

Complaint

IN THE MATTER OF

FIDELITY NATIONAL FINANCIAL, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT*Docket C-3929; File No. 991 0298**Complaint, February 17, 2000 – Decision, February 17, 2000*

This consent order addresses Fidelity National Financial Inc.'s ("Fidelity") acquisition of the common stock of Chicago Title Corporation ("Chicago Title"). The consent order requires Fidelity to divest or sell copies of the pre-acquisition title plant interests of either Fidelity or Chicago Title in five of the identified local jurisdictions to a buyer or buyers approved by the Commission. The consent order also requires Fidelity to divest the pre-acquisition interests of Fidelity or Chicago Title in a jointly owned title plant in San Luis Obispo County, California, or, alternatively, to relinquish any additional voting rights in the joint plant that Fidelity may have accrued post-acquisition while obtaining a new owner of the joint plant.

Participants

For the Commission: *Daniel J. Silver, Jacqueline Tapp, and Michael E. Antalics.*

For the Respondents: *John A. Herfort, Gibson, Dunn & Crutcher, and John C. Christie, Jr., Hale and Dorr.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Respondent, Fidelity National Financial, Inc. ("FNF"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire the common stock of Chicago Title Corporation ("CT"), a corporation subject to the jurisdiction of the Commission, 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, and it appearing to the Commission that a proceeding in respect thereof would be in

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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. "Acquisition Agreement" means the agreement between FNF and CT for FNF's proposed acquisition of the common stock of CT pursuant to the Agreement and Plan of Merger dated August 1, 1999.

4. "Respondent" means FNF.

II. RESPONDENT

5. Respondent FNF 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 17911 Von Karman Avenue, Irvine, California 92614-6253. Respondent, among other things, is engaged in the sale of title insurance and the provision of title information services.

6. Pursuant to the Merger Agreement, Respondent will purchase the common stock of CT.

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7. Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in, or affects, commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE ACQUIRED COMPANY

8. CT 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 171 North Clark Street, Chicago, Illinois 60601. CT is engaged, among other things, in the sale of title insurance and the provision of title information services.

IV. THE ACQUISITION

9. On August 1, 1999, FNF and CT entered into an Acquisition Agreement under which FNF is to acquire the common stock of CT for an amount valued, at the time of entering into the Acquisition Agreement, at approximately \$1.2 billion (“Acquisition”).

V. THE RELEVANT MARKETS

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

11. For the purposes of this Complaint, the relevant geographic areas in which to analyze the effects of the Acquisition in the relevant line of commerce are the following counties or other local jurisdictions in the United States: San Luis Obispo County, California; Tehama County, California; Napa County, California; Merced County, California; Yolo County, California; and San Benito County, California.

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VI. THE STRUCTURE OF THE MARKETS

12. The markets for title information services in the geographic areas listed under Paragraph 11 are highly concentrated.

VII. BARRIERS TO ENTRY

13. 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 competitive effects described in Paragraph 14, because of, among other things, the time and expense necessary to develop effective data collection technology and the time necessary to develop historical data, and the importance of an established reputation for accuracy.

VIII. EFFECTS OF THE ACQUISITION

14. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating actual, direct and substantial competition between Respondent and CT in the relevant markets;
- b. by increasing the likelihood of collusion or coordinated interaction in the relevant markets.

IX. VIOLATIONS CHARGED

15. The Acquisition Agreement described in Paragraph 9 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

16. The Acquisition described in Paragraph 9, 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 FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this seventeenth day of February, 2000, issues its Complaint against said Respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition by respondent Fidelity National Financial, Incorporated ("FNF") of Chicago Title Corporation ("CT"), and respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order ("Consent Agreement"), containing an admission by respondent of all the jurisdictional facts set forth in the aforesaid

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draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and issues the following order:

1. Respondent FNF 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 17911 Von Karman Avenue, Irvine, California 92614-6253.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this order, the following definitions shall apply:

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- A. “Respondent” or “FNF” means Fidelity National Financial, Incorporated, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by FNF, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “CT” means Chicago Title Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by CT, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “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.
- E. “Acquisition” means FNF’s proposed acquisition of the common stock of CT pursuant to the Agreement and Plan of Merger dated August 1, 1999.
- F. “Copy” means a reproduction of a title plant that will enable an acquirer to use the reproduction in a qualitatively similar way to the original. A Copy will reproduce all of the information contained in the original and enable the information to be accessed no less quickly and no less conveniently than it could be using the original.

