ACTION: OR–50855 Notice of Realty Action—Sale Public Land in Malheur County, Oregon.

SUMMARY: The following land has been found suitable for sale by direct sale procedures under Section 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719), at not less than the appraised fair market value (FMV) of $2,000.00.

The land will not be offered for sale for at least 60 days after publication of this notice.

Willamette Meridian, Oregon

T. 19S., R. 43E.,
Section 12: SW¼SW¼.
Containing 40 acres.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days from the date of publication of this notice in the Federal Register or until title transfer is completed or the segregation is terminated by publication in the Federal Register, whichever occurs first.

The parcel is difficult and uneconomic to manage as part of the public lands because of its location and has been identified as unneeded and not suitable for management by another Federal department or agency. There are no significant resource values which will be affected by this disposal. This parcel has no legal access and the public interest will be served by offering this land for sale.

The parcel will be offered by the direct sale method to Little Valley Ranch Co., LLC whose lands completely surround the subject parcel. The direct sale method is authorized under Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA). The purchaser will submit a non-refundable $50.00 filing fee for the conveyance of the mineral estate, with the exception of oil and gas and goethermal resources.

The terms and conditions applicable to the sale are:

1. A right-of-way for ditches and canals will be reserved to the United States under the authority of the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. The sale is for surface and subsurface estate with the following reservations: The patent will contain a reservation to the United States for oil and gas and geothermal resources, together with the right to prospect for, mine and remove the same.

The mineral interest being offered for conveyance have no known mineral value. The purchaser will submit an application for conveyance of the mineral estate in accordance with Section 209 of the Federal Land Policy and Management Act.

3. The sale will be subject to all valid existing rights.

DATES: No later than August 12, 1996, interested parties may submit comments to the District Manager, Bureau of Land Management, 100 Oregon Street, Vale, Oregon 97918. Objections would be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning the sale, including the reservations, procedures for the conditions of sale, and planning and environmental documents, is available at the Vale District Office, Bureau of Land Management, 100 Oregon Street, Vale, Oregon 97918.

FOR FURTHER INFORMATION CONTACT: Nancy Getchell, Realty Specialist, Malheur Resource Area, at 100 Oregon Street, Vale, Oregon 97918, (Telephone 541 473–3144).

Geoffrey B. Middaugh,
Vale District Associate Manager.

[FR Doc. 96–16500 Filed 6–27–96; 8:45 am]

BILLING CODE 4310–33–M

[Docket No. 4310–DN; MT–067–1220–01–23–1A]

Notice of Use Restriction—Seasonal Closure of Trails in the Ear Mountain ONA; Montana

AGENCY: Department of Interior, Bureau of Land Management, Great Falls Resource Area.

ACTION: Notice of use restrictions.

SUMMARY: To protect significant wildlife resources, a seasonal trail closure is in effect each year from December 15–July 1.

FOR MORE INFORMATION CONTACT: Richard L Hopkins, Area Manager, Great Falls Resource Area, 812 14th Street North, Great Falls, MT 59403. Phone (406) 727–0503.

SUPPLEMENTARY INFORMATION: The trails within the Ear Mountain Outstanding Natural Area (ONA), located in T.24N, R.8W, Sec. 5, 6, 7, and 8, PMM, Teton County, Montana, are closed seasonally. Signs stating the trail closure dates will be posted on trails accessing the Ear Mountain ONA. Access inside the Ear Mountain ONA boundary, during the closure dates, will be limited to permitted users and authorized Bureau of Land Management officials. Authority for this closure is found in 43 CFR 8364.1. Any person who fails to comply with a closure issued under 43 CFR 8364, may be subject to the penalties provided in 43 CFR 8360.0–7: violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The Ear Mountain ONA trailhead and picnic facilities are open year round.

Dated: June 14, 1996.

Gary Slagel,
Acting District Manager.

[FR Doc. 96–16294 Filed 6–27–96; 8:45 am]

BILLING CODE 4310–GR–P

National Park Service

Environmental Assessment

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service announces the publication of ''The Final Environmental Assessment to Provide Additional Housing for the Miccosukee Tribe of Indians of Florida'', which includes the Record of Decision and Finding of No Significant Impact and the Statement of Findings for Wetlands Protection and Floodplain Management. The location addressed is in the Special Use Permit Area of Everglades National Park, along the north boundary, near State Highway 41.

DATES: Copies of the assessment are immediately available.

ADDRESSES: Copies of the assessment may be obtained from the Public Affairs Office, Everglades National Park, 40001 State Road 9336, Homestead, FL 33034–6733.

FOR FURTHER INFORMATION CONTACT: Rick Cook, Public Affairs Officer, (305) 242–7700.

Elaine D'Amico Hall,
Acting Deputy Superintendent.

