the **Anytime Fitness**® system and to franchise its use to others (franchisees) in Australia. The **Anytime Fitness** system is a system of operating 24 hour a day/ 7 day a week fitness centres using the **Anytime Fitness** intellectual property (including trademarks, designs and copyright) as well as certain methods, procedures, standards and other protocol. The fitness centres provide exercise facilities and services to consumers or “members” who enter into a membership agreement or to guests who pay a casual fee or have been permitted to try out the facilities and services at non-refundable cost.*

Anytime Fitness members have reciprocal rights to use all Anytime Fitness centres world-wide following the first month of their membership.

(c) **Address in Australia for service of documents on that person:**

*Anytime Australia, Level 2, 71 Longueville Road, Lane Cove 2066
(Attention: Jordan Smith)*

2. Notified arrangement

(a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

This notice concerns:

(i) the supply of **Anytime Fitness** centre franchises, including licences of intellectual property and information necessary for the operation of the franchises; and

(ii) the acquisition of specific building, construction and project management supplies by **Anytime Fitness** franchisees from “authorised suppliers”, i.e. Construction and fitout supplies provided by the suppliers specified below and those that we may reasonably designate as approved suppliers from time to time:

- Wellsburg Group Pty Ltd (National), ABN 33003784601
- The Workplace Fitout Group (National), ABN 96154582206
- Alliance Retail (National), ABN 32136825223
- Service Select, ABN 90135656156
- RHG Contractors, ABN 67159703349
- Charman Constructions, ABN 92159108031
- Becvarik Building Solutions, ABN 45797980562
- Catalyst Interiors Pty Ltd, ABN 88440972180

(b) Description of the conduct or proposed conduct:

*The conduct specifically involves the grant of **Anytime Fitness** franchises to franchisees on the condition that the franchisees use the construction and fitout supplies referenced in 2(a)(ii) from suppliers designated by us.*

*The relevant requirements are set out in the **Anytime Fitness** franchise agreement. These provisions:*

- *require that the franchisees:*
 - *only use services and products, that have been authorised by Anytime Australia;*
 - *only purchase such types, models or brands of fixtures, furniture, inventory, products, equipment and supplies, approved by Anytime Australia as meeting its standards, quality, design, warranties, appearance, function and performance;*
 - *purchase, use and install and properly maintain an information system – which includes (amongst other things) **the construction and fitout services** which satisfies the functionality and specification requirements specified by Anytime Australia for the operation of **Anytime Fitness** centres and access by members of **Anytime Fitness** centres and*
- *permit Anytime Australia to require franchisees to purchase certain furniture, equipment, inventory, supplies, services,*

Information Systems or other products used or offered at their Anytime Fitness centre from suppliers who have been approved by Anytime Australia.

*The specified approved suppliers meet Anytime Australia's standards, quality, design, warranties, appearance, function and performance ("Standards") and have been authorised for use in **Anytime Fitness** clubs in Australia. Similarly, the noted suppliers have been approved by Anytime Australia for the supply of the authorised equipment and/or services.*

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

(a) Class or classes of persons to which the conduct relates:

- *Anytime Fitness franchisees*
- *Anytime Fitness members*
- *The relevant approved suppliers, i.e.*
 - *Wellsburg Group Pty Ltd (National), ABN 33003784601*
 - *The Workplace Fitout Group (National), ABN 96154582206*
 - *Alliance Retail (National), ABN 32136825223*
 - *Service Select, ABN 90135656156*
 - *RHG Contractors, ABN 67159703349*
 - *Charman Constructions, ABN 92159108031*
 - *Becvarik Building Solutions, ABN 45797980562*
 - *Catalyst Interiors Pty Ltd, ABN 88440972180*
- *Other approved suppliers that we may reasonably add from time to time.*

(b) Number of those persons:

(i) At the present time:

- *431 franchised Anytime Fitness centres*
- *420,000 (approx) Anytime Fitness members*
- *Eight authorised suppliers providing construction and fitout services and such other suppliers as we may reasonably add from time to time (see above at 3(a))*

(ii) Estimated within the next year:

- *459 franchised Anytime Fitness centres*

- 455,000 (approx.) *Anytime Fitness* members
 - *Eight authorised suppliers providing construction and fitout services and such other suppliers as we may reasonably add from time to time (see above at 3(a))*
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:
- *Franchisees and members - there are substantially more than 50 persons affected or likely to be affected by the notified conduct:*
 - *Authorised suppliers:*
 - *Wellsburg Group Pty Ltd (National), ABN 33003784601 of PO Box 457, Sylvania NSW 2224*
 - *The Workplace Fitout Group (National), ABN 96154582206 of 7 Alexander Drive, Burwood Vic 3125*
 - *Alliance Retail (National), ABN 32136825223 of 6/10 Harrington St, Arundel Qld 4214*
 - *Service Select, ABN 90135656156 of 178 High St, Willoughby NSW 2068*
 - *RHG Contractors, ABN 67159703349 of 468 Victoria Road, Malaa WA 6090*
 - *Charman Constructions, ABN 92159108031 of PO Box 186, Figtree NSW 2525*
 - *Becvarik Building Solutions, ABN 45797980562 of 8 Gilmore Crescent, Garran ACT 2605*
 - *Catalyst Interiors Pty Ltd, ABN 88440972180 of 13 Donegal Road, Lonsdale SA 5160*

