



3. SCI is, and at all relevant times has been, engaged in “commerce” as defined in Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

4. Respondent KNA is a corporation organized, existing, and doing business under and by virtue of the laws of Canada, with its registered and head office at Suite 2400, 250 Yonge Street, Toronto, Ontario, M5B 2M6. KNA conducts business in the United States through its headquarters located at 400 North Ashley Drive, Suite 1900, Tampa, Florida 33602. KNA, among other things, is engaged in the sale and provision of: (a) funeral services and associated products, and (b) cemetery services and associated products and property.

5. KNA owns and operates 199 funeral service locations and 15 cemetery service locations in the United States and Canada, including 196 funeral service locations in 31 states, and 15 cemetery service locations in seven states. KNA’s revenue for the 12 months ending June 30, 2009 totaled approximately \$124 million.

6. KNA is, and at all relevant times has been, engaged in “commerce” as defined in Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

## **II. THE ACQUISITION**

7. On October 14, 2009, SCI and KNA executed a definitive support agreement pursuant to which SCI agreed to acquire all of the outstanding voting securities of KNA (the “Acquisition”).

8. The Acquisition would combine the largest and fifth largest funeral and cemetery service providers in North America. SCI and KNA offer competing funeral and cemetery services in 19 local geographic markets, including 16 funeral services markets and three cemetery services markets where the Acquisition, if consummated, likely would substantially lessen competition.

## **III. THE RELEVANT PRODUCT MARKETS**

### **A. Funeral Services and Associated Products**

9. One relevant product market in which to analyze the competitive effects of the Acquisition is the provision and sale of funeral services and associated products (“funeral services”). Funeral services includes all activities relating to the promotion, marketing, sale, and provision of funeral services and goods, including, but not limited to, goods and services used to remove, care for, and prepare bodies for burial, cremation or other final disposition; and goods and services used to arrange, supervise, or conduct the funeral ceremony or final disposition of human remains.

10. There are no products or services that are reasonably interchangeable with or viable substitutes for funeral services.

#### **B. Cemetery Services and Associated Products and Property**

11. The provision and sale of cemetery services and associated products and property (“cemetery services”) constitutes a relevant product market in which to analyze the competitive effects of the Acquisition. Cemetery services includes all activities relating to the promotion, marketing, sale and provision of property, goods and services to provide for the final disposition of human remains in a cemetery, whether by burial, entombment in a mausoleum or crypt, disposition in a niche, or scattering of cremated remains on the cemetery grounds.

12. There are no products or services that are reasonably interchangeable with or viable substitutes for cemetery services.

13. In some local markets, certain funeral and cemetery service locations cater to specific populations by focusing on the customs and rituals associated with one or more religious, ethnic, or cultural heritage groups. In such situations, the provision of funeral services or cemetery services targeted to such populations may constitute distinct relevant product markets. Thus, in Denver, Colorado, the provision of funeral services to the Latino community constitutes a relevant product market in which to analyze the competitive effects of the acquisition.

#### **IV. THE RELEVANT GEOGRAPHIC MARKETS**

14. The 16 geographic markets in which to analyze the effects of the Acquisition with respect to funeral services are: Yuma, Arizona; Monterey Area, California; Denver, Colorado; Auburndale/Winter Haven, Florida; Vidalia, Georgia; Bossier City Area, Louisiana; Lansing, Michigan; East Aurora, New York; Northern Rockland County, New York; Charlotte Area, North Carolina; Greensboro Area, North Carolina; Columbia, South Carolina; West Columbia/Lexington, South Carolina; New Tazewell, Tennessee; Lynchburg Area, Virginia; and Yakima, Washington.

15. The three geographic markets in which to analyze the effects of the Acquisition with respect to cemetery services are: Yuma, Arizona; Macon Area, Georgia; and Columbia Area, South Carolina.

#### **V. MARKET STRUCTURE AND MARKET CONCENTRATION**

16. Under the 1992 Department of Justice and Federal Trade Commission Merger Guidelines (“Merger Guidelines”) and relevant case law, SCI’s acquisition of KNA is presumptively unlawful in the markets for funeral services and cemetery services in a total of 19 geographic markets. Under the Herfindahl-Hirschman Index (“HHI”), which is the standard measure of market concentration under the Merger Guidelines, an acquisition is presumed to create or enhance market power or facilitate its exercise if it increases the HHI by more than 100

points and results in a post-acquisition HHI that exceeds 1,800 points. The Acquisition creates market concentration levels well in excess of these thresholds.

### **A. Funeral Services**

17. For funeral services, the post-acquisition HHIs range from 3730 to 8632, and HHI levels will increase by 295 to 4130 points over pre-acquisition levels. The Acquisition also will result in SCI controlling between 52 percent and 93 percent market share in each of the affected funeral services markets.

