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## Competition Act 1998

### Decision of the Office of Fair Trading

No. CA98/06/2004\*

### Refusal to supply JJ Burgess & Sons Limited with access to Harwood Park Crematorium

29 June 2004

(Case CP/0055/02)

\*Certain information has been excluded from this document in order to comply with the provisions of section 244 of the Enterprise Act 2002. This includes the need to exclude from disclosure (so far as practicable) commercial information the disclosure of which would, or might, in the OFT's opinion, significantly harm the legitimate business interests of the undertaking to which it relates. Excisions are denoted by [...].

Note: pending the hearing of an appeal by JJ Burgess to the Competition Appeal Tribunal the OFT has, on a without prejudice basis, accepted the Tribunal's invitation not to publish details of the dispute referred to in paragraphs 5 and 82-84 (inclusive) until the appeal has been determined.

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## SUMMARY

The Office of Fair Trading (OFT) has investigated a complaint from JJ Burgess & Sons Limited (JJ Burgess), a funeral directing business, concerning W Austin and Sons (Stevenage) Limited's (Austins), also a funeral directing business, refusal to allow access to Harwood Park Crematorium (Harwood), its wholly owned subsidiary.

The OFT does not consider that the prohibition imposed by section 18 of the Competition Act 1998 has been infringed by Austins. For there to be an infringement of the Chapter II prohibition an undertaking must be both dominant and abusing a dominant position.

For the purposes of this decision, the OFT has concluded, on the basis of the evidence gathered during its investigation, that the likely relevant markets are:

- the supply of crematoria services within 30 km of Stevenage and Knebworth
- the supply of funeral directing services in Stevenage and Knebworth, and
- the supply of funeral directing services in Welwyn and Welwyn Garden City.

On the information available, it is unlikely that Austins is dominant in the supply of crematoria services within 30 km of Stevenage and Knebworth or in the supply of funeral directing services in Welwyn and Welwyn Garden City. However, it is likely that Austins is dominant in the supply of funeral directing services in Stevenage and Knebworth.

Whatever the position as to relevant markets and dominance, the OFT has not found strong and compelling evidence that any of the conduct which JJ Burgess alleges Austins has engaged in infringes the Chapter II prohibition.

## **I. THE FACTS**

### **The parties**

1. Austins is a family firm of funeral directors with branches in Stevenage, Hitchin, Hertford, Buntingford, Welwyn and Welwyn Garden City (see map 1 in Annex 1). Austins owns Harwood which it operates through its wholly-owned subsidiary Harwood Park Crematorium Limited. Harwood is located near to both Stevenage and Knebworth.
2. JJ Burgess is also a family firm of funeral directors. It has branches in Knebworth, Welwyn Garden City and Hatfield (see map 1 in Annex 1).

### **The services**

3. Both Austins and JJ Burgess supply funeral directing services to private individuals and organisations responsible for making funeral arrangements (e.g. local authorities). Funeral directors provide services to their customers directly and/or by arranging the provision of services (e.g. crematoria services) via other providers.
4. Harwood Park Crematorium Limited provides crematoria services at Harwood. The phrase 'crematoria services' covers the range of services provided to the bereaved at a crematorium.<sup>1</sup>

### **The complaint**

#### **INITIAL COMPLAINT**

5. The OFT received a complaint from JJ Burgess on 21 January 2002 that Austins had abused a dominant position by refusing JJ Burgess access to Harwood. This refusal appears to have resulted from a dispute between staff of JJ Burgess and of Harwood Park Crematorium Limited [...].<sup>2</sup>
6. The OFT rejected JJ Burgess' initial complaint on 28 February 2002 stating that in its view Harwood was not dominant in a relevant market.<sup>3</sup>

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<sup>1</sup> Paragraph 28 below provides more detail about the sort of services provided at a typical crematorium.

<sup>2</sup> Letter from Austins to OFT (14 February 2002).

<sup>3</sup> Letter from OFT to JJ Burgess (28 February 2002)

## THE APPLICATION

7. JJ Burgess made an application to vary a decision (the Application) under section 47(1) of the Competition Act 1998 (the CA98) on 6 June 2002.<sup>4</sup> In support of the Application, it argued that the OFT's letter of 28 February 2002 amounted to a decision that the Chapter II prohibition of the CA98 had not been infringed, and asked the OFT to vary that decision.
8. The OFT agreed that its letter of 28 February 2002 did amount to a decision (the Relevant Decision) in terms of section 46(3) of the CA98 that the Chapter II prohibition had not been infringed.<sup>5</sup> On 9 April 2003, and after consulting Austins in relation to its proposed action, the OFT withdrew the Relevant Decision.<sup>6</sup>

## CURRENT COMPLAINT

9. In summary, JJ Burgess has alleged in its initial complaint, the Application and subsequent submissions that Austins:
  - has a dominant position in the supply of crematoria services through its control of access to Harwood and,
  - has a dominant position in the supply of funeral directing services, where Austins and JJ Burgess both compete.
10. JJ Burgess has alleged that Austins has abused its dominant position by:
  - refusing to supply the customers of JJ Burgess with crematoria services at Harwood
  - putting pressure on other funeral directors carrying out cremations at Harwood to prevent them acting on JJ Burgess' behalf
  - discriminating against consumers wishing both to use the services of JJ Burgess and to have a cremation at Harwood
  - advertising its own funeral plan on its own premises at Harwood
  - copying the livery of JJ Burgess
  - preventing JJ Burgess from providing a pre-paid funeral plan providing for cremation at Harwood and
  - renaming the 'Austin Funeral Plan' the 'Hertfordshire Funeral Plan'.

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<sup>4</sup> Letter from JJ Burgess to OFT (6 June 2002).

<sup>5</sup> Reference: CA98/05/03 Harwood Park Crematorium Limited – Decision of the Office of Fair Trading Pursuant to Section 47(5).

<sup>6</sup> Pursuant to section 47(5) of the Competition Act 1998 and rule 28 of the Competition Act 1998 (Director's Rules) Order 2000, SI 2000 No 293. As from 1 April 2003, the Enterprise Act 2002 transferred the functions of the Director General of Fair Trading to the OFT. The OFT now applies the Director's rules.

11. JJ Burgess has alleged that, in the alternative, Austins has abused a dominant position in the relevant funeral directing and crematoria services markets by supplying JJ Burgess on terms that are unfair and/or discriminatory.
12. Although JJ Burgess was refused access to Harwood in January 2002, it remained able to arrange cremations at Harwood via a relationship with another local funeral director Chas. A. Nethercott & Son Ltd (Nethercotts) until March 2004.<sup>7</sup> However, since March 2004, Austins has refused to accept bookings from Nethercotts on behalf of JJ Burgess.

### **The OFT's investigation**

13. After withdrawing the Relevant Decision the OFT commenced an investigation under section 25 of the CA98 into the allegations made by JJ Burgess. The OFT sought detailed information from all funeral directors operating in Stevenage and Knebworth. This included information about:
  - the number of funerals arranged by each of the funeral director's branches
  - the number of burials and cremations conducted
  - the address of the deceased
  - the distance between the address of the deceased and the funeral director's branch
  - the identity of main competitors and
  - the crematoria used for each funeral arranged.
14. The OFT sought similar information from 25 funeral directors operating throughout West Hertfordshire relating to their business during the calendar year 2002.
15. This information was used to produce the maps in Annex 1 and the tables in the remainder of the Annexes to this decision. The information was used by OFT to assess the impact of Austin's behaviour on competition.

### **INTERIM MEASURES APPLICATION**

16. JJ Burgess has made two applications for interim measures directions:<sup>8</sup> on 18 August 2003 and again on 23 March 2004. Both applications claimed that interim measures directions were required as a matter of urgency to

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<sup>7</sup> Letter from Howell & Co to the OFT (28 November 2002).

<sup>8</sup> Pursuant to section 35(2) of the CA98.

prevent serious, irreparable damage to JJ Burgess and to protect the public interest.

17. The OFT rejected the two applications on the basis that it was not satisfied that the criteria set out in section 35 of the CA98 were met.

