FEDERAL TRADE COMMISSION

[File No. 991 0298]

Fidelity National Financial, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATE: Comments must be received on or before February 11, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker, Michael Antalics or Daniel Silver, FTC/H–374, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2574, 326–2821 or 326–3102.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 12, 2000), on the World Wide Web, at ''http://www.ftc.gov/ftc/formal.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

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 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 easy 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 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 name 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 postacquisition 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 specific 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 this matter because the small transaction size of most individual title plant acquisition 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.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–1192 Filed 1–18–00, 8:45 am]

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

FEDERAL TRADE COMMISSION

[File No. 992 3114]

Memtek Products, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 9, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz or Joel Winston, FTC/S–4002, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3158 or 326–3153.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 10, 2000), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from respondent Memtek Products, Inc. ("Memtek").

The proposed consent order has been placed on the public record for thirty (30) days for reception 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 agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Memtek repackages, advertises, labels and sells, among other products, "Memorex" brand computer diskettes, and blank audiotapes and videotapes. This matter concerns allegedly deceptive rebate advertising claims made in conjunction with the sale of these products. The Commission's proposed complaint alleges that Memtek falsely represented that purchasers of its package of 100 computer diskettes would receive a $29.99 cash rebate within 12 weeks of Memtek's receipt of purchasers' rebate requests. The complaint alleges that in many instances purchasers received their rebates one to two months late. The complaint also alleges that Memtek falsely represented that purchasers of its blank audiotapes and videotapes would receive a $10 Best Buy Gift Check within 8 weeks of Memtek's receipt of purchasers' gift check requests. The $10 Gift Check could then be used at any Best Buy retail store to obtain $10 off the purchase of any pre-recorded videotape or music CD. The complaint alleges that in many instances purchasers received their $10 Gift Checks one to three months late.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from misrepresenting the time in which any cash rebate, or rebate in the form of credit towards future purchases, will be mailed to consumers. It also prohibits respondent from failing to provide such rebates within the time specified, or if no time is specified, within thirty days.

Part I of the proposed order also prohibits respondent from violating any provision of the FTC's Mail Order Rule in connection with rebates in the form of merchandise. Among other things, the Mail Order Rule prohibits marketers from failing to provide rebates in the form of merchandise within the time they specify for delivery, or if no time is specified, within thirty days, unless they offer consumers the option of consenting to a delay or canceling the rebate request and promptly receiving