

**ANALYSIS OF THE AGREEMENT CONTAINING CONSENT ORDER TO AID
PUBLIC COMMENT**

***In the Matter of
Fidelity National Financial, Inc.
File No. 0910032***

I. Introduction

The Federal Trade Commission (“Commission” or “FTC”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from Fidelity National Financial, Inc. (“Fidelity”). Fidelity purchased three title insurance subsidiaries from LandAmerica Financial, Inc. (“LandAmerica”). The subsidiaries were Commonwealth Land Title Insurance Company (“Commonwealth”), Lawyers Title Insurance Company (“Lawyers”), and United Capital Title Insurance Company (“United”). Fidelity’s acquisition of Commonwealth and Lawyers created likely anticompetitive effects that the proposed Consent Agreement resolves. Under the terms of the proposed Consent Agreement, Fidelity is required, among other things, to divest one share of its ownership interest in a joint title plant serving the Portland, Oregon, metropolitan area, and divest a copy of its title data serving Benton, Jackson, Linn, and Marion Counties, in Oregon. Additionally, Fidelity will sell a copy of title data that LandAmerica had provided to a third party, Data Trace, to a pre-approved purchaser to remedy the competitive concern in three counties in the Detroit, Michigan, metropolitan area.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

On November 25, 2008, Fidelity and LandAmerica entered into an acquisition agreement under which Fidelity acquired LandAmerica’s title insurance subsidiaries for an amount valued, at the time of entering into the acquisition agreement, at approximately \$258 million (“Acquisition”). The Commission’s Complaint alleges that Fidelity’s acquisition violates 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, by eliminating an actual, direct, and substantial competitor from certain local markets in the United States.

II. Description of the Parties and the Acquisition

Fidelity, a publicly traded company, is based in Jacksonville, Florida. Its title insurance services facilitate the purchase, sale, transfer, and finance of residential and commercial real estate. Fidelity provides title insurance to residential and commercial property buyers and sellers, real estate agents and brokers, developers, attorneys, mortgage brokers and lenders, and title insurance agents through its subsidiaries, Fidelity National Title Company, Title Insurance Company, Ticor Title Insurance Company, Commonwealth, and Lawyers.

LandAmerica was a publicly traded company based in Glen Allen, Virginia, that operated through wholly owned subsidiaries. LandAmerica generated the majority of its income from its title insurance subsidiaries, Commonwealth and Lawyers.

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, and the FTC. 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.

III. Title Information Services

Title insurance companies insure clients against the risk that clear title is not transferred during the sale of property. Risks include failure to detect defective deeds or to discover liens, adverse court judgments, or encumbrances created by other security interests. In order to conduct title searches in a timely fashion, title insurers need access to the most accurate, up-to-date, and conveniently arranged title information. That information is found, among other places, in title plants, which are private collections of historic and current information about the status of title to real property. Because title information is essential to conducting a title search, ownership of, or access to, a title plant is a title insurer's primary competitive asset.

IV. The Complaint

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 Complaint alleges that the relevant product market in which to analyze the effects of the acquisition is the provision of title information services. "Title information services" means access to selected information contained in a title plant that is used to determine ownership of, and interests in, real property in connection with the underwriting and issuance of title insurance policies.

The Complaint also alleges that the relevant geographic markets are local in nature. Title information is generated and collected on a county level and, because of the highly local character of the real estate markets in which the title information services are used, geographic markets for title information services are highly localized and consist of the county or other local jurisdiction embraced by the real property information contained in the title plant. The three geographic areas of concern outlined in the Complaint are: (1) the tri-county Portland, Oregon, metropolitan area consisting of Clackamas, Multnomah, and Washington Counties; (2) Benton, Jackson, Linn, and Marion Counties, in Oregon; and (3) the tri-county Detroit, Michigan, metropolitan area consisting of Oakland, Macomb, and Wayne Counties.

In the Portland, Oregon, metropolitan area, the acquisition of LandAmerica's subsidiaries vested Fidelity with a controlling interest in the sole title plant providing title insurance information services. Absent the proposed relief regarding the title plant serving the Portland metropolitan area, Fidelity's acquisition of LandAmerica's subsidiaries increases the risk that Fidelity would unilaterally restrict or withhold access to title information, thus eliminating the potential for a new title insurance company to enter.

In Benton, Jackson, Linn, and Marion Counties in Oregon, the acquisition of LandAmerica's subsidiaries reduced the number of independent title plants providing title information services in these counties from four to three. Absent the proposed relief in these counties, Fidelity's acquisition would increase the risk of collusion among the remaining market participants to restrict or withhold access to title information, thus eliminating the potential for a new title insurance company to enter.

In three counties in the Detroit, Michigan, metropolitan area, 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.

Based on the facts above, the Complaint alleges that Fidelity's acquisition of LandAmerica's subsidiaries could eliminate actual, direct, and substantial competition between Fidelity and LandAmerica's subsidiaries in the relevant markets; increase Fidelity's ability to unilaterally exercise market power in the Detroit and Portland metropolitan areas; and substantially increase the level of concentration and enhance the probability of coordination in Benton, Jackson, Linn, and Marion Counties, in Oregon.

As stated in the Complaint, entry would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of this acquisition. There are relatively long time frames and large capital expenses associated with building and maintaining title plants. Among other things, intensive time and labor are required in each local jurisdiction to develop effective data collection technology and to compile historical data.

V. The Terms of the Consent Agreement

The proposed Consent Agreement will remedy the Commission's competitive concerns resulting from Fidelity's acquisition in each of the relevant markets discussed above. Pursuant to the proposed Consent Agreement, Fidelity will divest one share of its ownership interest in a joint title plant that serves the Portland, Oregon, metropolitan area to Northwest Title. This will remedy the competitive harm in that local market by ensuring that Fidelity no longer owns a majority of the only joint title plant serving that market. The proposed Consent Agreement also requires Fidelity to divest a copy of each of the title plants serving Benton, Jackson, Linn, and Marion Counties, in Oregon to Northwest Title. The sale of the title plants in Benton, Jackson, Linn, and Marion counties will eliminate the competitive harm that otherwise would have resulted in those markets by restoring the number of independent title plant owners within each

county to the pre-acquisition level.

Northwest Title is a privately-held company that is part of a family of six companies involved in real estate. Although the company will be a new entrant in the relevant markets, it does have experience in the title insurance business, and has pre-existing relationships with entities and individuals in the real estate market, mortgage banking industry, and related businesses. Moreover, Northwest Title is financially viable and is positioned to quickly achieve the remedial purposes of the proposed Consent Agreement.

Additionally, pursuant to the proposed Consent Agreement, Fidelity will sell a copy of the title data that LandAmerica's subsidiaries had provided to Data Trace to a pre-approved purchaser, for the three counties making up the Detroit, Michigan, metropolitan area.

Finally, the proposed Consent Agreement requires Fidelity to provide the Commission with prior written notice before acquiring fifty (50) percent or more of any joint title plant in the following states: California, Colorado, Nevada, New Mexico, Oregon, and Texas. In all of these states, Fidelity's acquisition of LandAmerica's subsidiaries increased Fidelity's ownership interest in joint title plants. Without this prior notification provision, in the future Fidelity could gain a controlling interest in joint plants serving these states without the FTC's knowledge.

VI. Opportunity for Public Comment

The Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement again and the comments received and will decide whether it should withdraw from the Consent Agreement, modify it, or make it final. By accepting the Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to inform and invite public comment on the Consent Agreement, including the proposed divestitures, and to aid the Commission in its determination of whether to make the Consent Agreement final. This analysis is not intended to constitute an official interpretation of the Consent Agreement, nor is it intended to modify the terms of the Consent Agreement in any way.