## II. LEGAL AND ECONOMIC ASSESSMENT

### Introduction

18. Section 18(1) of the CA98 imposes the Chapter II prohibition and states that: '... any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market is prohibited if it may affect trade within the United Kingdom.'
19. To find an infringement of the Chapter II prohibition in this case the OFT must establish that:
  - Austins is an undertaking
  - it holds a dominant position in a relevant market
  - it has abused that dominant position and
  - that this abuse may affect trade within the United Kingdom or any part of it.
20. In applying the Chapter II prohibition the OFT is required to ensure that there is no inconsistency with the principles laid down by the EC Treaty and the European Court and any relevant decision of the European Court. The OFT must also have regard to any relevant decision or statement of the European Commission.<sup>9</sup>

### Undertaking

21. The European Court of Justice (ECJ) in its judgment in *Höfner and Elser*<sup>10</sup> stated: 'in the context of competition law, ...the concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed'.
22. The OFT considers that Austins is clearly engaged in an economic activity and is therefore an undertaking for the purposes of the CA98. Austins owns and operates Harwood through Harwood Park Crematorium Limited

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<sup>9</sup> Section 60 of the CA98.

<sup>10</sup> Case C-41/90 *Höfner and Elser v Macrotron GmbH* [1991] ECR I-1979.

and the OFT considers that Austins and Harwood Park Crematorium Limited are a single economic entity.

## **Dominance**

### DEFINITION OF DOMINANCE

23. The ECJ has defined a dominant position as:

‘...a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately its consumers’.<sup>11</sup>

### MARKET DEFINITION

24. For the purposes of the Chapter II prohibition, dominance is assessed by reference to a relevant economic market.<sup>12</sup> The relevant market has two dimensions: the relevant goods and services (the product market) and the geographic extent of the market (the geographic market).

#### *Product market*

25. The relevant product market comprises all those products which are regarded as reasonably interchangeable by reason of the product’s characteristics, price or intended purpose.<sup>13</sup> The OFT considers that there are two relevant product markets: crematoria services in the upstream market and funeral directing services in the downstream market. The terms *upstream* and *downstream* are used to reflect the relationship between the two markets. The market for funeral directing services is the relevant *downstream* market, as it is closer to the end customer. Crematoria services are an input used by participants in the downstream market. The *upstream* market is the supply of crematoria services.

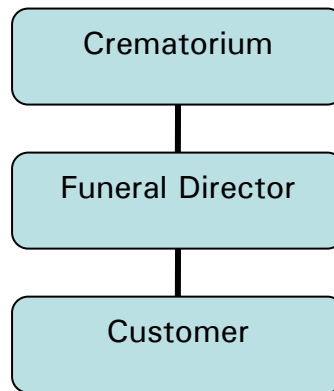
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<sup>11</sup> Case 27/76 *United Brands Co and United Brands Continental BV v Commission (United Brands)* [1978] ECR 207, paragraph 65.

<sup>12</sup> OFT Guideline 402, The Chapter II Prohibition, paragraph 3.3.

<sup>13</sup> Case 27/76 *United Brands*, see footnote 11 for full case reference; Case 85/76 *Hoffman-La Roche & Co AG v EC Commission (Hoffman-La Roche)* [1979] ECR 461. See also OFT Guideline 403, Market Definition, paragraph 3.4.

26. The relationship between participants in the upstream and downstream markets is represented in the diagram below:



27. Given the finding of no abuse, it has not been necessary to consider whether burials should also be included in the same market as cremations. However, the OFT observes that the available information does not suggest a high degree of substitution between burial and cremation. Furthermore, this case is primarily concerned with a refusal to supply crematoria services at Harwood. Harwood does not supply burials.

#### (I) CREMATORIA SERVICES

28. The services provided through Harwood, which are typical of those provided through crematoria generally, include the supply of:
- cremation services
  - music for the service
  - additional coffin bearers
  - floral tributes
  - entry in Harwood's book of remembrance
  - storage of ashes.
29. JJ Burgess says that it is 'common ground that the *product* market is 'crematoria''.<sup>14</sup> Available information indicates that the characteristics of crematoria services are sufficiently distinct from alternatives to constitute a discrete product market.

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<sup>14</sup> Letter from JJ Burgess to the OFT (6 June 2002).

30. Austins is active both in the upstream market for crematoria services (via Harwood) and the downstream market for funeral directing services. It considers that the buyers of crematoria services are funeral directors rather than the person who ultimately pays for crematoria services (the customer). The funeral director usually makes the bookings and pays the fee for the cremation. These costs are recovered from the customer as a disbursement. The analysis does not change, whether the customers are end-consumers, or are funeral directors purchasing on behalf of end-consumers. The OFT has not concluded on this point and does not consider it necessary to distinguish between demand from funeral directors and demand from customers for crematoria services. The OFT's approach would be the same in either case.

## (II) FUNERAL DIRECTING SERVICES

31. The services provided by funeral directors typically include the supply of:
- coffins and bearers
  - hearses
  - services involving preparation of bodies and arrangements with churches, crematoria or cemetery authorities.<sup>15</sup>

Funeral directors also provide burial services not involving cremation of the deceased. Funeral directing services may be provided directly (e.g. supplying the coffin) or via another provider (in which case the funeral director will arrange and pay for services).<sup>16</sup>

32. Some funeral directors also offer pre-paid funeral packages, which involve pre-payment into a trust fund which is then invested to pay for a funeral. Both Austins and JJ Burgess offer a pre-paid funeral package.
33. Most customers of funeral directors are private individuals. Other customers include:
- local authorities which have a duty under the Public Health (Control of Disease) Act 1984 to arrange a burial or cremation where it appears that no suitable arrangements for the disposal of the body are being made

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<sup>15</sup> Monopolies and Mergers Commission report Cm2880 'Service Corporation International and Plantsbrook plc: a report on the merger situation', published 25 May 1995, paragraph 4.4.

<sup>16</sup> Funerals: A report of the OFT inquiry into the funerals industry, published July 2001, Reference OFT 346, paragraph 3.4.

- coroner's offices which, in the case of sudden death, employ funeral directors to transport the deceased from the place of death to an appropriate mortuary and
- NHS trusts.

### (III) CONCLUSION

34. On the basis of available information, the OFT has concluded that the relevant product markets are likely to be:

- the supply of funeral directing services and
- the supply of crematoria services.

#### *Geographic market*

### (I) CREMATORIA SERVICES

35. In the Relevant Decision, the OFT stated that Harwood competes in a wide geographic market including several other crematoria (West Hertfordshire, Enfield, Parndon Wood, St Marylebone and Vale (Luton)). However, JJ Burgess argued in the Application that:

- the OFT had incorrectly defined the relevant geographic market for crematoria services
- the OFT had incorrectly defined the market from the perspective of funeral directors rather than the consumer
- the OFT's incorrect analysis resulted in a much wider geographic market definition than would otherwise have been warranted and
- a narrower market for crematoria services exists.

36. In addition, Austins has commented that 'a crematorium could not viably survive if not exclusive in its 'catchment area''.<sup>17</sup>

37. The OFT's analysis of the relevant geographic market for crematoria services focuses on demand-side considerations, as scope for supply-side substitution appears limited. Accordingly, it has sought to identify substitutes which are so close that they would prevent a 'hypothetical monopolist' in one area from charging monopoly prices.

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<sup>17</sup> Letter from Austins to the OFT (4 March 2003).

38. The process of identifying substitutes starts by looking at a relatively narrow area, which might be the area supplied by the parties to an agreement or the subject of a complaint. Examination is then broadened to consider whether consumers would switch to suppliers in neighbouring areas in response to a small increase in price. If substitution is potentially so significant that it would prevent an undertaking from raising its prices, the area is added to the market definition.
39. Accordingly, the key consideration in assessing the relevant geographic market for crematoria services is how funeral directors and end consumers would react if a hypothetical monopolist supplying crematoria services in the Knebworth/Stevenage area increased prices by a small but significant amount above competitive prices. If Harwood's customers would switch to alternative crematoria in sufficient numbers to make such a price increase unprofitable, this would suggest that the market is wider than just the Knebworth/Stevenage area and should include the areas where these competing crematoria are located.
40. Annex 2(A) identifies the crematoria used by all funeral directors in Stevenage and Knebworth and a sample of funeral directors in West Hertfordshire. All funeral directors used other crematoria in addition to Harwood.
41. Most branches of funeral directors (not including Austins) have access to alternative crematoria to Harwood, which are either closer or not significantly further away. While most cremations take place at the nearest crematorium to the deceased, funeral directors appear to be willing to use crematoria that are up to 30km or more from the branch where the cremation is arranged. It appears therefore that Harwood faces competition from crematoria located over a relatively wide area. Accordingly, if Harwood raised prices the majority of funeral directors would be able to switch to alternative crematoria relatively easily.
42. The JJ Burgess branch in Knebworth and the Co-operative Funeral Service (Co-op) branch in Stevenage are located closest to Harwood. In principle, if Harwood were dominant in the supply of crematoria services in Stevenage and Knebworth, it would be possible for Austins to price discriminate between these and other branches that are outside of Stevenage and Knebworth (i.e. it could increase prices for crematoria services charged to these two branches while not increasing prices charged to other branches). If Harwood could price discriminate in this way, this would suggest the possibility of a discrete market for crematoria services comprising the Knebworth and Stevenage area.

43. Whether price discrimination is possible is likely to turn on the reactions of end consumers. It may be that end consumers have a stronger preference to use the nearest crematorium than funeral directors. Alternatively their preference for using a specific funeral director may prevail.
44. Available information shows that funeral directors do not always use the same crematorium for all the cremations that they arrange from a specific branch. This indicates that end consumers are prepared to accept a crematorium other than the closest crematorium. In addition, there is no evidence to suggest that price discrimination is occurring. Austins charges the same price to all funeral directors for services provided via Harwood, irrespective of where they are located.

#### CONCLUSION ON THE RELEVANT GEOGRAPHIC MARKET FOR CREMATORIA SERVICES

45. On the balance of the evidence, the OFT has concluded that the relevant geographic market for crematoria services is wider than Knebworth and Stevenage. It includes, at least, the West Hertford crematorium and is likely to include all crematoria within a 30 km radius of Stevenage and Knebworth.

#### (II) FUNERAL DIRECTING SERVICES

46. JJ Burgess has alleged that the refusal to supply access to Harwood has weakened its ability to compete in the downstream market for funeral directing services. The OFT notes firstly that JJ Burgess' Hatfield branch has made little use of Harwood,<sup>18</sup> and Austins does not provide funeral directing services in competition with this branch to any significant extent, so it is unlikely that this branch would be affected by Austin's alleged conduct. Accordingly, the OFT does not consider that it is necessary to identify in which geographic market JJ Burgess' Hatfield branch competes.
47. For the reasons set out in the following paragraphs, the OFT has concluded that JJ Burgess' Knebworth branch is likely to compete in a geographic market comprising of Stevenage and Knebworth. JJ Burgess' Welwyn Garden City branch is likely to compete in a market comprising of Welwyn and Welwyn Garden City.

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<sup>18</sup> [...]. See Annex 2(A).

### *Stevenage and Knebworth*

48. Available information<sup>19</sup> indicates that:
- the vast majority of funerals arranged by Austin's Stevenage branch in 2001 are for deceased previously resident in Stevenage
  - Austin's Stevenage branch is also a significant supplier of funeral directing services in Knebworth
  - the vast majority of funerals arranged by JJ Burgess' Knebworth branch are for deceased previously resident in either Stevenage or Knebworth and
  - the majority of funerals arranged by the Co-op's Stevenage branch (which identifies JJ Burgess' Knebworth branch and Austin's Stevenage branch as its two most significant competitors) are for deceased previously resident in Stevenage.
49. Overall, this indicates that demand for funeral directing services, provided by branches in Stevenage and Knebworth, comes primarily from Stevenage and Knebworth. It appears that consumers in these two towns make use of branches located in either town rather than only the town in which the deceased resided.
50. To test this, the OFT has consulted a number of funeral directors based in towns surrounding Stevenage and Knebworth (therefore excluding Austin's Stevenage branch, JJ Burgess' Knebworth branch and the Co-op's Stevenage branch).<sup>20</sup> In summary, the OFT found that only a small number of funerals arranged by these funeral directors were for deceased previously resident in either Stevenage or Knebworth. This tends to support the view that Austin's Stevenage branch, the Co-op's Stevenage branch and JJ Burgess' Knebworth branch do not face any significant competition from funeral directors' branches based outside of Stevenage or Knebworth.

### *Welwyn and Welwyn Garden City*

51. Funerals arranged by JJ Burgess' Welwyn Garden City branch are almost exclusively for deceased previously resident in the town itself. However, Austin's Welwyn branch catchment area extends beyond Welwyn itself into Welwyn Garden City, and along the east and west sides of the A1.<sup>21</sup>

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<sup>19</sup> See maps in Annex 1.

<sup>20</sup> See Table in Annex 4 for a summary of results of consultation.

<sup>21</sup> See maps 2-5 in Annex 1.

52. Austin's Welwyn and Welwyn Garden City branches and JJ Burgess' Welwyn Garden City branch face competition from other funeral directors located in these areas. Competition is likely to be stronger between the competitors based in Welwyn and Welwyn Garden City (as opposed to competition between those based outside of this locality and those within which is likely to be less fierce).
53. The available information suggests that Welwyn and Welwyn Garden City are likely to comprise a discrete relevant geographic market for funeral directing services.

#### CONCLUSION ON THE RELEVANT GEOGRAPHIC MARKET FOR FUNERAL DIRECTING SERVICES

54. On balance, the OFT considers that Knebworth and Stevenage are likely to comprise a discrete geographic market for funeral directing services. The OFT also considers that it is likely that there is a discrete geographic market for funeral directing services which includes Welwyn and Welwyn Garden City (and perhaps a limited area beyond this).

#### **Market definition: summary**

55. For the purposes of this decision, the OFT has concluded that the likely relevant markets are:
  - the supply of crematoria services within 30km of Stevenage and Knebworth
  - the supply of funeral directing services in Stevenage and Knebworth
  - the supply of funeral directing services in Welwyn and Welwyn Garden City.

#### **Assessment of dominance**

56. In assessing whether there is dominance the OFT considers whether, and to what extent, an undertaking faces constraints on its ability to behave independently. Those constraints may be:
  - existing competitors, according to their strength in the market, which may be shown by market shares
  - potential competitors, which may be shown by a lack of significant entry barriers and the existence of other undertakings which might easily enter the market and
  - other constraints, such as strong buyer power from the undertaking's customers.

## (I) CREMATORIA SERVICES

57. The OFT has identified a likely relevant geographic market for the supply of crematoria services within a 30km radius of Stevenage and Knebworth.

### *Market share*

58. On the basis of the above geographic market definition, Harwood competes in a wide geographic market which includes several other crematoria, including the crematoria in West Hertfordshire, Enfield, Parndon Wood, St Marylebone and Luton (all located within a 30 km radius of Harwood). Figures from the Cremation Society of Great Britain website<sup>22</sup> show that in 2002, 1,911 cremations were conducted at Harwood from a total of 12,236 conducted by all crematoria within this area.

TABLE 1: NUMBER OF CREMATIONS CARRIED OUT

<b>Crematorium</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
Luton	1,956	2,075	1,946
Parndon Wood	1,844	1,775	1,761
Harwood Park	1,833	1,843	1,911
West Hertfordshire	3,226	3,194	3,288
Enfield	3,039	2,752	2,631
St. Marylebone	742	744	699
<b>Total</b>	<b>12,640</b>	<b>12,383</b>	<b>12,236</b>

Source: The Cremation Society of Great Britain.

