

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

_____)	
In the Matter of)	
)	
Service Corporation International,)	
a corporation, and)	Docket No. C-4423
)	
Stewart Enterprises, Inc.,)	
a corporation.)	
_____)	

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Service Corporation International (“SCI”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent Stewart Enterprises, Inc. (“Stewart”), a corporation subject to the jurisdiction of the Commission, in 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, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS AND JURISDICTION

1. Respondent SCI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its corporate office and principal place of business located at 1929 Allen Parkway, Houston, Texas 77019. SCI, 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.

2. SCI owns and operates approximately 1,449 funeral-services locations, 374 cemeteries (including 213 combined funeral services/cemetery locations), and 100 crematories in 44 states and the District of Columbia. SCI's 2012 revenue from all operations totaled approximately \$2.41 billion.

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 Stewart is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its corporate office and principal place of business located at 1333 South Clearview Parkway, Jefferson, Louisiana 70121. Stewart, 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. Stewart owns and operates 217 funeral homes and 141 cemeteries in 24 states and Puerto Rico. For the 12 months ending October 31, 2013, Stewart's total revenues were approximately \$524.1 million.

6. Stewart 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 May 29, 2013, SCI and Stewart executed an Agreement and Plan of Merger (the "Agreement") pursuant to which SCI will acquire Stewart in a transaction valued at approximately \$1.4 billion (the "Merger").

8. The Merger would combine the first and second largest funeral and cemetery services providers in North America. SCI and Stewart offer competing funeral and cemetery services in 98 metropolitan statistical areas ("MSAs") located in 16 states, including 29 funeral services markets and 30 cemetery services markets where the Merger, if consummated, likely would substantially lessen competition.

III. THE RELEVANT PRODUCT MARKETS

A. Funeral Services and Associated Products

9. The provision and sale of funeral services and associated products ("funeral services") constitutes a relevant product market in which to analyze the competitive effects of the Merger. Funeral services include 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; and goods and services used to arrange, supervise, or conduct the funeral ceremony. Funeral services do not include cremation services because consumers do not substitute cremation services for burial services based upon price, and the competitive conditions for cremation services are substantially different than for funeral services. Since

consumers primarily choose their final disposition based on their personal or religious views, consumers generally do not view cremation services as a viable substitute for funeral services. Thus, a hypothetical monopolist of funeral services could profitably impose a small but significant and non-transitory increase in price (“SSNIP”) because most consumers would not switch to cremation services.

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 Merger. Cemetery services include 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-service 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 or cemetery services targeted to such populations may constitute distinct and relevant product markets.

IV. THE RELEVANT GEOGRAPHIC MARKETS

14. The 29 geographic markets in which to analyze the effects of the Merger with respect to funeral services are: (1) Mobile, Alabama; (2) Auburn, California; (3) East Los Angeles County, California (Catholic); (4) Los Angeles (Long Beach), California (Catholic); (5) Los Angeles (San Fernando Valley), California (Catholic); (6) Palmdale/Lancaster, California; (7) Northern San Diego, California; (8) Southern and Eastern San Diego, California; (9) Clearwater, Florida; (10) Jacksonville, Florida; (11) Miami-Dade County (Homestead), Florida; (12) Miami-Dade County (Miami), Florida; (13) Ocala, Florida; (14) Orlando, Florida; (15) Port St. Lucie, Florida; (16) Tampa, Florida (Hispanic); (17) Overland Park, Kansas; (18) South Kansas City, Kansas/Missouri; (19) New Orleans, Louisiana; (20) West Jackson, Mississippi; (21) North Kansas City, Missouri; (22) New Bern, North Carolina; (23) Raleigh, North Carolina; (24) Columbia, South Carolina; (25) Nashville, Tennessee; (26) Dallas, Texas; (27) Southeast Fort Worth, Texas; (28) Arlington-Alexandria, Virginia; and (29) Washington D.C./Maryland suburbs (Jewish).

