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Anna Jefferson
Commerce Commission
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By email

Dear Anna

Anytime NZ Response to Commission's Statement of Unresolved Issues

1. Anytime NZ refers to the Commission's statement of unresolved issues dated 11 April 2022.
2. Anytime NZ particularly wishes to respond to the following three key points arising out of the statement:
 - (a) why the proposed pricing policy is "*reasonably necessary*" for the collaborative activity because it is necessary to achieve a consistent brand image and quality standards;
 - (b) the impact on the Commission's s27 competition analysis arising from the future growth in the number of Anytime Fitness gyms throughout New Zealand;
 - (c) the ability of the Commission to monitor the impact of the addition of further gyms to the Anytime Fitness New Zealand network.

Need to Achieve Consistent Brand Image and Quality Standards

3. Anytime NZ notes the Commission's acknowledgment that:
 - (a) there are benefits in franchisees aligning with each other to ensure a consistent brand and image and ensure the provision and maintenance of high quality services, facilities etc (at [51] of the statement of unresolved issues);
 - (b) having a standardised pricing band may be reasonably necessary to achieve a consistent brand image and standards (at [57]);
 - (c) the alternatives to the pricing policy that the Commission discusses later in its statement are not effective to address the issue of brand consistency and quality standards (see [88], [89] and [93]).
4. Where, however, the Commission has sought further information is on the question of whether the franchisor's ability to enforce quality standards may already be sufficient to ensure a consistent image and high quality services (see in particular [58], [60], [62], [63] and [65]).
5. As discussed further below, Anytime NZ submits that:
 - (a) seeking to enforce quality standards is futile (or at least not as effective) if [] (see for example the discussion in relation to the [] franchisees below);

- (b) there are only really true incentives to fully invest in and maximise the provision of quality services if the club doing so gets the benefit (which will not be the case if the clubs that are investing less on quality have the ability to free-ride).
6. The Commission has already received evidence from franchisees to the effect that the pricing policy would make it easier for Anytime NZ to “*hold individual franchisees to quality standards*” (see at [56.4] of the statement of unresolved issues). Further supporting evidence on this point is provided in this submission and accompanying documents.
 7. In Anytime NZ’s view it is clear that begrudging, and delayed, “*compliance*” with quality standards by clubs with [] who are being ordered to comply, will be nowhere near as effective as ensuring that clubs have the right economic incentive to willingly improve quality because they can see a real benefit to themselves in doing so. Further, in the absence of the Proposed Agreement it is likely that [].
 8. It is particularly important to note that the programme for renovation/ refurbishment of Anytime Fitness gyms as required under the franchise agreements for each gym can only take place over a lengthy time-frame (say 5-7 years for the whole chain). The franchise agreements for different franchisees have been entered into at different times. Accordingly, the obligations of franchisees to renovate are staggered over a period of several years. There is never a single period of time when it can be said that all gyms in the network are refurbished to a common standard pursuant to the renovation obligations under the franchise agreement.
 9. Partially for that reason it is important that there are ongoing incentives on all franchisees to keep quality standards high. The Proposed Agreement, by putting a band on the level of prices charged by franchisees, will provide a greater incentive on franchisees to compete through higher standards of service and facilities.
 10. It is true that where quality standards drop so low as to be unacceptable, Anytime NZ can step in and use enforcement mechanisms under the standard franchise agreement such as ordering cleaning, and if necessary terminating a franchise.
 11. These mechanisms may force action by some franchisees ([]) to do the minimum required to comply with enforced standards. However, franchisees (particularly those on []) will not have the incentives to raise standards to higher levels (as they will know they may not get the personal benefits from raising standards but will only further deplete margins through the additional expenditure while other nearby clubs free-ride on that expenditure).
 12. The Proposed Agreement, by changing the focus of franchisees to competing on high quality services and facilities, will substantially add to the incentives of franchisees to invest in high quality services and facilities. Therefore the Proposed Agreement will:
 - (a) provide an incentive for franchisees to invest in such services and facilities, over and above what is required to simply avoid termination of their franchise and;
 - (b) ensure an earlier addressing of quality issues than the contractual requirements for renovation (which for some franchisees may not require any action for some years).
 13. Secondly, the Proposed Agreement will assist in ensuring that franchisees have the ability to incur the expenditure required to meet their renovation obligations. Anytime NZ is very conscious that the impact of Covid-19 on the business of many franchisees has been extreme, particularly in Auckland due to the extended lockdown in August to December 2021. The result has been that []. Examples of this are discussed below.
 14. Anytime NZ’s assessment is that [] where they are pricing within the bands suggested in the Proposed

Agreement. Those pricing bands have been pitched at a level that Anytime NZ considers are appropriate having regard to:

- (a) the preferred market positioning of Anytime NZ as a quality gym operator providing excellent facilities and services to members (rather than as a budget low-quality operator) and;
 - (b) the need [] to invest in the excellent facilities and services necessary for Anytime Fitness to maintain a market reputation consistent with Anytime NZ's preferred market positioning.
15. The Commission suggests at [64] that the Proposed Agreement may not necessarily improve economic incentives for franchisees to improve quality of facilities as franchisees pricing at the lower end of the pricing band may not have the financial means to invest. However, it is up to Anytime NZ to pitch the band at the right level. Anytime NZ is aware of the financial position of the clubs and is in the best position to ensure that the bands are pitched at a level that will best encourage investment in better quality facilities and services.
16. As is apparent from the evidence supplied below, Anytime NZ's inspections and reliance on enforcement of the franchise agreement are not sufficient by itself to ensure satisfactory incentives[] of franchisees to maintain high quality standards.
17. The Proposed Agreement will:
- (a) add substantially to the economic incentives on franchisees to maintain high quality services and facilities, as with the Proposed Agreement the main area where clubs can differentiate themselves will be through the quality of their services and facilities;
 - (b) enable a number of franchisees to be able to financially afford the necessary expenditure required to renovate their gyms and maintain quality services, when they otherwise would not have had the willingness or financial ability to do so.
18. []

Specific Response to Commission Questions in Para [65] of Statement of Unresolved Issues

Reliance on Mechanisms in Franchise Agreement

19. The Commission asks at [65.1] "*whether [Anytime NZ] has sought to rely on any of the mechanisms we have identified in the Franchise Agreement and if so, whether they were effective in addressing the issues regarding quality*".
20. The mechanisms identified by the Commission are those referred to at para [60] of the statement of unresolved issues namely:
- []
- []
- []

]

[

]

[

]

Visits to Clubs

32. During the time that Cam Ward has been with Anytime NZ, Anytime NZ has frequently visited all clubs to ensure compliance with required standards and procedures.

]

Refurbishments of Clubs

36. The Commission asks at [65.2] [“

”].

[

] This is due to the staggered nature of when franchise agreements were entered into by different franchisees, and in turn the different times when refurbishment obligations arise under the respective franchise agreements.[

]

[]

39. The Commission asks at [65.3] for [“

”];

40. [

]

41. Accordingly the below description largely sets out details of Anytime NZ dealing by phone or in person with each of the relevant franchisees.
42. Cam Ward has nevertheless checked for documents that might relate to these matters and such documents as he has located are being provided to the Commission together with this submission.
43. The clubs are as follows:

Club	Company Name on Franchise Agreement	Physical Address of Club
[
]

[]

44. Cam Ward started with Anytime NZ in January 2020. Between January 2020 and March 2020 he visited all clubs (with very limited exceptions).

[

47. Cam Ward discussed these matters (and certain other matters) with the franchisee in person.

48. However, it is apparent that a number of the same issues are still present at the club.

]

[]

53. The [] was the first club visited by Cam Ward on his visit to all clubs in January to March 2020.

[

]

55. These matters were discussed by Cam Ward with the franchisee during the visit in early 2020.

[

]

57. Some leeway was allowed by Anytime NZ to the franchisee during the period that New Zealand was affected by the Covid-19 pandemic. However, the issues have been ongoing with the problems identified by Cam Ward in early 2020 still being present.

[

]

[

]

65. Cam Ward visited the club in early 2020 as part of his visit to all the clubs around the country. [

]

[

70. Cam Ward did not visit this club on his tour of all the clubs in early 2020. Instead he met the franchisee of that club onsite at Anytime NZ's head office in Hamilton at that time.

]

[]

78. Cam Ward met the franchisees of the [] in early 2020. Since then Cam Ward has visited the [] on several occasions. []

]

79. Cam Ward left the [] with Anytime NZ's Operations Manager and Compliance Manager to follow up with the franchisee.

[]

]

[]

86. The Commission noted at [44] that “*looking at online pricing of Anytime Fitness clubs, there seems to be little difference [] in weekly membership pricing between clubs that are []*”.

87. The Commission asks at [65.4] for “*details regarding the []*”

88. Anytime NZ has provided []

]

[]

89. The Commission asks at [65.5] for “[
”].

[]

]

[

]

Impact on Competition analysis resulting from growth of Anytime Fitness chain

92. Anytime NZ submits that the s27 analysis is straight-forward notwithstanding the growth of the Anytime Fitness chain.
93. Gym markets are so competitive throughout NZ that it is clearly apparent that limiting internal competition between franchisees of one gym network will never lessen competition in any local market considered as a whole.
94. There is no part of NZ where gym markets are so concentrated that the main competition in an area would be between different operators of the same gym network.
95. Should that position change in the future the Commission has the power to revoke the clearance on the basis of a material change in circumstances.

Ability of Commission to Monitor Addition of Parties

96. In para [123] of the Commission's statement, the Commission expresses a concern about being able to monitor the addition of parties (so that the Commission's ability to revoke the clearance if there is a change in the competitive situation is meaningful).

97. Anytime NZ undertakes to the Commission to provide it with details of new gyms opened every 6 months following the grant of clearance.

Miscellaneous Points

98. Anytime NZ does not intend to make detailed submissions on other points in the Commission's statement of unresolved issues. However, this does not mean that all such points are agreed to by Anytime NZ. Anytime NZ refers back to its previous submissions and attaches a schedule with brief comments on the remaining points.

Yours faithfully
Lane Neave

A handwritten signature in blue ink, appearing to read 'A. Ryan'.

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