59. While not conclusive in itself, market share is a significant consideration in assessing dominance. The OFT considers that it is unlikely that an undertaking will be individually dominant if its market share is below 40 per cent, although dominance could be established below that figure if other relevant factors provided strong evidence of dominance. Such other factors might include weak competitors and absence of any buyer power. The ECJ has stated that dominance can be presumed in the absence of evidence to the contrary if an undertaking has a market share persistently above 50 per cent.<sup>23</sup>

<sup>22</sup> Reproduced in Table 1.

<sup>23</sup> Case C-62/86 *AKZO Chemie BV v Commission* [1991] ECR -3359.

60. The figures in Table 1 above suggest that Harwood's share of the market for the supply of crematoria services within a 30km radius of Stevenage and Knebworth equated to 15.6 per cent in 2002. Austins, through its ownership of Harwood, would not be dominant in the supply of crematoria services in the relevant geographic market on the basis of its market share alone (15.6 per cent), particularly given the presence of competitors with a larger market share, such as the crematorium at West Hertfordshire.

#### CONCLUSION ON DOMINANCE: CREMATORIA SERVICES

61. In OFT's view, there are credible alternative crematoria that funeral directors can realistically access. Furthermore, there is no evidence that Austins is price discriminating between its customers. For these reasons, Austins does not appear to have a dominant market position because it does not appear to be able '...to behave to an appreciable extent independently of its competitors...'<sup>24</sup> The OFT has, therefore, concluded that Austins is unlikely to be dominant in the supply of crematoria services within 30km of Stevenage and Knebworth.

#### (II) FUNERAL DIRECTING SERVICES

62. The OFT has identified likely relevant markets for the supply of funeral directing services in Stevenage and Knebworth and for the supply of funeral directing services in Welwyn and Welwyn Garden City.

##### *Stevenage and Knebworth*

63. Austin's Stevenage branch, the Co-op's Stevenage branch and JJ Burgess' Knebworth Branch are the only competitors supplying funeral directing services in Stevenage and Knebworth.
64. Table 2 below shows the number of funerals conducted by each of these branches in 2001.

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<sup>24</sup> Case 27/76 *United Brands*, see footnote 11 for full case reference.

TABLE 2: TOTAL NUMBER OF FUNERALS CARRIED OUT IN STEVENAGE AND KNEBWORTH 2001

Firm and Branch		Total number of funerals	%
Austins	Stevenage	[...]	[...]
Co-op	Stevenage	[...]	[...]
JJ	Knebworth	[...]	[...]
Burgess			
<b>TOTAL</b>		[...]	100

Source: Austins, JJ Burgess, Co-op.

65. These figures suggest that Austin’s share of the market for the supply of funeral directing services in Stevenage and Knebworth in 2001 was approximately 79 per cent. On this basis, it can be presumed that Austins is dominant in the market for the supply of funeral directing services in Stevenage and Knebworth. However, it is necessary to consider whether there is any evidence to the contrary which might rebut this presumption.
66. The OFT has previously observed that: ‘Funeral directors are not subject to any licensing control, nor are they required to have professional qualifications or to be registered. Entry into the market is, in consequence, not difficult. However, a steady decline in the death rate means the only scope for growth in the market is the provision of higher value services. This may discourage significant new entry in a market where reputation is an important factor’.<sup>25</sup> This would tend to indicate that barriers to entry into the market for the supply of funeral directing services in Stevenage and Knebworth do exist. In addition, the OFT notes that there is no history of significant entry into this market.
67. For the above reasons, the OFT has concluded that Austins is likely to be dominant in the supply of funeral directing services in Stevenage and Knebworth.

*Welwyn and Welwyn Garden City*

68. Austins has a branch in Welwyn. Austins has another branch in Welwyn Garden City, as have JJ Burgess, Coughlan Brothers and Warwick & Peters. The OFT does not have figures on the number of funerals

<sup>25</sup> Funerals: A report of the OFT inquiry into the funerals industry, July 2001, paragraph 3.3.

conducted by Austin's Welwyn Garden City branch as this branch only began trading in June 2003. Nor does the OFT possess market share information on Coughlan Brothers or Warwick & Peters. JJ Burgess' Welwyn Garden City branch is equidistant between Harwood and the West Hertfordshire Crematorium.

#### CONCLUSION ON DOMINANCE: FUNERAL DIRECTING SERVICES

69. On the basis of information available, the OFT has concluded that it is likely that Austins is dominant in the supply of funeral directing services in Stevenage and Knebworth but has reached no conclusion on whether Austins is likely to be dominant in the supply of funeral directing services in Welwyn and Welwyn Garden City.

#### **Abuse**

70. JJ Burgess has alleged that Austins has abused its dominant position by:
- refusing to supply the customers of JJ Burgess with crematoria services at Harwood
  - putting pressure on other funeral directors carrying out cremations at Harwood to prevent them acting on JJ Burgess' behalf
  - discriminating against consumers wishing both to use the services of JJ Burgess and to have a cremation at Harwood
  - advertising its own funeral plan on its own premises at Harwood and copying the livery of JJ Burgess
  - preventing JJ Burgess from providing a pre-paid funeral plan providing for cremation at Harwood, and
  - renaming the 'Austin Funeral Plan' the 'Hertfordshire Funeral Plan'.
71. JJ Burgess alleged that, in the alternative, Austins had abused a dominant position in the relevant funeral directing and crematoria services markets by supplying JJ Burgess on terms that are unfair and/or discriminatory.

72. The ECJ has held that:

'The concept of an abuse is an objective concept relating to the behaviour of an undertaking in a dominant position which is such as to influence the structure of a market where, as a result of the very presence of the undertaking in question, the degree of competition is weakened and which, through recourse to methods different from those which condition normal competition in products or services on the basis of the transactions of commercial operators, has the effect of hindering the maintenance of the

degree of competition still existing in the market or the growth of that competition.<sup>26</sup>

73. The OFT has concluded that Austins is likely to hold a dominant position in at least one downstream market (in Knebworth and Stevenage). However, the main issue that the OFT has considered in this case concerns Austins' behaviour in the *upstream* market (i.e. its policy regarding access to Harwood) not the conduct of its downstream funeral directing business. In order to find that Austins had infringed the Chapter II prohibition in the current case, by refusing JJ Burgess access to Harwood, the OFT would have to establish (a) that Austins held a dominant position in the relevant *upstream* market for crematoria services and (b) that its policy of refusing JJ Burgess access to Harwood amounted to an abuse of that dominant position.
74. As noted above, the OFT has concluded that Austins is unlikely to hold a dominant position in the relevant upstream market. Nevertheless, the OFT has in its analysis below (hypothetically) assumed that Austins is dominant in the upstream market for crematoria services, and has proceeded on that basis to consider whether the conduct which is the subject of JJ Burgess' complaint is abusive.

#### REFUSAL TO SUPPLY

75. Refusal to supply by a dominant undertaking is not necessarily abusive. In considering such allegations of abuse, the OFT considers the effect of the refusal to supply. In particular, it considers the effect on competition rather than on individual competitors.
76. It appears from the case-law of the ECJ that a refusal to supply by a dominant undertaking can be considered to be abusive where the refusal risks eliminating all competition.<sup>27</sup>
77. In addition, the ECJ has found that, even in the absence of elimination of all competition, in some instances, where there is substantial harm to

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<sup>26</sup> Case 85/76 *Hoffmann-La Roche*, paragraph 91. See footnote 13 for full case reference.

<sup>27</sup> *Commercial Solvents v Commission* [1974] ECR 223, paragraph 25; Case 311/84 *Centre belge d'études de marché – Télémarketing (CBEM) v SA Compagnie luxembourgeoise de télédiffusion (CLT) and Information publicité Benelux (IPB)* [1985] ECR 3261, paragraph 27.

competition, a refusal to supply by a dominant undertaking can be considered to be an abuse.<sup>28</sup>

78. The OFT therefore considers that, in some cases, an abuse may be found where a refusal to supply does not eliminate all competition, but is still considered to cause substantial harm to competition. Thus, a refusal to supply by a dominant undertaking may be an abuse if there is evidence of likely, substantial harm to competition and if the behaviour cannot be objectively justified.
79. Whether such conduct by a dominant undertaking is actually abusive will be a question of fact and degree taking into consideration factors such as the evidence of intention of the dominant undertaking in pursuing the conduct, the effect (both direct and indirect) of the conduct on the undertaking's competitors and customers and the extent to which the conduct is plainly restrictive of competition.<sup>29</sup>
80. It is only in exceptional circumstances that competition law should deprive an undertaking of the freedom to determine its trading partners.<sup>30</sup>
81. The OFT has considered the allegations of abuse made by JJ Burgess against this background. The following factors indicate that the refusal to supply by Austins in this case is not abusive.