[FR Doc. 96–16607 Filed 6–27–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States vs. American Skiing Company and S–K–I Limited; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have

been filed with the United States District Court for the District of Columbia in *United States* vs. *American Skiing Company and S–K–I Limited,* Civil Action No. 96–1308. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

On June 11, 1996, the United States filed a Complaint seeking to enjoin a transaction in which American Skiing Company (''ASC'') agreed to acquire S–K–I Limited (''S–K–I''). ASC and S–K–I are the two largest owner/operators of ski resorts in New England, and this transaction would have combined eight of the largest ski resorts in this region. The Complaint alleged that the proposed acquisition would substantially lessen competition in providing skiing to eastern New England and Maine skiers in violation of section 7 of the Clayton Act, 15 U.S.C. 18, and section 1 of the Sherman Antitrust Act, 15 U.S.C. 1.

The proposed Final Judgment orders defendants to sell all of S–K–I's rights, titles, and interests in the Waterville Valley resort in Campton, New Hampshire, and all of ASC's rights, titles, and interests in the Mt. Cranmore resort in North Conway, New Hampshire, to one or more purchasers who have the capability to compete effectively in the provision of skiing to eastern New England and Maine skiers at Waterville Valley and Mt. Cranmore. The Stipulation also imposes a hold separate agreement that, in essence, requires the parties to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, S–K–I's Waterville Valley and ASC's Mt. Cranmore operations will be held separate and apart from, and operated independently of, ASC's assets and businesses. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the Federal Register and filed with the Court. Written comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530 (telephone: 202–307–5779). Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 3233 of the Antitrust Division, Department of Justice, Tenth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530 (telephone: 202–633–2481) and at the Office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, N.W., Washington, D.C. 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

In the matter of: UNITED STATES OF AMERICA, Plaintiff, vs. *AMERICAN SKIING COMPANY,* and *S–K–I Limited,* Defendants.
Docket Number: 96 1308
Judge: Thomas Penfield Jackson.
Filed: June 11, 1996.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District for the District of Columbia.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court; provided, however, that S–K–I Limited shall not be obligated to comply with Sections IV (A) or IX (A) of the Final Judgment unless and until the closing of any transaction in which American Skiing Company (formerly LBO Resort Enterprises) directly or indirectly acquires all or any part of the assets or capital stock of S–K–I Limited; provided, further, that S–K–I Limited shall not be obligated to comply with Sections IX (B) through (J) of the Final Judgment in the event that the Transactions contemplated by the Agreement and Plan of Merger, between LBO Resort Enterprises Corporation and S–K–I Limited, date February 13, 1996, are terminated.

(4) American Skiing Company shall prepare and deliver reports in the form required by the provisions of paragraph B of Section VII of the proposed Final Judgment commencing no later than July 1, 1996, and every thirty days thereafter pending entry of the Final Judgment.

(5) In the event plaintiff withdraws its consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(6) All parties agree that this agreement can be signed in multiple counter-parts.

Dated: June 11, 1996.

For Plaintiff United States of America:

Craig W. Conrath,

U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, N.W.; Suite 4000, Washington, D.C. 20005, (202) 307–5779.

For Defendant American Skiing Company:

Jeffrey M. White,

Pierce, Atwood, Scribner, Allen, Smith & Lancaster, One Monument Square, Portland, Maine 04101–1110, (207) 773–6411, Attorney for American Skiing Co.

For Defendant S–K–I Limited

Paul D. Sanson,

Shipman & Goodwin, One American Row, Hartford, CT 06103–2819, (860) 251–5721, Attorney for S–K–I Limited.

Dated: June 10, 1996.

For Plaintiff United States of America:

Craig W. Conrath,

U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, N.W.; Suite 4000, Washington, D.C. 20005, (202) 307–5779.

For Defendant American Skiing Company:

Jeffrey M. White,

Pierce, Atwood, Scribner, Allen, Smith & Lancaster, One Monument Square, Portland, Maine (207) 773–6411, Attorney for American Skiing Co.

For Defendant S–K–I Limited:

Paul D. Sanson,

Shipman & Goodwin, One American Row, Hartford, CT 06103–2819, (860) 251–5721, Attorney for S–K–I Limited.

Dated: June 11, 1996.

For Plaintiff United States of America:

Craig W. Conrath,

Antitrust Division, Merger Task Force, 1401 H Street, N.W.; Suite 4000, Washington, D.C. 20005, (202) 307–5779.

For Defendant American Skiing Company:

Jeffrey M. White,

Pierce, Atwood, Scribner, Allen, Smith & Lancaster, One Monument Square, Portland, Maine 04101–1110, (207) 773–6411, Attorneys for American Skiing Co.

For Defendant S–K–I Limited:

Paul D. Sanson,

Shipman & Goodwin, One American Row, Hartford, CT 06103–2819, (860) 251–5721, Attorney for S–K–I Limited.

