

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of)
)

Fidelity National Financial, Inc.,)
a corporation, and)

Lender Processing Services, Inc.,)
a corporation.)
_____)

File No. 131 0159

**APPLICATION FOR APPROVAL OF PROPOSED DIVESTITURE
OF THE TITLE PLANT ASSETS TO AMERITITLE, INC.**

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Pursuant to Section 2.41(i) of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f), and Paragraph III of the Decision and Order issued by the Commission on March 4, 2014 (the “Decision and Order”), Respondent Fidelity National Financial, Inc. (“Fidelity”) hereby respectfully petitions the Commission to approve the divestiture (the “Proposed Divestiture”) of the Title Plant Assets¹ to AmeriTitle, Inc. (“AmeriTitle”). The Title Plant Assets will be sold to AmeriTitle pursuant to the Purchase and Sale Agreement dated April 10, 2014 (the “Purchase Agreement”). The executed Purchase Agreement is attached hereto as Confidential Exhibit A.

INTRODUCTION

On May 28, 2013, Fidelity National Financial, Inc. (“Fidelity”) and Lender Processing Services, Inc. (“LPS”) entered into an Agreement and Plan of Merger pursuant to which Fidelity was to acquire LPS (the “Acquisition”). On or about December 13, 2013, Fidelity executed an Agreement Containing Consent Orders that included the Decision and Order and Order to Maintain Assets (the “Consent Agreement”) to settle the Commission’s charges that the proposed Acquisition 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.

Specifically, the Commission’s complaint alleges that Fidelity’s acquisition of LPS may substantially lessen competition in the provision of Title Information Services in Clatsop, Columbia, Coos, Josephine, Polk, and Tillamook counties in Oregon; and the tri-county Portland metropolitan area consisting of Clackamas, Multnomah, and Washington counties in Oregon.

¹ Capitalized terms in this submission if not otherwise defined have the same meanings ascribed in the Decision and Order issued by the Commission in this matter.

The Commission accepted the Consent Agreement for public comment on December 23, 2013 by a vote of three to one, with Commissioner Wright dissenting, and issued the Order to Maintain Assets. On January 2, 2014, Fidelity acquired LPS. On March 4, 2014, the Commission issued the Decision and Order.

Pursuant to the terms of the Decision and Order, Fidelity must “divest the Title Plant Assets, absolutely and in good faith, at no minimum price, to an Acquirer that receives prior approval of the Commission and in a manner (including a Divestiture Agreement) that receives the prior approval of the Commission.” By this Application, Fidelity seeks approval to divest the Title Plant Assets to AmeriTitle. Approval of the Proposed Divestiture is appropriate because the Proposed Divestiture complies with the terms of the Decision and Order and achieves the purposes of the Commission in requiring the divestiture of the Title Plant Assets.

Fidelity accordingly requests that the Commission grant this Application and approve the Proposed Divestiture as soon as practicable.

REQUEST FOR CONFIDENTIAL TREATMENT

Because the confidential version of this application, including Confidential Exhibit A, contains confidential and competitively-sensitive business information relating to the divestiture of the Title Plant Assets – the disclosure of which may prejudice Fidelity and AmeriTitle, cause harm to the ongoing competitiveness of the Title Plant Assets, and impair Fidelity’s ability to comply with its obligations under the Decision and Order – Fidelity has redacted such confidential information from the public version of this Application. 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 application 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 Application 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 AND SALE AGREEMENT IS CONSISTENT WITH THE TERMS OF THE DECISION AND ORDER

Paragraph III of the Decision and Order requires Fidelity to divest the Title Plant Assets to a purchaser approved by the Commission. Pursuant to this requirement, Fidelity proposes to sell the Title Plant Assets to AmeriTitle. On April 10, 2014, Fidelity entered into the Purchase Agreement to sell the Title Plant Assets to AmeriTitle. 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 Title Plant Assets absolutely and in good faith.

A. The Purchase Agreement Divests the Title Plant Assets Absolutely and in Good Faith

Paragraph III of the Decision and order requires that Fidelity "divest the Title Plant Assets[] absolutely and in good faith." The Proposed Divestiture satisfies this requirement. The Purchase Agreement provides that Fidelity "agrees to sell, transfer and deliver to [AmeriTitle], all right of Seller in and to the Copy [of the Title Plants to be divested] at the Closing." Additionally, the form of Bill of Sale attached to the Purchase Agreement as Exhibit A and required to be delivered to AmeriTitle at or before the closing of the sale states that "Ticor Title Company of Oregon . . . hereby sells, assigns and delivers unto AmeriTitle, Inc. . . . a Copy of the Title Plants (as such terms are defined in the Purchase and Sale Agreement . . .)." Furthermore, Section 2 of the Purchase Agreement contains numerous representations and warranties of Fidelity, indicating that Fidelity is selling the Title Plant Assets in good faith.

Thus, the Proposed Divestiture satisfies the requirement of the Decision and Order that Fidelity divest the Title Plant Assets “absolutely and in good faith.”