*(i) Intention*

82. The events that led Austins to refuse access to the facilities at Harwood to JJ Burgess arose out of a [dispute] between the firms. The [dispute] seems to have resulted from a combination of factors.[...]
83. [...]
84. In summary, [...]. The origins of the dispute do not appear to be competition related. [...]

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<sup>28</sup> Case 27/76 *United Brands*, paragraphs 182-194. See footnote 11 for full case reference.

<sup>29</sup> A similar approach was taken in the OFT's decision of 9 September 2003, *refusal to supply unprocessed holographic photopolymer film: E.I. du Pont de Nemours & Company and Op. Graphics (Holography) Limited*, paragraph 27.

<sup>30</sup> The issues in this section in relation to refusal to supply were considered in the Opinion of Advocate General Jacobs in Case C-7/97 *Oscar Bronner GmbH & Co. KG v Mediaprint Zeitungs-und Zeitschriftenverlag GmbH & Co KG* [1998] ECR I-7791.

*(ii) JJ Burgess has access to, and uses, other crematoria*

85. All of JJ Burgess' branches use crematoria other than Harwood. In the period prior to the opening of Harwood in 1997 they would have had to have used other crematoria.<sup>31</sup> This is significant insofar as JJ Burgess no longer has access to Harwood through the medium of Nethercotts.

*(iii) Number of funerals conducted by JJ Burgess since refusal of access to Harwood increased*

86. Tables 1 and 2 in Annex 3 show the use of crematoria by JJ Burgess and the number of funerals arranged at each of its branches in 2001 and 2002. The tables show that the number of funerals arranged at JJ Burgess' Knebworth branch in 2002, when direct access to Harwood was refused, was greater than in the previous year. Tables 1 and 2 in Annex 3 also show that the total number of cremations arranged at JJ Burgess' Knebworth branch increased, even while the number of cremations it conducted at Harwood fell.

87. The OFT recognises that since March 2004 JJ Burgess has no longer been able to obtain access to Harwood through Nethercotts. However, these tables show that, even when access was only available through Nethercotts, JJ Burgess organised the substantial majority of its cremations at crematoria other than Harwood.

*(iv) JJ Burgess' market share in Stevenage and Knebworth increased*

88. Tables 3 and 4 in Annex 3 show the number of cremations arranged by Austin's Stevenage branch, JJ Burgess' Knebworth branch and the Co-op's Stevenage branch in 2001 and 2002. The figures in Tables 3 and 4 in Annex 3 show that competition between Austins, the Co-op Stevenage and JJ Burgess Knebworth continued and was not significantly affected by the refusal to supply. This suggests that Austin's alleged conduct did not cause substantial harm to competition in the market for the supply of funeral directing services in Stevenage and Knebworth.

89. The OFT recognises that since March 2004 JJ Burgess has no longer been able to obtain access to Harwood through Nethercotts. However, even if Austin's refusal to supply were to lead to JJ Burgess exiting the market, Austin's largest competitor, the Co-op, would remain. The OFT notes that the Co-op's Stevenage branch is part of the largest branded funeral

directors group in the UK and is well represented in other parts of Hertfordshire

*(v) JJ Burgess' market share in Welwyn Garden City and Welwyn*

90. Tables 5 and 6 in Annex 3 show the number of cremations arranged by JJ Burgess' Welwyn Garden City branch and Austin's Welwyn branch in 2001 and 2002. The figures in these tables show that JJ Burgess' Welwyn Garden City branch lost market share in Welwyn and Welwyn Garden City during 2001. However, it is unclear whether JJ Burgess lost market share to Austins or to other funeral directors (there are two other funeral directors that operate in Welwyn Garden City: Warwick & Peters and Coughlan Brothers; Austins is the only funeral director with a branch in Welwyn). On the basis of these figures, it is not clear that Austin's alleged conduct caused substantial harm to competition in the market for the supply of funeral directing services in Welwyn and Welwyn Garden City.

*(vi) Evidence does not indicate that JJ Burgess is likely to exit the market*

91. All JJ Burgess' branches have access to credible alternatives to Harwood. Accordingly, it is not clear that JJ Burgess will exit the market for the supply of funeral directing services in the relevant markets as a result of Austin's refusal to supply access to Harwood. As noted above, even if JJ Burgess were to exit the market, Austin's largest competitor, the Co-op, would remain.

92. As far as the OFT is aware, Austins has not refused, access to Harwood to any funeral director other than JJ Burgess.

### **CONCLUSION ON REFUSAL TO SUPPLY**

93. On the basis of available information, the OFT does not consider that it has strong and compelling evidence that Austin's refusal to supply JJ Burgess with access to Harwood will eliminate or cause substantial harm to competition in any relevant market. It follows that the OFT does not consider that Austin's refusal to supply JJ Burgess with access to Harwood is an abuse of a dominant position in a market.

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<sup>31</sup> In 2002 JJ Burgess' Hatfield branch (its busiest branch) arranged only [...] cremations at Harwood and [...] at other crematoria (see Annex 2(A)).

## Other categories of behaviour

94. Aside from the refusal to supply which is considered above, JJ Burgess has also made other allegations of abusive conduct against Austins/Harwood. JJ Burgess alleges that:
- Harwood has put pressure on other funeral directors not to act for JJ Burgess at Harwood
  - the refusal to supply JJ Burgess with access to Harwood discriminates against consumers wishing to use the services of both JJ Burgess and Harwood
  - preventing JJ Burgess from offering a pre-paid funeral plan (including cremation at Harwood) and Austins renaming its own plan 'the Hertfordshire Funeral Plan' constitutes an abuse
  - advertising the Hertfordshire Funeral Plan inside of Harwood and copying the livery of JJ Burgess constitutes an abuse and
  - Harwood was (in the period January 2002 - March 2004) supplying JJ Burgess on terms that were unfair or discriminatory.
95. In relation to the allegation of pressure, the OFT has found that Austin's refusal to supply JJ Burgess with access to Harwood has not eliminated or caused substantial harm to competition in any relevant market.
96. In relation to the two allegations of discrimination, Austins charges the same price to all funeral directors for services provided via Harwood, irrespective of where they are located. There is therefore no evidence to suggest that price discrimination is occurring. JJ Burgess has argued that Austins has abused a dominant position in these markets by supplying JJ Burgess on terms that are unfair in the sense identified in the ECJ's judgment in the *AAMS* case.<sup>32</sup> The OFT does not consider that the *AAMS* case is relevant here. First, it is not that Austins is supplying JJ Burgess on terms that are unfair, but rather that Austins is not supplying JJ Burgess with access to Harwood at all. OFT considers that it is more appropriate to categorise the conduct in terms of a refusal to supply JJ Burgess with access to Harwood (which has been considered above). Even if the OFT did categorise Austin's conduct in terms of supply on unfair terms, the OFT

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<sup>32</sup> Case T-139/98 *AAMS v Commission* [2001] ECR II-3413.

does not consider that it would reach a conclusion different to that set out in relation to refusal to supply.

97. In relation to the pre-paid funeral plan related allegations, the available information does not support JJ Burgess' allegation that the refusal to supply access to Harwood prevents it from competing in the provision of prepaid funeral services. Harwood is not the only crematorium to which it has access.
98. JJ Burgess alleges that Austins has advertised the Hertfordshire Funeral Plan inside Harwood and copied the livery of JJ Burgess. The OFT does not consider that this conduct, which is not a consequence of Austin's refusal to supply JJ Burgess with access to Harwood, is abusive. Austins is entitled to advertise its own products at Harwood.

#### **CONCLUSION ON OTHER CATEGORIES OF BEHAVIOUR**

99. On the basis of available information, the OFT does not consider that it has strong and compelling evidence that any of the 'other' categories of behaviour considered above has caused a substantial harm to competition in any relevant market. Accordingly, the OFT does not consider that any of these categories of behaviour (to the extent that these fall within the scope of the CA98) amount to an abuse of dominant position in a market.

### **III. CONCLUSION**

100. On the basis of available information, the OFT does not consider that it has strong and compelling evidence that any of the conduct which JJ Burgess alleges Austins has engaged in infringes the Chapter II prohibition.

**Vincent Smith**  
**Director of Competition Enforcement**

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Table 2(a): Percentage of funerals carried out by Austins, JJ Burgess and Co-op (Stevenage) in 2001 (totals).

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### **Annex 3**

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Table 3: Stevenage and Knebworth: Market shares for 2001.

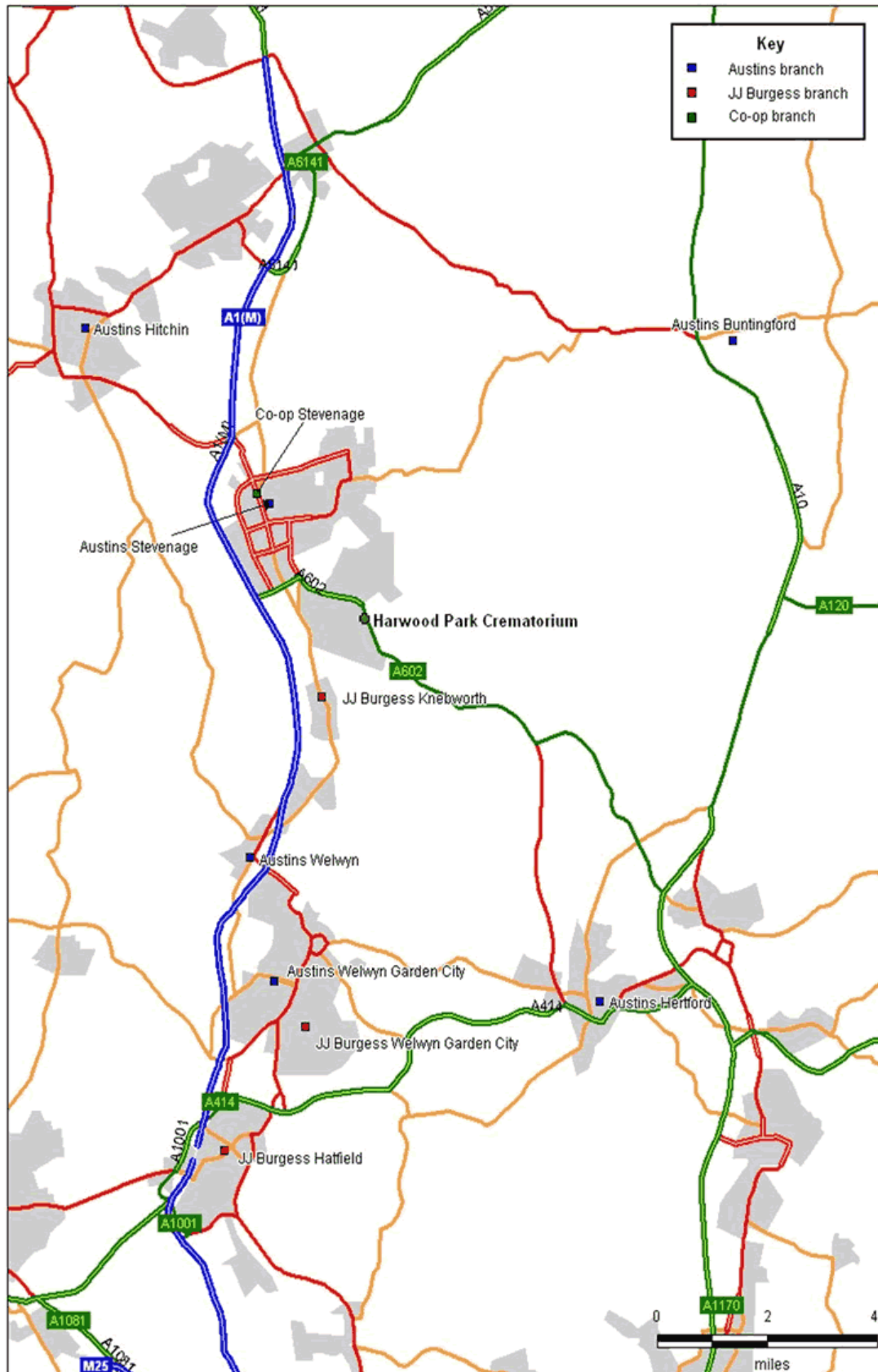
Table 4: Stevenage and Knebworth: Market shares for 2002.

### **Annex 4:**

Funerals carried out by funeral directors other than Austins, JJ Burgess and Co-op (Stevenage) in West Hertfordshire.

# ANNEX 1

MAP 1: Location of Austins, JJ Burgess and Co-op branches



**Map 2: Austins: funerals 2001 showing postcode location of the deceased by branch.**

[...]

**Map 3: Austins: funerals 2002 showing postcode location of the deceased by branch.**

[...]

**Map 4: JJ Burgess: funerals 2001 showing postcode location of the deceased by branch.**

[...]

**Map 5: JJ Burgess: funerals 2002 showing postcode location of the deceased by branch.**

[...]

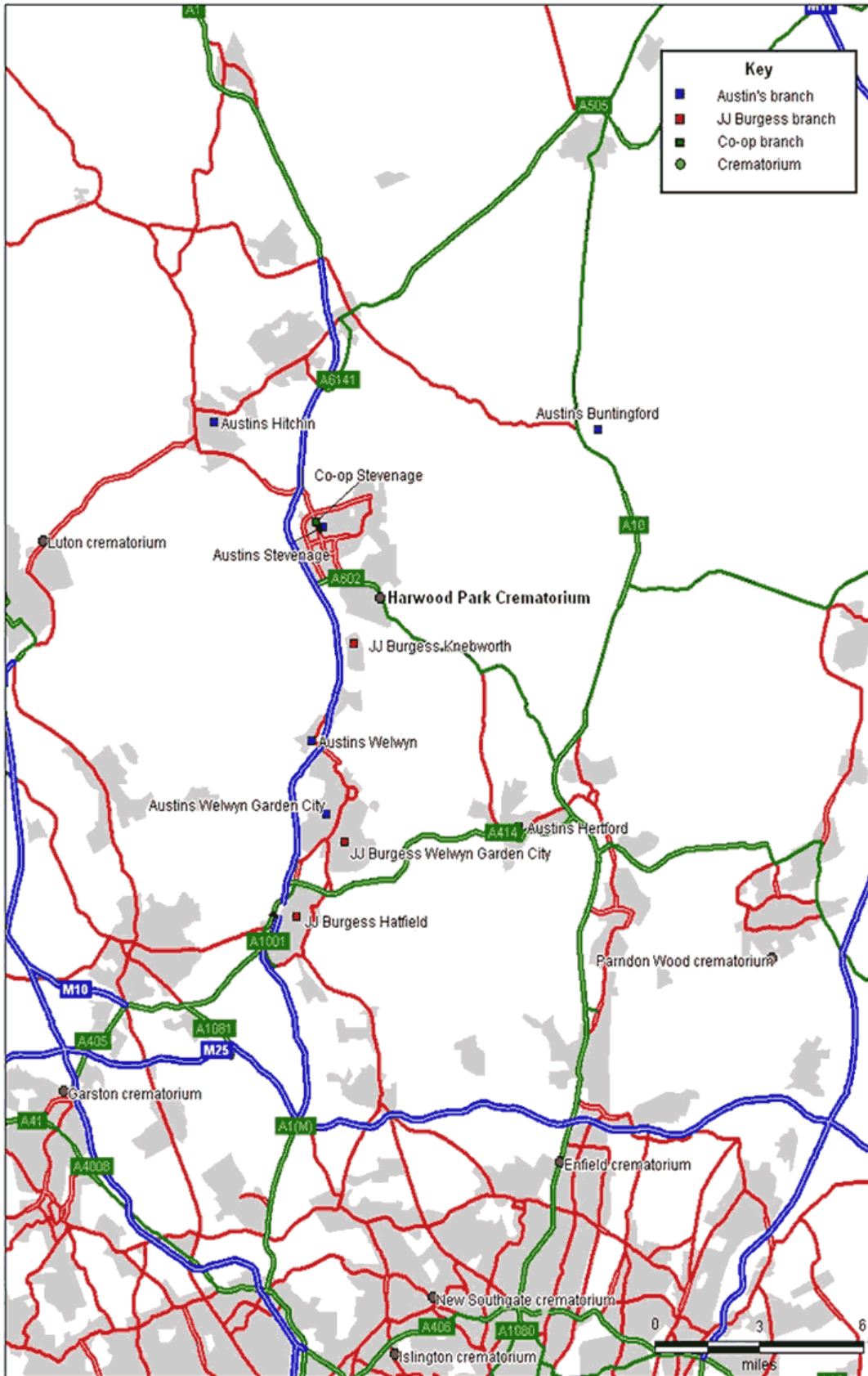
**Map 6: Co-op: funerals 2001 showing postcode location of the deceased by branch.**

