

Federal Trade Commission

Friday
January 19, 1996

Part V

Federal Trade Commission

Service Corporation International;
Proposed Consent Agreement With
Analysis to Aid Public Comment; Notice

FEDERAL TRADE COMMISSION

[File No. 951 0108]

**Service Corporation International;
Proposed Consent Agreement With
Analysis to Aid Public Comment****AGENCY:** Federal Trade Commission.**ACTION:** Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would permit Service Corporation International (SCI), the largest owner of funeral homes in North America, to acquire Gibraltar Mausoleum Corporation and would require SCI, among other things, to divest, within 12 months, a number of properties, including assets in Amarillo, Texas, and Brevard and Lee Counties, Florida, to restore competition. In addition, the consent agreement would require SCI, for 10 years, to notify the Commission before acquiring certain similar assets in any of these markets.

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Harold Kirtz, Federal Trade Commission, Atlanta Regional Office, 1718 Peachtree St., N.W., Room 1000, Atlanta, GA. 30367. (404) 347-4837.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following 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. 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 § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition of the voting securities of Gibraltar Mausoleum Corporation ("Gibraltar") by Service Corporation International and Rocky Acquisition Corp. (collectively, "SCI"), and it now appearing that SCI,

hereinafter sometimes referred to as "proposed respondent," is willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts, and providing for other relief.

It is hereby agreed by and between proposed respondent, by its duly authorized officers and attorney, and counsel for the Commission that:

1. Proposed respondent Service Corporation International is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 1929 Allen Parkway, Houston, Texas 77019.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.
3. Proposed respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
 - d. Any claim under the Equal Access to Justice Act.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.
5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.
6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and

substance with the draft of complaint and its decision containing the following order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives and right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered, That, as used in this order, the following definitions shall apply:

A. "Respondent" or "SCI" means Service Corporation International, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Service Corporation International, their successors and assigns, and their directors, officers, employees, agents and representatives.

B. "Commission" means the Federal Trade Commission.

C. "Funerals" means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony concerning the deceased at which ceremony the body is present; this group of services ordinarily includes, but is not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets

and outside cases; and the arrangement for and conveyance of the body to a cemetery of crematory for final disposition.

D. "Funeral establishment" means the Assets and Businesses of a facility that provides funerals.

E. "Perpetual care cemetery services" means the provision of plots of land, mausoleum spaces, and niches for, and the services associated with, including maintenance and upkeep, the final disposition of human remains.

F. "Cemetery" means the Assets and Businesses of a facility that provides perpetual care cemetery services.

G. "Crematory services" means the incineration of human remains.

H. "Crematory" means the Assets and Businesses of a facility that performs cremations.

I. "Assets and Businesses" include all assets, properties, business and goodwill, tangible and intangible, utilized by a funeral establishment, cemetery or crematory, including, but not limited to, the following:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

2. All vendor lists, management information systems and software used on-site, and all catalogs, sales promotion literature and advertising materials, except that SCI may delete from such materials the SCI, Gibraltar or Schooler Gordon names, trademarks or other identification;

3. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;

4. All right, title and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bids and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

5. All right, title and interest in the trade name of each funeral establishment, cemetery or crematory, but excluding the trade name "Schooler Gordon"; and

6. All right, title and interest in the books, records and files pertinent to any of the Properties to be Divested.

J. "Properties to be Divested" means all of the Assets and Businesses of the following funeral establishments, cemeteries and crematories:

1. Blackburn-Shaw Funeral Home (now known as Schooler-Gordon Blackburn-Shaw Funeral Home), 315 East Fifth Street, Amarillo, Texas 79105

2. Blackburn-Shaw Funeral Home (now known as Schooler-Gordon Blackburn-Shaw Funeral Home), 1505 Martin Street, Amarillo, Texas 79105

3. Memory Gardens of Amarillo & Crematory, I-27 and McCormack Road, Amarillo, Texas 79114

4. North Brevard Funeral Home, 1450 Norwood Avenue, Titusville, Florida 32796

5. Oaklawn Memorial Gardens & Mausoleum, 2116 Garden Street, Titusville, Florida 32796

6. Metz Funeral Home, 1306 Lafayette Street, Cape Coral, Florida 33904

7. Harvey-Englehardt Funeral Home, 1600 Colonial Boulevard, Ft. Myers, Florida 33907

II

It is further ordered That:

A. Respondent shall divest, absolutely and in good faith, within twelve months of the date this order becomes final, the Properties to be Divested.

B. Respondent shall divest the Properties to be Divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Properties to be Divested is to ensure that continued use of the Properties to be Divested in the same business in which the Properties to be Divested are engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

C. Pending divestiture of the Properties to be Divested, respondent shall take such actions as are necessary to maintain the viability and marketability of the Properties to be Divested and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Properties to be Divested except for ordinary wear and tear.

D. Respondent shall comply with all terms of the Agreement to Hold Separate, attached to this order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect until such time as respondent has divested all the Properties to be Divested as required by this order.