4. Public benefit claims

- (a) Arguments in support of notification and
 (b) Facts and evidence relied upon in support of these claims:

There are a number of benefits to franchisees and to consumers arising from the notified conduct, including the following:

Consistency of Approach: *Becoming a member of an Anytime Fitness centre allows that member to reciprocal rights at all Anytime Fitness centres throughout Australia and the world. In this context it is important*

that the member's experience in one centre is consistent with and duplicated in all other centres. Requiring franchisees to use specific construction and fitout suppliers helps ensure such consistency in the look and feel of **Anytime Fitness** Centres.

Quality Control and Efficiency: The designated authorised suppliers meet the Standards and have been assessed as the most suitable for **Anytime Fitness** centres. The authorised suppliers have each also agreed to certain key performance indicators and other controls to help manage quality, improve efficiency and provide franchisees with assurance that they are using trusted and tested suppliers.

Protection of the Anytime Fitness Brand and Reputation: the approval of suppliers, equipment, goods and services that comply with certain standards and fulfil specific expectations, helps to protect the **Anytime Fitness** brand and reputation. Such protection is critical for consumer confidence and to the ongoing success of the **Anytime Fitness** business.

Rationalisation of Suppliers: The notified conduct enables Anytime Australia to rationalise the number of suppliers from whom franchisees may purchase key equipment and services.

Cost Reductions: Neither new nor experienced franchisees are likely to have extensive practice in negotiating agreements for the supply of fitout services. Anytime Australia is far better placed than individual franchisees to be able to negotiate on behalf of the franchise network and obtain high quality products and services at favourable prices.

Collective buying also helps franchisees by reducing the time and cost they would otherwise spend on getting quotes from different suppliers, assessing the quality and value of equipment and services and negotiating terms and prices. Engaging trusted suppliers ensures franchisees are not preoccupied with managing building matters during the fitout process, which detracts from their ability to effectively run a business.

Competition: Having high quality construction and fitout services that satisfy the Standard, helps to distinguish the **Anytime Fitness** centres from other fitness centres and therefore assists franchisees to compete effectively with other fitness brands – such competition is beneficial for franchisees as well as consumers.

In addition, there are significant competitive pressures on Anytime Australia to help increase the financial viability - by cost control - of individual franchisees as well as the franchise group as a whole. Such cost control is, in turn, likely to impact pricing of memberships for the benefit of consumers. The notified conduct helps to enhance effective competition.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

The market in which the goods and services described are supplied is the market for construction and fitout services to fitness centres, and in particular, to 24 hour franchised fitness services.

*There are a number of suppliers that provide construction and fitout services, however the designated suppliers have demonstrated competency in their field and are best qualified to meet the **Anytime Fitness System and Standards**.*

Anytime Australia believes these other suppliers will be only be marginally impacted (if impacted at all) by the notified conduct: there are a large number of other fitness centres that other suppliers could target for the supply of their services.

Some current other fitness brands include:

- *Fitness First: Fitness First Pty Ltd,*
- *Ardent Leisure Group: Good Life Health Clubs*
- *24/7 Brands Pty Ltd: Jetts Fitness*
- *YMCA Australia: YMCA*
- *Fernwood Women's Health Clubs Pty Ltd: Fernwood Fitness*
- *GHF Pty Ltd: Genesis Fitness*
- *Curves*
- *Snap Fitness*
- *Virgin Active*

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets; and
- (b) Facts and evidence relevant to these detriments:

Franchisees: *although the notified conduct will remove the opportunity for **Anytime Fitness** franchisees to choose which supplier they purchase construction and fitout services from, Anytime Australia submits that the above benefits will significantly outweigh any disadvantage (if any exist at all). In addition, franchisees do not have to enter into franchise agreements*

with Anytime Australia. There are a number of other options available – they may enter into agreements with a range of other 24 hours fitness brands or may operate their own independent businesses.

Consumers (Members): *Anytime Australia does not consider that consumers will be detrimentally effected by the notified conduct.*

Other Suppliers: *The notified conduct will not allow other construction and fitout suppliers to compete for the business of franchisees in the supply of these services, however, the detrimental impact on suppliers will be minimal given:*

- *the large number of competitors operating 24 hour fitness centres; and*
- *the fact that suppliers are not restricted to supplying their construction and fitout services to other 24 hour fitness centres. They may also supply them to other (non 24 hour) fitness centres, to numerous other businesses and organisations as well as to the domestic market.*

Net Effect: *Anytime Australia submits that there are no public detriments that will result from the notified conduct*

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Name: Jordan Smith
E mail: jordan.smith@collectivewellness.com.au
Phone: +61 413 991 390
Address: 2nd Floor, 71 Longueville Road, Lane Cove 2066

Dated.....

Signed by/on behalf of the applicant

.....
(Signature)

Jordan Smith
Anytime Australia Pty Ltd

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.
Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.