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II.**IT IS FURTHER ORDERED** that:

- A. Within four (4) months from the date the Consent Agreement is signed by Respondent, Respondent shall, for each of the following counties or local jurisdictions listed below, either (1) divest at no minimum price, absolutely and in good faith, either the rights, title, and interest held by FNF prior to the Acquisition or the rights, title, and interest held by CT prior to the Acquisition in all title plants serving such county or local jurisdiction, or (2) sell at no minimum price or otherwise permanently transfer, absolutely and in good faith, a Copy of all title plants serving such county or local jurisdiction in which FNF prior to the Acquisition held rights, title, and interest or a Copy of all title plants serving such county or local jurisdiction in which CT prior to the Acquisition held rights, title, and interest:

Merced County, California
Napa County, California
San Benito County, California
Tehama County, California
Yolo County, California.

- B. Within four (4) months from the date the Consent Agreement is signed by Respondent, Respondent shall either (1) divest at no minimum price, absolutely and in good faith, the rights, title, and interest, other than the right, subject to the approval of the Commission, to a copy of the joint title plant's data covering the period prior to divestiture, held by FNF or CT prior to the Acquisition in the San Luis Obispo Joint Title Plant ("San Luis Obispo JTP") to an entity that is not currently an owner of San Luis Obispo JTP ("New Owner"); or (2) relinquish all of

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the voting rights held by FNF prior to the Acquisition or all of the voting rights held by CT prior to the Acquisition in the San Luis Obispo JTP, and obtain the admission to full participating ownership in the San Luis Obispo JTP of a New Owner, which New Owner shall have (i) the equivalent voting rights in the San Luis Obispo JTP after the admission of the New Owner to those retained by Respondent or CT, (ii) an ownership share no less than that of the other owners, and (iii) no greater financial responsibilities with respect to the San Luis Obispo JTP than those of the other owners.

- C. Respondent shall divest the properties or sell or otherwise permanently transfer the Copies specified in Paragraphs II. A. and II. B. of this order only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. Respondent shall obtain the admission to ownership specified in Paragraph II. B. of this order only by a New Owner that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture, sale, transfer, or obtaining admission to ownership pursuant to Paragraphs II. A. and II. B. of this order is to ensure the continued use of the divested or copied title plants as ongoing, viable title plants used in the production and/or sale of title information, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.
- D. Pending divestiture, sale, or transfer of the properties as specified in Paragraphs II. A. and II. B. of this order, Respondent shall take such actions as are necessary to maintain the viability and marketability of such properties and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the properties. FNF shall comply with the following requirements with respect to all title plants serving the counties or other local

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jurisdictions listed in Paragraphs II. A. and II. B. of this order in which either FNF or CT has any rights, title or interest, during the period prior to the completion of the actions required by Paragraphs II. A. and II. B. of this order:

1. FNF shall cause the title plants to be maintained, including but not limited to updating the records and/or indices contained in the title plants, to the extent and in the manner maintained prior to the Acquisition.
2. FNF shall cause to be maintained in good faith all contracts or agreements for access to the title plants subject to the terms, conditions and stipulations of those contracts, and will refrain from taking any action toward terminating those contracts other than that which would be commercially reasonable under the terms of such contracts or agreements.
3. FNF shall cause access to the title plants to continue to be provided to accessors whose contracts or agreements for access to the title plants expire by their terms prior to the completion of the actions required by Paragraphs II. A. and II. B. of this order, in good faith on terms, conditions and stipulations identical to those set forth in such contracts or agreements.

III.

IT IS FURTHER ORDERED that:

- A. If FNF has not, within four (4) months from the date the Consent Agreement is signed by Respondent, divested, sold, or otherwise permanently transferred, absolutely and in good faith and with the Commission's prior approval, all

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of the properties specified in Paragraphs II. A. and II. B. of this order or not obtained the admission to ownership specified in Paragraph II. B. of this order, the Commission may appoint a trustee to accomplish the actions specified in Paragraphs II. A. and Paragraph II. B. of this order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, FNF shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this order.

- B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III. A. of this order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
 - 1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.

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2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to accomplish the actions specified in Paragraphs II. A. and II. B of this order with respect to the properties or rights that have not been divested or sold or transferred by FNF, including the authority, subject to the approval of the Commission, with respect to any of the listed counties or local jurisdictions as to which divestiture or sale or transfer has not been completed by FNF, to determine whether to divest, sell, or transfer the rights, title and interest held by FNF prior to the Acquisition or the rights, title and interest held by CT prior to the Acquisition in title plants serving such county or local jurisdiction, and to determine, subject to the approval of the Commission, whether to accomplish the relief specified in Paragraph II. A. of this order through divestiture or sale of a Copy and whether to accomplish the relief specified in Paragraph II. B. of this order through divestiture or by obtaining a New Owner under the terms and conditions specified in Paragraph II. B. of this order, provided that if the trustee determines to accomplish the relief specified in Paragraph II. A. or Paragraph II. B. of this order through divestiture, Respondent may retain a copy of the divested assets, subject to the approval of the Commission.
3. Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to accomplish the actions specified in Paragraphs II. A. and II. B. of this order.