In the matter of: *UNITED STATES OF AMERICA, Plaintiff,* v. *AMERICAN SKIING COMPANY, and S–K–I LIMITED, Defendants.*

Civil No.: 96 1308. Filed 6/11/96. Judge Thomas Penfield Jackson.

Final Judgment

Whereas, plaintiff, United States of America, having filed its Complaint herein on June , 1996, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is prompt and certain divestiture of assets to assure that competition is not substantially lessened;

And whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to plaintiff that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. ''ASC'' means defendant American Skiing Company (formerly known as LBO Resort Enterprises Corporation), a Maine corporation headquartered in Newry, Maine, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

B. ''S–K–I'' means defendant S–K–I Limited, a Delaware corporation headquartered in West Lebanon, New Hampshire, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

C. ''Divestiture Assets'' means:

(1) all rights, titles and interests, including all fee and all leasehold and renewal rights, in S–K–I's Waterville Valley resort in Campton, New Hampshire, including, but not limited to, all real property (including but not limited to property owned in fee or through a lease or special use permit from the United States Forest Service), deeded development rights to real property, capital equipment (including but not limited to lifts and snowmaking equipment), buildings, fixtures, inventories, contracts (including but not limited to customer contracts), customer lists, marketing or consumer surveys relating to Waterville Valley, permits (including but not limited to environmental permits and all permits from the United States Forest Service), all work in progress on permits or studies undertaken in order to obtain permits, plans for design or redesign of ski trails, trucks and other vehicles, interests, assets or improvements related to the provision of skiing services to customers at the Waterville Valley resort (collectively ''Waterville Valley''); and

(2) all rights, titles and interests, including all fee and all leasehold and renewal rights, in ASC's Mt. Cranmore resort in North Conway, New Hampshire, including, but not limited to, all real property (including but not limited to property owned in fee or through a lease or special use permit from the United States Forest Service), deeded development rights to real property, capital equipment (including, but not limited to, lifts and snowmaking equipment), buildings, fixtures, inventories, contracts (including, but not limited to, customer contracts), customer lists, marketing or consumer surveys relating to Mt. Cranmore, permits (including, but not limited to, environmental permits and all permits from the National Forest Service), all work in progress on permits or studies undertaken in order to obtain permits, plans for design or redesign of ski trails, trucks and other vehicles, interests, assets or improvements related to the provision of skiing services to customers at the Mt. Cranmore resort; (collectively ''Mt. Cranmore''); provided, however that Mt. Cranmore shall not include the 81.9 acres of real estate identified in the subdivision application filed by Mt. Cranmore, Inc. with the town of North Conway, New Hampshire, unless plaintiff, in its sole discretion, determines that such 81.9 acres must be divested for the purchaser of Mt. Cranmore to satisfy the criteria set forth in Section IV (G) of the Final Judgment.

D. ''Skiing services'' means all services related to providing access to downhill skiing and snowboarding, including, but not limited to, providing lifts, skiing lessons, ski patrol, snowmaking, design, building, and grooming of trails, and ancillary services such as food service, entertainment, and lodging.

III. Applicability

A. The provisions of this Final Judgment apply to defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of the Divestiture Assets, that the purchaser or purchasers agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of this Final Judgment, to divest the Divestiture Assets to a purchaser or purchasers.

B. Divestiture of defendants' leasehold interests, if any, in the Divestiture Assets shall be by transfer of the entire leasehold interest, which shall be for the entire remaining term of such leasehold, including any renewal rights.

C. Defendants agree to use their best efforts to accomplish the divestitures as expeditiously and timely as possible. Plaintiff, in its sole discretion, may extend the time period for any divestiture for two additional periods of

time not to exceed ninety (90) calendar days in toto.

D. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendant shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall make known to any person making an inquiry regarding a possible purchase of the Divestiture Assets that the assets described in Section II (C) are being offered for sale and that Waterville Valley and Mt. Cranmore may be purchased as a two resort package or sold separately to different purchasers. Defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Divestiture Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to plaintiff at the same time that such information is made available to any other person.

E. Defendants shall not interfere with any negotiations by any purchaser or purchasers to employ any employee of the defendants who works at Waterville Valley or Mt. Cranmore, or whose employment substantially relates to the provision of skiing services at Waterville Valley or Mt. Cranmore, or whose responsibilities include the management of or marketing for Waterville Valley or Mt. Cranmore.

F. Defendants shall permit prospective purchasers of the Divestiture Assets to have access to personnel and to make such inspection of the Divestiture Assets, and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

G. Unless plaintiff otherwise consents in writing, the divestiture pursuant to Section IV (A), or by the trustee appointed pursuant to Section V of this Final Judgment, shall include all of the Divestiture Assets and be accomplished by selling or otherwise conveying the assets described in Section II (B) to one or two purchasers (or, as provided in Section IV (H) with respect to Mt. Cranmore, several purchasers), in such a way as to satisfy plaintiff, in its sole discretion, that the Divestiture Assets can and will be used by the purchaser or purchasers as part of a viable, ongoing business or businesses engaged in the provision of skiing services at Waterville Valley and Mt. Cranmore. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's sole satisfaction that: (1) the purchaser or purchasers have the capability and intent of competing effectively in the provision of skiing services at Waterville Valley and Mt. Cranmore; (2) the purchaser or purchasers have or soon will have the managerial, operational, and financial capability to compete effectively in the provision of skiing services at Waterville Valley and Mt. Cranmore; and (3) none of the terms of any agreement between the purchaser or purchasers and defendants give defendants the ability unreasonably to raise the purchaser's or purchasers' costs, to lower the purchaser's or purchasers' efficiency, or otherwise to interfere in the ability of the purchaser and purchasers to compete effectively in the provision of skiing services at Waterville Valley and Mt. Cranmore.

H. Defendants may divest the Mt. Cranmore sports center, the Mt. Cranmore tennis stadium and the development rights to land owned by the Nature Conservancy (which land is adjacent to Mt. Cranmore) to separate purchasers, provided that plaintiff, in its sole discretion, first determines that the purchaser of the remaining assets of Mt. Cranmore satisfies the criteria set forth in Section IV(G) of the Final Judgment.

V. Appointment of Trustee

A. In the event that defendants have not divested the Divestiture Assets within the time specified in Sections IV (A) or (C) of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections V and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser or purchasers acceptable to plaintiff, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendant must be conveyed in writing to plaintiff and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to ASC and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of defendants, and defendants shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in

the trustee's judgment, that the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendants, the proposed purchaser or purchasers, any other third party, or the trustee if applicable additional information concerning the proposed divestiture and the proposed purchaser or purchasers. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendants, the proposed purchaser or purchasers, any third party, and the trustee, whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendants and the trustee that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that plaintiff does not object to the proposed purchaser or upon objection by plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days therafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, ASC shall deliver to plaintiff an affidavit as to the fact and manner of defendants' compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period.

B. Within twenty (20) calendar days of the filing of this Final Judgment, ASC shall deliver to plaintiff an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the Divestiture Assets pursuant to Section IX of this Final Judgment and describes the functions, duties and actions taken by or undertaken at the supervision of the individual(s) described at Section IX(F) of this Final Judgment with respect to defendants' efforts to preserve the Divestiture Assets. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate Waterville Valley and Mt. Cranmore as active competitors, maintain the management, sales, marketing and pricing of Waterville Valley and of Mt. Cranmore apart from that of defendants' other businesses that provide skiing services, maintain and increase sales of skiing services at Waterville Valley and at Mt. Cranmore, and maintain the Divestiture Assets in operable condition, continuing normal maintenance. ASC shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall preserve all records of all efforts made to preserve and divest the Divestiture Assets.

VIII. Financing

With prior written consent of the plaintiff, defendants may finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment.

IX. Preservation of Assets

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall take all steps necessary to ensure that the Divestiture Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the provision of skiing services; and that, except as necessary to comply with Sections IX(B) to IX(F) of this Final Judgment, the management of the Divestiture Assets shall be kept separate and apart from the management of defendants' other ski resorts and will not be influenced by defendants and the books, records, and competitively sensitive sales, marketing and pricing information associated with the Divestiture Assets will be kept separate and apart from that of defendants; other businesses that provide skiing services.

B. Defendants shall use all reasonable efforts to maintain and increase sales of skiing services a Waterville Valley and at Mt. Cranmore, and defendants shall maintain at 1995 or previously approved levels, whichever are higher, promotional, advertising, sales, marketing and merchandising support for skiing services sold at Waterville Valley and at Mt. Cranmore. Defendants' sales and marketing employees responsible for sales of skiing services at Waterville Valley and at Mt. Cranmore shall not be transferred or reassigned to other ski resorts owned by defendant.

C. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition and shall maintain and adhere to normal maintenance schedules for the Divestiture Assets.

D. Defendants shall continue all efforts in progress to obtain permits for either Waterville Valley or Mt. Cranmore, including, but not limited to, efforts to obtain permits that will allow the building of ponds for the storage of water for snowmaking, provided that defendants will not be required to add any of the permitted ponds.

E. Defendants shall provide and maintain sufficient lines of sources of

credit to maintain the Divestiture Assets as viable, ongoing businesses.

F. Defendants shall provide and maintain sufficient working capital to maintain the Divestiture Assets as viable ongoing businesses.

G. Defendants shall not, except as part of a divestiture approved by plaintiff, remove, sell, or transfer any of the Divestiture Assets, other than sales in the ordinary course of business.

H. Unless they have obtained the prior approval of the United States, defendants shall refrain from terminating or reducing any current employment, salary, or benefit agreements for any personnel employed by defendants who works at Waterville Valley or Mt. Cranmore, except in the ordinary course of business.

I. Defendants shall take no action that would jeopardize their ability to divest the Divestiture Assets as viable, ongoing businesses.

J. Defendants shall appoint a person or persons to oversee the Divestiture Assets, and who will be responsible for defendant's compliance with Section IX of this Final Judgment.

X. Compliance Inspection

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, who may have counsel present, relating to enforcement of this Final Judgment; and

(2) Subject to the reasonable convenience of defendants and without restraint or interference from it, to interview its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in Section X of this Final Judgment shall be divulged by a representative of plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with the Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

UNITED STATES OF AMERICA, PLAINTIFF, versus *AMERICAN SKIING COMPANY, and S–K–I LIMITED, Defendants.*

Civil Action No.: 96–01308TPJ.
Filed: June 18, 1996.

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on June 11, 1996, alleging that American Skiing Company's (''ASC'') proposed acquisition of the ski resorts of S–K–I Limited (''S–K–I'') would violate section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that ASC and S-K-I are the two largest owner/operators of ski resorts in New England, and that this transaction would combine eight of the largest ski resorts in this region. In particular, this acquisition would increase substantially the concentration among ski resorts to which eastern New England residents (i.e., those in Maine, eastern Massachusetts and Connecticut, and Rhode Island) practicably can go for weekend ski trips, and to which Maine residents practicably can go for day ski trips. As a result, this acquisition threatens to raise the price of, or reduce discounts for, weekend and day skiing to consumers living in these areas in violation of section 7 of the Clayton Act. The prayer for relief in the Complaint seeks: (1) a judgment that the proposed acquisition would violate section 7 of the Clayton Act, 15 U.S.C. 18; and (2) a permanent injunction preventing ASC from acquiring control of S–K–I's ski resorts, or otherwise combining such businesses with ASC's own business in the United States.

At the same time the Complaint was filed, the United States also filed a proposed settlement that would permit ASC to complete its acquisition of S–K–I's ski resorts, but require certain divestitures that would preserve competition for skiers in eastern New England and Maine. This settlement consists of a Stipulation and a proposed Final Judgment.

The proposed Final Judgment orders the parties to sell all of S–K–I's rights, titles, and interests in the Waterville Valley resort in Campton, New Hampshire, and all of ASC's rights, titles, and interests in the Mt. Cranmore resort in North Conway, New Hampshire, to one or more purchasers who have the capability to compete effectively in the provision of skiing for skiers in eastern New England and Maine at Waterville Valley and Mt. Cranmore. The parties must complete the divestiture of these ski resorts and related assets within one hundred and eighty (180) calendar days after the filing of the proposed Final Judgment in accordance with the procedures specified therein.

The Stipulation and proposed Final Judgment also impose a hold separate agreement that requires defendants to ensure that, until the divestiture

mandated by the Final Judgment has been accomplished, S–K–I's Waterville Valley and ASC's Mt. Cranmore operations will be held separate and apart from, and operated independently of, defendants' other assets and businesses. Defendants must preserve and maintain the ski resorts to be divested as saleable and economically viable, ongoing concerns, with competitively sensitive business information and decisionmaking divorced from that of defendants' ski resorts. Defendants will appoint a person or persons to monitor and ensure their compliance with these requirements of the proposed Final Judgment.

The United States, ASC, and S–K–I have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment may be entered after compliance with the APPA. 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 proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Parties and the Proposed Transaction

ASC, A Maine corporation headquartered in Newry, Maine, owns four ski resorts: Sunday River in Main, Attitash/Bear Peak and Mt. Cranmore in New Hampshire, and Sugarbush in Vermont. During the 1994–95 ski season, ASC resorts accounted for 1.1 million skier days. ASC had revenues of over $58 million in 1995.

S–K–I, a Delaware corporation headquartered in West Lebanon, New Hampshire, also owns four ski resorts: Killington and Mt. Snow/Haystack in Vermont, Waterville Valley in New Hampshire, and a 51 percent interest in Sugarloaf in Maine. During the 1994–95 ski season, S–K–I resorts accounted for 1.8 million skier days. S–K–I had revenues of more than $109 million in 1995.

On February 13, 1996, ASC agreed to acquire all the common stock of S–K–I for approximately $137 million, which includes the assumption of certain liabilities. Pursuant to the purchase agreement, ASC would acquire all of the ski resort services and operations of S–K–I and its subsidiaries as well as its 51 percent interest in Sugarloaf. This proposed transaction combining the two largest owner/operators of ski resorts in New England precipitated the government's suit.

B. The Skiing Market

The Complaint alleges that the provision of weekend and day skiing constitutes a line of commerce, or relevant product market, for antitrust purpose, and that eastern New England and Maine constitute relevant geographic markets. Within eastern New England and Maine, the Complaint alleges the effect of ACS's acquisition would be to lessen competition substantially in the provision of skiing.

The business of skiing comprises all services related to providing access to downhill skiing and snowboarding, including, but not limited to, providing lifts, ski patrol, snowmaking, design, building, and grooming of trails, skiing lessons, and ancillary services such as food service, entertainment, and lodging.

Most skiers must travel some distance from their homes to ski. Consequently, depending on, among other things, the duration of a given ski trip, the number of resorts practicably available to a skier will vary according to the time and expense required to travel to, and the qualitative aspects of, the possible alternatives.

The duration of a ski trip and the distance traveled by the skier can be identified easily by ski resorts. As a consequence, ski resorts can and do offer different prices to skiers depending on where they come from and how long they plan to stay at the resort. For example, consecutive-day passes can be offered at discount off the single day ticket to attract weekend skiers. Discounts can be given to a skier who presents a drives license from a more distant state without the same discounts being offered to local residents, who may have fewer choices. Also, coupons can be put in local papers or sent out by direct mail, targeted to skiers in particular geographic areas. Promotions can be targeted to skiers in defined locations without significant risk that skiers in other locations will be able to learn about and take advantage of the lower price being offered to others. In addition, ski resorts routinely offer discounts on lift ticket prices when tickets are packaged with lodging, either by offering such ''ski and stay'' packages directly to skiers or by selling discounted lift tickets to the owner of a hotel or inn, who in turn sells a package to skiers. As a result, ski resorts can and do routinely charge different prices for skiing depending on the length of stay and the residence of the skier. Downhill skiing differs from other winter recreational activities, such as cross-country skiing, ice skating, snow-mobiling, sleigh rides, tobagganing, ice fishing,and taking cruises to places with hot climates. small but significant and nontransitory increase in prices for skiing would not cause a significant number of downhill skiers to substitute other winter recreational activities for skiing.

Moreover, geographic markets for skiing are regional. Skiers are not willing to travel an unlimited distance to ski. Traveling to distant ski resorts imposes a burden on the skier, either in the form of excessive driving time or of a large additional expense for airfare. However, the longer the ski trip, the greater a skier's willingness to travel. Thus, distance a skier will travel to a ski resort depends in part on the length of time that skier will stay at the resort and on the qualitative characteristics of the resort.

C. Competition Between ASC and S–K–I

ASC and S–K–I compete directly to provide skiing to both eastern New England weekend skiers and Maine day skiers.

Eastern New England Weekend Skiers

ASC and S–K–I both provide skiing to eastern New England weekend skiers at each of their ski resorts. Eastern New England residents can practicably turn only to a limited number of resorts with adequate services (e.g., accommodations, number and variety of trails, and other amenities) in Maine, New Hampshire, and Vermont for weekend skiing trips. These are the resorts that have the necessary qualities and are within a reasonable traveling distance for eastern New England weekend skiers.

Smaller ski resorts and resorts located farther away cannot and after this transaction would not constrain prices charged to weekend skiers living in eastern New England. Although eastern New England skiers occasionally choose to ski at such smaller or more distance resorts, skiing at such resorts is not a practical or economic alternative for most eastern New England weekend skiers most of the time.

Ski resorts in Maine, New Hampshire, and Vermont that have the necessary qualities and services to attract weekend skiers from eastern New England can charge different prices to these skiers than they charge to others. Eastern New England weekend skiers can be identified easily by the ski resorts that are reasonable alternatives for these consumers. These ski resorts can charge eastern New England weekend skiers prices that differ from prices charged to

day skiing customers, to customers coming from other parts of the country, or to customers who stay longer than a weekend. Ski resorts can offer coupons for discounted lift tickets packaged with lodging and/or airfare, either through direct mail or through advertising in local papers, in, for example, the New York, Washington D.C., or Atlanta metropolitan areas, and not offer such coupons in eastern New England. A single firm controlling all the resorts in Maine, New Hampshire, and Vermont with adequate services for weekend skiing would be able to raise prices a small but significant amount to eastern New England weekend skiers without losing so much business as to make the price increase unprofitable.

Thus, the provision of weekend skiing to eastern New England residents is a relevant market (i.e., a line of commerce and a section of the country) within the meaning of Section 7 of the Clayton Act, and ASC and S–K–I compete directly in this market.

Maine Day Skiers

ASC provides skiing to Maine day skiers primarily at its Sunday River, Attitash/Bear Peak, and Mt. Cranmore ski resorts. S–K–I provide skiing to Maine day skiers primarily at its Sugarloaf and Waterville Valley ski resorts. Maine residents can practicably turn only to resorts in Maine and eastern New Hampshire for day skiing trips. These are the resorts that are within a reasonable traveling distance for Maine day skiers.

Ski resorts located father from Maine cannot and after this transaction would not constrain prices charged to day skiers living in Maine. Although Maine skiers occasionally choose to ski at such more distant resorts, skiing at such resorts is not a practical or economic alternative for most Maine day skiers most of the time.

Ski resorts in Maine and eastern New Hampshire can charge prices to Maine day skiers different from prices they charge to other skiers. Maine day skiers can be identified easily by the ski resorts that are reasonable alternatives for these consumers. These ski resorts can charge Maine day skiers prices that differ from prices charged to out-of-state skiers or to Maine skiers who stay multiple days. A single firm controlling all the ski resorts in Maine and eastern New Hampshire would be able to raise prices a small but significant amount to Maine day skiers without losing so much business as to make the price increase unprofitable.

Thus, the provision of day skiing to Maine residents is a relevant market (i.e., a line of commerce and a section of the country) within the meaning of section 7 of the Clayton Act, and ASC and S–K–I compete directly in this market.

D. Anticompetitive Consequences of the Acquisition

The Complaint alleges that the acquisition of S–K–I by ASC would substantially lessen competition. The transaction would have the following effects, among others:

1. Competition generally in providing skiing to eastern New England weekend skiers would be lessened substantially;
2. Actual competition between ASC and S–K–I in providing skiing to eastern New England weekend skiers would be eliminated;
3. Discounting to eastern New England weekend skiers by ASC and S–K–I resorts would likely be reduced or eliminated;
4. Prices for skiing to eastern New England weekend skiers would be likely to increase;
5. Competition generally in providing skiing to Maine day skiers would be lessened substantially;
6. Actual competition between ASC and S–K–I in providing skiing to Maine day skiers would be eliminated;
7. Discounting to Maine day skiers by ASC and S–K–I resorts would likely be reduced or eliminated; and,
8. Prices for skiing to Maine day skiers would be likely to increase.

Moreover, the Complaint alleges that the combination of ASC and S–K–I would substantially increase concentration in the eastern New England weekend skier market and Maine day skier market using the Herfindahl-Hirschman Index (''HHI'') (explained in Appendix A to the Complaint) as a measure of market concentration. The approximate post-merger HHI for eastern New England weekend skiing, based on the 1994–95 total skier days of ski resorts located in Maine, New Hampshire, and Vermont capable of attracting and accommodating weekend skiers, would be approximately 2100 with a change in HHI of about 900 points. The approximate post-merger HHI for Maine day skiing, based on the 1994–95 total skier days of ski resorts located in Maine and eastern New Hampshire, would be over 2900 with a change in HHI of over 1200 points.

Finally, the Complaint alleges that successful entry or expansion in the skiing business would be difficult, time consuming, and costly, as well as extremely unlikely. Entry or expansion therefore would not be timely, likely, or sufficient to prevent any harm to competition.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition for skiers in the operation of ski resorts in eastern New England and Maine. Within one hundred and eighty (180) calendar days after filing the proposed Final Judgment, defendants must sell all of S–K–I's rights, titles, and interests in the Waterville Valley resort in Campton, New Hampshire, and all of ASC's rights, titles, and interests in the Mt. Cranmore resort in North Conway, New Hampshire, to one or more purchasers. The assets and interests will be sold to one or more purchasers who demonstrate to the sole satisfaction of the United States that they will be an economically viable and effective competitor, capable of maintaining or surpassing ASC's and S–K–I's pre-acquisition market performance in the operation of ski resorts in the New England region.

The divestitures ordered in the proposed Final Judgment will resolve the anticompetitive problems raised by the proposed transaction. With these divestitures, the post-merger HHI for the eastern New England weekend skiing market will be below 1800, and the parties' post-merger share of that market will be less than 40 percent. The post-merger HHI for the Maine day skiing market will be slightly over 1900 with these divestitures, and the parties' post-merger share of that market will be less than 35 percent. Given these post-divestiture HHI levels, the combined firm's post-divestiture market shares, and the number and size of independent ski resorts remaining in the affected markets, the proposed transaction is not likely to lead to a unilateral anticompetitive effect or to a higher probability of coordinative behavior, provided the divestitures are made.

Until the ordered divestitures take place, defendants must take all reasonable steps necessary to accomplish the divestitures, and cooperate with any prospective purchaser. If defendants do not accomplish the ordered divestiture within the specified one hundred and eighty (180) calendar day time period, which may be extended up to ninety (90) calendar days by the United States, the proposed Final Judgment provides for procedures by which the Court shall appoint a trustee to complete the divestitures. In that case defendants must cooperate fully with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's

compensation will be structured so as to provide an incentive for the trustee to obtain the highest price for the assets to be divested, and to accomplish the divestiture as quickly as possible. After the effective date of his or her appointment, the trustee shall serve under such other conditions as the Court may prescribe. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee shall file promptly with the Court a report that sets forth: (1) The trustee's efforts to accomplish the divestiture, (2) the reasons, in the trustee's judgment, why the divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee's report will be furnished to the parties and shall be filed in the public docket, except to the extent the report contains information the trustee deems confidential. The parties each will have the right to make additional recommendations to the Court. The Court shall enter such orders as it deems appropriate to carry out the purpose of the trust.

The proposed Final Judgment also imposes a hold separate agreement that requires defendants to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, S–K–I's Waterville Valley and ASC's Mt. Cranmore operations will be held separate and apart from, and operated independently of, defendants' other assets and businesses.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against ASC or S–K–I.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against ASC and against S–K–I. The United States is satisfied, however, that the divestitute of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the operation of ski resorts that otherwise would be affected adversely by the acquisition. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the government's Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court *may* consider—

> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment 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) (emphasis added). As the United States Court of Appeals for the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1997–1 Trade Gas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, 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) *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th

[1] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

Cir.), *cert. denied,* 454 U.S. 1083 (1981); *see also Microsoft,* 56 F.3d at 1460–62. Precedent requires that

> the 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 the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[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 public interest.' (citations omitted).''[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Respectfully submitted,

Burney P.C. Huber,

Attorney, D.C. Bar #181818, Dept. of Justice, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 307–1858.

June 18, 1996.

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[2] *United States* v. *Bechtel,* 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 716. *See also Microsoft,* 56 F.3d at 1461 (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.' '') (citations omitted).

[3] *United States* v. *American Tel. and Tel. Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983), *quoting United States* v. *Gillette Co., supra,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Notice Pursuant to the National Cooperative Research and Production Act of 1993—E&P Technology Cooperative

Notice is hereby given that, on June 6, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), E&P Technology Cooperative, a non-profit joint research and development venture, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: BP Oil Company, Cleveland, OH; The British Petroleum Company plc, London EC2M 7 BA, ENGLAND; BP Exploration Operating Company Limited, Poole Dorset BH16 6LS, ENGLAND; BP Exploration & Oil Inc., Cleveland, OH; Chevron Corporation, San Francisco, CA; Chevron Petroleum Technology Company, Houston, TX; Mobil Corporation, Fairfax, VA; Mobile Technology Company, Fairfax, VA; Texaco, Inc., White Plains, NY; and Texaco Group Inc., White Plains, NY. The objectives of the venture are as follows: The members of the program intend to support research activities that will create or drive the creation of new technologies to benefit their businesses. Examples of such research include innovations in drilling, recovery technology and data management. They expect the products of their research will materially impact business performance by lowering costs, shortening cycle time and/or improving recovery. In general, the members also intend to identify innovative approaches and attract and recruit the best talent in a variety of disciplines to solve the challenges of the future. It is the intention of the members to make the results of their projects available to others in the industry.

Information regarding participating in the Group may be obtained from Richard J. Goetsch, Esq., BP Oil Company, Terry Calvani, Esq., on behalf of Chevron Corporation, Carter B. Simpson, Esq., Mobil Corporation, and Robert D. Wilson, Esq., Texaco, Inc.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–16513 Filed 6–27–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant To the National Cooperative Research and Production Act of 1993 National Electronics Manufacturing Initiative

Notice is hereby given that, on June 6, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the National Electronics Manufacturing Initiative (''NEMI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to § 6(b) of the Act, the identities of the parties are: Adept Technology, Inc., San Jose, CA; AMP Incorporated, Harrisburg, PA; American Electronics Association, Washington, DC; Camelot Systems, Inc., Haverhill, MA; Chad Industries, Orange, CA; Cimetrix, Inc., Provo, UT; Compaq Computer Corporation, Houston, TX; Delco Electronics Corporation, Kokomo, IN; Dover Technologies International, Binghamton, NY; DuPont Electronics, Research Triangle Park, NC; Everett Charles Technologies, Pomona, CA; GR Technologies, Concord, MA; HADCO Corporation, Salem, NH; IPC/ITRI, Northbrook, IL; Lawrence Livermore National Laboratory, Livermore, CA; Lucent Technologies, Princeton, NJ; MCNC, Research Triangle Park, NC; Microelectronics and Computer Technology Corporation (''MCC''), Austin, TX; Morton Electronic Materials, Tustin, CA; Motorola, Inc., Schaumburg, IL; National Institute of Standards and Technology (''NIST''), Gaithersburg, MD; Kulicke and Soffa Industries, Inc., Willow Grove, PA; MPM Corporation, Franklin, MA; Northrop Grumman Corporation, Baltimore, MD; Sheldahl, Inc., Northfield, MN; Solectron Corporation, Milpitas, CA; and Texas Instruments Incorporated, Temple, TX.

NEMI's area of planned activity is to perform research and infrastructure development with a technical focus on the manufacturing of electronic information products that connect to information networks. Three initial thrust areas are the creation of a technology requirements roadmap; the setting of technical goals for materials and equipment suppliers; and the initiation of research, development, and deployment projects with suppliers in conjunction with the aforementioned goals. The parties will collect, exchange,