



U.S. DEPARTMENT OF JUSTICE
Antitrust Division

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October 27, 2020

By Electronic Mail

Denise Jarrett
ecoHair Braiders Association, LLC
deanie4426@gmail.com

RE: Business Review Request from the ecoHair Braiders Association

Dear Ms. Jarrett:

This letter responds to your request, on behalf of the ecoHair Braiders Association (“ecoHair”), for the issuance of a business review letter under the Department of Justice’s Business Review Procedure, 28 C.F.R. §50.6.¹ Specifically, the Department understands that your request is made under the expedited, temporary review procedure as detailed in the Joint Antitrust Statement Regarding COVID-19 dated March 2020 (“Joint Statement”).² Based on the information and representations you have provided, the Department has no present intention to challenge the Proposed Conduct. Pursuant to the Joint Statement, the Department’s statement of its current enforcement intentions as set out in this letter will be in effect for one year from the date of this letter.

We understand that ecoHair is a voluntary membership association that provides trainings and support to individual hair braiders, hair braiding schools, and salons.³ You have represented

¹ See Letter from Denise Jarrett, ecoHair Braiders Association, to the Hon. Makan Delrahim, Ass’t Att’y Gen., Antitrust Div., U.S. Dep’t of Justice [hereinafter “Request Letter”]

² See Dep’t of Justice & Fed. Trade Comm., Joint Antitrust Statement Regarding COVID-19 (Mar. 2020), <https://www.justice.gov/atr/joint-antitrust-statement-regarding-covid-19> [hereinafter “Joint Statement”]. The Division has concluded that expedited review within seven calendar days is not appropriate here, although the Division has still aimed to respond to your request expeditiously under the circumstances.

³ See also Minnesota Bd. of Cosmetologist Exam’rs, *BCE Bulletin: Hair Braiding* at 1 (July 26, 2016), https://mn.gov/boards/assets/Hair_Braiding_Bulletin_2016_tcm21-250454.pdf (“Hair braiding is a natural form of hair manipulation that results in tension on hair strands by beading, braiding, cornrowing, extending, lacing, locking, sewing, twisting, weaving, or wrapping hair into different shapes, patterns, and textures predominantly by hand and by only using simple braiding devices on human hair, synthetic hair, or hair extensions.”).

that ecoHair’s approximately 350 members make up fewer than 10% of hair braiders in Minnesota and fewer than 1% of hair braiders in any other state. You also indicate that hair braiders, like many small businesses across America, have been severely impacted by the COVID-19 pandemic and measures to mitigate its spread. Moreover, hair braiding can pose unique risks for customers and braiders because it often involves several different people working simultaneously on the same customer for prolonged periods of time.

ecoHair proposes to help hair braiders address these challenges in three ways (collectively, the “Proposed Conduct”).⁴ First, ecoHair will provide hair braiders with guidance about offering their services in compliance with federal, state, and local health guidance.⁵ For example, ecoHair will encourage braiders to “report [if] they are sick or experiencing symptoms while at work to the [CDC’s] COVID-19 hotline” and “implement[] leave policies that promote hair braiders staying at home when they are sick.”⁶ You have represented that these recommendations are voluntary, meaning that ecoHair will not require members to follow them or punish those who decline to do so. Instead, individual hair braiders or their salons will decide how and whether to enforce these policies.⁷ Second, ecoHair will offer “[o]nline educational programs” to teach hair braiders about rules affecting how and whether they can re-open their salons or shops.⁸ Finally, ecoHair intends to hold “virtual interactive question and answer[]” sessions with hair braiders.⁹ You have represented that these sessions will not involve the exchange of any competitively sensitive information, e.g., price, capacity, output, or competitively sensitive customer information. Instead, these conversations will be focused on informing hair braiders about where they can access face masks or other resources and equipment.

On the basis of the information and representations you provided to the Department, it appears that the Proposed Conduct does not raise concerns under the federal antitrust laws.¹⁰ In particular, the Proposed Conduct seems unlikely to “limit independent decision making” or

⁴ Your initial request indicated you have undertaken some aspects of the proposed conduct already. Request Letter at 11. “Although the Department typically does not review ongoing conduct, given the President’s declaration of a national emergency and the current exigencies, we have determined that, in these circumstances, it is appropriate to consider the request.” Letter from the Hon. Makan Delrahim, Ass’t Att’y Gen., Antitrust Div., U.S. Dep’t of Justice, to Thomas O. Barnett, Eli Lilly and Company, AbCellera Biologics, Amgen, AstraZeneca, Genentech, and GSK (July 23, 2020).

⁵ Request Letter at 4.

⁶ *Id.* at 4–5.

⁷ *Id.* at 3.

⁸ *Id.* at 4.

⁹ *Id.*

¹⁰ In so concluding, we express no opinion on the safety measures recommended by ecoHair or whether they satisfy any federal, state, or local guidance.

“reduce [hair braiders’] ability or incentive to compete independently.”¹¹ Moreover, while ecoHair’s guidelines reflect that, as a result of the pandemic, hair braiders may reduce output in the short term, e.g., by offering fewer appointments so that hair braiders in the same salon can remain socially distanced from each other, following the guidelines could also help them remain open while it may not be possible or safe to offer normal service. Additionally, while hair braiders exchanging information among themselves could raise concerns under certain circumstances, based on your representations this exchange does not involve competitively sensitive information and so it seems unlikely to facilitate “explicit or tacit collusion.”¹² Finally, the Proposed Conduct may provide significant procompetitive benefits to consumers by allowing more hair braiders to re-open sooner and more safely, ultimately increasing output and competition. In accordance with usual practice, however, the Department reserves the right to bring an enforcement action in the future if the Proposed Conduct proves to be anticompetitive in purpose or effect.

This letter expresses the Department’s current enforcement intentions with respect to the federal antitrust laws only and is predicated on the accuracy of the information and representations you have made to us. The letter also reflects the outcome of an expedited, temporary review procedure that is necessarily less thorough than ordinary business review procedures and should not be interpreted as applying to any matter other than the Proposed Conduct as it relates strictly to, or arises directly out of, the COVID-19 pandemic.

This letter is made in accordance with the Department’s Business Review Procedure, 28 U.S.C. § 50.6, and subject to the limitations and reservations of rights therein. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data you have submitted will be made publicly available within thirty days of the date of this letter, unless you request that part of the material be withheld in accordance with paragraph 10(c) of the Business Review Procedure.

Sincerely,



Makan Delrahim

¹¹ U.S. Dep’t of Justice & Fed. Trade Comm’n, *Antitrust Guidelines for Collaborations Among Competitors*, § 3.1 (2000), <https://www.justice.gov/atr/page/file/1098461/download>.

¹² *Id.* § 2.2.