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4. The trustee shall have twelve (12) months from the date the Commission or a court approves the trust agreement described in Paragraph III. B. 3. to accomplish the actions specified in Paragraphs II. A. and II. B. of this order, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan to accomplish the specified actions or believes that the specified actions can be accomplished within a reasonable time, the period to accomplish the specified actions may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.
5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the properties or rights specified in Paragraphs II. A. and II. B. that have not been divested, sold, or transferred by FNF, and to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the specified actions. Any delays caused by Respondent in accomplishing the specified actions shall extend the trustee's period for accomplishing the specified actions under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.
6. The trustee shall use his or her best efforts to negotiate expeditiously the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest or sell at no minimum price. The transactions shall be made in the

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manner and with the acquirer or acquirers as set out in Paragraph II. of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall enter into transactions with the acquiring entity or entities selected by Respondent from among those approved by the Commission; provided, however, that Respondent shall select such entity within five (5) business days of receiving notification of the Commission's approval.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the transactions and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's completing the actions specified by Paragraphs II. A. and II. B. of this order with respect to the properties specified therein that have not been divested or sold or transferred by FNF.

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8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III. A. of this order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the relief required by this order.
11. The trustee shall have no obligation or authority to operate or maintain the properties specified in Paragraphs II. A. and II. B.
12. The trustee shall report in writing to Respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.**IT IS FURTHER ORDERED** that:

- A. For a period of ten (10) years from the date this order becomes final, Respondent shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or

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otherwise:

1. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, that has any direct or indirect ownership interest in a title plant serving any county or other local jurisdiction specified in Paragraphs II. A. and II. B., where at the time of the acquisition the Respondent has a direct or indirect ownership interest in any title plant serving the same county or local jurisdiction; or
2. Acquire any assets (other than in the ordinary course of business) or ownership interest in a title plant serving any county or other local jurisdiction specified in Paragraphs II. A. and II. B., where at the time of the acquisition the Respondent has a direct or indirect ownership interest in any title plant serving the same county or local jurisdiction.

Notification is not required to be made pursuant to this Paragraph IV. with respect to any acquisition by Respondent of a copy of title records or other information from a person or entity which thereafter retains the original information in its ownership and control, and where competition in the ordinary course between the parties is not otherwise restrained.

- B. Notification pursuant to this Paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of

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Justice, and notification is required only of Respondent and not of any other party to the transaction. In addition to the information required to be supplied on such Notification and Report Form pursuant to the above-referenced regulation, Respondent shall submit the following supplemental information in Respondent's possession or reasonably available to Respondent:

1. The name of each county or local jurisdiction to which the terms of Paragraph IV. A. 1. or 2. are applicable;
 2. A description of the title plant assets or interests that are being acquired; and
 3. With respect to each title plant serving each county or local jurisdiction to which the terms of Paragraph IV. A. 1. or 2. are applicable (including title plants in which the Respondent has a direct or indirect ownership interest as well as other title plants known to the Respondent), the names of all persons or entities who hold any direct or indirect ownership interest in the title plant and the percentage interest held by each; the time period covered by each category of title records contained in the title plant; whether the respective categories of title records are regularly being updated; the indexing system or systems used with respect to each category of title records; and the names of all persons, including but not limited to title insurers or agents, who have access to the title plant.
- C. Respondent shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent shall not consummate the transaction until twenty (20)

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days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

V.**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after the date this order becomes final and every thirty (30) days thereafter until Respondent has fully complied with the provisions of Paragraphs II. and III. of this order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II. and III. of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. of this order, including a description of all substantive contacts or negotiations for accomplishing the specified actions and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the accomplishment of the specified actions.
- B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the

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Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraph IV. of this order.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this order, upon written request, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this order; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from it, to interview officers, directors, or employees of Respondent.

VIII.

IT IS FURTHER ORDERED that this order shall terminate ten (10) years after the actions required by Paragraphs II. A. and II. B. of this order have been accomplished.

Analysis to Aid Public Comment

By the Commission.

**ANALYSIS OF PROPOSED CONSENT ORDER TO AID
PUBLIC COMMENT**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order from Fidelity National Financial, Inc. ("FNF"), which is designed to remedy the anticompetitive effects arising from FNF's acquisition of the common stock of Chicago Title Corporation ("CT"). Under the terms of the agreement, FNF will be required to divest or sell copies of certain assets known as "title plants" in six California counties. Title plants are privately owned collections of records and/or indices that are used by abstractors, title insurers, title insurance agents, and others to determine ownership of and interests in real property in connection with the underwriting and issuance of title insurance policies and for other purposes.