[...]

**Map 7: Co-op: funerals 2002 showing postcode location of the deceased by branch.**

[...]

**MAP 8: Location of Austins, JJ Burgess and Co-op funeral director branches and location of other crematoria within 30 km of Harwood.**



# ANNEX 2 (A)

## Crematoria used by funeral directors 2002

Firm	Branch	Crematoria	Estimated distance of branch from crematoria (Kilometers)	Number of cremations	Percentage for each branch
Austins	Stevenage	Harwood Park	3	[...]	[...]
		West Hertfordshire	32.5	[...]	[...]
		Luton	17.8	[...]	[...]
		Other	-	[...]	[...]
	Hitchin	Harwood Park	15.1	[...]	[...]
		West Hertfordshire	37.6	[...]	[...]
		Luton	10.9	[...]	[...]
	Buntingford	Harwood Park	27	[...]	[...]
		Parndon Wood	34.7	[...]	[...]
		Enfield	33.7	[...]	[...]
		Other	-	[...]	[...]
	Hertford	Harwood Park	15.7	[...]	[...]
		Parndon Wood	19.4	[...]	[...]
		Enfield	18.4	[...]	[...]
		Other	-	[...]	[...]
	Welwyn	Harwood Park	10.1	[...]	[...]
Enfield		32.8	[...]	[...]	
West Hertfordshire		24.1	[...]	[...]	
Luton		26.5	[...]	[...]	
Other		-	[...]	[...]	
JJ Burgess	Knebworth	Harwood Park	5.3	[...]	[...]
		West Hertfordshire	20.8	[...]	[...]

		Luton	23.3	[...]	[...]
		Enfield	42.1	[...]	[...]
		Other	-	[...]	[...]
	Welwyn Garden City	Harwood Park	19.5	[...]	[...]
		West Hertfordshire	20.4	[...]	[...]
		Enfield	29	[...]	[...]
		Other	-	[...]	[...]
	Hatfield	Harwood Park	17.5	[...]	[...]
		West Hertfordshire	15.6	[...]	[...]
		Enfield	24.3	[...]	[...]
		Luton	34.7	[...]	[...]
		Golders Green	25.6	[...]	[...]
		Parndon Wood	30.2	[...]	[...]
		Other	-	[...]	[...]
Co-op	Stevenage	Harwood Park	5.3	[...]	[...]
		Luton	17.9	[...]	[...]
		Enfield	42	[...]	[...]
		Golders Green	43.2	[...]	[...]
		Other	-	[...]	[...]
Newlings	Royston	Cambridge	37.2	[...]	[...]
		Harwood Park	33.2	[...]	[...]
		Enfield	46.3	[...]	[...]
		Parndon Wood	47.3	[...]	[...]
		Other	-	[...]	[...]
Lodge Brothers	Royston	Cambridge	31.7	[...]	[...]
		Harwood Park	33.1	[...]	[...]
Jeremy Rule	Royston	Cambridge	31.8	[...]	[...]
		Harwood Park	33.1	[...]	[...]
EH Crouch	Letchworth	Harwood Park	15.1	[...]	[...]
		Luton	16.1	[...]	[...]
		Cambridge	48.8	[...]	[...]

Shires	Letchworth	Harwood Park	15.1	[...]	[...]
		Luton	16		
Philips	St Albans	West Hertfordshire	8.9	[...]	[...]
		Harwood Park	27	[...]	[...]
		Luton	23.4	[...]	[...]
		Golders Green	26.2	[...]	[...]
		Hendon	23.3	[...]	[...]
		Cambridge	81.9	[...]	[...]
		Other	-	[...]	[...]
	Harpenden	West Hertfordshire	22.5	[...]	[...]
		Harwood Park	25.1	[...]	[...]
		Luton	14.2	[...]	[...]
Powell	Hertford	Harwood Park	15.4	[...]	[...]
		Parndon Wood	19.1	[...]	[...]
		Enfield	18.1	[...]	[...]
	Ware	Harwood Park	14.5	[...]	[...]
		Parndon Wood	17.3	[...]	[...]
		Enfield	19.1	[...]	[...]
		Cambridge	68.9	[...]	[...]
		Other	-	[...]	[...]
MK Ginder	St Albans	West Hertfordshire	5.3	[...]	[...]

Source: JJ Burgess, Austins, Co-op Stevenage, plus the respondents to the OFT survey. Travel distances calculated using the RAC Routeplanner.

**NB** The OFT does not have figures for the Welwyn Garden City branch of Austin's. The branch opened in June 2003.

# ANNEX 2 (B)

## Funerals carried out by Austins, JJ Burgess and Co-op (Stevenage) in 2001 and 2002

TABLE 1: FUNERALS CARRIED OUT BY AUSTINS, JJ BURGESS AND CO-OP (STEVENAGE) BY BRANCH IN 2001

Firm	Branch	No of deceased residing within specified distance of branch (miles)								
		0.5	1.0	1.5	2.0	3.0	4.0	5.0	10.0	20.0
Co-op	Stevenage	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Austins	Stevenage	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Hitchin	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Buntingford	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Hertford	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Welwyn	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
JJ Burgess	Knebworth	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Welwyn	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Garden City	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Hatfield	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<b>Total</b>		[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: Table produced by OFT from postcode data supplied by Co-op, Austins and JJ Burgess.

TABLE 1(A): FUNERALS CARRIED OUT BY AUSTINS, JJ BURGESS AND CO-OP (STEVENAGE) BY BRANCH IN 2001 (TOTALS)

<b>Firm</b>	<b>Branch</b>	<b>Total*</b>	<b>Not mapped</b>	<b>Grand total</b>
Co-op	Stevenage	[...]	[...]	[...]
Austins	Stevenage	[...]	[...]	[...]
	Hitchin	[...]	[...]	[...]
	Buntingford	[...]	[...]	[...]
	Hertford	[...]	[...]	[...]
	Welwyn	[...]	[...]	[...]
	Welwyn Garden City	[...]	[...]	[...]
JJ Burgess	Knebworth	[...]	[...]	[...]
	Welwyn Garden City	[...]	[...]	[...]
	Hatfield	[...]	[...]	[...]
<b>Grand total</b>		[...]	[...]	[...]

Source: Table produced by OFT from postcode data supplied by Co-op, Austins and JJ Burgess.

Notes: 'Total' refers to the total number of postcodes, or addresses for which the OFT found postcodes, supplied by the parties which were recognised by the mapping software used by the OFT.

'Grand total' refers to the total number of addresses, mapped and unmapped, supplied by the parties in each case.

\* Total will include funerals more than 20 miles distant from branch.

