



Fidelity Divests Assets After Monopoly Found in Some Markets

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11/18/2010

For those who might have claimed that the "big four" title insurers have had a monopoly in the business, they can now say they are right, in at least one case, albeit in a somewhat limited way.

When Fidelity National Financial purchased three title underwriters-- Lawyers Title, Commonwealth Title, and United Title-- from bankrupt LandAmerica in November 2008, it reduced the number of major corporate players in the title insurance business from five to four, and created a the largest title insurer by market share.

This acquisition immediately piqued the interest of regulators concerned about whether a monopoly had possible been created. An investigation was soon launched by the Federal Trade Commission, the regulatory body charged with enforcing federal antitrust laws.

In July of this year, the Federal Trade Commission issued a formal complaint against Fidelity National Financial, saying that the firm had possibly violated the Clayton Antitrust Act by substantially reducing competition and creating a monopoly in some markets. In particular, the complaint focused on two major markets-- the Detroit, Michigan, and Portland Oregon metropolitan areas-- and also several other counties in Oregon. In these areas, the FTC said that the removal of competition between the former LandAmerica underwriters and Fidelity's own stable of title underwriters gave Fidelity such a stranglehold on active title plants as to create a risk that Fidelity could "unilaterally exercise market power" in the title information services business.

In the Portland metro area, the FTC ruled that Fidelity held a controlling share in the only title plant after the merger. In Benton, Marion, and Linn Counties in west central Oregon containing the cities of Salem and Corvallis, and in Jackson County in southwest Oregon containing the city of Medford, the merger reduced the number of active title plants providing title information services to three. And in the Detroit, Michigan metro counties of Wayne, Macomb, and Oakland, the LandAmerica underwriter acquisitions allegedly gave Fidelity the power to cut off DataTrace, an independent title information services provider which had a license to use LandAmerica's title plant.

Based on the paltry number of competitors left in the title information services business, and the fact that barriers to entry into the business made it unlikely that new competitors would arise, the FTC forced Fidelity to divest itself from ownership interests in some title plants. The FTC sought to compel Fidelity to divest a portion of its ownership in its Portland title plant to Northwest Title, and also to sell a copy of its title plant in Benton, Marion, Linn, and Jackson counties in Oregon to Northwest. In Detroit, Fidelity was forced to sell a copy of its title plant to an approved purchaser. It was agreed by Fidelity, the FTC, and DataTrace in September that DataTrace itself would be the purchaser of the title plant. The deal got final approval this week.

As a result of the FTC's antitrust sanctions Fidelity also must get prior approval from the FTC to acquire any title plants in California, Colorado, Nevada, New Mexico, Oregon, and Texas, where Fidelity's acquisition of the LandAmerica underwriters has concentrated ownership in title plants to a level of concern.