

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

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

)	
In the Matter of)	
)	Docket No. C-4425
Fidelity National Financial, Inc.,)	
a corporation, and)	
)	
Lender Processing Services, Inc.,)	
a corporation.)	
)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by the Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondents Fidelity National Financial, Inc. (“Fidelity”) and Lender Processing Services, Inc. (“LPS”) have entered into an acquisition agreement that constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and which, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

1. “Title plant” means a privately-owned collection of records and/or indices regarding the ownership of and interests in real property. The term includes such collections that are regularly maintained and updated by obtaining information or documents from the public records, as well as such collections of information that are not regularly updated.

2. “Title information services” means providing selected information contained in a title plant to a customer or user or permitting a customer or user to have access to information contained in a title plant.

3. “Respondent Fidelity” or “Fidelity” means Fidelity National Financial, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its subsidiaries, divisions, joint ventures, groups, and affiliates in each case controlled by Fidelity; and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

4. “Respondent LPS” or “LPS” means Lender Processing Services, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its subsidiaries, divisions, joint ventures, groups, and affiliates in each case controlled by LPS; and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

II. RESPONDENTS

5. Respondent Fidelity is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices located at 601 Riverside Avenue, Jacksonville, FL 32204. Fidelity, among other things, is engaged in the sale of title insurance and the provision of title information services.

6. Respondent LPS is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices located at 601 Riverside Avenue, Jacksonville, FL 32204. LPS, among other things, is engaged in the sale of title insurance and the provision of title information services.

7. Respondents and each of their relevant operating subsidiaries are, and at all relevant times have been, engaged in activities in or affecting “commerce” as defined in Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

III. THE PROPOSED ACQUISITION

8. Pursuant to an Agreement and Plan of Merger dated May 28, 2013, Fidelity proposes to acquire all of the outstanding common stock of LPS for a total equity value of approximately \$2.9 billion.

IV. RELEVANT MARKETS

9. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the proposed acquisition is the provision of title information services.

10. For the purposes of this Complaint, the relevant geographic areas in which to analyze the effects of the proposed acquisition in the relevant line of commerce are the following jurisdictions in the state of Oregon: Clatsop, Columbia, Coos, Josephine, Polk, and Tillamook counties; and the tri-county Portland metropolitan area consisting of Clackamas, Multnomah, and Washington counties. Title information is generated and collected on a county level and because

of the local character of the real estate markets in which the title information services are used, geographic markets for title information services are highly localized.

V. STRUCTURE OF THE MARKETS

11. Oregon law requires title insurers and title insurance producers, who are the only users of title information services, to own an interest in a title plant in each county in which they issue policies. Oregon's regulatory requirement prevents third-party information providers from offering title information services in the relevant geographic areas listed under Paragraph 10.

12. Four independent title plants provide title information services in Josephine and Polk counties, Oregon. Three independent title plants provide title information services in Clatsop, Columbia, Coos, and Tillamook counties, Oregon. Each independent title plant in these counties has a single owner, a title insurer or title insurance producer, who is the plant's sole user. Both Respondents own title plants in each of these counties.

13. A single jointly-owned title plant provides title information services in the tri-county Portland metropolitan area consisting of Clackamas, Multnomah, and Washington counties. The jointly-owned title plant is governed by an agreement permitting each owner to use the title plant. The agreement sets forth the terms under which the owners can vote to expel other owners from the joint title plant. Both Respondents own interests in the joint title plant.

14. The markets for title information services in the geographic areas listed under Paragraph 10 are highly concentrated. The proposed acquisition significantly increases concentration in the relevant markets.

VI. BARRIERS TO ENTRY

15. Entry into the market for providing title information services is unlikely and would not occur in a timely manner to deter or counteract the adverse anticompetitive effects described in Paragraph 16, because of, among other things, the time and expense necessary to collect, compile, and index historical real property records.

VII. EFFECTS OF THE ACQUISITION

16. The effects of the proposed acquisition, if consummated, may be substantially to lessen competition in the relevant markets in the following ways, among others:

- a. by eliminating actual, direct, and substantial competition between Respondents Fidelity and LPS in the relevant markets;
- b. 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;

c. 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; and

d. by increasing the likelihood of collusion or coordinated interaction in the tri-county Portland metropolitan area consisting of Clackamas, Multnomah, and Washington counties, Oregon, where the proposed acquisition reduces the number of joint title plant owners necessary to expel other owners from the joint title plant.

VIII. VIOLATIONS CHARGED

17. The agreement described in Paragraph 8 constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

18. The acquisition described in Paragraph 8, if consummated, would constitute a 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-third day of December, 2013 issues its Complaint against Respondents.

By the Commission, Commissioner Wright dissenting.

April J. Tabor
Acting Secretary

SEAL: