

ISSN NO. 0114 - 2720

COMMERCE COMMISSION

DECISION NO. 312

Determination pursuant to the Commerce Act 1986 (the Act), in the matter of an application for clearance of a business acquisition involving:

THE CREMATION SOCIETY OF CANTERBURY LIMITED

and

HAREWOOD CREMATORIUM LIMITED

The Commission: Peter Allport (Chairman of the Division)
Kate Brown
Cathie Harrison

Summary of Proposed Acquisition: The proposed acquisition by The Cremation Society of Canterbury Limited of up to 100% of the shares in Harewood Crematorium Limited.

Determination: Pursuant to s 66(3)(a) of the Act, the Commission determines to give a clearance for the proposed acquisition.

Date of Determination: 3 December 1997

AUT/BA-C11/1
M2356

MEMORANDUM

To: Peter Allport (Chairman of the Division)
Kate Brown
Cathie Harrison

From: Jeff Hamilton
John Preston
Jo Bransgrove

Date: 3 December 1997 (Working Day 7)

Subject: **Commerce Act 1986: Business Acquisition: The Cremation Society of Canterbury Limited/Harewood Crematorium Limited**

Working Day 8: 4 December 1997 Working Day 10: 8 December 1997

Confidential material in this report is contained in square brackets.

THE PROPOSED ACQUISITION

- 1 Clearance has been sought by The Cremation Society of Canterbury Ltd (The Cremation Society) to acquire up to 100% of the shares in Harewood Crematorium Limited (Harewood Crematorium).
- 2 The Cremation Society is proposing initially to purchase 45% of the shares in Harewood Crematorium, but may seek to purchase 100% of the shares at a subsequent stage. The shares being purchased by The Cremation Society comprise the holdings of 4 individual shareholders (H G Washbourne, P G Washbourne, P I White and S E White). The trustees of the Stevenson Harewood Trust (50.02%), and Mr and Mrs A Hunter (5.12%), intend to retain their shares in Harewood Crematorium once the initial purchase of shares by The Cremation Society has been completed.

PROCEDURES

- 3 The proposed acquisition was registered on 24 November 1997 under s 66 of the Act. In terms of s 66(3) of the Act, the Commission is required to give clearance for the proposal within 10 working days, unless the Commission and the person who gave the notice agree to a time extension. A decision on the notice is due by 8 December 1997.
- 4 In the notice, the applicant requested confidentiality as to the fact of the proposal. However, the request was later withdrawn, following discussions between Commission staff and the applicant's lawyer.

THE PARTIES

The Cremation Society of Canterbury Limited

- 5 The Cremation Society, a private company, operates a crematorium facility in Linwood Avenue, Christchurch. The company provides cremation services as well as the interment of ashes and the provision of perpetual memorials at its site.

Harewood Crematorium

- 6 Harewood Crematorium is a private company which operates a crematorium facility at Johns Road, Harewood, Christchurch. Like the Cremation Society, the Harewood Crematorium provides cremation services. The company also provides interment of ashes and the provision of tenure memorials at its premises.

THE RELEVANT MARKETS

Market Definition

- 7 As noted from the description of the activities of the participants, The Cremation Society and Harewood Crematorium are engaged in the following activities:
 - the provision of cremation services;
 - the interment of ashes; and
 - the provision of memorials.

