

**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)

**PLAINTIFF UNITED STATES' MOTION AND  
MEMORANDUM FOR ENTRY OF THE PROPOSED FINAL JUDGMENT**

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), Plaintiff United States moves for entry of the proposed Final Judgment filed on December 31, 2014, and attached as Exhibit 1. The proposed Final Judgment may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement (“CIS”) and the Response of Plaintiff United States to Public Comments on the Proposed Final Judgment (“Response to Public Comments”) – filed by the United States on December 31, 2014, and May 18, 2015, respectively – explain why entry of the proposed Final Judgment is in the public interest. The United States is filing simultaneously with this Motion and Memorandum a Certificate of Compliance (attached as Exhibit 2) setting forth the steps taken by the parties to comply with all applicable provisions of the APPA.

## **I. Background**

On December 31, 2014, the United States filed a Complaint in this matter, alleging that Defendant Verso Paper Corp.’s<sup>1</sup> (“Verso”) proposed acquisition of Defendant NewPage Holdings Inc. (“NewPage”) would substantially lessen competition in the sale of coated freesheet web paper, coated groundwood paper, and label paper to customers in North America in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition would likely have resulted in higher prices to consumers and reduced output.

On December 31, 2014, the United States also filed the proposed Final Judgment – which is designed to remedy the anticompetitive effects of the proposed merger – the CIS, and a Hold Separate Stipulation and Order signed by the parties consenting to entry of the proposed Final Judgment after compliance with the requirements of the APPA. The proposed Final Judgment requires 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. 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.

Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

## **II. Compliance with the APPA**

The APPA requires a 60-day period for the submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United

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<sup>1</sup> After the United States initiated this action on December 31, 2014, Verso Paper Corp. changed its name to Verso Corporation. *See* Docket No. 8.

States filed the CIS with the Court on December 31, 2014; published the proposed Final Judgment and CIS in the *Federal Register* on January 14, 2015, *see* 80 Fed. Reg. 1957 (2015); and had summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, published in *The Washington Post* on January 14, 15, 16, 19, 20, 21, and 22, 2015. The 60-day public comment period ended on March 24, 2015. The United States received two written comments relating to the proposed Final Judgment. On May 18, 2015, the United States filed with the Court its Response to Public Comments and the public comments that it received. Pursuant to 15 U.S.C. § 16(d), and with the Courts' authorization (May 19, 2015 Minute Order), the United States posted on the Antitrust Division's website the comments, the attachments to these comments, and its Response to Public Comments. On May 29, 2015, the United States published in the *Federal Register* both comments received, its Response to Public Comments, and the location on the Antitrust Division's website at which the attachments to the public comments are accessible, *see* 80 Fed. Reg. 30726 (2015).

The Certificate of Compliance filed simultaneously with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

### **III. Standard of Judicial Review**

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the Court may 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)(A)-(B).

In its CIS and its Response to Public Comments, the United States set forth the legal standards for determining the public interest under the APPA and now incorporates those statements herein by reference. The public has had the opportunity to comment on the proposed Final Judgment as required by the APPA. As explained in the CIS and the Response to Public Comments, entry of the proposed Final Judgment is in the public interest.

#### **IV. Conclusion**

For the reasons set forth in this Motion and Memorandum, the CIS, and the Response to Public Comments, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further proceedings. The United States respectfully requests that the proposed Final Judgment be entered at this time.

Dated: June 1, 2015

Respectfully submitted,

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