

99/75

TRADE PRACTICES ACT 1974
UNDERTAKING
TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
GIVEN UNDER SECTION 87B
BY SERVICE CORPORATION INTERNATIONAL AUSTRALIA PTY LIMITED
(ACN 060 060 031)

Background

On 20 October 1998, Service Corporation International Australia Pty Limited ("SCIA") approached the Australian Competition and Consumer Commission ("the Commission") to obtain an informal clearance on a confidential basis for its proposed purchase of control of cremations (Newcastle) Holdings Pty Limited ("CNH"). CNH is the holding company controlling the operations of David Lloyd Funerals, Evans Funeral Services, Beresfield Crematorium and Macquarie Memorial Park, which is a crematorium and cemetery.

Following inquiries, the Commission concluded that, in its view the proposed acquisition, if it proceeded, was likely to contravene section 50 of the Trade Practices Act 1974 ("the Act").

The Commission's view reflected its concerns about the possibility of SCIA taking advantage of its monopoly position in the provision of cremation services to disadvantage its downstream competitors in the funeral directing market, which would be likely to have the effect of substantially lessening competition in that downstream market.

In order to address the Commission's concerns, and without admission, SCIA has agreed to implement certain practices pursuant to an enforceable undertaking to the Commission under section 87B of the Act.

SCIA has proffered this undertaking to the Commission pursuant to section 87B of the Act and the Commission has agreed to accept the undertaking and not to object to the purchase.

Commencement of Undertakings

1. This undertaking comes into effect when:
 - (a) the undertaking is executed by SCIA; and
 - (b) the undertaking so executed is accepted by the Commission.

Undertakings

1. Service Corporation International Australia Pty Limited ("SCIA") hereby undertakes for the purposes of section 87B of the Act:
 - 1.1 That from the date of the completion of the acquisition for three years or until another crematorium is built to service the Newcastle area, whichever comes first, SCIA shall operate the Beresfield Crematorium and Memorial Park Crematorium ("the crematoria") separately to SCIA's funeral directing businesses and without causing any competitive disadvantage to non-SCIA funeral directing businesses by ensuring:
 - (a) that no advantage be given to SCIA funeral directing businesses which is not given to other funeral directing businesses, in terms of the price offered for cremations and related services, including any discount, rebate or other reduction in price;
 - (b) that no preference be given to SCIA funeral directing businesses which is not given to non-SCIA funeral directing businesses, in terms of access to the crematoria, particularly in relation to booking times, or facilities (ie chapel or delivery bays);
 - (c) that no details of the next of kin of deceased persons, which may be provided to the crematoria by non-SCIA funeral directing businesses, be used in any way by SCIA, including SCIA crematoria, or SCIA funeral directing businesses, for the purposes of selling pre-paid funerals;
 - (d) that there are separate management and staff of the crematoria and SCIA funeral directing businesses at the Newcastle locations;
 - (e) that SCIA notify the Newcastle community of the acquisition by way of a half (1/2) page advertisement in the first 20 pages of the Newcastle Herald within two(2) weeks of completion of the acquisition;
 - (f) that, in future advertising of the businesses currently being acquired in Newcastle, SCIA discloses its ownership of those funeral directing businesses;
 - (g) that SCIA engage an accounting firm to conduct an independent audit process to attest to SCIA's compliance with the above matters. The accounting firm shall:
 - (a) at six monthly intervals, attest to the equal pricing treatment of all funeral directors;
 - (b) at twelve monthly intervals, attest to their equal treatment in respect of allocation of times for the conduct of cremations and any related services;

- (c) at twelve monthly intervals, attest to the implementation of systems designed to ring fence family information obtained at the time of a cremation from the Newcastle crematoria, which might otherwise be used in the marketing of prepaid funeral services;
- (d) at twelve monthly intervals, attest that general inquiries about funerals and funeral directors are not referred from the Newcastle crematoria to SCIA owned funeral directors; and
- (h) that SCIA provide the Commission with a copy of each of the audit reports within two weeks of their receipt.

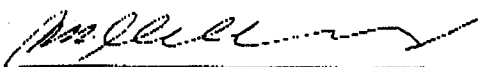
Acknowledgments

SCIA acknowledges that the Commission will make this Undertaking available for public inspection.

SCIA further acknowledges that the Commission will from time to time publish and publicly refer to this Undertaking.

DATED: 2 RD ^{MARCH} ~~February~~ 1999

EXECUTED by SERVICE CORPORATION INTERNATIONAL AUSTRALIA PTY LIMITED:


Signature of director (AUTHORIZED OFFICER)


Signature of director/secretary

KENNETH RONALD MEALEY
Name of director

Name of director/secretary

ACCEPTED by THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION

Chairman

Date: 

March 5, 1999