15. The 30 geographic markets in which to analyze the effects of the Merger with respect to cemetery services are: (1) South San Diego, California; (2) Jacksonville, Florida; (3) Miami-Dade County, Florida; (4) Ocala, Florida; (5) West Orlando, Florida; (6) Port St. Lucie, Florida;

(7) Spring Hill/Hudson, Florida; (8) St. Petersburg/Largo, Florida; (9) Tampa, Florida; (10) Atlanta (Cobb County), Georgia; (11) Atlanta (Fairburn/College Park), Georgia; (12) Atlanta (Henry County), Georgia; (13) New Orleans, Louisiana; (14) Annapolis, Maryland; (15) Baltimore, Maryland; (16) North Kansas City, Missouri; (17) South Kansas City, Kansas/Missouri; (18) High Point, North Carolina; (19) Raleigh, North Carolina; (20) Philadelphia, Pennsylvania; (21) Greenville, South Carolina; (22) Kingsport, Tennessee; (23) Knoxville, Tennessee; (24) Dallas, Texas; (25) South Dallas, Texas (African American); (26) Southeast Fort Worth, Texas; (27) Houston, Texas; (28) Northwest Richmond, Virginia; (29) South Richmond, Virginia; and (30) Kearneysville, West Virginia.

V. MARKET STRUCTURE AND MARKET CONCENTRATION

16. Under the 2010 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (“Merger Guidelines”) and relevant case law, SCI’s acquisition of Stewart is presumptively unlawful in the markets for funeral and cemetery services in a total of 59 geographic markets. Under the Merger Guidelines’ standard measure of market concentration, the Herfindahl-Hirschman Index (“HHI”), an acquisition is presumed to create or enhance market power or facilitate its exercise if it increases the HHI by more than 200 points and results in a post-acquisition HHI that exceeds 2,500 points. The Merger creates market concentration levels well in excess of these thresholds.

A. Funeral Services

17. The Merger will significantly increase concentration in numerous local markets for funeral services and will result in SCI controlling a substantial percentage of the market in each of the affected funeral services markets.

- A. Mobile, Alabama. The market for funeral services in Mobile is highly concentrated. The Respondents are close competitors and are differentiated from most other funeral homes in the market. Other competitors in the market will not constrain Respondents post-Merger.
- B. Auburn, California. The market for funeral services in Auburn is highly concentrated. The Merger will reduce from three to two the number of funeral services providers in the relevant area.
- C. East Los Angeles County, California. The market for Catholic funeral services is highly concentrated. The Respondents are close competitors and are differentiated from most other funeral homes by serving a significant number of Catholic consumers. The transaction will result in significant lost competition for Catholic funeral services in East Los Angeles County.
- D. Los Angeles (Long Beach), California. The market for Catholic funeral services is highly concentrated. The Respondents are close competitors and are differentiated from most other funeral homes by serving a significant number of

Catholic consumers. The transaction will result in significant lost competition for Catholic funeral services in Long Beach.

- E. Los Angeles (San Fernando Valley), California. The market for Catholic funeral services is highly concentrated. The Respondents are close competitors and are differentiated from most other funeral homes by serving a significant number of Catholic consumers. The transaction will result in significant lost competition for Catholic funeral services in San Fernando Valley.
- F. Palmdale/Lancaster, California. The market for funeral services in Palmdale and Lancaster is highly concentrated. The Respondents are close competitors and are differentiated from most other funeral homes in the market. Post-Merger the Respondents would own three of the six funeral homes in the area. Other competitors are differentiated from Respondents' funeral homes in terms of quality.
- G. Northern San Diego, California. Post-Merger, SCI will have a market share of over 60 percent for funeral services, representing an HHI increase of over 1,400, in numerous areas in and around the Pacific Beach and Clairemont, California. The Merger will reduce the number of funeral providers in the Pacific Beach and Clairemont areas from five to four.
- H. Southern and Eastern San Diego, California. Post-Merger, SCI will have a market share of 57 percent for funeral services, representing a post-merger HHI increase of over 850, in numerous highly populated zip codes in southern and eastern San Diego.
- I. Clearwater, Florida. Post-Merger, SCI will have a market share of 52 percent. The Respondents are close competitors and are differentiated from most other funeral homes in the market. The remaining competitors are not nearly as close substitutes for Respondents' funeral homes as Respondents' funeral homes are for each other.
- J. Jacksonville, Florida. The market for funeral services in Jacksonville is highly concentrated. The Respondents are close competitors and are differentiated from most other funeral homes in the market. Respondents are close competitors while the remaining competitors are less competitively significant.
- K. Miami-Dade County (Homestead), Florida. In the Homestead area, south of Miami, the Merger will reduce the number of competitive funeral homes from two to one.
- L. Miami-Dade County (Miami), Florida. Post-Merger, SCI will have a market share of 51 percent in the Miami area. The Merger will increase the HHI by 1,292 points, from 1,732 to 3,024. The Respondents are close competitors and are differentiated from most other funeral homes in the market. The remaining

