

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

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In the Matter of	)	
	)	
Fidelity National Financial, Inc.	)	File No. 091-0032
	)	
a corporation,	)	
	)	
_____	)	

**PETITION FOR APPROVAL OF PROPOSED DIVESTITURE  
TO DATA TRACE INFORMATION SERVICES, LLC**

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f), and Paragraph III.A. of the Decision and Order contained in the Agreement Containing Consent Order accepted for public comment in this matter (“Decision and Order”), Respondent Fidelity National Financial, Inc. (“Fidelity”) hereby petitions the Commission to approve the divestiture of the Michigan Title Plant Assets<sup>1</sup> to Data Trace Information Services, LLC, (“Data Trace”) a Delaware Limited Liability Company, defined in the Decision and Order in this matter. The Michigan Title Plant Assets will be sold to Data Trace pursuant to the Michigan Title Plant Purchase Agreement dated September 2, 2010 (the “Purchase Agreement”). The executed Purchase Agreement is attached hereto as Confidential Exhibit A.

Background

On November 25, 2008, Fidelity National Financial, Inc. (“Fidelity”) and LandAmerica Financial, Inc. (“LandAmerica”) entered into an acquisition agreement under

<sup>1</sup> This petition uses the same definitions as those from the Decision and Order in this matter. *In the Matter of Fidelity National Financial, Inc.*, FTC No. 091 0032 (July 16, 2010).

which Fidelity was to acquire LandAmerica's title insurance subsidiaries ("Acquisition"). On November 26, 2008, LandAmerica filed for bankruptcy and its title insurance subsidiaries were placed into receivership under the supervision of the Nebraska Department of Insurance. On Tuesday, December 16, 2008, the United States Bankruptcy Court for the Eastern District of Virginia held a hearing on LandAmerica's motion to sell its subsidiaries to Fidelity. The bankruptcy court took testimony from LandAmerica, Fidelity, the unsecured creditors committee, the secured creditors committee, the Nebraska Insurance Commission, and the Federal Trade Commission. The court found that Fidelity's purchase of the LandAmerica title insurance subsidiaries was in the best interest of the estate, and approved the sale of the subsidiaries to Fidelity. The Acquisition was consummated shortly thereafter.

The Commission, however, continued its investigation of the Acquisition relating to its potential impact on competition involving title information services in certain geographic areas. On June 24, 2010, Fidelity executed an Agreement Containing Consent Order that included the Decision and Order (the "Consent Agreement") to settle the Commission's charges that the proposed acquisition by Fidelity of three title insurance underwriters from LandAmerica Financial Group, Inc. would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Commission's complaint alleges that Fidelity's acquisition of LandAmerica's title insurance subsidiaries may substantially lessen competition in the provision of title information services in several counties in Oregon, and three counties making up the Detroit, Michigan, metropolitan area, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

The Commission accepted the Consent Agreement for public comment on July 16, 2010. Pursuant to the terms of the Consent Agreement, Fidelity divested the TriCounty Title Plant Divestiture Interest and the Downstate Title Plant Assets to Northwest Title shortly thereafter to resolve the Commission's concerns in Oregon.

With respect to the three counties in the Detroit, Michigan metropolitan area, the Commission was concerned that Fidelity's purchase of LandAmerica's subsidiaries may give Fidelity the power to affect the competitive significance of Data Trace, an independent title information services provider. Data Trace, in which LandAmerica once had an ownership interest, is a provider of title plant information services in the Detroit metropolitan area. LandAmerica had previously licensed the Michigan Title Plant Assets to Data Trace, and the Commission was concerned that Fidelity's acquisition of the LandAmerica title insurance subsidiaries would permit Fidelity to prevent Data Trace (or any other provider of title insurance services) from using such licensed assets. The Consent Agreement provides that Fidelity will divest the Michigan Title Plant Assets to a pre-approved purchaser to remedy the competitive concern in three counties in the Detroit, Michigan, metropolitan area.

**[REDACTED FROM THE PUBLIC RECORD VERSION]**

Thus, prompt consummation of the divestiture to Data Trace will further the purposes of the Decision and Order and is in the public interest. All pre-closing conditions, with the exception of Commission approval, have been or will be satisfied, and Fidelity and Data Trace are in a position to close the divestiture within a few days of such approval and consent.

