have been added to the application form. In order to reduce the burden impact on the applicant, many of the questions have been presented as Yes/No or check box questions. Including these questions in the application form will remove the need for Ex-Im Bank to contact the applicant for additional information after the application has been submitted.

Affected Public

This form affects entities involved in the export of U.S. goods and services.

The number of respondents: 3,400.

Estimated time per respondents: 35 minutes.

The frequency of response: Annually.

Annual hour burden: 1,983 total hours.

Government Expenses

Reviewing time per hour: 1 hour.

Responses per year: 3,400.

Reviewing time per year: 3,400 hours.

Average wages per hour: $42.50.

Average cost per year: (time * wages) $144,500.

Benefits and overhead: 20%.

Total Government Cost: $173,400.

Alla Lake,

Agency Clearance Officer, Acting, Office of the Chief Information Officer.

[FR Doc. 2013–31409 Filed 12–31–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012064–003.

Title: Hapag-Lloyd/NYK Mexico-Dominican Republic Slot Exchange Agreement.

Parties: Hapag-Lloyd AG and Nippon Yusen Kaisha.

Filing Party: Joshua P. Stein, Esq.; Cozen O'Connor; 1627 I Street NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment would increase the amount of space to be exchanged under the agreement.

Agreement No.: 012240.

Title: Seaboard/BBC Space Charter Agreement.

Parties: Seaboard Marine Ltd.; and BBC Chartering Carriers GmbH & Co. KG and BBC Chartering & Logistic GmbH & Co. KG.

Filing Party: Joshua P. Stein, Esq.; Sher & Blackwell LLP; 1850 M Street NW.; Suite 900; Washington, DC 20036.

Synopsis: The Agreement authorizes the parties to charter space to each other in the trade between the U.S. Gulf Coast and the West Coast of South America.

Dated: December 27, 2013.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–31405 Filed 12–31–13; 8:45 am]

BILLING CODE 6730–01–P

Federal Trade Commission

[File No. 131 0159]

Fidelity National Financial, Inc./Lender Processing Services, Inc.; Analysis of Agreement Containing Consent Orders 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 of Agreement Containing Consent Orders to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 23, 2014.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/fidelitynationalconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Fidelity National Financial, Inc./Lender Processing Services, Inc.—Consent Agreement; File No. 131 0159'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/fidelitynationalconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jessica S. Drake, Bureau of Competition, (202–326–3144), 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent orders 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 December 24, 2013), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 23, 2014. Write ''Fidelity National Financial, Inc./Lender Processing Services, Inc.—Consent Agreement; File No. 131 0159'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/fidelitynationalconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home*, you also may file a comment through that Web site.

If you file your comment on paper, write ''Fidelity National Financial, Inc./Lender Processing Services, Inc.—Consent Agreement; File No. 131 0159'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 23, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Agreement Containing Consent Orders To Aid Public Comment

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'') and Lender Processing Services, Inc. (''LPS'') (collectively, ''Respondents''). Fidelity proposes to acquire LPS, a combination that would reduce competition in seven relevant markets in Oregon where Respondents own overlapping title plant assets. The proposed Consent Agreement remedies the competitive concerns arising from the acquisition. The proposed Consent Agreement requires, among other things, that Respondents divest: A copy of LPS's title plants covering Clatsop, Columbia, Coos, Josephine, Polk, and Tillamook counties in Oregon; and an ownership interest equivalent to LPS's share in a joint title plant serving the Portland, Oregon, metropolitan area.

On May 28, 2013, Respondents entered into an acquisition agreement under which Fidelity would acquire all of the outstanding common stock of LPS for approximately $2.9 billion (the ''Acquisition''). The Commission's Complaint alleges that the acquisition agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and, 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 by eliminating actual, direct, and substantial competition between Respondents and by increasing the likelihood of collusion or coordinated interaction in the relevant geographic markets.