III

It is further ordered That:

A. If SCI has not divested, absolutely and in good faith and with the Commission's prior approval, the Properties to be Divested within twelve months of the date this order becomes final, the Commission may appoint a

trustee to divest the Properties to be Divested. In the event that the Commission or the Attorney General brings an action pursuant to section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, SCI shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III A of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent and its counsel of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Properties to be Divested.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III B.3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the

court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Properties to be Divested or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Properties to be Divested.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Properties to be Divested.

12. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered That, for a period of ten (10) years from the date this order becomes final, respondent shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition, the sale of funerals, perpetual care cemetery services, or crematory services within the city limits of, or the area extending ten (10) miles outward in any direction of the city limits of, Amarillo, Texas; the sale of funerals or perpetual care cemetery services in Brevard County, Florida; or the sale of funerals in Lee County, Florida; or

B. Acquire any assets used for or used in the previous two years for (and still suitable for use for) the sale of funerals, perpetual care cemetery services or crematory services within the city limits of, or the area extending ten (10) miles outward in any direction of the city limits of, Amarillo, Texas; the sale of funerals or perpetual care cemetery

services in Brevard County, Florida; or the sale of funerals in Lee County, Florida.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondent shall not consummate the transaction until twenty days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

This Paragraph IV shall not apply to new facilities constructed or developed by respondent.

V

It is further ordered That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with the provisions of Paragraphs II and III of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written

communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture as required by this order.

B. One year (1) from that date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraph IV of this order.

VI

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VII

It is further ordered That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to its principal office, respondent shall permit any duly authorized representative or representatives of the Commission:

A. Access, during office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent and without restraint or interference therefrom, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

Appendix I—Agreement to Hold Separate

This Agreement to Hold Separate ("Agreement") is by and between Service Corporation International ("SCI"), a corporation organized and existing under the laws of the State of Texas, with its principal executive office located at 1929 Allen Parkway, Houston, Texas, and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914,

15 U.S.C. 41, *et seq.* (collectively, "Parties").

Premises

Whereas, on or about June 7, 1995, SCI entered into an Agreement and Plan of Merger with Gibraltar Mausoleum Corporation ("Gibraltar"), in which (1) Gibraltar would be merged into Rocky Acquisition Corp., a wholly-owned subsidiary of SCI, and (2) Gibraltar shareholders would receive SCI common stock and other consideration specified therein ("Acquisition"); and

Whereas, both SCI and Gibraltar own interests in funeral establishments that provide funerals, cemeteries that provide perpetual care cemetery services, and crematories that provide cremations to consumers; and

Whereas, the Commission is now investigating the Acquisition to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("SCI/Gibraltar Consent Agreement"), the Commission must place the SCI/Gibraltar Consent Agreement on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving the *status quo ante* and holding separate the assets and businesses of certain funeral establishments, cemeteries, and a crematory ("Hold Separate Assets") listed in Exhibit A attached hereto and made a part hereof until the divestitures contemplated by the SCI/Gibraltar Consent Agreement have been made, divestitures resulting from any proceeding challenging the legality of the Acquisition might not be possible or might be less than an effective remedy; and

Whereas, the purposes of this Agreement are to: (1) Preserve the Hold Separate Assets as viable independent businesses pending the divestitures described in the SCI/Gibraltar Consent Agreement; (2) preserve the Commission's ability to require the divestitures of the funeral establishments, cemeteries, and a crematory as specified in the SCI/Gibraltar Consent Agreement; and (3) remedy any anticompetitive aspects of the Acquisition; and

Whereas, SCI's entering into this Agreement shall in no way be construed as an admission by SCI that the Acquisition is illegal; and

Whereas, SCI understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and unless the Commission determines to reject the SCI/Gibraltar Consent Agreement, it will not seek further relief from SCI with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the SCI/Gibraltar Consent Agreement to which it is annexed and made a part, and the order, once it becomes final, and in the event that the required divestitures are not accomplished, to appoint a trustee to seek divestiture of the Properties to be Divested pursuant to the SCI/Gibraltar Consent Agreement, as follows:

1. SCI agrees to execute and be bound by the SCI/Gibraltar Consent Agreement.

2. SCI shall hold and Hold Separate Assets separate and apart from the date this Agreement is accepted until the first to occur of (a) ten business days after the Commission withdraws its acceptance of the SCI/Gibraltar Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules or (b) the date the divestitures required by the order contained in the SCI/Gibraltar Consent Agreement are accomplished. SCI's obligation to hold the Hold Separate Assets separate and apart shall be on the following terms and conditions and for the periods set forth in Exhibit A:

a. SCI shall hold separate and apart the Hold Separate Assets.

b. Except as provided herein and as is necessary to assure compliance with this Agreement and the Consent Order, SCI shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or any of their operations or businesses.

c. SCI shall cause the Hold Separate Assets to continue using their present names and trade names, and shall maintain and preserve the viability and marketability of each of the Hold Separate Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability. During the term of this Agreement, SCI shall provide the Hold Separate Assets with the same or better quality of support services, including without limitation, payroll processing,

accounting, management information systems, and computer support, as SCI or Gibraltar provided to the Hold Separate Assets prior to the acquisition.

