

**Schedule – Anytime NZ Miscellaneous Points in Response to Commission’s Statement of Unresolved Issues**

<b>Commission para number and comment</b>	<b>Anytime Response</b>
43 “ <i>whether the Proposed Agreement is reasonably necessary to provide a strong Anytime Fitness network of clubs</i> ”	“ <i>Strong</i> ” in this respect means as competitively strong as possible. Small margins can mean the success or failure of brands. Anytime Fitness is not able to compete effectively [ ] rather than outwards as part of a collaborative Anytime Fitness chain that competes with the likes of Les Mills and other gym chains.
43.2 “ <i>We understand from some franchisees that the issue exacerbated by the Reciprocity Policy is not necessarily resulting from the lack of standardised pricing, rather it is resulting from [ ]</i> ”	It is both. [ ]
44 “ <i>Looking at online pricing of Anytime Fitness clubs, there seems to be little difference [ ] in weekly membership pricing between clubs that are [ ].</i> ”	[ ] as more fully explained in the body of Anytime Fitness submission in response to Statement of Unresolved Issues.  [ ] The Proposed Agreement will put a bound on where clubs can price so that pricing 1) is consistent with Anytime Fitness brand positioning 2) is not at a level where the profitability of efficiently run clubs is jeopardised.
45 “ <i>our current view remains that [ ] appear to be a relatively confined issue affecting a relatively small number of franchisees in Christchurch and Auckland</i> ”	The Anytime Fitness network is not as strong or competitive as it can be if some of its members (in two particularly important markets) [ ]. As a consequence, the Proposed Agreement is reasonably necessary now even without the proposed growth in the chain. It will be even more essential as the chain grows and more clubs are geographically close to each other.
46 “ <i>the Proposed Agreement[ ] may actually limit the ability of some Anytime Fitness franchisees to compete against lower-priced gym chains</i> ”	It is for Anytime Fitness to assess how it best competes in the gym market generally. As seen from its strategy documentation already provided to the Commission, Anytime Fitness’ strategy is to position itself at a certain level with quality services and facilities, rather than as a budget provider. Competing less in relation to certain dimensions of an overall price, quality package can be quite consistent with more effective competition overall.
51 “ <i>the Commission understands that there are benefits in franchisees aligning with each other, for example, to ensure a consistent brand and image across the network, ensure the provision</i> ”	Anytime Fitness agrees. The comments by the franchisees noted at para 56 of the Statement are supportive of consistency of pricing (ie the Proposed Agreement) assisting this (as the Commission appears to accept at para 57).

<i>and maintenance of high-quality services, facilities, equipment and group fitness offerings"</i>	
58-65	See body of Anytime Fitness submission in response to Statement of Unresolved Issues.
72 <i>"our view remains that concerns with the allocation of membership fees between franchisees appears to be a reasonably confined issue affecting a relatively small number of franchisees in Christchurch and Auckland"</i>	Christchurch and Auckland are very important markets for Anytime Fitness. If there is not equitable allocation of membership fees in those markets then the ability of Anytime Fitness to effectively compete with other gym chains is hampered. This problem will be exacerbated as the Anytime Fitness chain expands over the next few years.
78 <i>"we are not persuaded that the 30-day cooldown period is [</i> <i>"]</i>	Cam Ward of Anytime NZ disagrees. With respect, Anytime NZ considers that its CEO is in the best position to assess what is practical having regard to his experience of the industry. Anytime NZ reiterates para [46] of its submission dated 15 February 2022.
80.2 <i>"while we acknowledge that no systems currently exist which would enable clubs to monitor how many times a member has attempted to access their 'non-home club' in the initial 30-day cooldown period, the barriers to introducing such systems appear low"</i>	That is not a system that Anytime Fitness would want to introduce. Anytime Fitness is seeking to attract gym users on the basis that they will be able to use any club. Trying to police the use by members of different clubs goes against that ethos.
80.4 <i>"most Anytime Fitness franchisees that have engaged with us said that the issue of clubs not receiving fees from 'non-home club' members likely evens out over time"</i>	If so, that is only because <i>"most"</i> franchisees are not geographically close to each other. The statement in 80.4 is unlikely to be true for those clubs which are close together.
98 <i>"We are continuing to consider whether a collaborative activity clearance, if granted, could continue to apply to the original parties and extend to further parties if further parties join the Proposed Agreement"</i>	It would be absurd for franchise chains to have to apply for a new collaborative activity clearance every time a franchisee is added to a franchise network. Many collaborative activities such as franchises involve multiple members the composition of which is changing frequently from time to time (franchise chains, trade association arrangements, rules of sporting bodies). The legislature would not have intended to exclude such collaborative activities from the ability to seek clearance. Refer to Anytime Fitness submission dated 15 February 2022 at [71]-[87].
106 <i>"There will likely be circumstances in which a fresh cause of action arises when a further party is added to a contract, arrangement or understanding"</i>	Anytime Fitness does not express a view on whether there would be a fresh cause of action as per this comment. However, whether there is a new cause of action, and whether there is an <i>"arrangement"</i> seem to be entirely different concepts.
112 <i>"preliminary question of whether a contract, arrangement or understanding is replaced with a new contract, arrangement or understanding when a further party is added to it"</i>	The answer to this question is no. Many arrangements involve multiple members the composition of which is changing frequently from time to time (trade association arrangements, rules of sporting bodies). There is no suggestion in the cases relating to such

	<p>arrangements, that there is more than one arrangement involved when the members of such associations or bodies change over time.</p> <p>As the Commission notes at para 108, s58B reflects the fact that it is possible for a person to become a party to an arrangement after it was entered into. That section would not make sense if a new person becoming party to the arrangement was itself treated as a new arrangement.</p>
113. <i>"the authorisation regime also includes references to authorisations relating to contracts, arrangements or understandings, while separately providing an express power for the Commission to state that an authorisation applies to further parties who may subsequently join an agreement"</i>	<p>As previously submitted, it was not necessary to provide for the Commission to have such an express power in relation to collaborative activity clearances. Section 65B on its terms applies to any party who enters into the arrangement or gives effect to the relevant provisions. That means that the starting point of a collaborative activity clearance is that it has much wider scope (than an authorisation) as to the parties who may rely on it. An authorisation under s58(1) on its terms only applies to persons named in the application for authorisation. See Anytime Fitness previous submission of 15 February 2022 at [75] and [84]-[85].</p>
122	<p>See body of Anytime Fitness submission in response to Statement of Unresolved Issues.</p>
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