- A. Yuma, Arizona. Post-acquisition, SCI will have a market share of 69 percent. The Acquisition will increase the HHI by 2055 points, from 3277 to 5332. In addition, the Acquisition will reduce from four to three the number of funeral services providers in the relevant market.
- B. Monterey Area, California. Post-acquisition, SCI will have a market share of 93 percent. The Acquisition will increase the HHI by 4001 points, from 4631 to 8632, and eliminate one of only three funeral services providers in the relevant market.
- C. Denver, Colorado. Post-acquisition, SCI will have a market share of 71 percent of the market for funeral services targeted to the Latino community. The Acquisition will increase the HHI by 2445 points, from 3433 to 5878, and create a duopoly for such services in the Denver market.
- D. Auburndale/Winter Haven, Florida. Post-acquisition, SCI will have a market share of 59 percent. The Acquisition will increase the HHI by 1303 points, from 2737 to 4040.
- E. Vidalia, Georgia. Post-acquisition, SCI will have a market share of 81 percent. The Acquisition will increase the HHI by 3243 points, from 3647 to 6890, and eliminate one of only three competitors, creating a duopoly in the market.
- F. Bossier City Area, Louisiana. Post-acquisition, SCI will have a market share of 68 percent. The Acquisition will increase the HHI by 1726 points, from 3896 to 5622, and eliminate one of only three competitors, creating a duopoly in the market.
- G. Lansing, Michigan. Post-acquisition, SCI will have a market share of 52 percent. The Acquisition will increase the HHI by 1067 points, from 2470 to 3537. In addition, the Acquisition will reduce from five to four the number of funeral services providers in the relevant market.
- H. East Aurora, New York. SCI will have a post-acquisition market share of 91 percent. In addition, the Acquisition will increase the HHI by 4130 points, from

4288 to 8418, leave only two competitors, and eliminate the first or second choice of funeral services providers for a substantial number of consumers.

- I. Northern Rockland County, New York. Post-acquisition, SCI will have a market share of 69 percent. The Acquisition will increase the HHI by 2196 points, from 3019 to 5215, and reduce the number of competitors from five to four.
- J. Charlotte Area, North Carolina. SCI will have a post-acquisition market share of 63 percent. The Acquisition will increase the HHI by 1046 points, from 3156 to 4202.
- K. Greensboro Area, North Carolina. SCI will have a post-acquisition market share of 55 percent. The Acquisition will increase the HHI by 1201 points, from 3254 to 4455. In addition, the Acquisition will reduce from four to three the number of funeral services providers in the relevant market.
- L. Columbia, South Carolina. SCI will have a post-acquisition market share of 62 percent. The Acquisition will increase the HHI by 1716 points, from 3291 to 5007, and reduce the number of competitors from four to three.
- M. West Columbia/Lexington, South Carolina. SCI will have a post-acquisition market share of 56 percent. The Acquisition will increase the HHI by 295 points, from 3688 to 3983, and reduce the number of competitors from five to four.
- N. New Tazewell, Tennessee. Post-acquisition, SCI will have a market share of 83 percent. The Acquisition will increase the HHI by 3120 points, from 4062 to 7182, and create a duopoly in the market.
- O. Lynchburg Area, Virginia. SCI will have a post-acquisition market share of 61 percent. The Acquisition will increase the HHI by 1762 points, from 2870 to 4632, and reduce the number of competitors from four to three.
- P. Yakima, Washington. SCI will have a post-acquisition market share of 81 percent. The Acquisition will increase the HHI by 2341 points, from 4603 to 6944, eliminate the first or second choice of funeral services providers for a substantial number of consumers, and create a duopoly in the market.

#### **B. Cemetery Services and Associated Products and Property**

18. The Acquisition will reduce the number of cemetery services providers from five to four in the Columbia, South Carolina and Macon, Georgia areas, and from three to two in Yuma, Arizona. Moreover, for a substantial number of customers in all three relevant markets, the Acquisition will eliminate one of two competitors that are their first and second choices.

- A. Columbia Area, South Carolina. The Acquisition will reduce the number of competing cemetery services providers from four to three, and eliminate the first or second choice of cemetery services providers for a substantial number of consumers.
- B. Macon Area, Georgia. Post-acquisition, SCI will have a market share of 59 percent. The Acquisition will increase the HHI by 1456 points, from 2590 to 4046, and reduce the number of competitors from five to four.
- C. Yuma, Arizona. The Acquisition will eliminate one of only three competing cemetery services providers, creating a duopoly in the market.

## **VI. ANTICOMPETITIVE EFFECTS**

19. The Acquisition may substantially lessen competition in the relevant markets by, among other things:

- (a) eliminating actual, direct, and substantial competition between SCI and KNA;
- (b) increasing the likelihood that SCI will exercise market power unilaterally; and
- (c) increasing the likelihood of collusion or coordinated interaction between SCI and other funeral or cemetery service providers.

## **VII. ENTRY CONDITIONS**

20. Entry into the relevant markets would not be timely, likely, or sufficient to prevent or defeat the likely anticompetitive effects of the Acquisition.

21. Among other entry barriers, both heritage (the consumer's tendency to use the same funeral services provider for multiple generations) and reputation pose substantial barriers to entrants attempting to establish new funeral service locations, and the availability of suitable land, and local zoning, health and environmental regulations impact significantly the ability of firms to enter with new cemetery service locations.

## **VII. VIOLATIONS**

22. The allegations of Paragraphs 1 through 21 are repeated and realleged as though fully set forth here.

23. The Agreement described in Paragraph 7 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

24. The Acquisition described in Paragraph 7, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

**IN WITNESS WHEREOF**, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this twenty-fourth day of March 2010.

By the Commission.

Donald S. Clark  
Secretary

SEAL