d. SCI shall refrain from taking any actions that may cause any material adverse change in the business or financial conditions of the Hold Separate Assets.

e. SCI shall not change the composition of the management of the Hold Separate Assets, except that SCI may fill vacancies and remove management for cause.

f. SCI shall maintain separate financial and operating records and shall prepare separate quarterly and annual financial statements for the Hold Separate Assets and shall provide the Commission with such statements for each funeral establishment, cemetery and crematory within ten days of their availability.

g. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to dispose of assets, SCI shall not receive or have access to, or the use of, any of the Hold Separate Assets' material confidential information not in the public domain. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to SCI from sources other than Gibraltar or itself, and includes but is not limited to pre-need customer lists, prices quoted by suppliers, or trade secrets.)

h. All earnings and profits of the Hold Separate Assets shall be held separate. If necessary, SCI shall provide any or all of the Hold Separate Assets with sufficient working capital to operate at their current levels.

i. SCI shall refrain from, directly or indirectly, encumbering, selling, disposing of, or causing to be transferred any assets, property, or business of the Hold Separate Assets, except that the Hold Separate Assets may advertise, purchase merchandise and sell or otherwise dispose of merchandise in the ordinary course of business.

3. Should the Federal Trade Commission seek in any proceeding to compel SCI to divest itself of the shares of Gibraltar stock that SCI may acquire, or to compel SCI to divest any assets or businesses of Gibraltar that it may hold, or seek any other injunctive or equitable relief, SCI shall not raise any objection based upon the fact that the Commission has permitted the

Acquisition. SCI also waives all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to SCI made to its principal office, respondent shall permit any duly authorized representative or representatives of the Commission:

a. Access during office hours of SCI, and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of SCI relating to any matters contained in this Agreement; and

b. Upon five (5) days' notice to SCI and without restraint or interference therefrom, to interview officers or employees of SCI, who may have counsel present, regarding such matters.

This Agreement shall not be binding until approved by the Commission.

Exhibit A

Hold Separate Assets

A. The following funeral establishment, cemetery, and crematory shall be held separate until the divestitures of the two Blackburn-Shaw Funeral Homes (now known as Schooler-Gordon Blackburn-Shaw Funeral Homes) and Memory Gardens of Amarillo & Crematory pursuant to the order as is set forth in the SCI/Gibraltar Consent Agreement:

1. Memorial Park Funeral Home, 6969 I-40 East, Amarillo, Texas 79120
2. Memorial Park Cemetery & Crematory, 6969 I-40 East, Amarillo, Texas

B. The following cemetery and funeral establishment shall be held separate until their divestiture pursuant to the order as is set forth in the SCI/Gibraltar Consent Agreement:

1. Oaklawn Memorial Gardens and Mausoleum, 2116 Garden Street, Titusville, Florida 32796
2. North Brevard Funeral Home, 1450 Norwood Avenue, Titusville, Florida 32796
3. Metz Funeral Home, 1306 Lafayette Street, Cape Coral, Florida 33904
4. Harvey-Engelhardt Funeral Home, 1600 Colonial Boulevard, Ft. Myers, Florida 33907

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent Service Corporation International ("SCI").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that SCI's acquisition of Gibraltar Mausoleum Corporation will violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and Section 7 of the Clayton Act, 15 U.S.C. 18, in three relevant geographic markets. In Lee County, Florida, both SCI and Gibraltar own funeral establishments and are actual competitors in the provision of funerals. SCI is the largest seller of funeral services in Lee County and Gibraltar is the third largest. In Brevard County, Florida, both SCI and Gibraltar own funeral establishments and cemeteries and are actual competitors in the provision of funerals and perpetual care cemetery services. Gibraltar is the largest firm selling funerals and perpetual care cemetery services in Brevard County and SCI is the second largest. Finally, in Amarillo, Texas and its immediate environs, both SCI and Gibraltar own funeral establishments, cemeteries and crematories, and are actual competitors in the provision of funerals, perpetual care cemetery services and cremation services. SCI and Gibraltar are the first and second largest sellers of funerals, respectively. They own two of three perpetual care cemeteries in the area and they own the only two crematories.

The complaint alleges that the acquisition may substantially lessen competition in the following ways, among others: (1) By eliminating actual competition between SCI and Gibraltar in the relevant markets; and (2) by significantly enhancing the possibility of collusion or interdependent coordination among the remaining firms in the relevant markets or by tending to create a dominant firm in the relevant markets. These effects increase the likelihood that firms would increase prices, decrease quality and restrict output in the relevant markets if the acquisition were consummated.

The proposed order requires SCI to divest two funeral establishments in Lee County, Florida; one funeral establishment and one cemetery in Brevard County; and two funeral establishments, a cemetery and a crematory in Amarillo, Texas.

The purpose of this analysis is to facilitate public comment on the

proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96-507 Filed 1-18-96; 8:45 am]

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