CITATION 30 CFR 254 and NTLs	Reporting requirement	Hour burden	Average number of annual responses	Annual burden hours (rounded)
Subpart D—Oil Spill Response Requirements for Facilities Located in State Waters Seaward of the Coast Line				
50; 52	Submit response plan for facility in State waters following format for OCS plan.	46.3	13 plans	602
50; 51; 52	Submit response plan for facility in State waters by modifying existing OCS plan.	14.3	50 plans	715
50; 53;	Submit response plan for facility in State waters developed under State requirements including all information as required in these sections.	40	8 plans	320
54	Submit description of oil-spill prevention procedures and demonstrate compliance; include any industry safety and pollution prevention standards your facility meets.	3.8	67 submissions	255
Subtotal			138 responses	1,892 hours
Total Hour Burden			1,610 Responses	74,461 Hours

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no non-hour cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .''. Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other than hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 20, 2015.

Robert Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2015–13003 Filed 5–28–15; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Verso Paper Corp. and NewPage Holdings Inc.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *Verso Paper Corp., et al.,* Civil Action No. 1:14–CV–2216–TSC (D.D.C. 2014), together with the Response of the United States to Public Comments.

Copies of the comments, attachments to these comments, and the United States' Response are available for inspection at the Department of Justice Antitrust Division, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.justice.gov/atr/cases/verso.html,* and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue NW., Washington, DC 20001. Copies of any of these materials may also be obtained upon request and payment of a copying fee.

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

UNITED STATES OF AMERICA, Plaintiff, v. VERSO PAPER CORP., and NEWPAGE HOLDINGS INC., Defendants.

Case No. 1:14–cv–2216 (TSC)

Response of Plaintiff United States to Public Comments on the Proposed Final Judgment

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby responds to the public comments received regarding the proposed Final Judgment in this case. After careful consideration of the submitted comments, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comments and this response have been published in the **Federal Register** pursuant to 15 U.S.C. § 16(d).[1]

[1] On May 7, 2015, the United States submitted its Unopposed Motion and Supporting Memorandum to Excuse **Federal Register** Publication of Attachments to Public Comments requesting that

I. Procedural History

On January 3, 2014, Verso Paper Corp. (''Verso'') entered into an agreement to acquire NewPage Holdings Inc. (''NewPage'') in a transaction valued at approximately $1.4 billion.[2] The United States filed a civil antitrust Complaint on December 31, 2014, seeking to enjoin Verso from acquiring NewPage. The United States alleged in its Complaint that the acquisition likely would substantially lessen competition in the sale of coated freesheet web paper, coated groundwood paper, and label papers to customers in North America in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. At the time the Complaint was filed, Verso and NewPage were vigorous competitors in these coated paper markets.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment and a Stipulation signed by Plaintiff and Defendants consenting to entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act, 15 U.S.C. § 16, and a Competitive Impact Statement (''CIS'') describing the transaction and the proposed Final Judgment. The United States published the proposed Final Judgment and CIS in the **Federal Register** on January 14, 2015, *see* 80 FR 1957, and caused summaries of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, to be published in *The Washington Post* on January 14, 15, 16, 19, 20, 21, and 22, 2015. The 60-day period for public comment ended on March 24, 2015. The United States received two comments, as described below and attached hereto as Exhibits 1 and 2.

II. The Investigation and the Proposed Resolution

The proposed Final Judgment is the culmination of a nearly year-long investigation by the Antitrust Division of the United States Department of Justice (''Department'') of the proposed transaction. As part of its investigation, the Department issued 19 Civil Investigative Demands for documents and information to third parties, collected almost one million documents from the Defendants and third parties, interviewed more than 100 customers, brokers, and competitors in the relevant coated paper markets, deposed 12 Verso and NewPage employees, and consulted with industry experts. The Department carefully analyzed the information it obtained from these sources and thoroughly considered all of the issues presented.

The Department found that the proposed acquisition would likely have eliminated substantial head-to-head competition in the relevant markets between Verso and NewPage, providing the combined firm with an incentive to raise prices and reduce output. The Department also found in the coated freesheet web paper and coated groundwood paper markets that the transaction would have likely caused the remaining players to accommodate one another's price increases and output reductions. Overall, the Department concluded that if Verso and NewPage had completed the proposed transaction as structured, the loss of competition likely would have resulted in higher prices to consumers. For these reasons, the Department filed a civil antitrust lawsuit to block the merger and alleged that the proposed transaction violated Section 7 of the Clayton Act, 15 U.S.C. § 18.

The proposed Final Judgment eliminates the anticompetitive effects identified in the Complaint by requiring Defendants to divest NewPage's Rumford, Maine and Biron, Wisconsin paper mills and related assets (collectively, ''the Divestiture Assets'') to Catalyst Paper Corporation (''Catalyst'') on terms acceptable to the United States. The divestitures eliminate the anticompetitive effects of the transaction by transferring the Rumford and Biron paper mills to a vigorous and independent competitor and preserving the pre-merger market structure in the coated freesheet web paper, coated groundwood paper, and label paper markets.

Since the United States submitted the proposed Final Judgment on December 31, 2014, Verso has acquired NewPage, and Catalyst has acquired and is operating the Divestiture Assets.

III. Standard of Judicial Review

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day public comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see also United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1, 10–11 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* No. 08–cv–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (discussing nature of review of consent judgment under the Tunney Act; inquiry is limited to ''whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable'').

Under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the Complaint, whether the decree is sufficiently clear, whether the enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)). Instead, courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is

this Court authorize an alternative means for publishing the attachments to the public comments received in this action. (Docket No. 11.)

[2] After the United States initiated this action on December 31, 2014, Verso Paper Corp. changed its name to Verso Corporation.

the one that will best serve society, but whether the settlement in ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).

In determining whether a proposed settlement is in the public interest, ''the court 'must accord deference to the government's predictions about the efficacy of its remedies.''' *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 76 (D.D.C. 2014) (quoting *SBC Commc'ns,* 489 F. Supp. at 17). *See also Microsoft,* 56 F.3d at 1461 (noting that the government is entitled to deference as to its ''predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' ''prediction as to the effect of the proposed remedies, its perception of the market structure, and its views of the nature of the case''); *United States* v. *Morgan Stanley,* 881 F. Supp. 2d 563, 567–68 (S.D.N.Y. 2012) (explaining that the government is entitled to deference in choice of remedies).

Courts ''may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17. Rather, the ultimate question is whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461. Accordingly, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17. And, a ''proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is within the reaches of the public interest.'' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations and internal quotations omitted); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

In its 2004 amendments to the Tunney Act,[3] Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). The procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of the Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11; *see also United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (''[T]he Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to public comments alone.'').

[3] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

IV. Summary of Public Comments and the United States' Response

A. Summary of the Public Comments

During the 60-day comment period, the United States received two comments regarding the proposed Final Judgment, although no comments were received from any printer, publisher, or other paper customer. The only comments were made by former employees of the now closed Bucksport, Maine paper mill. Verso produced coated groundwood and specialty paper products at the Bucksport mill until closing the mill in December 2014 and selling it to AIM Development (USA) LLC (''AIM''). AIM is the U.S. subsidiary of American Iron & Metal, Inc., a company that purchases discontinued manufacturing facilities and salvages the metal. Both comments focus upon competition in the coated groundwood paper market and the closure of the Bucksport mill.

Local 1821 of the International Association of Machinists and Aerospace Workers (''Local 1821''), consisting of 58 former employees of the Bucksport mill, submitted a comment arguing that: (1) The divestitures provided by the proposed Final Judgment are inadequate to redress the merger's anticompetitive effects and should have included the Bucksport mill; (2) Catalyst is an insufficiently independent and vigorous competitor and should not have been selected as the buyer of the Divestiture Assets; (3) recent price increases by Verso and Catalyst demonstrate the failure of the proposed Final Judgment to remedy the transaction's anticompetitive effects; and (4) the United States should have investigated alleged anticompetitive conduct that Verso's parent company, Apollo Capital Management (''Apollo''), has engaged in since at least 2011, including efforts to buy NewPage, acquiring NewPage's debt to influence its business operations, and causing Verso and NewPage to shut down mills in order to reduce output and raise prices. Local 1821 further argues that the Department should open an investigation into whether the sale of the Bucksport mill to AIM violated Section 1 of the Sherman Act.

Herbert R. Gilley also submitted a comment. Mr. Gilley, who is not a member of Local 1821, worked at the Bucksport mill for more than 38 years before losing his job when the mill closed. In his comment, Mr. Gilley similarly contests the closure and sale of the Bucksport mill and argues that the closure was anticompetive and will result in reduced output and higher prices.

B. The United States' Response to the Public Comments

1. The Divestiture Assets Are Sufficient To Remedy the Harm Alleged in the Complaint

Local 1821 and Mr. Gilley argue that the required divestitures are not sufficient to prevent the merger's anticompetitive effects and assert that additional paper mills, including Verso's Bucksport mill, should have been included in the divestiture package. But the required divestitures essentially preserve the preexisting competitive structure of the affected coated paper markets by providing Catalyst with approximately the same capacity as Verso had prior to the merger. The divested Rumford and Biron mills produced approximately 940,000 tons per year of coated publication papers, label paper, and other papers, which is approximately the same amount of production capacity that Verso had after closing the Bucksport mill but before acquiring NewPage. In the coated groundwood market in which the Bucksport mill competed, the output of the divested mills actually exceeds the output of the assets Verso held after it closed the Bucksport mill and before it completed the merger. In fact, the Biron mill alone produces more coated groundwood than Verso's remaining coated groundwood production assets. Furthermore, both the Rumford and Biron mills have a strong track record of competitively producing a range of coated publication papers and label paper, and Catalyst's ownership of the mills will give it a

market presence comparable to Verso's pre-merger market presence in the relevant markets. *See also* Competitive Impact Statement at 11. For these reasons, the Department concluded that Verso's divestiture of the Rumford and Biron mills sufficiently redressed the merger's competitive harm.

Local 1821 and Mr. Gilley assert that the Department should have required Verso to divest the Bucksport mill. But, as discussed above, the Department concluded that the required divestitures would sufficiently preserve competition, making the divestiture of the Bucksport mill unnecessary. *See US Airways,* 38 F. Supp. 3d at 75–76 (explaining that the government is entitled to deference in choice of remedies); *United States* v. *Abitibi Consol. Inc.,* 584 F. Supp. 2d 162, 166 (D.D.C. 2008) (rejecting claim that paper mill divestiture was too small because the government had factual basis for concluding that a single mill divestiture was adequate).

The Bucksport mill, moreover, was less viable than the mills included in the Divestiture Assets. The Department carefully reviewed evidence related to the Verso mills, including Verso's plans relating to the Bucksport mill that pre-dated the merger and deposition testimony of senior Verso executives about the future of the Bucksport mill. Based on this evidence, the Department concluded that Verso closed the Bucksport mill because the mill was not profitable and that the merger did not cause the mill's closure.[4]

Notably, Local 1821 made many of the same antitrust arguments about the Bucksport mill in a recent—and unsuccessful—lawsuit it brought to enjoin Verso's sale of the Bucksport mill to AIM. On December 15, 2014, Local 1821 filed a civil action in the United States District Court for the District of Maine alleging that the pending sale violated federal and state antitrust laws. *See Int'l Ass'n of Machinists and Aerospace Workers* v. *Verso Paper Corp.,* No. 1:14–cv–00530 (JAW), ______ F. Supp. 3d ______, 2015 WL 248819, at *8–*34 (D. Me. Jan. 20, 2015) (attached as Exhibit 3). After extensive briefing and oral argument, the Court rejected Local 1821's motion for a preliminary injunction and temporary restraining order, concluding in a 73-page opinion that Local 1821 had not ''met its burden to prove a strong likelihood of success on the merits of their claims under federal antitrust law.'' *Verso Paper,* 2015 WL 248819, at *73.

2. Catalyst Is an Appropriate Buyer for the Divested Assets

Local 1821 asserts that Catalyst is not an appropriate buyer for the Divestiture Assets because it is insufficiently vigorous and independent to compete with Verso. However, Catalyst operated three paper mills in British Columbia, Canada, before it acquired the Divestiture Assets and the Department thoroughly examined Catalyst before approving it as the purchaser of the Divestiture Assets. The Department carefully reviewed the proposed transaction, Catalyst's plans to compete in the relevant markets, and the transitional agreements between Verso and Catalyst.[5] Based upon this review, the Department concluded that Catalyst would be a vigorous and independent competitor.

3. Verso's and Catalyst's Recent Announcements of Price Increases Do Not Show That the Department's Proposed Remedy Is Inadequate

Local 1821 notes that Verso and Catalyst each announced price increases in January 2015 and argues that these announced price increases demonstrate that the divestiture is inadequate. But Local 1821 has not offered any evidence that the price increases arise from or are connected to the merger. To the contrary, the price increases likely are related to a number of factors, including input costs, demand fluctuations, and recent and significant capacity reductions in the coated groundwood market that are unrelated to the merger. In addition to Verso's Bucksport mill closure, coated groundwood paper producer Futuremark also closed its Alsip, Illinois coated groundwood mill in August 2014. *See* Press Release, FutureMark Alsip, *FutureMark Alsip to Idle Mill* (Aug. 21, 2014), *available at http://www.businesswire.com/news/home/20140821005972/en/#.VUjFcv-Jiig* (''FutureMark Alsip [] today announced that, due to increasingly challenging market conditions in the North American coated paper market, it will indefinitely idle its mill in early September.'').

4. Local 1821's Allegations That Other Conduct by Apollo and Verso Violated the Antitrust Laws Are Outside the Scope of the Tunney Act

Lastly, Local 1821 alleges that Apollo, Verso's parent company, has engaged in anticompetitive conduct since at least 2011 and argues that the Department should have investigated these earlier activities. Local 1821 also asserts that the Department should investigate whether Verso's 2015 sale of the Bucksport mill to AIM violates Section 1 of the Sherman Act.

Although the Department takes all allegations of anticompetitive conduct seriously, Local 1821's claim that the United States should bring or have brought an enforcement action relating to conduct not challenged in the Complaint is outside the scope of this Tunney Act proceeding. It is well-settled that the Department's decision to bring an action alleging harm is left to the Department's prosecutorial discretion and is not part of the court's Tunney Act review. *See Microsoft,* 56 F.3d at 1459 (explaining that in an APPA proceeding, the ''district court is not empowered to review the actions or behavior of the Department of Justice; the court is only authorized to review the decree itself''). Indeed, this Court has squarely held that ''a district court is not permitted to 'reach beyond the complaint to evaluate claims that the government did *not* make and to inquire as to why they were not made.' '' *SBC Commc'ns,* 489 F. Supp. 2d at 14 (quoting *Microsoft,* 56 F.3d at 1459) (emphasis in original); s*ee also US Airways,* 38 F. Supp. 3d at 76. Consequently, Local 1821's allegations of anticompetitive conduct not challenged in the Complaint do not provide a basis for rejecting the proposed Final Judgment.

V. Conclusion

After reviewing the public comments, the United States continues to believe that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after the comments and this response are published in the **Federal Register**.

Dated: May 18, 2015

Respectfully submitted, /s/Karl D. Knutsen., Karl D. Knutsen, Richard Martin, Garrett M. Liskey (D.C. Bar No.

[4] Consequently, the closure of the Bucksport mill is not an anticompetitive effect of Verso's acquisition of NewPage. *See also* Competitive Impact Statement at 3 n.1.

[5] While Catalyst recently emerged from bankruptcy, bankruptcy reorganization is a fairly common occurrence in the paper industry and not a sign that Catalyst will not be an effective competitor. *See, e.g.,* Judy Newman, *NewPage Corp. Emerges from Chapter 11 Bankruptcy,* Wis. State J., Dec. 12, 2012, *available at http://host.madison.com/business/newpage-corp-emerges-from-chapter-bankruptcy/article_d31c8f88-4bc8-11e2-9164-001a4bcf887a.html* (discussing NewPage's emergence from bankruptcy); Press Release, AbitibiBowater, *AbitibiBowater Emerges from Creditor Protection* (Dec. 9, 2010), *available at http://www.newswire.ca/en/story/586251/abitibibowater-emerges-from-creditor-protection.*

1000937), Attorneys for the United States, Litigation I Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530, Telephone: (202) 514–0976, Facsimile: (202) 305–1190, Email: *karl.knutsen@usdoj.gov.*

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From: [REDACTED]
Sent: Tuesday, January 06, 2015 10:49 AM
To: Knutsen, Karl
Subject: Verso paper merger case #1:14-cv-2216

Hi Karl
Just would like to express my opinion on the Verso,Newpage merger seeing how I have nothing but time on my hands looking for a new job after working 38+ years at the Bucksport Maine mill. I am quite sure I wont get a response because I have also filed a complaint with the consumer complaint division and both times they responded with a automated response stating someone would contact me,not yet?
So my concern is that you approved the merger and I still believe their is a anti trust violation concerning them scrapping the Bucksport mill? This will take paper off the market and it will drive the price up and it eliminates competition doesn't it and also Lyle Fellows from Verso stated they would not sell the mill to a competitor but was open for other options(scrapping the mill)?
As I stated I have operate a paper machine for 38 years and I still believe that we can make a go at Bucksport if the mill is sold to another company that wants to make paper not take advantages of government and town,state tax breaks like Verso has. Since Verso has bought us we have not made a profit in 8 plus years but they we remained taking concessions thru bargaining and yet we still produced the best sheet of paper and still broke production records along with safety records and they couldn't make a profit?
You might want to look at how they do their book keeping as far as shifting costs from one mill to the other.
So on that note how can a mill get 30 to 40 million in tax credits and tax breaks to put into the power plant and turn around and shut down 3 paper machines and sell the mill to a scrap company(AIM) for 58 million when the power plant is worth 2 to 3 times more than that and the machines are still capable in making paper.
All we want at Bucksport is to at least get a chance like the other mills in the state to try and make it go and if the Bucksport Mill cant make money then why is VERSO so afraid of selling it ? There is at least 2 companies interested in buying the mill to make paper and the state of Maine is aware of that but cannot force Verso to sell to them because Verso is more concerned in taking the paper off the market.
I really believe that your department can force verso to sell and you can do so by getting involved with the pending lawsuit that International Machinist Union has coming up with Judge Woodcock this month on Jan 13th.this lawsuit is the only thing that can save the jobs at Bucksport and if we don't stop corporate Greed and big businesses controlling our government pretty soon we wont have any working people left to pay taxes then how will you people keep your jobs?
Enough said and would look forward to hear from you or anyone else about this matter.
Thank You Herbert R Gilley

[PERSONAL INFORMATION REDACTED]

Kim Ervin Tucker
Attorney at Law
Katahdin Counsel

Admitted to Practice:
State of Maine
State of Florida
District of Columbia

United States Supreme Court
United States District Court District of Maine
United States District Court Northern District of Florida
United States District Court Middle District of Florida

March 12, 2015

Peter J. Mucchetti, Esquire
Chief, Litigation I Section
Antitrust Division
United States Department of Justice,
450 Fifth Street, NW
Suite 4100
Washington, DC 20530

RE: Proposed Consent Decree in *United States v. Verso Paper Corp. and NewPage Holdings*; Case No. 1:14-cv-2216 (D.D.C.)

Dear Mr. Mucchetti:

I am submitting this letter, pursuant to the Tunney Act, 15 U.S.C. § 16(b)-(h), to protest the clear inadequacy of the Antitrust Division's proposed Consent Decree – which fails to eliminate the negative competitive consequences of permitting a merger between Verso Paper Corp. and New Page Holdings ("Verso-NewPage Merger"). Not only were the two proposed divestitures required by the Consent Decree (in Biron, WI and Rumford, ME) insufficient in scale, but they were made to a party (Catalyst) which has already become Verso's dancing partner on pricing increases in the oligopolistic market that Verso now dominates as a result of the Verso-NewPage Merger. Moreover, the Division allowed Verso to amplify the likely anticompetitive effects of the Verso-NewPage merger by shutting down and selling its operational mill in Bucksport, Maine ("the Bucksport Mill") *for scrap* – which is intended to, and likely will result in the permanent loss of this facility as a productive asset in the economy of Maine and the North American coated paper market.[1] The loss of the Bucksport Mill and its capacity is a consequence that the Division had ample basis, opportunity and time to prevent – but inexplicably chose instead to allow to occur.

The Post-Merger Price Increases in January 2015

To see how badly the Division's proposed Consent Decree has failed to reduce the predictable and long-predicted, anticompetitive and negative market impacts of the Verso-NewPage merger, the reviewing Court will need look no further than the $40/ton price increase announced by Verso, on

[1] This letter is submitted on behalf of 58 former employees of the Bucksport Mill who have lost their jobs as result of Verso's capacity-reduction actions made possible by the Verso-New Page Merger. A list of the impacted employees is attached to this letter as Exhibit A. I am also acting as counsel for Local 1821 of the International Association of Machinists and Aerospace Workers ("Local 1821"), which has represented these hourly wage employees for collective bargaining purposes.

48 Harbour Pointe Drive ♦ Lincolnville, Maine ♦ 04849 ♦ Phone: 207-706-7913 ♦ Cell: 202-841-5439
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Friday January 30, 2015.[2] This price increase was followed in quick succession with a similar price increase by Catalyst – the very entity to which the divested Biron and Rumford Mills were sold in order to "eliminate the anticompetitive effects of the [NewPage] acquisition in the North American market for coated publication papers by establishing a new, independent, and economically-viable competitor" (Competitive Impact Statement p. 9).[3] Ironically, the Verso price increase occurred on the very day that the Division advised representatives of employees from the Bucksport Mill that the Division would not, *under any circumstances*, open an inquiry into the sale and closure of the Bucksport Mill by Verso to a scrap dealer (rather than a competitor willing to pay more to continue to operate the Mill).

As the Division's Complaint asserts, the Verso-NewPage Merger violates Section 7 of the Clayton Act. We believe that it also involves likely violations of Sections 1 and 2 of the Sherman Act. So far, requiring the divestiture of only the Biron and Rumford Mills to Catalyst has done less than nothing to reduce or even slow-down the adverse impact on consumers, direct and indirect, of the anticompetitive consequences of allowing this merger to proceed. A bigger divestiture package, to a more independent and vigorous competitor than Catalyst (which recently emerged from bankruptcy), might have provided greater consumer protections, but this option was expressly rejected by the Division when proposed by me and my colleagues on behalf of the employees of the Bucksport Mill.

The fact that Verso Corporation acted with such haste to increase prices after the merger deal with NewPage was approved by the Division – not even waiting until the 60-day Tunney Act comment period was past – demonstrates the impunity with which Verso will act now that it has been granted near monopoly status in the North American coated printing paper market. Further, Catalyst's immediate adoption of the price increase that Verso announced last month demonstrates that the divestiture of the Biron and Rumford Mills to Catalyst was, and is, a grossly inadequate remedy to prevent or delay the inevitable anticompetitive consequences of approving the Verso-NewPage Merger – utterly bereft of any chance of protecting direct and indirect consumers of coated paper products, now or in the future.

The Antitrust Division's Too Narrow Focus

The Division's inquiry into the Verso-NewPage Merger was fatally flawed from the outset, because of Litigation I Section's apparent limitation of its investigation to consideration of only events *after* the initial public announcement of this proposed merger by Verso and NewPage *in January of 2014*. This myopic 2014-centric focus on events and actions failed to put this merger in a realistic (and accurate) competitive context and ignored ample evidence, available from publicly available sources, regarding the lengths to which Apollo Global Management ("Apollo"), Verso's parent, had gone to use its acquisition of NewPage's second lien debt in 2011 as leverage

[2] "Price hike prospects brighten on coated as Verso announces immediate $20-40 CFS, CM, SC increases", PPI Pulp & Paper Week, January 30, 2015. This price increase information is available at: http://www.risiinfo.com/pulp-paper/ppippw/Price-hike-prospects-brighten-on-coated-as-Verso-announces-immediate-20-40-CFS-CM-SC-increases.html

[3] "Catalyst announces Apr. 1 price increase of $40/ton for Its coated freesheet, CM, and high-brite grades in the US", PPI Pulp & Paper Week, February 6, 2015, *available at* https://www.risiinfo.com/pulp-paper/ppippw/Catalyst-announces-Apr-1-price-increase-of-40ton-for-Its-coated-freesheet-CM-and-high-brite-grades-in-the-US.html

to force a Verso-NewPage merger and to have both Verso and NewPage reduce capacity prior to the merger Apollo has sought to achieve since 2011.

Even the most cursory review of publicly available sources reveals that the January 2014 announcement of a Verso-NewPage merger was merely the most recent step in Apollo's quest to reduce competition by shutting down capacity and achieving this merger. In fact, a Verso-NewPage merger has been a goal actively pursued by Apollo, Verso's parent, since *at least* 2011 -- when Apollo acquired a significant amount of NewPage's second lien debt and began exerting influence to force a Verso-NewPage merger. Publicly available sources reveal: (i) discussions of a merger between Verso and NewPage in 2011 and 2012; (ii) public claims by Verso of abandonment of interest in a merger with NewPage by mid-year in 2011, whileApollo was simultaneously attempting to use its status as a second line debt holder to force a Verso-NewPage merger through the NewPage bankruptcy proceedings in the Delaware Bankruptcy Court (efforts that continued through at least August 2012);[4] and (iii) evidence that Verso and NewPage have engaged in a campaign to restrain competition and reduce industry capacity, by scrapping the equipment and physical plants of otherwise operational and productive paper mills with the help of AIM Development (USA) LLC.

Attached to this letter, as Exhibit B, is the Chronology that representatives of the Bucksport Mill employees previously provided to the Division, but which the Division chose to ignore. This Chronology lays out some of the pattern of conduct, engaged in by Apollo in conjunction with Verso and NewPage, to reduce capacity in anticipation of a Verso-NewPage merger, and committed in furtherance of an anticompetitive scheme to increase Verso's market power after such a merger. This pattern includes: (i) shutting down and scrapping paper making machinery and laying off hundreds of workers at Verso's Sarterll and Bucksport Mills in 2011; (ii) the destruction of two viable and productive paper mills (NewPage's Kimberly, WI mill, and Verso's Sartell, MN mill) in 2011 through 2013; and (iii) the pending destruction of the Bucksport Mill, as ways of reducing capacity in order to facilitate post-merger pricing increases. All of these three facilities (Kimberly, Sartell and Bucksport) have been sold to the scrap metal company AIM Development (USA) LLC -- which has destroyed the paper making capacity of the first two mills and has indicated an intent to do the same with the Bucksport Mill, while spinning off the electrical assets of these facilities (after the electric plants had been upgraded with millions of dollars in public funds in the case of Sartell and Bucksport).[5]

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[4] Law360, "*Verso Paper publicly ended talks to acquire NewPage*," by Jamie Santo (Spetember 5, 2012)
http://www.law360.com/articles/375444/verso-paper-ends-talks-to-acquire-newpage
http://www.law360.com/articles/375444/attachments/0

[5] Despite the availability of buyers willing to purchase the Bucksport Mill for more than AIM paid, on March 11, 2015, AIM's agents announced that the Mill's equipment will be auctioned off on March 24, 2015 – the same pattern used prior to the razing of the Sartell and Kimberly Mills, that have still left those communities in ruin.
Bangor Daily News, "*Former Verso Equipment to go up for Auction*," by Bill Trotter (March 11, 2015)
http://bangordailynews.com/2015/03/11/news/hancock/former-verso-equipment-to-go-up-for-auction/?utm_source=BDN+News+Updates&utm_campaign=e7ceb1d32c-RSS_AFTERNOONUPDATE_EMAIL_CAMPAIGN&utm_medium=email&utm_term=0_715eed3192-e7ceb1d32c-82421111

Apollo's substantial acquisition of the NewPage debt, for the purpose of exercising some control over the largest printing paper competitor of Apollo's subsidiary Verso, appears to be an asset acquisition which violates Section 7 of the Clayton Act, 15 U.S.C. Section 18. See *Mr. Frank, Inc. v. Waste Mgmt.*, 591 F.Supp. 859, 864-67 (N.D. Ill. 1984) (Section 7 is applicable where acquisition of debt may create opportunities to control a competitor's decision making); and *Metro-Goldwyn-Mayer, Inc. v. Transamerica Corp.*, 303 F. Supp. 1344, 1351 (S.D.N.Y. 1969) ("[i]t would be naive, of course, to believe that a powerful creditor, which has placed a debtor in a position of dependency upon it, would not use its position as leverage to put pressure upon the debtor to conduct its business, including its control over others, in a way that would accord with the creditor's interests"). Ironically, both the Antitrust Division and Apollo have had reported first hand experience with this very subject. See *United States v. The Gillette Company, et al.*, Civil No. 90-0053-TFH (D.D.C.), 55 FR 12567 (April 4, 1990) (Proposed Final Judgment preventing Gillette from acquiring additional debt in competitor, and requiring them to remain passive debt holder); and *Vantico Holdings S.A. v. Apollo Mgmt.*, 247 F. Supp. 2d 437, 455 (S.D.N.Y. 2003) (analyzing whether acquisition of a competitor's debt by Apollo was anti-competitive, but ultimately finding that the facts presented by the plaintiff were not sufficient to support imposition of a preliminary injunction).

In Apollo's present case involving NewPage debt, subsequent history has proven that this possibility of control was not just speculative; rather, in the subsequent NewPage bankruptcy proceeding, Apollo tried unsuccessfully to use its position as debtor to force a $1.5 billion merger with Verso. See f.n. 4 above. Given this reality, we respectfully suggest that the question of whether Apollo used this debt-based-influence to encourage NewPage to shut down its Kimberly, WI mill in 2013 is entirely worthy of a Government Sherman Act investigation as well.

Indeed, it ought to be a source of concern to the broader public, and not just the Bucksport Mill employees, that the Division staff ignored their pleas for an investigation into the implementation and anticompetitive effects of the reductions of capacity since January 2011 by Verso and NewPage, and Apollo's involvement in those actions, given Apollo's history and tactics laid out in detail in *Vantico Holdings S.A. v. Apollo Management, LP, supra.* The substantial body of information relating to Apollo and these simultaneous capacity reducing activities in 2011-2013 was readily available through simple Googling and thus an initial investigation could have been carried out without requiring a significant expenditure of the Division's resources. The known fact and law all favored the Division undertaking the requested inquiry and requiring divestiture (rather than destruction) of the Bucksport Mill.

The Bucksport Mill, located in Bucksport, Maine, which was owned by Verso Paper Corp. until January 29, 2015, had been a fully operational paper mill for more than eighty (80) years, and at the time of its closure in December, 2014, produced coated and specialty paper. In order to provide a more complete record, I attach as Exhibit C a statement detailing the competitive significance of the Bucksport Mill and the summary of the Division's failure to take steps to prevent Verso's plan to eliminate its capacity from the market in conjunction with the Verso-NewPage Merger. This sad history is no doubt familiar to the Division, but will not necessarily be familiar to the reviewing Court.

The most troubling aspect of the Division's failure to act to prevent the destruction of the Bucksport Mill and its capacity is that it would have cost Verso no legitimate gain to avoid the human and economic suffering that closure has imposed on the Bucksport Mill employees and this

entire region of the State of Maine. First, had the Division required Verso to sell this valuable asset (that by the Division's own estimate in the Competitive Impact Statement would cost $2 billion+ to rebuild from scratch) to a competitor willing and able to continue to operate it in the coated paper market, Verso would have directly made more money than the scrapper AIM paid Verso. Further, had such a sale been required, many or all of the 570 individual who worked at this Mill for decades (some over 4 decades) would still be working today. Instead, 524 people have lost their jobs, the town of Bucksport has lost 44% of its tax base, the State of Maine has lost a productive source of revenue that has employed thousands of people for more than 80-years, and the North American coated paper market has *permanently* lost a facility capable of producing hundreds of thousands of tons of coated and specialty paper annually. And, in addition, Verso and Catalyst have raised prices – to the detriment of all direct and indirect consumers of North American coated paper products.

These anticompetitive consequences were not speculative or unpredictable – in fact, within days of the announcement of the closure of the Bucksport Mill, industry analysts had raised Verso's credit rating *expressly because of* the anticipated anticompetitive benefits of the closure of the Bucksport Mill and the permanent loss of its capacity from the North American coated paper market.[6]

I also attach two letters to Assistant Attorney General William Baer from Donald Baker of Baker & Miller, arguing as a matter antitrust policy and established precedents, that parties to a merger among industry leaders should never be permitted to close down and eliminate capacity without having made a good faith offer of the closed capacity for sale to any qualified buyer willing to continue to operate in the market. Mr. Baker has served as our antitrust counsel during the Division's investigation of this matter and, as you know, is former head of the Antitrust Division. In the first of these letters dated December 5, 2014 (Exhibit D), Mr. Baker traced the history to show how the Bucksport Mill closure was premised on the Division allowing the Verso-NewPage merger to proceed. In the second letter dated January 27, 2015 (Exhibit E), Mr. Baker stressed that the Division's reliance on Verso's statement of its prior intentions was an improper and insufficient reason for the Division to ignore the competitive impact of the Bucksport Mill closure (see pp. 4-6); and he urged the Division to investigate the Verso-AIM transaction on the ground that its purpose and effect was to reduce competition in coated printing papers by destroying the significant productive capacity represented by the Bucksport Mill (see pp. 11-12).

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[6] In June 2014, Moody's had downgraded Verso's bond rating from B3 to Caa3, a change that reflected Moody's belief that Verso's debt obligations were "judged to be of poor standing and are subject to very high credit risk."[6] The investors' service also speculated that the future of the acquisition was unclear. In taking this action, Moody's wrote in its report that: "The rating action reflects Moody's view that the announced agreement to acquire NewPage is becoming less likely to occur as the Department of Justice continues its review." *See*: http://www.risiinfo.com/content-gateway/pulpandpaper/news/Market-profilesCoated-papers-A-sector-in-flux-in-the-face-of-secular-decline.html?industryId=21.

However, within two days of Verso's announcement of the closure of the Mill in Buckport, Moody's Rating Service upgraded Verso's rating, on October 3, 2014, and identified the closure of the Bucksport Mill and layoffs of more than 500 people by year's end as "a credit positive event."
Portland Press Herald, "*Verso's finances benefit from Bucksport mill closure, Moody's analyst says*," by Whit Richardson (October 8, 2014).
http://www.pressherald.com/2014/10/08/versos-finances-helped-by-bucksport-mill-closure-moodys-analyst-says/

Tunney Act Protest Letter Re: Verso-NewPage Merger
March 11, 2015
Page 6

Unfortunately, Mr. Baker never received any written response to these letters (or the earlier one that he had written Mr. Baer on November 12, 2014). And, as noted above, the only response Mr. Baker received was in the January 30, 2015 phone call that you and other Division staff members had with him and our team to advise us that no inquiry would be made of the Verso-AIM transaction – fittingly but ironically stated on the very same day that the merged Verso entity announced the $40/ton increase in its pricing for coated printing paper! In that call, you responded to our request for clarification by telling us explicitly that the Division would "never undertake any Sherman Act investigation" into the propriety of the Verso-AIM sale and scrapping of the Bucksport Mill.

The Tunney Act submissions made to the District Court concerning communications between Verso and the Division tend to confirm that the Division failed to conduct any serious inquiry into the issues that Mr. Baker raised in his letters and other communications -- including: (i) the 2011-2013 merger-related efforts and capacity reduction activities involving Apollo, Verso, NewPage, and AIM; (ii) the likely adverse, anticompetitive market consequences of eliminating the Bucksport Mill's capacity from the North American coated paper market; (iii) Verso's express statements to Bucksport employees that it "would never sell the Bucksport Mill to a competitor"; and (iv) the likely availability of competitors willing to continue to operate the Bucksport Mill as a productive paper mill who were, and are, willing to pay more for the Bucksport Mill than the scrapper AIM ultimately paid for this facility as an incipient scrap heap.

Requested Action

Pursuant to the Tunney Act, I respectfully request, on behalf of 58 former Bucksport Mill employees and IAMAW Local 1821 that: (i) the Division withdraw its consent to the Consent Decree, and (ii) if the Division fails to do so, that the Court reject the Consent Decree. The Court should then instruct the Division that it should either: (i) require the parties to divest at least two more paper mills, preferably to some more independent operator than Catalyst; or (ii) take steps to cause (or require Verso to cause) AIM to sell the Bucksport Mill to a qualified operator willing to reopen it as a paper mill and cease and desist from all actions intended to scrap the Mill's paper-making capacity. Such a sale could be to a competitor of Verso's willing to pay *a reasonable price* (i.e., scrap value + $1) and continue to operate this facility as a paper mill engaged in the production of paper in the North American market.

We also respectfully request that the Division more fully explain than it did in the Competitive Impact Statement whatever legal reasoning and economic analysis there was behind its decision to only require, as a condition for approving the merger, the divestment of paper mills located in Rumford, Maine, and Biron, Wisconsin, while permitting destruction *rather than divestiture* of the Bucksport Mill. Such an explanation, if credible, might do much to improve the public image of the Division among those of us who live and work in the Penobscot Bay area of Maine.

Respectfully submitted,

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D.C. Bar No. 478517
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[FR Doc. 2015–13025 Filed 5–28–15; 8:45 am]

BILLING CODE C

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Disclosures by Insurers to General Account Policyholders

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Disclosures by Insurers to General Account Policyholders,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 29, 2015.