competitors are not nearly as close substitutes for Respondents' funeral homes as Respondents' funeral homes are for each other.

- M. Ocala, Florida. Post-Merger, SCI will have a market share of 42 percent. The Merger will increase the HHI by 860 points, from 3,375 to 4,235. In addition, the Merger will reduce from four to three the number of funeral services providers in the relevant market.
- N. Orlando, Florida. Post-Merger, SCI will have a market share of 67 percent. The Respondents are close competitors and are differentiated from most other funeral homes in the market.
- O. Port St. Lucie, Florida. Post-Merger, SCI will have a market share of more than 72 percent. The remaining competitors are not nearly as close substitutes for Respondents' funeral homes as Respondents' funeral homes are for each other.
- P. Tampa, Florida. Post-Merger, SCI will have a 76 percent share of the Hispanic-focused market. The Respondents are close competitors and are differentiated from most other funeral homes in the market.
- Q. Overland Park, Kansas. The market for funeral services in Overland Park is highly concentrated. The Respondents are close competitors and are differentiated from most other funeral homes in the market.
- R. South Kansas City, Kansas/Missouri. The market for funeral services in South Kansas City is highly concentrated. Respondents are similarly-positioned competitors while the remaining competitors are more distant substitutes for the Respondents' facilities.
- S. New Orleans, Louisiana. Post-Merger, SCI will have a market share of 90 percent. The Merger will increase the HHI by 3,961 points, from 3,965 to 7,926. In addition, the Merger will reduce from three to two the number of funeral services providers in the relevant market.
- T. West Jackson, Mississippi. The Merger will reduce the number of competing providers of funeral services from three to two. The Respondents are close competitors and are differentiated from most other funeral homes in the market.
- U. North Kansas City, Missouri. The market for funeral services in North Kansas City is highly concentrated. Post-Merger, SCI will have a market share of over 60 percent. The Respondents are close competitors and are differentiated from most other funeral homes in the market. The remaining competitors will not constrain Respondents post-Merger.
- V. New Bern, North Carolina. Post-Merger, SCI will have a market share of 100 percent. The Merger is a merger-to-monopoly, reducing the number of funeral

services providers in the relevant market from two to one. The only other funeral homes in the area do not compete closely with Respondents' homes because they cater to African-American customers.

- W. Raleigh, North Carolina. Post-Merger, SCI will have a market share of 51 percent. The Merger will increase the HHI by 667 points, from 2,924 to 3,591.
- X. Columbia, South Carolina. The market for funeral services in western Columbia is highly concentrated. The Respondents are close competitors and are differentiated from most other funeral homes in the market. The remaining competitors are not nearly as close substitutes for Respondents' funeral homes as Respondents' funeral homes are for each other.
- Y. Nashville, Tennessee. Post-Merger, SCI will have a market share of 42 percent. The Merger will increase the HHI by 499 points, from 1,785 to 2,284. The remaining local competitors are insufficient to constrain the merged firm and would not prevent competitive harm from resulting from the Merger.
- Z. Dallas, Texas. The market for funeral services in the Dallas area is highly concentrated. Together, Respondents own 20 funeral homes in the market including the dominant funeral home with the largest call volume. The Respondents are close competitors and are differentiated from most other funeral homes in the market including on price.
- AA. Southeast Fort Worth, Texas. The market for funeral services in Southeast Fort Worth is highly concentrated. The Merger will reduce from four to three the number of funeral services providers in the relevant market. The Respondents are close competitors, offering large, well-maintained facilities serving a similar customer base, and are differentiated from most other funeral homes in the market.
- BB. Arlington-Alexandria, Virginia. The market for funeral services in the Arlington-Alexandria area is highly concentrated. Post-Merger, SCI will own six of the eight funeral homes in the area. Other funeral homes are not nearly as close substitutes for Respondents' facilities.
- CC. Washington, D.C./Maryland Suburbs. Post-Merger, SCI will have a market share of 68 percent of the market for Jewish funeral services. The Merger will increase the HHI by 2,038 points, from 3,625 to 5,662. The Merger will reduce from three to two the number of current providers of Jewish funeral services in the relevant market.

B. Cemetery Services

18. The Merger will significantly increase concentration in numerous local markets for cemetery services and will result in SCI controlling a substantial percentage of the market in each of the affected cemetery services markets.

- A. South San Diego, California. Post-Merger, SCI will have a market share of 70 percent. The Merger will increase the HHI by 2,381 points, from 2,832 to 5,213.
- B. Jacksonville, Florida. The market for cemetery services in Jacksonville is highly concentrated. The Respondents are close competitors and are differentiated from most other cemeteries in the market. The remaining competitors are not nearly as close substitutes for Respondents' cemeteries as Respondents' cemeteries are for each other.
- C. Miami-Dade County, Florida. The Merger will reduce the number of competitive providers of cemetery services in the Miami area from five to four, with SCI owning six of the ten private perpetual-care cemeteries in the area. Post-Merger, SCI will have a market share of 53 percent. Respondents are close competitors while the remaining competitors are not close substitutes for the Respondents' facilities.
- D. Ocala, Florida. The market for cemetery services in Ocala is highly concentrated. Post-Merger, SCI will own two of the three competitively significant private perpetual-care cemeteries in the market. Respondents are close competitors while the remaining competitors are not close substitutes for the Respondents' facilities.
- E. West Orlando, Florida. The market for cemetery services in the West Orlando area is highly concentrated. The Respondents are close competitors and own a majority of the private cemeteries in the market. The remaining competitors are not nearly as close substitutes for Respondents' cemeteries as Respondents' cemeteries are for each other.
- F. Port St. Lucie, Florida. The Merger will reduce the number of competitively-significant providers of cemetery services in the Port St. Lucie area from four to three. The Respondents are close competitors and are differentiated from most other cemeteries in the market. The remaining competitors are not nearly as close substitutes for Respondents' cemeteries as Respondents' cemeteries are for each other.
- G. Spring Hill/Hudson, Florida. The market for cemetery services in the Spring Hill/Hudson area is highly concentrated. The Merger reduces the number of competitively significant cemeteries from three to two. The Respondents are close competitors and are differentiated from most other cemeteries in the

market. The remaining competitors are not nearly as close substitutes for Respondents' cemeteries as Respondents' cemeteries are for each other.

- H. St. Petersburg/Largo, Florida. Post-Merger, SCI will own four of the five competitive private perpetual care cemeteries in the market. The Respondents are close competitors and are differentiated from most other cemeteries in the market. There is only one other meaningful, but differentiated, competitor in the area.
- I. Tampa, Florida. The market for cemetery services in the central Tampa area is highly concentrated. The Respondents are close competitors and are differentiated from most other cemeteries in the market. The remaining competitors are not nearly as close substitutes for Respondents' cemeteries because third-party cemeteries lower quality and cater to specific ethnic groups.
- J. Atlanta, Georgia. In each of the three relevant geographic markets in the Atlanta area, Cobb County, Fairburn/College Park, and Henry County, the market for cemetery services is highly concentrated. The Respondents own 20 cemeteries in the area, are close competitors, and are differentiated from most other cemeteries in each relevant geographic market. The remaining competitors are not nearly as close substitutes for Respondents' cemeteries as Respondents' cemeteries are for each other.
- K. New Orleans, Louisiana. Post-Merger, SCI will have a market share of 66 percent. The Merger will increase the HHI by 1,823 points, from 2,584 to 4,407. Only one third-party firm operates a competitively significant cemetery in this market.
- L. Annapolis, Maryland. Post-Merger, SCI will have a market share of 66 percent. The Merger will increase the HHI by 2,125 points, from 2,672 to 4,797. In addition, the Merger will reduce from four to three the number of cemetery services providers in the relevant market.
- M. Baltimore, Maryland. Post-Merger, SCI will have a market share of 48 percent. The Merger will increase the HHI by 1,024 points, from 2,315 to 3,339. The remaining local competitors are insufficient to constrain the merged firm and would not prevent competitive harm from resulting from the Merger.
- N. North Kansas City, Missouri. Post-Merger, SCI will have a market share of 68 percent. The Merger will increase the HHI by 2,145 points, from 2,687 to 4,832.
- O. South Kansas City, Kansas/Missouri. The market for cemetery services in South Kansas City is highly concentrated. The Respondents are close competitors, own the dominant, most prestigious cemeteries in the market, and are differentiated from most other cemeteries in the market.

