

FEDERAL TRADE COMMISSION

[File No. 9810353]

**Service Corporation International;
Analysis To Aid Public Comment**

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joseph S. Brownman, FTC/S-2105, 601 Pa. Ave., N.W., Washington, D.C. 20580, (202) 326-2605.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 15, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from Service Corporation International ("SCI") an Agreement Containing Consent Order ("Consent Agreement"). The proposed Consent Order is designed to remedy the likely anticompetitive effects arising from the proposed acquisition by SCI of Equity Corporation International ("ECI").

According to the draft of complaint that the Commission intends to issue, SCI, headquartered in Houston, Texas, is the nation's largest chain of funeral homes and cemeteries. ECI, in Lufkin, Texas, is the nation's fourth largest chain. SCI and ECI compete in the sale of funeral services and cemetery services in various local markets throughout the United States. Pursuant to an agreement of August 6, 1998, SCI intends to acquire all of the stock of ECI for \$578 million.

The draft complaint alleges that the proposed acquisition would lessen competition in two relevant lines of commerce: (1) the provision of funeral services in six local geographic markets and (2) the provision of cemetery services in eight (additional) local geographic markets. Funeral services include transporting the deceased from the place of death to the funeral home, embalming and otherwise preparing the body for burial, providing a casket, holding a viewing or other ceremony, and transporting the body to the cemetery or crematorium. Although direct disposal cremation is a less costly alternative to funeral services, funeral service customers would not switch to cremation as a substitute in sufficient volume to defeat a price increase by funeral service providers.

In the market for funeral services, the Commission's draft complaint alleges that the acquisition would harm competition in the following geographic markets: (1) Phenix City, Alabama/Columbus, Georgia; (2) Evansville, Indiana; (3) Jacksonville Beach, Florida; (4) Roseville, California; (5) Ruskin/Sun City Center, Florida; and (6) West Pasco County and Tarpon Springs, Florida. In these funeral service markets, total annual sales are about \$36.6 million. Premerger concentration in these six markets, as measured by the Herfindahl-Hirschman Index,¹ ranges from more

¹ The Herfindahl-Hirschman Index, or "HHI," is a measurement of market concentration calculated by summing the squares of the individual market shares of all participants in the market. Under Section 1.51 of the Horizontal Merger Guidelines issued April 2, 1992, by the Federal Trade Commission and the Department of Justice, the Commission considers concentration levels

than 2,200 to 7,450. As a result of the proposed acquisition, concentration would increase in each funeral service market by more than 100 points, to levels ranging from 3,270 to 10,000.²

According to the draft complaint, entry into the provision of funeral services in each of these six markets is difficult, and would not be timely, likely or sufficient to prevent anticompetitive effects from the acquisition.

The draft complaint alleges that a second line of commerce in which to analyze the competitive effects of the proposed acquisition is the provision of cemetery services. Cemetery services include the traditional products and services offered by perpetual care cemeteries. They include plots, mausoleum spaces, and opening, closing and maintaining grave sites. The complaint alleges that the acquisition would harm competition in the following geographic markets: (1) Broward County (Fort Lauderdale), Florida; (2) Chattanooga, Tennessee, and its north Georgia suburbs; (3) Citrus County, Florida; (4) Corpus Christi, Texas; (5) Eugene/Springfield, Oregon; (6) North Richmond, Virginia, and the northern eastern and western suburbs of Richmond; (7) the South Bay area of San Diego, California; and (8) Summit County (Akron), Ohio. In these cemetery service markets, total annual sales are about \$47.3 million. Premerger concentration in these eight markets, as measured by the HHI, ranges from 2,350 to 4,400. As a result of the acquisition, concentration would increase in each cemetery service market by more than 100 points, to levels ranging from 3,450 to 10,000.

This line of commerce does not include cemeteries that serve a distinct group of customers, such as cemeteries limited to veterans and their families, or small church cemeteries that only serve members of the church congregation. Such cemeteries are not available to members of the general public served by the parties, and consumers could not turn to them to defeat an attempt to raise prices of cemetery services to the general public. This line of commerce also does not include direct disposal cremations, even though they are an alternative to cemetery services. An increase in the price of cemetery services would not cause a sufficient number of customers to switch from

exceeding 1,800 as "highly concentrated" and concentration levels between 1,000 and 1,800 as "moderately concentrated."

² Under the HHI, a concentration level of 10,000 denotes a monopoly market in which one firm has 100% of the market. Squaring 100 yields a total of 10,000.

cemetery services to direct disposal cremations to make the price increase unprofitable.

According to the draft complaint, entry into the provision of cemetery services in each of these eight markets is difficult, and would not be timely, likely or sufficient to prevent anticompetitive effects from the acquisition.