Cremation Services

- 8 Both the Cremation Society and Harewood Crematorium run crematorium facilities at their respective premises. These facilities comprise a receiving/retiring lounge, a cremator, an administration complex, and a chapel.
- 9 In Christchurch, around 70% of burials are carried out by cremation, and the balance is undertaken predominantly by earth burial. On the basis of our discussions with the parties to the proposal and Christchurch-based funeral directors, the decision relating to the method of burial is determined by the client family. The role of funeral directors in this process is confined to providing information on the various options. Most religious groups now endorse cremation.
- 10 The cost of earth burial can be significantly higher than cremation, although this depends on a number of factors, including whether a burial plot is required to be purchased. For example, the parties to the acquisition advise that earth burial is two and a half times more expensive than cremation. However, some funeral directors spoken to indicated that the difference would not be of that magnitude. Our enquiries revealed that price is not a significant factor which influences the decision relating to the method of burial which is used.
- 11 The customary practice following the death of a person is for the next of kin to engage a funeral director who provides a range of services connected with the funeral arrangements. These include organising and providing facilities for the funeral service, inserting notices in the newspaper, and cremation/burial arrangements. Both the Cremation Society and Harewood Crematorium offer their chapels for funeral services, and can organise certain aspects of the service (e.g. arranging an organist).
- 12 In Christchurch, we have been told by the applicant that it is customary for the Cremation Society to service the population on the eastern side of the city, where its crematorium is located, while the Harewood Crematorium tends to service the needs of the population on the western side of the city, where its crematorium is located. However, to a certain degree this is a generalisation, and applies largely as a matter of convenience for the client families.
- 13 Both parties to the acquisition publish a schedule of cremation fees which are reviewed annually. The cost of the cremation is usually invoiced to the funeral director who in turn passes on the fee as a disbursement to the estate of the deceased.

Interment of Ashes/Provision of Memorials

- 14 The parties to the acquisition provide interment of ashes, and various memorials (e.g. bronze or granite plaques, roses or trees) to the general public in their respective memorial garden facilities. The Cremation Society provides memorials in perpetuity (i.e. 100 years), while Harewood Crematorium provides tenure memorials, under which the ashes are kept for up to 20 years, or longer on payment of an additional amount.

Conclusion on Market Definition

15 We conclude that, for the purpose of analysing the competition implications of the proposed acquisition, the relevant product and function markets are:

- the provision of cremation services; and
- the interment of ashes and installation and maintenance of memorials.

16 The geographic market is the Greater Christchurch area in relation to both product/functional markets identified above.

COMPETITION ASSESSMENT

Statutory Considerations

17 Section 66(3) of the Act, when read in conjunction with s 47(1) of the Act, requires the Commission to decline to give clearance to a proposed acquisition if it is not satisfied that the proposed acquisition would not result, or would not be likely to result, in a person acquiring or strengthening a dominant position in a market.

Assessment of the Likely Impact of the Proposed Acquisition on the Market for the Provision of Cremation Services in Christchurch

18 The Cremation Society and Harewood Crematorium are the sole providers of crematorium services in the Christchurch metropolitan area.

19 There is no published market share data available on the cremation services market in Christchurch. In the application, The Cremation Society estimates that it accounts for about 60% of the Christchurch market, while Harewood Crematorium accounts for about 40%. However, on the basis of market share data provided by the Harewood Crematorium, and additional information supplied by the applicant, those market share estimates overstate to some degree the actual position of The Cremation Society, and understate to some degree the position of Harewood Crematorium. According to the additional information provided by the applicant on the number of cremations carried out in Christchurch, The Cremation Society accounts for [] of the market and Harewood Crematorium accounts for [].

20 In any event, implementation of the proposed acquisition would result in the combined entity accounting for 100% of the market for the provision of cremation services in Christchurch.

- 21 While a market share of such magnitude indicates potential market power issues, several other factors require consideration. In the context of the proposed acquisition, the likely constraints from the threat of market entry, and the countervailing power of customers are relevant to the consideration of whether or not dominance concerns arise.

Entry Conditions

- 22 The major item of equipment which is required to carry out cremation is a cremator. We were told by the applicant that the cost of purchasing and installing a large cremator is about \$360,000. However, our enquiries have revealed that it is unlikely that any party would enter on a scale similar to that of the parties to the proposal. Rather, entry is more likely to take place on a more modest scale.
- 23 Our enquiries indicate that there are no major impediments to entry into providing cremation services. Indeed, we have been advised by three of the larger funeral directors operating in Christchurch that individually they would have no hesitation in purchasing a cremator. Alternatively, there is scope for two or more funeral directors to purchase a cremator on a collective basis, and installing it at a suitable location.
- 24 Staff have been advised that a cremator can be purchased and installed for between about \$100,000, if a suitable premises is already available, and about \$150,000, if some modifications are required to be made to the existing premises. We were told by a Blenheim funeral director, which acts as the New Zealand agent for a United-States-produced range of cremators, that such equipment would be capable of handling the requirements of any of the funeral directors based in Christchurch, irrespective of the size of their business.
- 25 It is likely that a funeral director would require a resource consent prior to installing a cremator, but providing access to suitably zoned land can be secured (e.g. commercial or

industrial land), no problems with obtaining the relevant consents are likely to arise. In fact, two Christchurch funeral directors whom we spoke to, consider that they already have access to suitably zoned land, and expressed confidence that they could obtain a resource consent with relative ease, and in a timely fashion. The actual length of time to obtain a consent could vary but, subject to no major delays being experienced, it seems possible that this could be achieved within a period of three months from the time an application is lodged.