II. The Parties

Fidelity, a publicly traded company headquartered in Jacksonville, Florida, provides title insurance, transaction services, and technology solutions to the mortgage industry. Fidelity is the nation's largest title insurance company, operating six underwriting subsidiaries.

LPS, a publicly traded company headquartered in Jacksonville, Florida, provides transaction services and technology solutions to the mortgage industry. LPS's transaction services include title insurance underwriting provided by its National Title Insurance of New York, Inc. (''NTNY'') subsidiary.

Respondents own overlapping title plants in Clatsop, Columbia, Coos, Josephine, Polk, and Tillamook counties, Oregon. Fidelity and LPS are also partners in a title plant serving the tri-county Portland, Oregon, metropolitan area, consisting of Clackamas, Multnomah, and Washington counties.

III. Title Information Services

Lenders require assurance of title before issuing a mortgage loan, typically in the form of title insurance. Title insurance protects against the risk that a sale of real property fails to result in the transfer of clear title. Before a title insurance policy can issue, a title agent or abstractor must first conduct a title search. Title search is the due diligence process that enables title insurance underwriters to assess (and mitigate, if necessary) the risk of subsequent title challenges. The title agent or abstractor examines property-specific records to establish the chain of title and to identify any potential obstacles—such as liens or encumbrances—that might impair the transfer of title.

To facilitate the title search process, title agents and underwriters often utilize title plants. Title plants are privately-owned (either individually or jointly) databases of information detailing the title status of real property parcels. Title plants compile, normalize, and re-index county-level property records, which are often difficult to access or inefficient to search directly. Oregon law requires title insurers and title insurance producers, who are the sole users of title information services, to own an interest in a title plant in each county in which they issue policies. This law means that there are no alternatives to title plants in Oregon counties.

IV. The Complaint

The Commission's Complaint alleges that the acquisition agreement between Fidelity and LPS constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The Complaint further alleges that consummation of the agreement may substantially lessen competition in the provision of title information services in seven relevant markets in Oregon, 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.

The Complaint alleges that a relevant product market in which to analyze the effects of the Acquisition is the provision of title information services. ''Title information services'' means the provision of selected information, or access to information, contained in a title plant to a customer or user.

The Complaint alleges that the relevant geographic markets are local in nature. Title information is generated, collected, and used on a county (or county-equivalent) level. Therefore, geographic markets for title information services are highly localized and consist of each of the counties or other local jurisdictions covered by the title plants at issue. The geographic areas of concern outlined in the Complaint are Clatsop, Columbia, Coos, Josephine, Polk, and Tillamook counties, Oregon; and the tri-county Portland, Oregon, metropolitan area, consisting of Clackamas, Multnomah, and Washington counties.

The Complaint alleges, absent the proposed relief, that the Acquisition would increase the risk of coordinated anticompetitive effects in the relevant markets. In Clatsop, Columbia, Coos, and Tillamook counties, the Acquisition would reduce the number of independent title plant owners to two. In Josephine and Polk counties, the Acquisition would leave only three independent title plant owners. In each of these six counties, each title plant has a single owner that is also the title plant's sole user. In contrast, one jointly-owned title plant serves the Portland, Oregon, metropolitan area; each co-owner has full access to this title plant. The Acquisition would leave five joint owners of that joint title plant, but would reduce the number of owners necessary to expel other owners from the joint title plant.

The Complaint alleges that entry would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition. *De novo* entry would be costly and time-consuming, requiring any potential entrant to assemble a complete and accurate index of historical property records.

V. The Proposed Consent Agreement

The proposed Consent Agreement will remedy the Commission's competitive concerns resulting from the Acquisition in each of the relevant markets discussed above. Pursuant to the proposed Consent Agreement, Respondents must divest a copy of LPS's title plants serving Clatsop, Columbia, Coos, Josephine, Polk, and Tillamook counties, Oregon, to a Commission-approved acquirer. Respondents must complete these divestitures within five (5) months of the closing date of the Acquisition. The required divestitures will eliminate the competitive harm that otherwise would have resulted in these counties by restoring the number of independent title plant owners within each county to the pre-acquisition level.

