

**ANALYSIS OF THE AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT**

*In the Matter of Service Corporation International, File No. 091-0138,
Docket No. C-*

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Service Corporation International (“SCI”) that will completely remedy the anticompetitive effects that would likely result from SCI’s proposed acquisition of Palm Mortuary, Inc. (“Palm”). Under the terms of the proposed Consent Agreement, SCI is required to divest a cemetery, Davis Memorial Park, an associated funeral home in the Las Vegas, Nevada, metropolitan area, rights to the Davis trade name, and the pre-need service contracts relating to both the associated Davis Funeral Home and a second Davis Funeral Home owned by SCI in the Las Vegas area.

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 will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

SCI, doing business as Alderwoods (Nevada) Inc., and Palm entered into an agreement for SCI to acquire 100 percent of Palm’s outstanding voting securities on August 5, 2009. The Commission’s Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45, as amended, by lessening competition in the provision and sale of cemetery services in the Las Vegas, Nevada, metropolitan area.

II. The Parties

SCI is a public 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. SCI currently is the third largest provider of funeral home and cemetery services in the Las Vegas metropolitan area, where SCI operates two funeral homes and one funeral home and cemetery combination facility.

Palm is a privately-held corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 1325 N. Main Street, Las Vegas, Nevada 89101. In the Las Vegas metropolitan area, Palm operates five funeral home and cemetery combination facilities, three standalone funeral homes, and one mausoleum, making it the largest provider in the area of both funeral home and cemetery services.

III. The Complaint

According to the Commission's proposed Complaint, the relevant product market in which SCI and Palm compete is the provision and sale of cemetery services in the Las Vegas, Nevada, metropolitan area. Cemetery services include the traditional products and services offered by perpetual care cemeteries, including burial spaces, opening and closing of graves, memorials and burial vaults, mausoleum spaces, cemetery maintenance and upkeep, and advance disposition planning.

Concentration in the market for cemetery services in the Las Vegas area is very high, and the proposed acquisition would further increase concentration levels. Post-acquisition, the combined entity will have a 76 percent share in the cemetery services market.¹ Post-acquisition, the Herfindahl-Hirschman Index ("HHI") for cemetery services will be 6261, and the acquisition will increase HHI levels by 1876.

According to the Commission's proposed Complaint, entry into the cemetery services market is unlikely to be timely, likely, or sufficient to prevent anticompetitive effects in the Las Vegas area. Entry would be difficult because of the limited availability of geographically-desirable land, zoning regulations and other statutory restrictions, and high sunk costs. An entrant would also need to build a customer base in the face of competition from well-established cemeteries that are not capacity constrained and have long-standing reputations and heritage traditions in the community.

Finally, the proposed Complaint alleges that the proposed Acquisition will eliminate significant competition between SCI and Palm in the highly concentrated cemetery services market and increase the likelihood that SCI would be able to unilaterally raise prices or exercise market power through coordinated interaction among competitors.

IV. The Consent Agreement

The proposed Consent Agreement would preserve competition completely in the relevant market alleged in the Complaint by requiring that SCI divest to a Commission-approved acquirer the Davis combination cemetery/funeral home facility, rights to the Davis trade name, and all the pre-need service contracts associated with the Davis combination facility and with a second Davis funeral home in the Las Vegas metropolitan area (collectively the "Divestiture Business"). Divestiture of the pre-need service contracts associated with a second Davis funeral home in the Las Vegas area is to help ensure the competitiveness and viability of the Divestiture Business.

The proposed Consent Agreement requires that the divestiture occur no later than ninety (90) days after SCI consummates its acquisition of Palm. If SCI divests the assets during the public comment period, and if, at the time the Commission decides to make the Order final, the

¹ In calculating market shares, the Commission relied on the number of "calls" (funerals or interments) of each competitor rather than dollar revenues.

Commission notifies SCI that either the purchaser is not an acceptable acquirer or that the asset purchase agreement is not an acceptable manner of divestiture, then SCI must immediately rescind the transaction in question and divest those assets within six (6) months of the date the Order becomes final to an acquirer and in a manner that receives the prior approval of the Commission.

The Consent Agreement further requires SCI to maintain the economic viability, marketability, and competitiveness of the Divestiture Business until the potential acquirer is approved by the Commission and the divestiture is complete. For six (6) months following the divestiture, SCI is required to provide transitional services, as needed, to assist the acquirer of the Divestiture Business.

The proposed Consent Agreement also allows the Commission to appoint an interim monitor to ensure SCI's compliance with the Order to Maintain Assets and a trustee to divest any divestiture assets that SCI fails to timely divest. The Commission also may seek civil penalties from SCI for non-compliance with the Consent Agreement.

The proposed Consent Agreement prohibits SCI from acquiring any interest or assets engaged in the provision of cemetery services in the Las Vegas metropolitan area for ten (10) years without providing prior written notice to the Commission. In addition, SCI is required to file periodic reports of compliance with the proposed orders.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.