26 We have ascertained that a number of funeral directors, mainly in provincial locations, have installed their own cremators. Also, that a funeral director in Wellington (Harbour City Funeral Home), and another in Lower Hutt (Gee & Hickton), have each installed a cremator on their premises. In all cases, no regulatory, or other related difficulties were encountered when installing such equipment.

27 On the basis of the experience of Harbour City Funeral Home and Gee & Hickton, we consider that there is unlikely to be any problems associated with a funeral director installing his/her own cremator in the Christchurch metropolitan area.

Countervailing Power of Funeral Directors

28 The other major constraining factor on the behaviour of the combined entity is likely to be the purchasing power of the funeral directors themselves. We have been told by the applicant that there are currently 10 funeral directors operating in Christchurch¹. These include the two largest funeral directors in the South Island (Lamb & Hayward and John Rhind). Further, we note that John Rhind is now ultimately 100%-owned by Stewart International, a large US-based company which has been active in purchasing many funeral homes in various locations throughout New Zealand over the last year, and is well positioned in terms of access to the necessary resources to fund the purchase of a cremator.

29 Taking into account the above factors, staff consider that the combined entity is likely to be significantly constrained by the countervailing power of its customers.

Conclusion on Dominance in the Market for the Provision of Cremation Services in Christchurch

30 We conclude that the threat of potential competition together with the countervailing power of the funeral directors is likely to ensure that no person would acquire or strengthen dominance in this market as a result of implementation of the proposal.

Assessment of the Likely Impact of the Proposed Acquisition on the Market for Interment of Ashes and the Provision of Memorials in Christchurch

- 31 The proposed acquisition would lead to the aggregation of the activities of the two largest providers of interment of ashes and memorials to the public in the Christchurch metropolitan area. However, while competitive choice would be reduced to some degree as a result of the acquisition, the public would continue to have a range of options, including interment of the ashes in the ash plots at one of the five council-owned cemeteries in Christchurch, having the ashes scattered in some favourite location, or held by the next of kin.
- 32 Taking these factors into account, we conclude that the proposed acquisition would not result in dominance being acquired or strengthened in this market.

OVERALL CONCLUSION

- 33 We conclude that, for the reasons outlined above, the proposed acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in any of the affected markets.

RECOMMENDATION

- 34 We recommend that, pursuant to s 66(3)(a) of the Act, clearance be given to the proposed acquisition.

Investigator

Chief Investigator

Manager

THE CREMATION SOCIETY OF CANTERBURY LIMITED/HAREWOOD CREMATORIUM LIMITED

I agree/disagree with the recommendation.

I am satisfied/not satisfied that implementation of the proposed acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in a market.

**DETERMINATION TO GRANT NOTICE OF CLEARANCE:
THE CREMATION SOCIETY OF CANTERBURY LIMITED/HAREWOOD CREMATORIUM
LIMITED**

I agree/disagree with the recommendation.

I am satisfied/not satisfied that implementation of the proposed acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in a market.

Accordingly, pursuant to s 66(3)(a) of the Commerce Act 1996 (the Act), I hereby give clearance for The Cremation Society of Canterbury Limited, or any interconnected body corporate thereof, to acquire up to 100% of the shares in Harewood Crematorium Limited.

In terms of s 66(5) of the Act, this clearance shall expire twelve months after the date of this notice. Brief particulars of this clearance will appear in the Commission's public register.

This clearance is given only to the proposed acquisition described in the notice seeking clearance dated 21 November 1997.

Dated at Wellington this day of 1997

P C Allport
Deputy Chairman

Dr K M Brown
Member

E C A Harrison
Member

¹ Three of these businesses share a common ownership.