The proposed Consent Agreement also requires Respondents to divest an ownership interest equivalent to LPS's share in the joint title plant that serves the Portland, Oregon, metropolitan area to a Commission-approved buyer. Respondents must complete this divestiture within five (5) months of the closing date of the Acquisition. The proposed Consent Agreement requires that the divestiture purchaser's interest in the joint title plant, when combined with Fidelity's post-merger interest, must not equal or exceed 70 percent. The divestiture will ensure that no two joint owners of the plant could coordinate to expel other members of the joint title plant in this relevant market. The proposed Consent Agreement further prohibits Fidelity from exercising its voting rights, or influencing others to exercise their voting rights, to expel the divestiture buyer from the joint title plant for failure to conduct an active title business for a period of three (3) months.

In addition to the required divestitures, the proposed Consent Agreement obligates Respondents to provide the Commission with prior written notice of title plant acquisitions in any county in Oregon in three sets of circumstances: (1) If the acquisition would result in three or fewer title plants covering the county; (2) if the acquisition would result in three or fewer owners of a joint plant; and (3) if the acquisition would result in Fidelity controlling a 50 percent or greater share in a joint plant. Each of these circumstances would raise competitive concerns in the market for title information services, and could reduce competition in the market for title insurance underwriting in Oregon. These transactions likely would not come to the Commission's attention without the prior notification provision.

VI. The Order To Maintain Assets

The Decision and Order and the Order to Maintain Assets obligate Fidelity to continue to update and maintain the individual title plants, the Portland Tri-County Plant interest, and the Portland Tri-County Plant until the required divestitures are complete. This will ensure that the divested assets remain viable sources of title information to support the title insurance underwriting operations of the acquirer or acquirers. The Order to Maintain Assets explicitly requires Fidelity not to compromise these assets' ability and suitability to meet Oregon's requirements for title insurers and title insurance producers.

VII. 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 again review the Consent Agreement and the comments received and will decide whether it should withdraw from the Consent Agreement, modify it, or make it final.

By accepting the proposed 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 invite and inform public comment on the Consent Agreement, including the proposed divestitures. 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.

Statement of the Federal Trade Commission

Today the Commission is taking remedial action with respect to the proposed acquisition of Lender Processing Services, Inc. by Fidelity National Financial, Inc. We believe Fidelity's acquisition of LPS, which would combine the two firms' title plants, among other assets, is likely to reduce competition that benefits title insurance consumers in nine counties in the state of Oregon. Our proposed remedy is tailored to counteract the likely anticompetitive effects of the proposed acquisition without eliminating any efficiencies that might arise from the combination of the two companies.

Fidelity is a leading provider of mortgage and other services to the mortgage industry and is the largest title insurance underwriter in the United States. LPS's underwriting activity is small by comparison, a complementary operation to LPS's key business as a leading provider of technology solutions, transaction services, and data and analytics to the mortgage and real estate industries.

Our competitive concerns arise from a limited aspect of the $2.9 billion combination of Fidelity and LPS: the title plant assets each company uses to support its title insurance underwriting activities in certain Oregon counties. Both Fidelity and LPS own title plants covering Oregon's Clatsop, Columbia, Coos, Josephine, Polk, and Tillamook counties. Both firms are also joint owners of a title plant covering the tri-county Portland metropolitan area.

Title insurance underwriters require access to county-level title information contained in title plant databases. In Oregon, state law requires title insurance underwriters or their agents to own a title plant in each county in which they issue policies. As a result, any firm offering title insurance underwriting in Oregon must obtain an ownership interest in an existing title plant or build one from scratch. Fidelity and LPS compete for title insurance customers in the nine Oregon counties of concern. The proposed acquisition will eliminate one of only a few underwriters available in each relevant market,[1] and the Commission has reason to believe that no timely entrant is likely to replace the competition lost in these counties.