Fidelity accordingly requests that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2), and grant this petition by approving the divestiture of the Michigan Title Plant Assets to Data Trace pursuant to the Purchase Agreement as soon as practicable after the close of the public comment period.

Because the confidential version of this petition, including Confidential Exhibit A, contains confidential and competitively-sensitive business information relating to the divestiture of the Michigan Title Plant Assets – the disclosure of which may prejudice Fidelity and Data Trace, cause harm to the ongoing competitiveness of the Michigan Title Plant Assets, and impair Fidelity's ability to comply with its obligations under the Consent Agreement – Fidelity has redacted such confidential information from the public version of this petition. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(4) & 4.9(c), Fidelity requests that the confidential version of this petition and the information contained herein be accorded confidential treatment under 5 U.S.C. § 552 and Section 4.10(a)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2). The confidential version of this petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4), 552(b)(7)(A), 552(b)(7)(B), & 552(b)(7)(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h).

**I. The Purchase Agreement Is Final and Consistent with the Decision and Order's Terms**

Paragraph III.A. of the Decision and Order requires Fidelity to divest the Michigan Title Plant Assets to a purchaser approved by the Commission. Pursuant to this requirement, Fidelity proposes to sell such assets to Data Trace.

On September 2, 2010 Fidelity entered into a Purchase Agreement to sell the Michigan Title Plant Assets to Data Trace. The Purchase Agreement complies with the requirements of Paragraph III of the Decision and Order, and would thus meet Fidelity's obligation to divest the Michigan Title Plant Assets, absolutely and in good faith.

As demonstrated above and in the accompanying Purchase Agreement, Fidelity has entered into an agreement relating to the divestiture of the Michigan Title Plant Assets that fully complies with the Decision and Order. Accordingly, Fidelity hereby seeks Commission approval of the proposed divestiture pursuant to Paragraph III. A. of the Decision and Order.

**II. The Proposed Divestiture Will Achieve the Purposes of the Decision and Order**

The proposed divestiture of the Michigan Title Plant Assets, as embodied in the Purchase Agreement, will ensure competition remains at the level that existed prior to the Acquisition and thus, achieve the purposes of Paragraph III.D. of the Decision and Order. Data Trace was an incumbent supplier of title information services in the Detroit, Michigan metropolitan area prior to the Acquisition. It utilized the Michigan Title Plant Assets pursuant to an agreement with LandAmerica to carry on that business. As a part of the Acquisition, Fidelity acquired the Michigan Title Plant Assets and Data Trace's right to use the Michigan Title Plant Assets was terminated as a part of the LandAmerica bankruptcy proceedings. The proposed divestiture will provide Data Trace with all of the rights to the Michigan Title Plant Assets that it previously had and leave the competitive

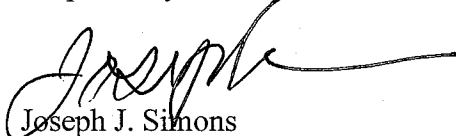
landscape unchanged from prior to the Acquisition.

In sum, the proposed divestiture will remedy any anticompetitive effects that could result from the Acquisition. The Purchase Agreement will achieve the Commission's stated purposes of ensuring the continued use of the Michigan Title Plan Assets in the same business in which they were engaged at the time of the announcement of the proposed Acquisition and remedy the lessening of competition as alleged in the Commission's Complaint.

Conclusion

For the foregoing reasons, Fidelity respectfully requests that the Commission approve the proposed divestiture of the Michigan Title Plant Assets to Data Trace, as embodied in the Purchase Agreement, as soon as practicable after expiration of the public comment period.

Respectfully submitted,




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Dated: September 7, 2010

**CERTIFICATION OF FIDELITY NATIONAL FINANCIAL, INC.**

The facts and information related in the foregoing Petition, insofar as they pertain to Fidelity National Financial, Incorporated, its subsidiaries, and its assets, are, to the best of my knowledge, true, correct, and complete.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



**Don Partington**  
Executive Vice President, Legal and Strategic Affairs  
Fidelity National Financial, Incorporated

# **EXHIBIT A**

**[REDACTED FROM THE PUBLIC RECORD VERSION]**