The proposed Consent Order has been placed on the public record for 30 days so that the Commission may receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

On August 1, 1999, FNF entered into an agreement to acquire the common stock of CT for an amount valued at the time of entering into the acquisition agreement at approximately \$1.2 billion. The proposed Complaint alleges that the acquisition, if consummated, would constitute a violation of Section 7 of the

Analysis to Aid Public Comment

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, in local markets for title information services in the following counties or local jurisdictions in the United States: San Luis Obispo County, California; Tehama County, California; Napa County, California; Merced County, California; Yolo County, California; and San Benito County, California.

Title plants are privately-owned collections of title information obtained from public records that can be used to conduct title searches or otherwise ascertain information concerning ownership of or interests in real property. Title plants typically contain summaries or copies of public records or documents (often in a format that is comparatively easily to store and readily retrievable), as well as indices to facilitate locating relevant records that pertain to a particular property. Title plants permit users to obtain real property ownership information with significantly greater speed and efficiency than by consulting the original public records, which may be located in a number of separate public offices (e.g., offices of the county recorder, tax authorities, and state and federal courts), may be stored in an inconvenient form, and may be indexed in a fashion that makes it difficult to readily research a particular property. Because of the county-specific way in which title information is generated and collected and the highly local character of the real estate markets in which the title plant services are used, geographic markets for title information services are highly localized, consisting of the county or local jurisdiction embraced by the real property information contained in the title plant.

In each of the local jurisdictions named in the Complaint, the market for title information services is highly concentrated, and FNF and CT are direct competitors in the sale or provision of title information services. In each of the local jurisdictions named, there are no commercially reasonable substitutes for title information services. For a number of reasons, including the relatively large fixed costs associated with building and maintaining title plants, entry into the market for title information

Analysis to Aid Public Comment

services in each of the local jurisdictions named is difficult or unlikely to occur at a sufficient scale to deter or counteract the effects of the acquisition. For these reasons, the Complaint alleges that in each of the named local jurisdictions the effects of the acquisition may be substantially to lessen competition by, among other things, eliminating direct actual competition between FNF and CT in title information services and increasing the likelihood of collusion or coordinated interaction among competing providers of title information services.

The Consent Order requires FNF to divest or sell copies of the pre-acquisition title plant interests of either FNF or CT in five of the identified local jurisdictions to a buyer or buyers approved by the Commission. The Order also requires FNF to divest the pre-acquisition interests of FNF or CT in a jointly owned title plant in San Luis Obispo County, California, or, alternatively, to relinquish any additional voting rights in the joint plant that FNF may have accrued post-acquisition while obtaining a new owner of the joint plant. The specified relief is required to be completed within four months after the respondent signs the Consent Order agreement. In the period prior to divestiture, the respondent is required to maintain the viability and marketability of the properties, including updating the title plants in the same fashion as before the acquisition and maintaining in effect all user contracts and relationships.

The Consent Order includes a provision permitting the Commission to appoint a trustee to accomplish the divestitures, sales of copies, or obtaining new ownership if the specified relief is not accomplished by the respondent within the four-month period. The Consent Order also includes a requirement that for ten years the respondent provide the Commission with prior notice of future title plant acquisitions by the respondent in the counties where the specified actions are required if, at the time of any such acquisition, the respondent continues to have an interest in a title plant serving the county. A prior notice provision is appropriate in

Analysis to Aid Public Comment

this matter because the small transaction size of most individual title plant acquisitions is below the threshold of reportability under the Hart-Scott-Rodino Act (Clayton Act § 7A, 15 U.S.C. § 18a, as amended) and because there is a credible risk that the respondent will, but for an order to the contrary, engage in otherwise unreportable, anticompetitive mergers.¹

The purpose of this analysis is to facilitate public comment on the proposed Consent Order, and it is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify in any way their terms.

¹ See Statement of FTC Policy Concerning Prior Approval and Prior Notice Provisions, 4 Trade Reg. Rep. (CCH) ¶ 13,241 (June 21, 1995).

Complaint

IN THE MATTER OF
MEMTEK PRODUCTS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3927; File No. 9923114
Complaint, February 17, 2000--Decision, February 17, 2000

This consent order prohibits Respondent, Memtek Products, Inc., from misrepresenting the time in which any cash rebate, or rebate in the form of credit towards purchases will be mailed to purchasers. It also prohibits Respondent from failing to provide any offered rebate within the promised time specified, or if no time is specified, within thirty days. The consent order also prohibits Respondent from violating the Commission's Mail Order Rule which also prohibits marketers from failing to provide rebates in the form of merchandise or service for products within specified time or, if time is not specified, within thirty days unless they offer consumers the option of consenting to the delay and receiving compensation for the offered rebate.

Participants

For the Commission: *Michael Dershowitz, Michael*
Ostheimer, Mark Eichorn, C. Lee Peeler, and BE.

For the Respondents: *Robert A. Padway, Bullivant Houser*
Bailey.

COMPLAINT

The Federal Trade Commission, having reason to believe that Memtek Products, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges: