

**Statement of the Federal Trade Commission**  
**In the Matter of Fidelity National Financial, Inc. and Lender Processing Services, Inc.**  
**File No. 131-0159**  
**December 23, 2013**

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.<sup>2</sup>

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 competitiveness is not applicable. In the latter case, as in the merger Guidelines, a well-batishn0(as)-5l(at)a-1(w).4()JEMC /Span <</MCID 26 >>BDC TJ 0 Tc 0 8.09.740 8.0

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 10 Tw -35lihet(s)1(t s)1(-10(s)1((1h3 Tc 0...004 Tc(e an)-14)e)481h3 Tc 0... -160r 1h3da3 d rthe the