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# Stewart/SCI to face scrutiny; upfront divestiture buyers possible

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The proposed acquisition of Stewart Enterprises by Service Corporation International (SCI) will face heavy scrutiny at the Federal Trade Commission (FTC), which might require upfront divestiture buyers, a Washington, DC-based antitrust consultant predicted.

On 29 May, the nation's largest cemetery and funeral home company, SCI, announced plans to buy its largest competitor, Stewart. The deal is valued at approximately USD 1.4bn and is expected to close in late 2013 or early 2014, according to the companies.

"These are the last two major national players in this space, so this is going to get scrutinized in a big way," the antitrust consultant said, adding that he thinks the FTC will ultimately approve the acquisition.

If the deal is approved, SCI will "finally get their prize", said Christopher Hewitt, a partner at Tucker Ellis who advised Alderwoods Group when it was purchased by SCI in 2006. Alderwoods had previously been the second-largest chain of cemeteries and funeral homes.

In the lead-up to the deal with Alderwoods, SCI had also expressed an interest in buying Stewart, Hewitt noted. "They have been talking on and off for years about doing a deal between the two of them."

SCI controls roughly 13% of the national market, while Stewart holds about 3%, an SCI spokesperson said, arguing that it would be "misleading" not to consider this a fragmented market.

Still, divestitures are expected, and the Stewart/SCI deal includes a divestiture cap of USD 60m. "We are comfortable with that number – we think it will actually be lower," the spokesperson told PaRR. "But until the FTC has an opportunity to run it down market by market, you don't ever really know."

According to a former government antitrust attorney, the FTC will again approach the industry based on local markets. "The national market shares don't really matter," he said, adding that analysis of the deal could be tedious.

The FTC had a difficult time with the Alderwoods/SCI deal, the antitrust consultant said. The commission did not require upfront buyers, and there were a lot of issues completing the remedy package.

Even though SCI reached a divestiture agreement with the FTC in 2006, SCI did not comply with the deadline in that agreement. The FTC noted this failure in a letter to SCI in 2008, although it opted not to take action against the company.

That experience may have left the FTC with some lingering sentiments that could perhaps be resolved by requiring upfront divestiture buyers, the antitrust consultant said.

The former government attorney agreed, noting that some of the same FTC staff members who looked at the Alderwoods deal may be analyzing the proposed Stewart acquisition.

Although precedent deals have not required an upfront buyer, the FTC could approach this situation differently – for example, by requiring upfront buyers in all or some markets.

"Given the problems the last time, maybe they consider doing something a little bit different this time," he said.

The SCI spokesperson declined to get into specifics, saying the company would not have any insight into divestiture buyers until there is some action by the FTC.

Thomas Ryan, the president and CEO of SCI, said during a 29 May conference call that the FTC process is "very, very difficult to predict" because "you're going to get different people, you're going to get different circumstances."

Ryan added, "We'll deal with the Federal Trade Commission and we'll get through this, but that's about all we can say at this point in time."

by Ryan Lynch in Washington DC

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