Although price competition in title insurance underwriting occurs at the state level, underwriters compete on the basis of service as well. For example, underwriters compete on the turnaround time from title order to settlement, enabling consumers to close on mortgage transactions more quickly. Moreover, the costs of entering the title insurance underwriting business are higher in Oregon because of the requirement that underwriters operating in the state own an interest in a title plant rather than merely purchase title information from a third-party provider. No other states where both Fidelity and LPS compete have a similar requirement. For these reasons, we have reason to believe that the proposed acquisition is likely to result in a loss of competition and harm title insurance customers.[2]

We respectfully disagree with Commissioner Wright that our action is based solely on the fact that the merger will decrease the number of underwriters operating in the relevant markets and that it is inconsistent with the 2010 Horizontal Merger Guidelines. Substantial increases in concentration caused by a merger play an important role in our analysis under the Guidelines because highly concentrated markets with two or three large firms are conducive to anticompetitive outcomes. The lens we apply to the evidence in a merger that reduces the number of firms in a market to two or three is, and should be, different than the lens we apply to a merger that reduces the number of firms to six or seven. In the former case, as in the merger here, a presumption of competitive harm is justified, under both the express language of the Guidelines and well-established case law.[3]

However, we did not end our analysis there. We also considered whether other market factors, such as the possibility of entry, might alleviate our competitive concerns. In most of the markets we considered, even where the merger would reduce the number of title plant operators from three to two, we concluded that the transaction was unlikely to lessen competition because the evidence demonstrated that alternative sources of title information beyond proprietary title plants existed. That is not the case in Oregon. We are also not persuaded that price regulation in Oregon is sufficient to address our concerns about potential competitive harm. The evidence showed that competition between underwriters occurs on nonprice dimensions, supporting our view that the transaction was likely to harm competition in the identified nine counties.

Consistent with the approach the Commission has taken in previous merger enforcement actions involving title plants,[4] the proposed consent order addresses these competitive concerns by requiring divestiture of a copy of LPS's title plants in each of the affected counties and an ownership interest equivalent to that of LPS in the tri-county Portland-area joint plant. With the divested assets, the acquirer or acquirers will have the title plant ownership interest necessary to overcome the most significant legal impediment to compete in underwriting, thereby preserving the competition that would be lost as a result of the acquisition. There is no evidence that the proposed consent order would eliminate any efficiencies resulting from the transaction or otherwise burden the parties.

Merger analysis is necessarily predictive and requires us to make a determination as to the likely effects of a transaction. Where, as here, we have reason to believe that consumers are likely to suffer a loss of competition, and there are no countervailing efficiencies weighing against the remedy, we believe the public interest is best served by remedying the competitive concerns.

By direction of the Commission, Commissioner Wright dissenting.

April Tabor,

Acting Secretary.

Dissenting Statement of Commissioner Joshua D. Wright

The Commission has voted to issue a Complaint and Decision & Order against Fidelity National Financial, Inc. (''FNF'') to remedy the allegedly anticompetitive effects of FNF's proposed acquisition of Lender Processing Services, Inc. (''LPS''). I dissented from the Commission's decision because the evidence is insufficient to provide reason to believe FNF's acquisition will substantially lessen competition for title information services in the Oregon counties identified in the Complaint in violation of Section 7 of the Clayton Act. I commend staff for their hard work in this matter. Staff has worked diligently to collect and analyze a substantial quantity of evidence related to numerous product and geographic markets within the U.S. mortgage lending industry. Based upon this evidence, I concluded there is no reason to believe the proposed transaction is likely to lessen competition in the Oregon counties identified in the Complaint. It follows, in my view, that the Commission should close the investigation and allow the parties to complete the merger without imposing a remedy.

I. Mortgage Lending Industry Background

Title insurance protects against the risk that a sale of real property fails to result in the transfer of clear title. Before a title insurance policy can issue, a title insurance underwriter must evaluate the risk that a subsequent title challenge will be made against the property. Title plants are privately owned repositories of real estate

[1] In Clatsop, Coos, Columbia, and Tillamook counties, only two title insurance underwriters will remain post-acquisition. In Josephine and Polk counties, three underwriters will remain. In the Portland tri-county area, the proposed acquisition will leave five competing title insurance underwriters as joint owners of the only title plant serving the Portland area. However, the transaction would reduce to two the number of joint owners with the ability to exclude all others from the plant.

[2] We note that, in deciding whether to issue a complaint, the relevant standard for the Commission is whether we have ''reason to believe'' a merger violates Section 7 of the Clayton Act, not whether a violation has in fact been established. 15 U.S.C. 45(b).

[3] 2010 Horizontal Merger Guidelines § 2.1.3 (''Mergers that cause a significant increase in concentration and result in highly concentrated markets are presumed to be likely to enhance market power, but this presumption can be rebutted by persuasive evidence showing that the merger is unlikely to enhance market power.''); *see also Chicago Bridge & Iron Co.* v. *FTC,* 534 F.3d 410, 423 (5th Cir. 2008) (''Typically, the Government establishes a *prima facie* case by showing that the transaction in question will significantly increase market concentration, thereby creating a presumption that the transaction is likely to substantially lessen competition.''); *FTC* v. *H.J. Heinz Co.,* 246 F.3d 708, 716 (D.C. Cir. 2001) (merger to duopoly creates a rebuttable presumption of anticompetitive harm through direct or tacit coordination).

[4] *See, e.g.,* Complaint, *Fidelity Nat'l Fin., Inc.,* FTC Dkt. No. C–4300 (Sept. 16, 2010), *available at http://www.ftc.gov/sites/default/files/documents/cases/2010/09/100916fidelitycmpt.pdf;* Complaint, *Fidelity Nat'l Fin., Inc.,* FTC Dkt. No. C–3929 (Feb. 25, 2000), *available at http://www.ftc.gov/sites/default/files/documents/cases/2000/02/fidelitycmp.pdf;* Complaint, *Commonwealth Land Title Ins. Co.,* FTC Dkt. No. C–3835 (Nov. 12, 1998), *available at http://www.ftc.gov/sites/default/files/documents/cases/1998/11/ftc.gov-9810127cmp.htm;* Complaint, *LandAmerica Fin. Grp., Inc.,* FTC Dkt. No. C–3808 (May 27, 1998), *available at http://www.ftc.gov/sites/default/files/documents/cases/1998/05/ftc.gov-9710115.cmp_.htm.*

records that help underwriters examine property-specific title information in order to establish chain of title and identify any potential obstacles—such as liens or encumbrances—that could impair the transfer of title. In recent years, third-party title information services have begun to offer an alternative to title plants by providing access to the necessary data and records on a transactional or subscription basis. However, in Oregon, state law requires all title insurance underwriters to own an interest in a title plant in each county in which it issues policies. This law therefore effectively precludes a market in third-party provision of title information services.[1]

II. Coordinated Effects Analysis Under the Horizontal Merger Guidelines

The Commission's theory of anticompetitive harm in this matter is based solely upon a structural analysis. In other words, the Commission seeks to satisfy its prima facie burden of production to demonstrate the merger will substantially lessen competition based exclusively upon a tenuous logical link between the reduction in the number of firms that own title plants in each of the Oregon counties identified in the Complaint and a presumption that the merger between FNF and LPS will increase the likelihood of collusion or coordinated interaction among the remaining competitors for the sale of title information services.[2]

It is of course true that a reduction in the number of firms in a relevant market, all else equal, makes it easier for the remaining firms to coordinate or collude.[3] However, this is true of any reduction of firms, whether it be from seven to six or three to two, and therefore that proposition alone would have us condemn all mergers. The pertinent question is whether and when a reduction in the number of firms, without more, gives reason to believe an acquisition violates the Clayton Act.[4] The Horizontal Merger Guidelines (''Guidelines'') clarify that the focus of modern coordinated effects analysis is not merely upon the number of firms but rather ''whether a merger is likely to change the manner in which market participants interact, inducing substantially more coordinated interaction.'' [5] The key economic issue underlying coordinated effects analysis is to understand how the merger changes incentives to coordinate, or, as the Guidelines explain, to examine ''how a merger might significantly weaken competitive incentives through an increase in the strength, extent, or likelihood of coordinated conduct.'' [6] Consistent with the focus on changes in post-merger incentives to coordinate rather than mere structural analysis, the Guidelines declare the federal antitrust agencies are not likely to challenge a merger based upon a coordinated effects theory of harm unless the following three conditions are satisfied: (1) ''the merger would increase concentration and lead to a moderately or highly concentrated market''; (2) ''the market shows signs of vulnerability to coordinated conduct''; and (3) ''the Agencies have a credible basis on which to conclude that the merger may enhance that vulnerability.'' [7]

Although market structure is relevant to assessing the first and second conditions, the Guidelines require more than the observation that the merger has decreased the number of firms to satisfy the third condition. This is the correct approach. And it is no less correct for mergers that reduce the number of firms from three to two. Of what relevance is market structure if the Commission does not allege or otherwise describe the relevance of the reduction in the number of firms to post-merger incentives to coordinate? There is no basis in modern economics to conclude with any modicum of reliability that increased concentration—without more—will increase post-merger incentives to coordinate.[8] Thus, the Guidelines require the federal antitrust agencies to develop additional evidence that supports the theory of coordination and, in particular, an inference that the merger increases incentives to coordinate.

For example, the Guidelines observe that ''an acquisition eliminating a maverick firm . . . in a market vulnerable to coordinated conduct is likely to cause adverse coordinated effects.'' [9] In short, the Guidelines correctly, and consistent with the modern economics of collusion, require the Commission to do more than point to a reduction in the number of firms to generate inferences of likely competitive harm. Although the acquisition of a maverick is not necessary for a coordinated effects theory, a theory consistent with the Guidelines must include a specific economic rationale explaining why—above the mere reduction in the number of firms attendant to all mergers—the acquisition of this rival is likely to eliminate or reduce a constraint upon successful coordination and thus lead to increased incentives to coordinate, or alternatively, some evidence supporting structural inferences in the context of the specific transaction.

III. Insufficient Evidence To Conclude an Increased Likelihood of Coordination Exists Post-Merger

In my view, the Commission's coordinated effects theory and the evidence to support it do not provide a credible basis for concluding the merger between FNF and LPS will enhance incentives to coordinate. There is no evidence beyond the mere increase in the concentration of title plants in the Oregon counties identified in the Complaint that provides a reason to believe that the merger will increase the likelihood or coordination or collusion for title insurance underwriting and thereby substantially reduce competition for the same.

Significantly, because insurance rates are generally set at the state level and also

[1] It is important to note at the outset that Oregon's vertical integration requirement creates a scenario in which there is no relevant market for title information services in Oregon. As a result, any competitive concerns arising from increased concentration in title plant ownership must be based upon anticompetitive effects in the downstream title insurance underwriting market in Oregon. The Commission does not allege, and there is no evidence to support the conclusion, that the merger will result in a substantial lessening of competition in the title insurance underwriting market in Oregon.

[2] The Complaint appears to allege that the proposed transaction also may result in unilateral effects by stating the proposed merger will substantially lessen competition ''by eliminating actual, direct, and substantial competition between Respondents Fidelity and LPS in the relevant markets.'' Complaint ¶ 16(a), Fidelity National Financial, Inc., FTC File No. 131–0159 (Dec. 23, 2013). I have seen no evidence to support a unilateral effects theory of harm in either the title insurance services or title insurance underwriting markets. Nor does the Commission's Analysis to Aid Public Comment discuss the potential for a unilateral effects theory in this matter. *See* Analysis of the Agreement Containing Consent Order to Aid Public Comment § 4, Fidelity National Financial, Inc., FTC File No. 131–0159 (Dec. 23, 2013). Moreover, the merger cannot possibly result in unilateral effects in the title insurance services market because no such market exists in Oregon as a result of the state's vertical integration requirement.

[3] *See generally* George J. Stigler, *A Theory of Oligopoly,* 72 J. Pol. Econ. 44 (1964).

[4] One reason to disfavor an approach that assesses the likelihood of anticompetitive effects based solely upon the number of firms in a market is that the approach is sensitive to the market definition exercise and requires great faith that we have defined the relevant market correctly.

[5] U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines § 7.1 (2010) [hereinafter 2010 Guidelines], *available at http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf.*

[6] *Id.*

[7] *Id.*

[8] The Commission touts legal authority rooted in a long ago established legal presumption that disfavors mergers that create concentrated markets. Statement of the Commission, Fidelity National Financial, Inc., FTC File No. 131–0159, n. 2. (Dec. 23, 2013) (citing to authority); *see also United States* v. *Philadelphia Nat'l Bank,* 374 U.S. 321 (1963) (creating the so-called ''structural presumption'' that shifts the burden of proof away from the federal antitrust agencies and towards defendants in cases where the government challenges certain mergers resulting in concentrated markets). Significantly, however, modern economic learning and evidence no longer supports the foundations for the structural presumption upon which the Commission relies today. *See* Joshua D. Wright, Comm'r, Fed. Trade Comm'n, The FTC's Role in Shaping Antitrust Doctrine: Recent Successes and Future Targets, Remarks at the 2013 Georgetown Global Antitrust Symposium Dinner (Sept. 24, 2013), *available at http://www.ftc.gov/sites/default/files/documents/public_statements/ftc%E2%80%99s-role-shaping-antitrust-doctrine-recent-successes-and-future-targets/130924globalantitrustsymposium.pdf.* And although *Philadelphia National Bank* remains good law in that it has not been overruled by the Supreme Court, it should not be the basis for the Commission's decision if the economic foundations upon which the legal proposition was built no longer hold. The Commission has correctly taken a similar approach with other disavowed but not yet overturned precedent, such as, for instance, *United States* v. *Von's Grocery Co.,* 385 U.S. 270 (1966).

[9] *See* 2010 Guidelines, *supra* note 5, § 7.1. The Guidelines define a maverick as a firm ''that plays a disruptive role in the market to the benefit of customers,'' and provide a number of examples. *See id.* § 2.1.5. Each example has in common the acquisition of a firm that imposes a particularized constraint upon successful coordination before the merger. *See* Jonathan B. Baker, *Mavericks, Mergers and Exclusion: Proving Coordinated Competitive Effects Under the Antitrust Laws,* 77 N.Y.U.L. Rev. 135 (2002); Taylor M. Owings, *Identifying a Maverick: When Antitrust Law Should Protect a Low-Cost Competitor,* 66 Vand. L. Rev. 323 (2013).

because Oregon is a ''prior approval'' state in which underwriters must request specific rates that the regulator then approves or amends, it is unlikely that concentration in title plant ownership at the county level can increase the likelihood of collusion or coordinated interaction and thereby result in an increase in price.[10] There also is no evidence that FNF's acquisition of LPS will eliminate a maverick that is currently a constraint upon successful coordination. Furthermore, there is no evidence that title insurance underwriters can effectively coordinate on non-price factors, such as service and turnaround time. Lastly, there is no empirical evidence demonstrating that similar levels and changes in concentration in other title information service markets have resulted in a reduction in price or non-price competition.

Section 7 of the Clayton Act requires that the Commission first find that a merger likely will substantially lessen competition prior to agreeing to enter into a consent agreement with merging parties. Because there is insufficient evidence to conclude that the proposed transaction will substantially lessen competition, I respectfully dissent and believe the Commission should close the investigation and allow the parties to complete the merger without imposing a remedy.

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[10] Notably absent from the Commission's statement is any explanation of how the proposed transaction will increase the parties' incentives to coordinate on non-price terms post-merger. Such analysis is fundamental to modern merger analysis under the Guidelines. *See* 2010 Guidelines, *supra* note 5, § 7.1 (''The Agencies examine whether a merger is likely to change the manner in which market participants interact, inducing substantially more coordinated interaction.'').

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0012; Docket 2013–0077; Sequence 11]

Submission for OMB Review; Termination Settlement Proposal Forms–FAR (Standard Forms 1435 Through 1440)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension, with changes, to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Termination Settlement Proposal Forms–FAR (Standard Forms 1435 through 1440), as prescribed at FAR subpart 49.6, Contract Termination Forms and Formats. A notice was published in the **Federal Register** at 78 FR 59009 on September 25, 2013. No comments were received.

DATES: Submit comments on or before February 3, 2014.

ADDRESSES: Submit comments identified by Information Collection 9000–0012, Termination Settlement Proposal Forms–FAR (Standard Forms 1435 through 1440) by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0012; Termination Settlement Proposal Forms–FAR (Standard Forms 1435 through 1440)''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0012; Termination Settlement Proposal Forms–FAR (Standard Forms 1435 through 1440)''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0012; Termination Settlement Proposal Forms–FAR (Standard Forms 1435 through 1440)'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001. ATTN: Hada Flowers/IC 9000–0012.

Instructions: Please submit comments only and cite Information Collection 9000–0012, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover Sr., Procurement Analyst, Federal Acquisition Policy Division, at 202–501–1448.

SUPPLEMENTARY INFORMATION:

A. Purpose

The termination settlement proposal forms (Standard Forms 1435 through 1440) provide a standardized format for listing essential cost and inventory information needed to support the terminated contractor's negotiation position per FAR subpart 49.6—Contract Termination Forms and Formats. Submission of the information assures that a contractor will be fairly reimbursed upon settlement of the terminated contract.

B. Annual Reporting Burden

Based on data retrieved from the Federal Procurement Data System (FPDS) there was an estimated average of 10,152 contracts to 5,949 unique vendors that would have been subject to the termination settlement proposal forms (Standard Forms 1435 through 1440). This data was based on the estimate average number of terminations for convenience (complete or partial) for Fiscal Years, 2010, 2011, and 2012. In consultation with subject matter experts, it was determined that the 5,949 unique vendors was a sufficient baseline for estimating the number of respondents. It is therefore estimated that approximately 5,949 respondents would need to comply with this information collection. The estimated number of responses per respondent for this information collection is based on an estimated average number of respondents divided by the estimated average number of unique vendors (1.7). Additionally, in discussion with subject matter experts, it was estimated that the previously approved burden hours per response of 2.4 hours is still relevant for this information collection. No public comments were received in prior years that have challenged the validity of the Government's estimate. The revisions to this information collection reflect a significant upward adjustment from what was published in the **Federal Register** at 75 FR 63831 on October 18, 2010. This increase is based on a revision to the estimated number of respondents that would be subject to this information collection.

Respondents: 5,949.

Responses per Respondent: 1.7.

Total Responses: 10,113.

Hours per Response: 2.4.

Total Burden Hours: 24,271.

Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001, telephone 202–501–4755. Please cite OMB Control No. 9000–0012, Termination Settlement Proposal Forms–FAR (SF's 1435 through 1440), in all correspondence.