

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:

N99944

Anytime Australia Pty Ltd - ACN 131 035 491 (**Anytime Australia**)

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

Anytime Australia has master franchise rights in Australia relating to the Anytime Fitness brand. It has the rights to use the Anytime Fitness® system and to franchise its use to others (franchisees) in Australia.

The Anytime Fitness system operates 24/7 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 no 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:

Attn: Christina Andrews
Anytime Australia
Level 2, 71 Longueville Road
Lane Cove NSW 2066

2. Notified arrangement

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

This notice relates to the acquisition and usage by Anytime Fitness franchisees of a specific employment and human resources software system

and related services from an authorised supplier, designated by Anytime Australia. The current authorised supplier is HR Assured Pty Limited.

(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 obtain and use the specific employment and human resources software and related services from the authorised supplier.

The Anytime Fitness franchise agreement requires franchisees to purchase and maintain products, equipment and supplies approved by Anytime Australia as meeting its standards, quality, design, warranties, appearance, function and performance (“Standards”).

The specified authorised supplier meets Anytime Australia’s Standards.

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:

(Refer to direction 5)

- Anytime Fitness franchisees; and
- The relevant authorised supplier (HR Assured).

(b) Number of those persons:

(i) At present time:

- 460 (approx.) franchised Anytime Fitness centres; and
- One authorised supplier (HR Assured).

(ii) Estimated within the next year:

- 500 franchised Anytime Fitness centres; and
- One authorised supplier (HR Assured).

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

- Authorised supplier:
HR Assured Pty Limited (ACN 008 522 852)
Level 11, 83 Mount Street, North Sydney NSW 2060

4. Public benefit claims

(a) Arguments in support of notification and

(b) Facts and evidence relied upon in support of these claims:

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

Increased Compliance with Employment Laws: The authorised supplier will provide ad-hoc, non-legal advice and support to franchisees to assist them in complying with employment laws relating to staff within their centres.

Compliance with applicable laws relating to employment and human resources is of critical importance and as such, the notified conduct will be highly beneficial to the public.

Consistency of Approach: Becoming a member of an Anytime Fitness centre allows that member 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 systems and suppliers helps ensure such consistency.

Quality Control and Efficiency: The authorised supplier meets the Standards and has been assessed as the most suitable for Anytime Fitness centres. The authorised supplier has also agreed to certain key performance indicators and other controls to help manage quality, privacy and security, improve efficiency and provide franchisees with assurance that they are using trusted and tested systems and 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 services.

Cost Reductions: Neither new nor experienced franchisees are likely to have extensive practice in negotiating agreements for the supply of employment and human resources related software 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 services and negotiating terms and prices. Engaging a trusted employment and human resources software service supplier streamlines the process of engaging and retaining staff which ensures that franchisees are complying with all required laws and can run their businesses effectively and efficiently.

Competition: Having high quality, reliable and compliant employment and human resources software services that satisfy the Standards, helps to distinguish Anytime Fitness centres from other fitness centres by assisting franchisees to compete effectively with other fitness brands by obtaining and retaining the highest quality candidates. 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 employment and human resources related software services, to fitness centres, and in particular, to 24-hour franchised fitness services.

Anytime Australia believes other suppliers will only be marginally impacted (if impacted at all) by the notified conduct as there are many other fitness centres that other suppliers could target for 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 employment and related human resources software 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 several 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 employment and human resources software services suppliers to compete for the business of franchisees in the supply of employment and human resources related software 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 those suppliers are not restricted to supplying their services to 24-hour fitness centres. They can supply them to other (non-24 hour) fitness centres and to numerous other businesses and organisations.

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: Christina Andrews


E mail: christina.andrews@collectivewellness.com.au

Phone: 0411 478 447

Address: Level 2, 71 Longueville Road, Lane Cove NSW 2066

Dated... *4 October 2017*

Signed by/on behalf of the applicant


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(Signature)

Christina Andrews
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(Full Name)

Anytime Australia Pty Ltd
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(Organisation)

Legal Counsel
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(Position in Organisation)

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.