B. Fidelity is Seeking Prior Approval of the Proposed Divestiture from the Commission

Paragraph III of the Decision and Order requires that Fidelity “divest the Title Plant Assets . . . to an Acquirer that receives the prior approval of the Commission and in a manner (including a Divestiture Agreement) that receives prior approval of the Commission.” By submitting this Application, Fidelity is respectfully requesting that the Commission approve AmeriTitle as the Acquirer and that the Commission approve the Purchase Agreement attached hereto as Confidential Exhibit A. In addition, the Purchase Agreement conditions closing of the Proposed Divestiture on “qualification of [AmeriTitle] as an approved purchaser under any order, settlement, or other agreement of the Federal Trade Commission requiring Seller, or its parent or affiliates, to divest the Copy.”

C. The Proposed Divestiture Satisfies the Remaining Requirements of the Decision and Order

In addition to the requirements described above, the Decision and Order requires that “[p]rior to the Divestiture Date, Respondents shall obtain all consents, approvals, and waivers from all Third Parties that are necessary to permit Respondents to divest the Portland Title Agency Interest and transfer all associated rights to the Acquirer.” Indeed, the Purchase Agreement provides that “all consents or approvals required for Seller to enter into and consummate the transactions contemplated by this Agreement shall have been obtained” prior to the Proposed Divestiture. All such consents, approvals, and waivers have been obtained, and no further Third Party consents are necessary.

II. THE PROPOSED DIVESTITURE WILL ACHIEVE THE PURPOSES OF THE DECISION AND ORDER

As indicated in Paragraph III of the Decision and Order, “[t]he purpose of the divestiture of the Title Plant Assets is to remedy the lessening of competition in Title Information Services resulting from the Acquisition as alleged in the Commission’s Complaint.” In the Complaint, the Commission alleges that the Acquisition may substantially lessen competition in the provision of title information services “by increasing the likelihood of collusion or coordinated interaction in Clatsop, Columbia, Coos, and Tillamook counties, Oregon, where the proposed acquisition reduces the number of independent title plants from three to two.” This concern is addressed by the Proposed Divestiture. Selling the Title Plant Assets, which include Copies of the title plants covering these counties, to AmeriTitle will ensure competition remains at the level that existed prior to the Acquisition. After the Proposed Divestiture, there will be three independent title plants in these counties, which was the number of independent title plants in existence in these counties prior to the Acquisition.

Additionally, the Commission alleges that the Acquisition may substantially lessen competition in the provision of title information services “by increasing the likelihood of collusion or coordinated interaction in Josephine and Polk counties, Oregon, where the proposed acquisition reduces the number of independent title plants from four to three.” This concern is addressed by the Proposed Divestiture. After the Proposed Divestiture, there will be four independent title plants in Josephine County and three independent title plant operators in Polk County (AmeriTitle already owns a title plant in Polk County). Polk County has only approximately 75,000 residents. The relatively small population in Polk County may make it difficult to find another viable competitor who is not already operating in Polk County, but who is interested in purchasing a Copy of the Polk County title plant. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Thus, although the number of independent plant operators in Polk County would be reduced from four to three, Fidelity's superior plant will be provided to a viable competitor

[REDACTED] Finally, we note that for Clatsop, Columbia, Coos, and Tillamook counties, the existence of three competitors per county satisfies the Commission that competition is being maintained. The Commission should recognize that the existence of three competitors in Polk County is also sufficient to protect competition.

Thus, divesting the Title Plant Assets to AmeriTitle, will achieve the purposes of Paragraph III of the Decision and Order.

Furthermore, AmeriTitle is a qualified and viable purchaser of the Title Plant Assets. AmeriTitle has served real estate professionals in the Pacific Northwest for over twenty-five years,² growing from a single office to a regional network.³ The company offers title insurance, escrow services, account services and other services.⁴ Additionally, while AmeriTitle operates in many Oregon counties, it currently does not serve Clatsop, Columbia, Coos, Josephine or Tillamook Counties.⁵ Thus, by acquiring the Title Plant Assets, AmeriTitle will become an additional entrant in these counties with the resources it needs to compete effectively.

² AmeriTitle, Company Profile, *available at* http://www.ameri-title.com/about/Company_Profile.php.

³ AmeriTitle, History, *available at* http://www.ameri-title.com/about/AmeriTitle_History.php.

⁴ *Id.*

⁵ *See* AmeriTitle, "Counties We Serve," <http://www.ameri-title.com/>.

CONCLUSION

Because the Proposed Divestiture is pro-competitive, in the public interest, addresses the competitive concerns raised in the Complaint and Decision and Order, fully complies with the terms of the Decision and Order, and for all of the additional reasons set forth above, Fidelity respectfully requests that the Commission approve the Proposed Divestiture.

Dated: New York, New York
April 22, 2014

Respectfully submitted,

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PUBLIC VERSION

CONFIDENTIAL EXHIBIT A

[REDACTED]