- P. High Point, North Carolina. Post-Merger, SCI will have a market share of 69 percent. The Merger will increase the HHI by 2,389 points, from 2,973 to 5,362. In addition, the Merger will reduce from four to three the number of cemetery services providers in the relevant market.
- Q. Raleigh, North Carolina. Post-Merger, SCI will have a market share of over 70 percent. Respondents are close competitors in this market and the Merger will reduce the number of cemetery services providers in the relevant market from five to four.
- R. Philadelphia, Pennsylvania. The market for cemetery services in Philadelphia is highly concentrated. The Respondents own five of the largest, most prominent cemeteries and they are close competitors. The remaining competitors include the various Catholic cemeteries that are not close substitutes for Respondents' cemeteries.
- S. Greenville, South Carolina. The market for cemetery services in the relevant geographic market in the Greenville area is highly concentrated. The Merger will reduce the number of competitively significant providers of cemetery services in this relevant market from three to two.
- T. Kingsport, Tennessee. Post-Merger, SCI will have a market share of 85 percent. The Merger will increase the HHI by 3,559 points, from 3,757 to 7,316. In addition, the Merger will reduce from four to three the number of cemetery services providers in the relevant market.
- U. Knoxville, Tennessee. The Merger will reduce the number of competitive providers of cemetery services from four to three. The Respondents are close competitors and are differentiated from most other cemeteries in the market.
- V. Dallas, Texas. The market for cemetery services in Dallas is highly concentrated. The Respondents own 13 cemeteries in the market, including the dominant cemetery with the most annual internments. The Respondents are close competitors while the remaining competitors are not as geographically close or competitively significant.
- W. South Dallas, Texas. Post-Merger, SCI will have a market share above 90 percent for African-American cemetery services in South Dallas. No other cemetery in South Dallas is a close substitute for Respondents' cemeteries.
- X. Southeast Fort Worth, Texas. The market for cemetery services in Southeast Fort Worth is highly concentrated. The Merger will reduce from four to three the number of cemetery services providers in the relevant market. The Respondents are close competitors serving a similar customer base and offering high-quality cemeteries.

- Y. Houston, Texas. The market for cemetery services in Houston is highly concentrated. The Respondents are close competitors and are differentiated from most other cemeteries in the market.
- Z. Northwest Richmond, Virginia. The market for cemetery services in Northwest Richmond is highly concentrated. The Respondents are close competitors and are differentiated from most other cemeteries in the market.
- AA. South Richmond, Virginia. The market for cemetery services in South Richmond is highly concentrated. The Respondents are close competitors and are differentiated from most other cemeteries in the market.
- BB. Kearneysville, West Virginia. The Merger will reduce the number of competitive providers of cemetery services from three to two. The Respondents are close competitors and are differentiated from the other cemetery in the market.

VI. ANTICOMPETITIVE EFFECTS

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

- a. Eliminating actual, direct, and substantial competition between SCI and Stewart;
- 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 services 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 Merger.

21. Among other entry barriers, 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 services locations.

22. The availability of suitable land and local zoning, health, and environmental regulations impact significantly the ability of firms to enter with new cemetery services locations.

VIII. VIOLATIONS

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

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

25. The Merger 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twentieth day of December, 2013, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

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