TABLE 2: PERCENTAGE OF FUNERALS CARRIED OUT BY AUSTINS, JJ BURGESS AND CO-OP (STEVENAGE) IN 2001

Firm	Branch	% of deceased (grand total) residing within specified distance of branch (miles)								
		0.5	1.0	1.5	2.0	3.0	4.0	5.0	10.0	20.0
Co-op	Stevenage	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Austins	Stevenage	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Hitchin	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Buntingford	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Hertford	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Welwyn	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
JJ Burgess	Knebworth	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Welwyn	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Garden	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	City	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Hatfield	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: Table produced by OFT from postcode data supplied by Co-op, Austins and JJ Burgess.

TABLE 2(A): PERCENTAGE OF FUNERALS CARRIED OUT BY AUSTINS, JJ BURGESS AND CO-OP (STEVENAGE) IN 2001 (TOTALS)

Firm	Branch	Total	Not mapped	Grand total
Co-op	Stevenage	[...]	[...]	100
Austins	Stevenage	[...]	[...]	100
	Hitchin	[...]	[...]	100
	Buntingford	[...]	[...]	100
	Hertford	[...]	[...]	100
	Welwyn	[...]	[...]	100
JJ Burgess	Knebworth	[...]	[...]	100
	Welwyn Garden	[...]	[...]	100
	City	[...]	[...]	100
	Hatfield	[...]	[...]	100

Source: Table produced by OFT from postcode data supplied by Co-op, Austins and JJ Burgess.

See notes to table 1(A).

TABLE 3: FUNERALS CARRIED OUT BY AUSTINS, JJ BURGESS AND CO-OP (STEVENAGE) IN 2002

Firm	Branch	No of deceased residing within specified distance of branch (miles)								
		0.5	1.0	1.5	2.0	3.0	4.0	5.0	10.0	20.0
Co-op	Stevenage	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Austins	Stevenage	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Hitchin	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Buntingford	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Hertford	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Welwyn	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
JJ Burgess	Knebworth	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Welwyn	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Garden	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	City	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Hatfield	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<b>Totals</b>		[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: Table produced by OFT from postcode data supplied by Co-op, Austins and JJ Burgess.

TABLE 3(A): FUNERALS CARRIED OUT BY AUSTINS, JJ BURGESS AND CO-OP (STEVENAGE) BY BRANCH IN 2001 (TOTALS)

<b>Firm</b>	<b>Branch</b>	<b>Total</b>	<b>Not mapped</b>	<b>Grand total</b>
Co-op	Stevenage	[...]	[...]	[...]
Austins	Stevenage	[...]	[...]	[...]
	Hitchin	[...]	[...]	[...]
	Buntingford	[...]	[...]	[...]
	Hertford	[...]	[...]	[...]
	Welwyn	[...]	[...]	[...]
JJ Burgess	Knebworth	[...]	[...]	[...]
	Welwyn Garden City	[...]	[...]	[...]
		[...]	[...]	[...]
	Hatfield	[...]	[...]	[...]
<b>Grand total</b>		[...]	[...]	[...]

Source: Table produced by OFT from postcode data supplied by Co-op, Austins and JJ Burgess.

See notes to table 1(A).

TABLE 4: PERCENTAGE OF FUNERALS CARRIED OUT BY AUSTINS, JJ BURGESS AND CO-OP (STEVENAGE) IN 2002

		% OF FUNERALS (GRAND TOTAL) WITHIN SPECIFIED DISTANCE OF BRANCH (MILES)								
Firm	Branch	0.5	1.0	1.5	2.0	3.0	4.0	5.0	10.0	20.0
Co-op	Stevenage	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Austins	Stevenage	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Hitchin	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Buntingford	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Hertford	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Welwyn	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	JJ Burgess	Knebworth	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Welwyn	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Garden City	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	Hatfield	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: Table produced by OFT from postcode data supplied by Co-op, Austins and JJ Burgess.

TABLE 4(A): PERCENTAGE OF FUNERALS CARRIED OUT BY AUSTINS, JJ BURGESS AND CO-OP (STEVENAGE) IN 2002 (TOTALS)

Firm	Branch	Total*	Not mapped	Grand total
Co-op	Stevenage	[...]	[...]	100
Austins	Stevenage	[...]	[...]	100
	Hitchin	[...]	[...]	100
	Buntingford	[...]	[...]	100
	Hertford	[...]	[...]	100
	Welwyn	[...]	[...]	100
	JJ Burgess	Knebworth	[...]	[...]
	Welwyn Garden City	[...]	[...]	100
	Hatfield	[...]	[...]	100

Source: Table produced by OFT from postcode data supplied by Co-op, Austins and JJ Burgess.

See notes to table 1(A).

# ANNEX 3

TABLE 1: FUNERALS ARRANGED BY JJ BURGESS IN 2001

Branch	Burials	Cremations at Harwood	Cremations at other crematoria	Total cremations	Total Burials and Cremations
Knebworth	[...]	[...]	[...]	[...]	[...]
Welwyn	[...]	[...]	[...]	[...]	[...]
Garden City					
Hatfield	[...]	[...]	[...]	[...]	[...]
<b>TOTAL</b>	[...]	[...]	[...]	[...]	[...]

Source: Letter from JJ Burgess to the OFT (29 April 2003).

TABLE 2: FUNERALS ARRANGED BY JJ BURGESS IN 2002

Branch	Burials	Cremations at Harwood	Cremations at other crematoria	Total cremations	Total Burials and Cremations
Knebworth	[...]	[...]	[...]	[...]	[...]
Welwyn	[...]	[...]	[...]	[...]	[...]
Garden City					
Hatfield	[...]	[...]	[...]	[...]	[...]
<b>TOTAL</b>	[...]	[...]	[...]	[...]	[...]

Source: Letter from JJ Burgess to the OFT (29 April 2003).

TABLE 3: STEVENAGE AND KNEBWORTH: MARKET SHARES FOR 2001

Firm & Branch	Burials	Cremations at Harwood	Cremations at other Crematoria	Total Cremations	Total Funerals	Total Funerals %
Austins Stevenage	[...]	[...]	[...]	[...]	[...]	[...]
Co-op Stevenage	[...]	[...]	[...]	[...]	[...]	[...]
JJ Burgess Knebworth	[...]	[...]	[...]	[...]	[...]	[...]
<b>TOTAL</b>	[...]	[...]	[...]	[...]	[...]	100

Source: Austins, Co-op, and JJ Burgess.

TABLE 4: STEVENAGE AND KNEBWORTH: MARKET SHARES FOR 2002

Firm & Branch		Burials	Cremations at Harwood	Cremations at other Crematoria	Total Cremations	Total Funerals	Total Funerals %
Austins	Stevenage	[...]	[...]	[...]	[...]	[...]	[...]
Co-op	Stevenage	[...]	[...]	[...]	[...]	[...]	[...]
JJ Burgess	Knebworth	[...]	[...]	[...]	[...]	[...]	[...]
<b>TOTAL</b>		[...]	[...]	[...]	[...]	[...]	100

Source: Austins, Co-op, and JJ Burgess.

# ANNEX 4

## Funerals carried out by funeral directors other than Austins, JJ Burgess and Co-op (Stevenage) in West Hertfordshire

Firm	Branch	Total number of funerals carried out	Involving resident of Stevenage or Knebworth		Location of main competitor (most important competitor's location listed first)
			Yes	No	
Newlings	Royston	[...]	[...]	[...]	[...]
Lodge Bros	Royston	[...]	[...]	[...]	[...]
Jeremy Rule	Royston	[...]	[...]	[...]	[...]
EH Crouch	Letchworth	[...]	[...]	[...]	[...]
Shires	Letchworth	[...]	[...]	[...]	[...]
Philips	St Albans	[...]	[...]	[...]	[...]
MK Ginder	St Albans	[...]	[...]	[...]	[...]
Philips	Harpenden	[...]	[...]	[...]	[...]
Powell	Hertford	[...]	[...]	[...]	[...]
Powell	Ware	[...]	[...]	[...]	[...]

Source: OFT 2003 survey of other funeral directors in North Hertfordshire.