Kentucky, from a federally chartered savings bank to a state charted commercial bank.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. [illegible]

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. [illegible] FTC Rule 4.9(c), 16 CFR 4.9(c).

Inc. (''Bosley''), and its corporate parents, Aderans America Holdings, Inc. (''Aderans America'') and Aderans Co., Ltd. (''Aderans'') (collectively, ''Respondents''). Bosley is the largest manager of medical/surgical hair transplantation practices in the United States. The Commission's Complaint alleges that Bosley facilitated coordination and endangered competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by exchanging competitively sensitive, nonpublic information with HC (USA), Inc. (''Hair Club''). Bosley indicated that it exchanged similar information with other medical/surgical hair transplantation practitioners.[2]

The proposed Consent Agreement would resolve competitive concerns by requiring Bosley: (1) Not to communicate competitively sensitive, nonpublic information with any competitor; (2) not to request, encourage, or facilitate communication of competitively sensitive, nonpublic information from any competitor; and (3) to institute an antitrust compliance program to assure ongoing compliance with the proposed Decision and Order (''Order'') and with U.S. antitrust laws.

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make final the proposed Order.

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement. The analysis does not constitute an official interpretation of the Consent Agreement or the proposed Order, nor does the analysis modify their terms in any way. Further, the Consent Agreement has been entered into for settlement purposes only, and does not constitute an admission by Respondents that they violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

I. The Complaint

The allegations of the Complaint are summarized below.

Bosley and Hair Club are managers of medical/surgical hair transplantation with nationwide geographic presence and national brand recognition. Bosley is the largest such manager in the United States. For at least four years, the chief executive officers (''CEOs'') of Bosley and Hair Club repeatedly exchanged competitively sensitive, nonpublic information about their companies' medical/surgical hair transplantation practices. The information exchanged included details about future product offerings, surgical hair transplantation price floors and discounts, plans for expansion and contraction, and business operations and performance. At the time the CEOs exchanged the information, it was not publicly available.

Bosley considered the information exchanges to be business as usual, and as alleged in the Complaint, Bosley indicated that it had similar communications with other competitors.

II. Analysis

Competition may be unreasonably restrained whenever a competitor directly communicates, solicits, or facilitates exchange of competitively sensitive information with its rivals, particularly where such information is highly detailed, disaggregated, and forward-looking. The risks posed by such communications are three-fold. First, a discussion of competitively sensitive prices, output, or strategy may mutate into a conspiracy to restrict competition. Second, an information exchange may facilitate coordination among rivals that harms competition, even in the absence of any explicit agreement regarding future conduct. Third, knowledge of a competitor's plans reduces uncertainty and enables rivals to restrict their own competitive efforts, even in the absence of actual coordination.

According to the Commission's Complaint, by directly and repeatedly exchanging competitively sensitive, nonpublic information with Hair Club and other rivals, Bosley engaged in unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. The Commission's Complaint alleges that Bosley and Hair Club exchanged information on competitively sensitive subjects, including future plans to close existing facilities and current strategies regarding price discounting. Bosley and Hair Club's alleged tacit understanding to exchange the information could facilitate coordination or endanger competition by reducing uncertainty about a rival's product offerings, prices, and strategic plans. For example, the information exchanges could lead a competitor to determine not to open facilities or market services in a particular location. Alternatively, a competitor might avoid granting additional discounts to maintain existing price levels for surgical hair transplantation services. Any or all of these decisions could result in consumer harm in the form of reduced choice or artificially inflated transaction prices. The potential for harm increases to the extent that Bosley engaged in similar communications with additional rivals.

The Commission must weigh the potential for competitive harm from direct and repeated exchanges of competitively sensitive, nonpublic information against the prospect of legitimate efficiency benefits. The Commission's Complaint alleges that the information exchanges between Bosley and Hair Club served no legitimate business purpose. Specifically, the Commission alleges that in this instance—considering the types of information involved, the level of detail, the direct nature of the communication, and the absence of any related pro-competitive impact—the exchanges were potentially anticompetitive and lacked a legitimate business justification.

III. The Proposed Consent Order

The Consent Agreement signed by Respondents contains a proposed Order resolving the allegations in the Commission's Complaint. First among its provisions, Paragraph II. of the proposed Order enjoins Respondents from communicating competitively sensitive, nonpublic information directly to any hair transplantation competitor. Paragraph II. further prohibits Respondents from requesting, encouraging, or facilitating communication of competitively sensitive, nonpublic information from any competitor.

Paragraph II. of the proposed Order would not interfere with Respondents' ability to compete or prevent participation in legitimate industry practices, such as ordinary trade association or medical society activity. Specifically, the proposed Order excludes from its prohibitions certain communications including: (1) Where the information is reasonably necessary to achieve pro-competitive benefits related to a lawful joint venture or as part of legally supervised due diligence; (2) provision of rates to market research firms or Respondents' own vendors or independent contractors; (3) provision of rates or competitive offers to actual or prospective customers; and (4) receipt of information from competitors for the purpose of legitimate market research

[2] Pursuant to a Stock Purchase Agreement dated July 13, 2012, Aderans plans to acquire all of Hair Club's stock from Regis Corporation for $163.5 million. Therefore, Hair Club is not a respondent to the Consent Agreement.

where the information is not knowingly conveyed to Respondents or their representatives (e.g., competitive intelligence).

In addition, Paragraph III. of the proposed Order requires Respondents to institute programs to ensure compliance with the proposed Order and U.S. antitrust laws. Paragraph III. requires: (1) Annual antitrust compliance training for all Bosley officers, executives, employees, and agents whose positions entail contact with competitors or who have sales, marketing, or pricing responsibility for Respondents' management of medical/surgical hair transplantation practice; (2) the provision of legal support to respond to any questions regarding antitrust compliance or U.S. antitrust laws; and (3) document retention sufficient to record compliance with Respondents' obligations under the proposed Order.

Paragraph IV. requires Respondents to submit periodic compliance reports to the Commission. Respondents must provide an initial compliance report within sixty (60) days from the date the Order becomes final and annually thereafter for the next four (4) years or upon written notice by the Commission.

Pursuant to Paragraph V. of the proposed Order, Respondents must also provide notice to the Commission thirty (30) days prior to any planned dissolution, acquisition, or other change that may affect compliance obligations arising from the proposed Order.

Paragraph VI. gives the Commission access, upon five (5) days written notice, to Respondents' U.S. facilities, records, and employees to ensure on-going compliance.

Paragraph VII. of the proposed Order provides that the proposed Order will expire in twenty (20) years.

By direction of the Commission, Commissioner Wright recused.

Donald S. Clark,

[illegible] .

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/ thel. rd S. Clark,