The proposed Consent Order, if issued by the Commission, would remedy all of the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed Consent Order, SCI must divest one or more funeral homes in each of the funeral services markets and one or more cemeteries in each of the services markets, as follows:

1. In the Phenix City, Alabama/Columbus, Georgia, funeral service market, (a) Vance Memorial Chapel, 3738 Highway 431 North, Phenix City, Alabama 36867; and (b) Vance Memorial Chapel, 2919 Hamilton Road, Columbus, Georgia 31904;
2. In the Evansville, Indiana, funeral service market, Miller & Miller Colonial Chapel, 219 East Franklin Street, Evansville, Indiana 47711;
3. In the Jacksonville Beach, Florida, funeral service market, Beaches Funeral Home, 3600 South 3rd Street, Jacksonville Beach, Florida 32250;
4. In the Roseville, California, funeral service market, Cochrane's Chapel of the Roses, 103 Lincoln Street, Roseville, California 95678;
5. In the Ruskin/Sun City Center, Florida, funeral service market, Family Funeral Care Funeral Home, 1851 Rickenbacker Road, Sun City Center, Florida 33573;
6. In the West Pasco County, Florida, and Tarpon Springs, Florida, funeral service market, Michels & Lundquist Funeral Home, 130 State Road 54, New Port Richey, Florida 34652;
7. In the Broward County, Florida, cemetery service market, (a) Evergreen Cemetery, 1300 S.E. 10th Avenue, Fort Lauderdale, Florida 33316; (b) Lauderdale Memorial Park, 2001 S.W. 4th Avenue, Fort Lauderdale, Florida 33315; and (c) Sunset Memorial Gardens, 3201 19th Street, Fort Lauderdale, Florida 33311,
8. In the Chattanooga, Tennessee, and the neighboring north Georgia suburbs of Chattanooga cemetery service market, (a) Lakewood Memory Gardens East Cemetery, 4621 Shallowford Road, Chattanooga, Tennessee 37411; (b) Lakewood Memory Gardens West Cemetery, 3509 Cummings Road, Chattanooga, Tennessee 37419; and (c) Lakewood Memory Gardens South

Cemetery, 627 Greens Lake Road, Rossville, Georgia 30741;

9. In the Citrus County, Florida, cemetery service market, Fountains Memorial Park, 4890 South Suncoast Boulevard, Homosassa Springs, Florida 34447;

10. In the Corpus Christi, Texas, funeral service market, Rose Hill Memorial Park, 2731 Comanche, Corpus Christi, Texas 78408;

11. In the Eugene/Springfield, Oregon, cemetery service market, Sunset Hills Memorial Gardens, 4810 South Willamette Street, Eugene, Oregon 97405;

12. In the North Richmond, Virginia, and the northern, eastern, and western suburbs of Richmond cemetery service market, Forest Lawn Cemetery, 4000 Pilots Land, Richmond, Virginia 23222;

13. In the South Bay area of San Diego, California, cemetery service market, LaVista Memorial Park, 3191 Orange Street, National City, California 91951; and

14. In the Summit County, Ohio, cemetery service market, Greenlawn Memorial Park, 2580 Romig Road, Akron, Ohio 44320.

SCI must complete the required divestitures to Carriage within seven days from the date the Consent Order becomes final, or 120 days from the date of the signing of the Agreement Containing Consent Order, whichever is earlier. In the event SCI does not divest the assets to an acquirer or acquirers acceptable to the Commission in the required time, the Consent Order establishes procedures for the appointment of a trustee to sell the assets. Also, for a period of ten years, SCI must give prior notice to the Commission of any proposed acquisition of a funeral home or cemetery, as applicable, in each of the 14 local markets. The Consent Order also requires SCI to deliver a copy of the required notice to the office of the attorney general in each state where any to-be-acquired assets are found.

An Asset Maintenance Agreement accompanies the proposed Consent Order. Under its terms, SCI must preserve and maintain the assets that it must divest. The procedures enumerated in the Asset Maintenance Agreement will ensure the continued competitive viability of these assets after they are divested.

The proposed Consent Order also requires SCI to provide the Commission a report of compliance with the terms of the order within thirty days following the date on which the order becomes final, every thirty days thereafter until the divestitures are completed, and annually for a period of ten years.

The proposed Consent Order has been placed on the public record for sixty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make the proposed Consent Order final.

By accepting the proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the proposed Consent Order in order to aid the Commission in its determination of whether to make the proposed Consent Order final. It is not intended to constitute an official interpretation of the proposed Consent Order, nor is it intended to modify the terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

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FEDERAL TRADE COMMISSION

[File No. 9823570]

Stanley Works; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 29, 1999.

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FOR FURTHER INFORMATION CONTACT: Elaine Kolish or Laura Koss, FTC/S-4302, 601 Pa. Ave., N.W., Washington, D.C. 20580, (202) 326-3042 or 326-2890.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade