



Public Competition Assessment

14 July 2011

InvoCare Limited - proposed acquisition of Bledisloe Group Holdings Pty Ltd

Introduction

1. On 9 June 2011, the Australian Competition and Consumer Commission (**ACCC**) announced its decision not to oppose the proposed acquisition of Bledisloe Group Holdings Pty Ltd (**Bledisloe**) by InvoCare Limited (**InvoCare**) (the **proposed acquisition**), subject to section 87B undertakings accepted by the ACCC on 8 June 2011. The ACCC decided that the proposed acquisition, in conjunction with the undertakings, would be unlikely to have the effect of substantially lessening competition in any market in contravention of section 50 of the *Competition and Consumer Act 2010* (the **Act**).
2. The ACCC made its decision on the basis of the information provided by the merger parties and information arising from its market inquiries. This Public Competition Assessment outlines the basis on which the ACCC has reached its decision on the proposed acquisition, subject to confidentiality considerations.

Public Competition Assessment

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
 - a merger is opposed;
 - a merger is subject to enforceable undertakings;
 - the merger parties seek such disclosure; or
 - a merger is not opposed but raises important issues that the ACCC considers should be made public.
4. This Public Competition Assessment has been issued because InvoCare's proposed acquisition of Bledisloe is subject to court enforceable undertakings.
5. By issuing Public Competition Assessments, the ACCC aims to provide the public with a better understanding of the ACCC's analysis of various markets and

the associated merger and competition issues. It also alerts the public to circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change.

6. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.
7. Public Competition Assessments outline the ACCC's principal reasons for forming views on a proposed acquisition at the time the decision was made. As such Public Competition Assessments may not definitively identify and explain all issues that the ACCC considers arise from a proposed acquisition. Further, the ACCC's decisions generally involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources.

The parties

InvoCare Limited

8. InvoCare owns and operates funeral homes, cemeteries and crematoria in Australia and Singapore. It is the largest provider of funeral directing services and the largest operator of private cemeteries and crematoria in Australia with 178 outlets providing funeral directing services and 12 cemeteries and crematoria nationally. InvoCare is one of Australia's largest suppliers of pre-paid funeral plans.
9. **Table 1** provides a summary of InvoCare's funeral directing brands, cemetery and crematoria operations in Australia.

Table 1 – Summary of InvoCare's operations in Australia

State	Funeral directing brands	Cemetery and crematoria
NSW	<i>White Lady Funerals</i>	Rookwood Memorial Gardens and Crematorium Northern Suburbs Memorial Gardens & Crematorium Castlebrook Memorial Park Forest Lawn Memorial Park Pinegrove Memorial Park Tweed Heads Memorial Gardens Newcastle Memorial Park Lakeside Memorial Park
	<i>David Lloyd Funerals</i>	
	<i>Simplicity Funerals</i>	
	<i>Kevin Geaghan Funerals</i>	
	<i>Economy Funerals</i>	
	<i>Twin Towns Funeral Service</i>	
	<i>Guardian Funerals</i>	
	<i>William Riley & Son</i>	
	<i>W.N. Bull Funerals</i>	
	<i>Allen Drew Funerals</i>	
<i>Ann Wilson Funerals</i>		
<i>Liberty Funerals</i>		
<i>Casino Funerals</i>		
<i>Universal Chung Wah Funerals</i>		
<i>Byron District Funerals</i>		
<i>Bruce Maurer Funerals</i>		

			Lake Macquarie Memorial Park
QLD	<i>White Lady Funerals</i> <i>Simplicity Funerals</i> <i>George Hartnett Funerals</i> <i>Value Funerals</i>	<i>J & H Reed / O. Bottcher & Son</i> <i>Cannon & Cripps Funerals</i> <i>Drysdale Funerals</i> <i>Sommerville Funerals</i>	Albany Creek Memorial Park Mt Thompson Memorial Gardens Allambe Memorial Park
VIC	<i>White Lady Funerals</i> <i>Simplicity Funerals</i> <i>Le Pine Funerals</i>	<i>George Richardson Funerals</i> <i>Provinciale Servizio Funebre</i>	Nil
SA	<i>White Lady Funerals</i> <i>Simplicity Funerals</i>	<i>Blackwell Funerals</i> <i>Value Funerals</i>	Nil
WA	<i>Simplicity Funerals</i> <i>Oakwood Funeral Homes</i> <i>Chipper Funerals</i>	<i>Purslowe Funeral Homes</i> <i>Christian Funerals</i> <i>Mareena Purslowe & Associates</i>	Nil
ACT	<i>Tobin Brothers Funerals</i>		Nil

10. InvoCare has made a number of acquisitions of funeral directing businesses in the last six years including the acquisition of W.N Bull Funerals (NSW), Chipper Pty Ltd (WA), Liberty Funerals (NSW), Southern Cross Funerals (VIC) and Ann Wilson Funerals (NSW).

Bledisloe Group Holdings Pty Ltd

11. Bledisloe operates a funeral directing business in Australia and New Zealand, providing funeral directing services from 52 outlets across the two countries. It also owns and operates three cemeteries and crematoria in Queensland. It also supplies pre-paid funeral plans to customers.
12. **Table 2** provides a summary of Bledisloe’s funeral directing brands, cemetery and crematoria operations in Australia.

Table 2 – Summary of Bledisloe’s operations in Australia

State	Funeral directing brands		Cemetery and crematoria
NSW	<i>Gregory and Carr</i>	<i>Boland Funerals</i>	Nil
QLD	<i>Metropolitan Funerals</i> <i>Beaudesert Funerals</i> <i>Hiram Philip Funerals</i>	<i>Gatton Funerals</i> <i>City Funeral Services</i> <i>Mackay Funerals</i> <i>Sarina Funerals</i>	Great Southern Garden of Remembrance, Carbrook Great Northern Garden of Remembrance, Deception Bay Toowoomba Garden of Remembrance Cemetery

	<i>Serenity Funerals</i>		
VIC	<i>WD Rose Funerals</i> <i>Joseph Allison Funerals</i>	<i>Giannarelli Funerals</i>	Nil
TAS	<i>Turnbull Family Funerals</i>		Nil

The proposed transaction

13. InvoCare proposed to acquire 100% of the shares in Bledisloe.

Industry background

Funeral directing services

14. Funeral directors arrange funeral services on behalf of the family members and/or other associates of a deceased person. The services provided to a customer¹ typically include collecting the deceased body from the place of death, preparing the deceased, procuring a coffin, flowers and death certificate, organising funeral and death notices and arranging a burial or cremation.
15. A funeral service may be purchased from a funeral director on an ‘as needs’ basis (typically by a family member shortly after the death of the deceased person) or through a pre-paid funeral plan (prior to death). Pre-paid funeral plans are commonly offered by third parties, such as Funeral Plan Management, but marketed and sold by funeral directors who act as an intermediary. Customers select a funeral plan and then pay up-front (or in instalments for up to three years) for the current price of a funeral, which is guaranteed to be ‘inflation proof’ and irrespective of rising prices. InvoCare both markets and manages its own pre-paid funerals which are subsequently conducted by InvoCare funeral directors.
16. Customers may also take out funeral insurance which is offered by most large insurance companies. Market inquiries indicated that the acquisition of pre-paid funerals and funeral insurance is becoming increasingly popular.
17. There are an estimated 900 or more funeral directing businesses operating in Australia. The funeral directing industry has traditionally been characterised by family-owned and operated businesses, however industry consolidation during the mid 1990s has seen the emergence of a number of multi-branded firms including InvoCare and Bledisloe. A number of other funeral directing businesses including John Allison/Monkhouse and David Walker also offer funeral services under multiple brands.
18. Customers may not be aware of the common ownership of various funeral directing brands and when seeking competitive quotes for funeral services may often in fact be soliciting quotes from branches of the same company. This was

¹ Throughout this document ‘customer’ refers to the commissioner of a funeral, typically the family or an associate of the deceased, or for a pre-paid funeral the customer may make arrangements for their own funeral service.

considered to be particularly likely in respect of InvoCare due to the high degree of recognition associated with the InvoCare brands such as *Simplicity*, *White Lady* and *Guardian* and the tendency for multiple InvoCare brands to operate within the same metropolitan areas.

19. A number of state and territory governments have conducted inquiries into the funeral directing industry, which have aimed to address concerns in the industry including the perceived high cost of funerals, a lack of competitiveness in the industry and the need for increased regulation. The NSW and Victorian government inquiries in 2005-06 led to a number of recommendations principally aimed at increasing the transparency of funeral service pricing, for example through itemised billing.

Cemetery and crematoria services

20. In most states and territories in Australia, the ownership and operation of cemeteries, memorial parks and crematoria remains largely the responsibility of local or state government authorities. However there has been some privatisation of cemeteries and crematoria operations in New South Wales, Queensland, South Australia and Tasmania. A number of cemeteries and crematoria are also operated by churches or religious groups.
21. The involvement of private enterprise in cemeteries and crematoria differs from state to state but local authorities typically remain the major operators of cemeteries (although InvoCare owns a significant cemetery in both north Brisbane and the Gold Coast) with private enterprises having much more significant involvement in crematoria.
22. The operation of a cemetery typically involves the supply of burial plots for deceased remains and related products and services such as crypts, monuments and plaques. An increasing number of cemeteries now also offer 'memorialisation services' for cremated remains by the provision of ashes placements and/or cremation plots in memorial gardens. Burial, cremation and memorialisation services are typically arranged through the funeral director who acts as an intermediary between the commissioner and the cemetery or crematorium. Often a commissioner may indicate a preference for the location of the burial or cremation but in some cases the funeral director will recommend a cemetery or crematorium. The fees associated with burial and cremation are typically added as a disbursement to the funeral director's invoice to the customer.
23. Submissions from market participants suggested that 50% to 60% of deceased persons are cremated each year and that this rate has been increasing over time, in part due to a lack of burial space and the consequent premium cost of burials in major metropolitan areas.

ACCC review timeline

24. The following table outlines the timeline of key events in this matter.

Date	Event
19-Nov-2010	ACCC commenced a review under the Merger Review Process Guidelines.
30-Nov-2010	ACCC requested further information from the merger parties. ACCC timeline suspended.
09-Dec-2010	ACCC received further information from the merger parties. ACCC timeline recommenced.
10-Dec-2010	Closing date for submissions from interested parties.
20-Dec-2010	ACCC requested further information from the merger parties. ACCC timeline suspended.
04-Jan-2011	ACCC received further information from the merger parties. ACCC timeline recommenced.
19-Jan-2011	ACCC published a Statement of Issues outlining preliminary competition concerns.
04-Feb-2011	Closing date for submissions relating to Statement of Issues.
17-Feb-2011	ACCC requested further information from the merger parties. Former proposed decision date of 3 March 2011 delayed. ACCC timeline suspended pending receipt. ACCC to announce a new proposed decision date upon receipt of further information from the parties.
25-Mar-2011	ACCC received further information from the merger parties. ACCC timeline recommenced.
15-Apr-2011	Former proposed decision date for announcement of ACCC's findings of 21 April 2011 suspended at the request of InvoCare to allow the merger parties to provide further information.
03-Jun-2011	ACCC received further information from InvoCare. ACCC timeline recommenced.
08-Jun-2011	Section 87B undertaking accepted by the ACCC.
09-Jun-2011	ACCC announced it would not oppose the proposed acquisition, subject to a section 87B undertaking accepted by the ACCC.

Market inquiries

25. The ACCC conducted market inquiries in relation to the proposed acquisition with a range of industry participants, including other suppliers of funeral directing services, cemeteries, crematoria and memorial parks, suppliers of essential inputs such as coffins and caskets, industry associations, consumer representative organisations and regulatory bodies.

Statement of Issues

26. The ACCC published its Statement of Issues on 19 January 2011 identifying a number of competition issues. In the Statement of Issues the ACCC identified the following areas as issues of concern and stated its preliminary view that the proposed acquisition would be likely to have the effect of a substantial lessening of competition in:
- the supply of funeral directing services in North metropolitan Sydney;

- the supply of funeral directing services in North metropolitan Brisbane;
 - the supply of funeral directing services in South metropolitan Brisbane;
 - the supply of cremation services in North metropolitan Brisbane; and
 - the supply of cremation services in South metropolitan Brisbane.
27. The ACCC’s preliminary view was that the proposed acquisition may also raise competition concerns in relation to:
- the supply of funeral directing services in the Gold Coast;
 - the supply of funeral directing services in East metropolitan Sydney;
 - the increased ability and incentive of InvoCare to foreclose rival funeral directors access to crematoria in North and South metropolitan Brisbane;
 - the increased ability and incentive of InvoCare to foreclose rival cemeteries and crematoria in North and South metropolitan Brisbane; and
 - the increased ability and incentive of InvoCare to foreclose rival cemeteries and crematoria in North metropolitan Sydney.
28. The ACCC’s preliminary view was that the proposed acquisition was unlikely to raise competition concerns in relation to
- the supply of funeral directing services in the Melbourne metropolitan area;
 - the supply of funeral directing services in South and West metropolitan Sydney;
 - the supply of burial services in North and South metropolitan Brisbane;
 - vertical integration in the Sydney metropolitan area;
 - vertical integration in the Gold Coast metropolitan area;
 - the acquisition of coffins and caskets;
 - the acquisition of hearses.
29. The Statement of Issues is available on the ACCC’s website at the following address: www.accc.gov.au/content/index.phtml/itemId/750995.

With/without test

30. In assessing a merger pursuant to section 50 of the Act, the ACCC must consider the effects of the transaction by comparing the likely competitive environment post-merger if the transaction proceeds (the “with” position) to the likely competitive environment if the transaction does not proceed (the “without” position).
31. The ACCC considered that if the merger did not proceed, it was likely that Bledisloe would continue to operate as a separate, ongoing entity, and the ACCC accordingly assessed the matter on that basis.

Areas of overlap

32. The operations of InvoCare and Bledisloe overlap in the supply of funeral directing services in the metropolitan areas of Brisbane, Gold Coast, Melbourne and Sydney. In Sydney, there is a significant overlap between InvoCare and Bledisloe's funeral directing services in the North Shore and northern beaches of Sydney.
33. In Brisbane, the operations of InvoCare and Bledisloe overlap in the supply of cremation services and burial services (including the memorialisation of cremated remains).
34. The merger parties also overlap in the acquisition of coffins, caskets and hearses.

Market definition

35. The ACCC considered the impact of the proposed acquisition on a number of different markets as outlined in the following paragraphs.

Funeral directing services

Product/service dimension

36. The operations of the parties overlap in the supply of funeral directing services to those people who commission funerals (typically the family of deceased persons). The services typically include collecting the deceased body from the place of death, preparing the deceased, procuring a coffin or casket, flowers, and death certificate, organising funeral and death notices and arranging a burial or cremation. From both a demand-side perspective and a supply-side perspective, the provision of funeral direction services is separate from the provision of the independent component services – e.g. advertising, flowers, organising notices and death certificates, cremation services and burial services.

Geographic dimension

37. The ACCC's inquiries indicated that in most geographic regions considered in the context of the proposed acquisition, the relevant market should be defined more broadly than local, suburban areas, but not as broadly as an entire metropolitan area. The sub-metropolitan markets for the supply of funeral directing services identified by the ACCC reflect those proposed in the Statement of Issues and were defined according to the expected boundaries of effective competition, rather than a distance based geographic radius of competition.
38. From a demand-side perspective, market inquiries emphasised the importance of local presence for a funeral director to attract customers from a local area. This was supported by information provided by market participants and the merger parties which indicated that commissioners typically select a funeral director located in proximity to the last residence of the deceased and/or their own residence (except where there is a family connection to a funeral directing business or a funeral directing business has an established reputation for serving a specific ethnic or religious group). The typical practice of commissioners in

selecting a local funeral director may be due to convenience and a desire to minimise any search and travelling time (particularly in the stressful period following a bereavement) but may also be due to other reasons such as the customer's greater awareness of local funeral directors and the localised nature of a funeral director's reputation.

39. The ACCC considered the extent of demand-side substitution between geographic regions within the conceptual framework of the hypothetical monopolist test (HMT)². While the ACCC noted that some funeral directors may be willing to travel across a metropolitan area to provide funeral services, it was nevertheless considered that a hypothetical monopolist within a sub-metropolitan area would be likely to be able to profitably impose a small but significant non-transitory increase in price (a SSNIP). That is, it was considered unlikely that, if faced with the application of a SSNIP to funeral directing services in a particular sub-metropolitan area (say North metropolitan Sydney), such a proportion of customers would switch to a funeral director located outside of that sub-metropolitan area (e.g. to a funeral director in West metropolitan Sydney) so as to make it unprofitable for a hypothetical monopolist in North metropolitan Sydney to impose the SSNIP.
40. The ACCC reached this view on the basis of the factors outlined in paragraph 38 above, which indicated customers typically select locally based funeral directors. In particular, customers are not likely to have a good awareness of funeral directors outside their local area and are unlikely to seek to use geographically distant funeral directors given the short period available to a customer to choose a funeral director, the stressful nature of the situation, and the fact that customers may be unable to detect a price increase or an equivalent reduction in the quality of the service provided due to lack of price transparency (funeral prices are rarely advertised) and the infrequent nature of the purchase.
41. In relation to supply-side substitutability, the ACCC considered the extent to which funeral directors in one sub-metropolitan area could quickly and without significant investment switch activities to supply funeral directing services in another sub-metropolitan area in response to a SSNIP in that area (using the framework of the HMT). The ACCC considered that given the importance of local reputation and customer loyalty (obtaining repeat business from the same family group) in establishing an effective business and the length of time necessary to build such a reputation and obtain the benefits of customer loyalty, a funeral directing business is unlikely to be able to quickly establish a business in a particular sub-metropolitan area without significant investment in response to a SSNIP or an equivalent reduction in service in that area.
42. While the above analysis indicated that the funeral directing services markets are narrower than metropolitan wide, the ACCC did not consider the markets to be as narrow as local suburban specific markets. Funeral directors with premises in one

² The HMT determines the smallest area in product and geographic space within which a hypothetical profit-maximising monopolist could effectively exercise market power. In general, the exercise of market power by the hypothetical monopolist is characterised by the imposition of a small but significant non-transitory increase in price (SSNIP) above the price level that would prevail without the merger, assuming the terms of sale of all other products are held constant. A SSNIP in the context of the HMT usually consists of a price rise for the foreseeable future of at least 5 per cent. More information on the conceptual framework provided by the HMT is set out in paragraphs 4.19-4.22 of the ACCC Merger Guidelines (2008).

suburb are likely to benefit from a degree of name recognition in respect of the inhabitants of neighbouring or near-by suburbs which will enable them to provide an effective competitive constraint on the directors located in the immediate neighbouring suburbs.

Summary

43. On the basis of the above assessment, the ACCC considered that it was appropriate to identify the following markets for the supply of funeral directing services:
- North metropolitan Sydney;³
 - East metropolitan Sydney, including eastern and central Sydney;⁴
 - South metropolitan Sydney and West metropolitan Sydney⁵;
 - North metropolitan Brisbane⁶;
 - South metropolitan Brisbane⁷;
 - markets for the supply of funeral directing services in metropolitan Melbourne⁸; and
 - a Gold Coast metropolitan market for the supply of funeral directing services⁹.

Cremation services

Product/service dimension

44. The ACCC considered there to be separate product markets for the supply of cremation services and the supply of burial services.
45. Market inquiries indicated that from a customer's perspective, cremation and burial services would be unlikely to present a close substitute. Religious and cultural factors limit the ability of a number of customers to substitute cremation services with burial services for deceased family members. It also appeared that a small but significant increase in the price of cremation services would be unlikely to prompt customers to switch to acquiring burial services, given that burials are typically at least twice the cost of a cremation.

³ Including the inner and outer North Shore and Northern Beaches. This area is broadly defined by Sydney Harbour to the south, the Pacific Ocean to the east, Kuring-gai Chase National Park and the M2 motorway to the north-west, and Lane Cove park to the west and south-west.

⁴ This area is broadly defined by Sydney harbour to the north, the Pacific Ocean to the east, Botany Bay to the south and is likely to reach as far as Redfern to the west

⁵ The specific boundaries of this market are not necessary to define as there are unlikely to be competition concerns in this area.

⁶ North metropolitan Brisbane includes the area north of the Brisbane river and Brisbane CBD extending to Caboolture.

⁷ Including the area south of the Brisbane river, extending south east to Beenleigh and south west to Ipswich;

⁸ The exact boundaries of the sub-metropolitan markets within the Melbourne metropolitan area can also be left open as there is no particular region within Melbourne where the proposed acquisition would significantly increase concentration.

⁹ Having regard to the relatively smaller geographic size of the Gold Coast metropolitan area the ACCC considered that there was a single metropolitan market for funeral directing services in the Gold Coast rather than sub-metropolitan markets.

46. From a supply-side perspective, the ACCC noted that it is not possible for a crematorium to supply burial services or a cemetery to supply cremation services without acquiring specialist equipment and/or land. In the case of a cemetery seeking to offer cremation, the cemetery operator would need to establish a crematorium which must meet environmental regulations and for which council approval is required. The time and costs associated with such development are such that the ACCC considered that burial services were not close supply-side substitutes for cremation services.

Geographic dimension

47. The ACCC considered there to be sub-metropolitan markets for the supply of cremation services. Similar to the position for the funeral directing services markets, the sub-metropolitan markets for the supply of cremation services identified by the ACCC reflect those proposed in the Statement of Issues and were defined according to the expected boundaries of effective competition, rather than a distance based geographic radius of competition. The sub-metropolitan cremation service markets identified by the ACCC as relevant to the assessment of the proposed acquisition were North metropolitan Brisbane and South metropolitan Brisbane.
48. While the ACCC notes that in the majority of cases, cremated remains are not interred on the site of the crematorium (and family members are therefore unlikely to revisit the site where the deceased was cremated), market inquiries indicated that most of a crematorium's business was typically drawn from customers living in suburbs proximate to the crematorium. The ACCC expects that this is likely to reflect the commissioner's concerns to minimise travelling time for members of the mourning community as well as their awareness of available crematoria – which is likely to be far greater in the case of local options.
49. In this context, the ACCC had regard to the HMT, considering at a conceptual level whether it would be profitable for a hypothetical monopolist to implement a SSNIP in respect of the price of cremation services in one sub-metropolitan area (e.g. North metropolitan Brisbane), taking into account the possibility of customers 'switching' and using a crematorium in South metropolitan Brisbane as an alternative.
50. A SSNIP on a cremation plus chapel service fee is likely to be less than \$50, which represents a very small component of the average price of a funeral. Customers are unlikely to be able to detect such a price increase and even if such a price increase was detected, the ACCC considered that such an increase in the price of cremation services is unlikely to lead a commissioner to switch from a preference to use a crematorium in North metropolitan Brisbane to a crematorium in South metropolitan Brisbane, given the additional travelling time likely to be involved for the mourning community.
51. On the basis of the above assessment, the ACCC considered that it was appropriate to identify the following markets for the supply of cremation services:
- the supply of cremation services in North metropolitan Brisbane; and
 - the supply of cremation services in South metropolitan Brisbane.

Burial services

52. The ACCC considered that the geographic dimension of the supply of burial services is sub-metropolitan wide, for the same reasons as the market for the supply of cremation services.
53. On this approach, there is no overlap between the operations of the merger parties. InvoCare operates one cemetery in North metropolitan Brisbane and Bledisloe operates one cemetery in South metropolitan Brisbane. Post acquisition, there are a number of other cemeteries in both North and South metropolitan Brisbane. Accordingly, the ACCC has not considered the market for the supply of burial services any further.

Acquisition of coffins and caskets on the east coast of Australia

54. The ACCC considered the effect of the proposed acquisition on actual and potential suppliers of coffins and caskets to the merged firm's operations on the east coast of Australia (where the merger parties' respective funeral directing businesses overlap). Market feedback indicated that manufacturers on the east coast typically operated from a centralised manufacturing facility and could viably transport coffins and caskets to customers located anywhere on the eastern seaboard, however this may be aided by a distribution centre in each state or in closer proximity to customers.
55. However, as competition concerns were unlikely to arise under a wider or narrower geographic market definition, the ACCC considered it unnecessary to reach a concluded view on the appropriate market definition for the supply of coffins and caskets.

Acquisition of hearses on the east coast of Australia

56. The ACCC's view is that there is likely to be an east coast market for the acquisition of hearses. Market feedback indicated that manufacturers and suppliers of hearses on the east coast could viably supply customers in any state on the eastern seaboard from a centralised facility. However, the ACCC considered it unnecessary to reach a concluded view on the appropriate market definition for the supply of hearses as competition concerns are unlikely to arise under narrower or wider geographic markets.

Competition analysis

Horizontal analysis – funeral directing services markets

57. The ACCC considered that the proposed acquisition would have the effect, or would be likely to have the effect, of substantially lessening competition in the following markets for funeral directing services:
 - North metropolitan Sydney; and
 - South metropolitan Brisbane.

58. In each of these markets, the proposed acquisition would increase market concentration with the merged firm having a substantial share of the market (determined by reference to the number of cases served by the merged firm's outlets in that area). Remaining competitors in these areas appeared unlikely to provide an effective competitive constraint on the merged firm and, as discussed in paragraph 62-65, the barriers to entry and expansion are high. Accordingly, post acquisition, InvoCare would be able to increase the effective price paid for a funeral service and/or reduce the service standards in those areas.
59. The ACCC considered that in the absence of the undertaking, post-acquisition, InvoCare would likely be able to significantly and sustainably increase the effective price of funeral directing services in the markets identified in paragraph 57. While InvoCare and Bledisloe both operate metropolitan-wide price lists for each brand, both parties offer discounts from list prices at the branch level and the ACCC considered that post acquisition InvoCare would be able to reduce the frequency and size of the discounts offered in North metropolitan Sydney and South metropolitan Brisbane. Further, the ACCC notes that certain InvoCare brands are only available in particular local areas, namely Ann Wilson Funerals and Bruce Maurer Funerals, both of which only have branches in North metropolitan Sydney. This means that InvoCare would be able to increase the list prices for the services provided by these brands without regard to the competitive constraint provided in the other sub-metropolitan areas by the funeral businesses operating in those areas.
60. The ACCC also considered that post acquisition the merged firm would not be constrained from reducing the level of service provided to customers in the identified areas. A reduction in service standards would most likely be manifested by a reduction in staffing levels, reducing the time and the level of attention spent on customers.
61. The reasons for the ACCC's views in relation to each of the relevant funeral directing services markets (including those markets identified in paragraph 43) are outlined below.

Barriers to entry and expansion in the supply of funeral directing services

62. The ACCC considered that while the capital costs associated with new entry or expansion by an existing funeral directing business were not necessarily high (particularly if the existing funeral directing business sought to expand via the establishment of a small local office, referred to as a 'shop front'), the time required to build a local reputation and obtain the benefits of customer loyalty created a significant barrier to entry and expansion.
63. Information provided by market participants indicated that in order to develop a competitive funeral directing business it is necessary to establish a strong reputation and loyal customer base. The ACCC found that new entrants typically performed a small number of funerals in their first five years after commencing operation while the business builds customer relationships, a reputation in the local areas, and in some instances, expands capacity. This conclusion was equally applicable to both new funeral directors and existing funeral directors attempting to enter a new geographic area.

64. While there were some examples of a new entrant achieving significant funeral volumes within their first one or two years of operation, these were generally limited to funeral directors who had already established a reputation while working for a previous employer in an area, or participants that occupy a unique position (such as a funeral directing business operated by a cemetery or local church). The ACCC noted there are very few examples of organic expansion in funeral directing services markets and found no examples of new entry or expansion on a significant scale in the funeral directing service markets identified as raising concerns.
65. The ACCC therefore considered that the threat of entry in the supply of funeral directing services in North metropolitan Sydney and South metropolitan Brisbane was unlikely to be sufficiently timely or likely to provide an effective competitive constraint on the merged firm post acquisition.

The supply of funeral directing services in North metropolitan Sydney

66. The ACCC considered that in the absence of the undertaking the proposed acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in the supply of funeral directing services in North metropolitan Sydney.
67. InvoCare and Bledisloe are the largest and second largest providers of funeral directing services in North metropolitan Sydney respectively. Bledisloe's *Gregory & Carr* branded funeral directing business has three outlets in North metropolitan Sydney while seven InvoCare funeral directing brands have outlets in North metropolitan Sydney:
- Ann Wilson (2 outlets);
 - Bruce Maurer (1outlet);
 - Guardian (2 outlets);
 - Liberty (1 outlet);
 - Simplicity (3 outlets);
 - White Lady (5 outlets); and
 - WN Bull (1 outlet).
68. Market inquiries confirmed that brand recognition is an important aspect of competition in funeral directing services markets. InvoCare benefits from the high degree of brand recognition associated with its brands as well as from the extensive reach associated with operating from multiple branches across the area. Bledisloe's *Gregory & Carr* branded funeral directing business also benefits from a high degree of brand recognition, particularly in North metropolitan Sydney.
69. While many customers do not actively compare prices before choosing a funeral director, market inquiries indicated that a growing number of customers are seeking to compare prices of funeral services before selecting a funeral director. The ACCC is concerned that due to the high degree of brand recognition associated with the InvoCare brands, that those customers seeking competitive quotes may unknowingly solicit quotes from branches of the same company. The lack of transparency as to brand ownership may restrict the effectiveness of a customer's search for genuine competitive quotes and the ACCC considered that

the acquisition of *Gregory & Carr* brand would exacerbate this concern in North metropolitan Sydney.

70. In the absence of the undertaking, the ACCC considered that the remaining independent funeral directing businesses in North metropolitan Sydney were unlikely to provide an effective constraint on the merged firm.
71. The merged firm's case volume would be substantially higher than the next closest competitor and the ACCC considered it unlikely that these significantly smaller suppliers of funeral directing services (which do not benefit from the same degree of brand recognition) would be able to prevent the merged firm from increasing the effective price of funeral services and/or reducing the level of service provided in North metropolitan Sydney post acquisition.
72. As set out above, the barriers to entry and expansion in the supply of funeral directing services are high and the ACCC considered that the threat of new entry into the supply of funeral directing services in North metropolitan Sydney (by either an existing funeral directing business located elsewhere in the metropolitan Sydney area or by the establishment of a new funeral directing business) was unlikely to constrain the merged firm post acquisition.

The supply of funeral directing services in South metropolitan Brisbane

73. The ACCC considered that in the absence of the undertaking, the proposed acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in the supply of funeral directing services in South metropolitan Brisbane.
74. InvoCare and Bledisloe are the largest and second largest providers of funeral directing services in South metropolitan Brisbane. Four InvoCare brands have outlets in South metropolitan Brisbane:
 - George Hartnett (3 outlets);
 - Simplicity (3 outlets); and
 - Reed Botcher (1 outlet);
 - White Lady (3 outlets).
75. Bledisloe has a single brand across Brisbane - *Metropolitan Funerals* which has four outlets in South metropolitan Brisbane.
76. The ACCC found that the InvoCare brands also benefit from a high degree of brand recognition in South metropolitan Brisbane and considered that the acquisition of Bledisloe's *Metropolitan Funerals* brand raised competition concerns by further restricting the effectiveness of a customer's search for genuine competitive quotes. The ACCC also considered that the threat of new entry is unlikely to constrain the merged firm from increasing the effective price of funeral services in South metropolitan Brisbane for similar reasons to those set out in paragraphs 62-65.
77. However, the ACCC notes that there are a number of medium sized funeral directing businesses located in South metropolitan Brisbane and while these businesses do not individually account for a large number of funeral cases,

together they serve a significant proportion of funeral cases in this area. These businesses have the potential to become more effective competitors if behavioural impediments to effective competition (such as the opacity of brand ownership) are removed.

Other funeral directing services markets

78. The ACCC's preliminary view, as expressed in the Statement of Issues, was that the proposed acquisition was also likely to have the effect of substantially lessening competition in the market for the supply of funeral directing services in North metropolitan Brisbane. Following the publication of the Statement of Issues, the ACCC made further market inquiries and considered the extent of the competitive constraint likely to be provided by independent funeral directors post acquisition.
79. Independent funeral directors *Traditional Funerals*, *KM Smith* and *Alex Gow* each have significant operations in North metropolitan Brisbane, operating from multiple locations and each serve a significant proportion of the funeral cases in that area. Market inquiries also indicated that the brand names associated with these businesses are well recognised in the area. The ACCC considered that these businesses are likely to be an effective constraint on the merged firm post acquisition and that the proposed acquisition was accordingly unlikely to substantially lessen competition in this market.
80. The ACCC also identified two other funeral directing services markets in the Statement of Issues where its preliminary view was that the proposed acquisition may raise competition concerns:
- the supply of funeral directing services in the Gold Coast;
 - the supply of funeral directing services in East metropolitan Sydney;
81. Market inquiries conducted following the publication of the Statement of Issues indicated that the proposed acquisition was unlikely to result in a substantial lessening of competition in the supply of funeral directing services in either of these markets. In the Gold Coast metropolitan area, Bledisloe's funeral directing business was not considered to be a particularly strong competitor and there were a number of other effective competitors in this area. In respect of East metropolitan Sydney, the ACCC concluded that the merged firm would be constrained by a number of independent funeral service providers, including the Eastern Suburbs Memorial Park (**ESMP**) which recently commenced offering funeral direction services from its cemetery and crematoria in Maroubra.

Horizontal analysis – cremation services markets

82. The ACCC considered that the proposed acquisition would have the effect, or would be likely to have the effect, of substantially lessening competition in the market for the supply of cremation services in North metropolitan Brisbane.
83. The ACCC considered the proposed acquisition was unlikely to have the effect of substantially lessening competition in the supply of cremation services in South metropolitan Brisbane (the other cremation services market where the activities

of the merger parties overlap).

84. The reasons for the ACCC's views in relation to each relevant cremation services market are outlined below.

Barriers to entry and expansion

85. The ACCC considered the barriers to entry and expansion in the markets for cremation services in the Brisbane metropolitan area to be high. Significant capital investment is required to establish a crematorium and a lead time of up to 3-5 years may be required in order to obtain local council approval for new crematorium developments.
86. While the barriers to entry may be lower for existing cemetery operators which may be able to utilise existing land and infrastructure to establish cremation operations, the ACCC considered it was unlikely a new entrant or the threat of a new entry into the supply of cremation services (including by an existing cemetery operator) in a timely manner would provide an effective constraint on the existing providers of cremation services.

The supply of cremation services in North metropolitan Brisbane

87. The ACCC considered that in the absence of the undertakings, the proposed acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in the supply of cremation services in North metropolitan Brisbane.
88. The proposed acquisition would combine the two largest suppliers of cremation services in the region (Albany Creek Memorial Park operated by InvoCare and the Great Northern Garden of Remembrance operated by Bledisloe). Post acquisition, the only remaining providers would be the Brisbane City Council (BCC) crematorium at Pinnaroo and the Moreton Bay Regional Crematorium (owned by *Traditional Funerals*), both of which conduct significantly fewer cremations than the InvoCare and Bledisloe crematoria.
89. Market inquiries indicated that the BCC crematorium at Pinnaroo is not considered an effective price competitor and the ACCC considered it would be unlikely to constrain the merged firm from increasing the price of cremation services in North metropolitan Brisbane post acquisition. The other provider of cremation services in North metropolitan Brisbane, Moreton Bay Regional Crematorium does not actively promote its facilities to independent funeral directors, with the majority of its operation being dedicated to the performance of cremation services for the *Traditional Funerals* funeral directing business.
90. The ACCC notes market inquiries suggested that Nudgee Catholic Cemetery is expected to expand its cemetery operations to include the supply of cremation services. However, the timeframe for this development is not certain and the ACCC considered it was unlikely to provide effective competitive constraint on the merged firm in the foreseeable future.

The supply of cremation services in South metropolitan Brisbane

91. The ACCC's preliminary view was that the proposed acquisition was also likely to have the effect of substantially lessening competition in the market for the supply of cremation services in South metropolitan Brisbane. However, following the market inquiries carried out after the publication of the Statement of Issues, the ACCC concluded that the proposed acquisition was unlikely to substantially lessen competition in this market.
92. While the proposed acquisition would combine the two largest suppliers of cremation services in the region (Mt Thompson Memorial Gardens operated by InvoCare and Great Southern Garden of Remembrance operated by Bledisloe), there would remain a number of alternative crematoria in South metropolitan Brisbane operated by four parties independent of the merged firm: Mt Gravatt Cemetery and Crematorium and Hemmant Cemetery and Crematorium (both operated by the BCC), Centenary Memorial Gardens, Heritage Park Crematorium at Goodna and Newhaven Crematorium in Stapylton. Each of these crematoria are available for use by independent funeral directors.
93. Market inquiries indicated that Centenary Memorial Gardens and the crematoria operated by the Brisbane City Council were likely to be particularly effective competitors offering services at a comparable level to those available at the InvoCare and Bledisloe crematoria and having sufficient facilities to enable them to increase the number of cases served.

Vertical analysis

94. In addition to considering the competition concerns arising from the overlap in the merger parties' activities in funeral directing services and cremation services, the ACCC considered whether additional concerns arose as a result of InvoCare being vertically integrated (supplying both funeral directing services and cremation and burial services).
95. In light of InvoCare's increased vertical integration as a result of the proposed acquisition, the following theories of harm were considered:
 - (a) *foreclosure of rival funeral directors* – whether the merged firm would have the ability and incentive to foreclose rival funeral directors (e.g. by charging rival funeral directors higher prices to access crematoria or otherwise limiting access) with the likely effect of substantially lessening competition in relevant funeral directing services markets; and
 - (b) *foreclosure of rival suppliers of cremation services and burial services* – whether the merged firm would have the ability and incentive to foreclose rival crematoria and cemeteries (e.g. by directing the merged firm's funeral cases to the merged firm's crematoria and cemeteries) with the likely effect of substantially lessening competition in relevant cremation or burial service markets.
96. The undertaking includes a commitment by InvoCare to divest Bledisloe's crematorium in North metropolitan Brisbane (the Great Northern Garden of Remembrance). As this addresses the ACCC's concerns with the merged firm's

market power in the supply of cremation services in North metropolitan Brisbane, it is not necessary for the ACCC to reach a view as to whether the merged firm would have had the ability and incentive to use this market power to foreclose rival funeral directors in North metropolitan Brisbane, and the competitive effect of any such foreclosure strategy (*theory (a)* above).

97. The undertaking also includes commitments to address the ACCC's concerns with the impact of the proposed acquisition on the supply of funeral directing services in North metropolitan Sydney and in South metropolitan Brisbane. As these commitments address the ACCC's concerns with the merged firm's market power in these markets, it is not necessary for the ACCC to decide whether the merged firm would have had the ability and incentive to use its market power to foreclose rival crematoria or cemeteries in North metropolitan Sydney and South metropolitan Brisbane, and the competitive effect of any such foreclosure strategy (*theory (b)* above).

Other issues

98. With respect to the following, which were identified in the Statement of Issues as markets where the ACCC considered that competition concerns were unlikely to arise, no information was provided during the course of the ACCC's further inquiries that contradicted the ACCC's preliminary views:

- the supply of funeral directing services in the Melbourne metropolitan area
- the supply of funeral directing services in South and West metropolitan Sydney;
- the supply of burial services in the Brisbane metropolitan area;
- vertical integration in the Sydney metropolitan area – foreclosure of rival funeral directors' access to cremation services;
- vertical integration in the Gold Coast metropolitan area;
- the acquisition of coffins and caskets; and
- the acquisition of hearses.

99. In respect of the above funeral directing services, cremation and burial services markets, the ACCC considered that there would remain a number of significant independent competitors post acquisition which would provide an effective constraint on the merged firm. In respect of the acquisition of coffins, caskets and hearses, the ACCC conducted market inquiries with a number of suppliers and purchasers and no significant competition concerns were raised in relation to the likely effect of the proposed acquisition on these markets.

Undertaking

100. On 8 June 2011, the ACCC accepted a court enforceable undertaking from InvoCare, pursuant to section 87B of the Act, to remedy the competition concerns identified by the ACCC. The undertaking provides for InvoCare to:
- divest three funeral directing outlets in North metropolitan Sydney and the *Gregory & Carr* brand name (**the Sydney divestiture business**) to the

ACCC approved purchaser Albert & Meyer Pty Ltd (a member of the David Walker group);

- divest Bledisloe's Great Northern Garden of Remembrance crematorium in North metropolitan Brisbane (**the Brisbane divestiture business**) to an ACCC approved purchaser;
- use and implement an 'ownership statement' for five years. The obligations require InvoCare to clearly disclose in marketing and advertising in the Brisbane metropolitan area that a brand is an InvoCare owned brand.

101. The first obligation, to divest the Sydney divestiture business, removes the competitive overlap between InvoCare and Bledisloe in the North metropolitan Sydney services funeral directing services market.
102. The second obligation, to divest the Brisbane divestiture business, similarly removes the competitive overlap between InvoCare and Bledisloe in the North metropolitan Brisbane cremation services market.
103. Should the sale of the Sydney and/or Brisbane divestiture businesses to an ACCC approved purchaser not complete within the required divestiture periods, the undertaking provides for the appointment of an independent divestiture agent approved by the ACCC to sell the businesses as quickly as possible. In addition, the undertaking requires InvoCare to appoint an ACCC approved independent manager to manage the Brisbane divestiture business until it is sold.
104. This undertaking addresses the ACCC's concerns that the proposed acquisition would have the effect, or likely effect, of substantially lessening competition in the supply of funeral directing services in North metropolitan Sydney and the supply of cremation services in North metropolitan Brisbane.
105. The third obligation set out in paragraph 100 - the implementation of the 'ownership statement', will facilitate transparency of ownership in funeral directing services across the Brisbane metropolitan area.
106. While this remedy does not remove the competitive overlap between the parties in the South metropolitan Brisbane funeral services market, the ACCC considered that this obligation addresses the post merger competition concerns in this market.
107. The implementation of the 'ownership statement' across the Brisbane metropolitan area will assist customers looking for competitive quotes of funeral prices, reducing the risk of customers unknowingly soliciting quotes from branches and brands operated by InvoCare. The ACCC considered that the increase in the transparency of funeral business ownership will assist effective competition in the Brisbane funeral directing service markets¹⁰, enabling

¹⁰ While the ACCC did not conclude that the proposed acquisition was likely to have the effect of substantially lessening competition in the supply of funeral directing services in North metropolitan Brisbane, InvoCare's obligations to implement an 'ownership statement' apply across the Brisbane metropolitan area and, accordingly, will assist effective competition in North metropolitan Brisbane as well as South metropolitan Brisbane.

independent funeral directors to provide a more effective constraint on the merged firm.

108. InvoCare also appointed an ACCC approved independent auditor to monitor and report on InvoCare's compliance with its obligations under the undertaking until it ends.

Conclusion

109. On the basis of the above, including taking into account the section 87B undertaking, the ACCC formed the view that the proposed acquisition of Bledisloe by InvoCare would not be likely to result in a substantial lessening of competition in any market in contravention of section 50 of the Act.