U.S. Agency for International Development, Room 409, SA–18, Washington, D.C. 20523–1822;
Fax Nos: 703/875–4384 or 875–4639;
Telephone: 703/875–4300.

Dated: January 27, 1997.

Michael G. Kitay,

Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.

[FR Doc. 97–2525 Filed 1–31–97; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States of America and the State of Colorado v. Vail Resorts, Inc., Ralston Resorts, Inc., and Ralston Foods, Inc.

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 Colorado in *United States and The State of Colorado* versus *Vail Resorts, Inc., Ralston Resorts, Inc., and Ralston Foods, Inc.*, Civ. Action No. 97–B–10. 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 January 3, 1997, the United States and the State of Colorado filed a Complaint seeking to enjoin a transaction in which Vail Resorts, Inc. (''Vail'') agreed to acquire Ralston Resorts, Inc. (''Ralston''). Vail and Ralston are the two largest owner/operators of ski resorts in Colorado, and this transaction would have combined five ski resorts in Colorado. The Complaint alleged that the proposed acquisition would substantially lessen competition in providing skiing to Front Range Colorado skiers in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

The proposed Final Judgment orders defendants to sell all of Ralston's rights, titles, and interests in the Arapahoe Basin resort in Summit County, Colorado to a purchaser who has the capability to compete effectively in the provision of skiing to Front Range Colorado skiers at Arapahoe Basin. 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, Ralston's Arapahoe Basin operations will be held separate and apart from, and operated independently of, Vail'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, NW., Suite 4000, Washington, DC. 20530 (telephone: (202) 307–0001). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530 (telephone: (202) 514–2481) and at the office of the Clerk of the United States District court for the District of Colorado, 1929 Stout Street, Room C–145, Denver, Colorado 80294.

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 United States District Court for the District of Colorado

United States of America and the State of Colorado, Plaintiffs, v. *Vail Resorts, Inc., Ralston Resorts, Inc., and Ralston Foods, Inc.,* Defendants.

Civil Action No. 97–B–10

Stipulation and Order

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 of Colorado;

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 the United States 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. Defendants Vail and Ralston (as defined in paragraphs II (A) & (B) of the proposed Final Judgment attached hereto) 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 through the same were in full force and effect as an order of the Court; provided, however, that Ralston shall not be obligated to comply with Section IV(A) of the proposed Final Judgment unless and until the closing of any transaction in which Vail directly or indirectly acquires all or any part of the assets or capital stock of Ralston; and provided, further, that Ralston shall be relieved of its obligation to comply with Sections IX (A) through (K) of the proposed Final Judgment in the event that the Stock Purchase Agreement among Vail Resorts, Inc., Ralston Foods, Inc. and Ralston Resorts, Inc., dated July 22, 1996 (the ''Stock Purchase Agreement''), is terminated without consummation of the transaction contemplated therein or any variant of it; and provided, further, that Ralston Foods, Inc. shall be relieved of its obligation to comply with Sections IV (A) through (G) and IX (A) through (K) of the proposed Final Judgment upon consummation of the transaction contemplated by the Stock Purchase Agreement.

4. Defendants shall not consummate their transaction before the Court has signed this Stipulation and Order;

5. Vail shall prepare and deliver affidavits in the forms required by the provisions of paragraphs A and B of Section VII of the proposed Final Judgment commencing no later than January 23, 1997 and every thirty days thereafter pending entry of the Final Judgment;

6. In the event plaintiff United States 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;

7. The defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that the defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

8. All parties agree that this agreement can be signed in multiple counterparts.

Dated: January 2, 1997.

For the United States:
Craig W. Conrath,
Chief.
Reid B. Horwitz,
Assistant Chief.
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Anne M. Purcell,*
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Attorneys for Vail Resorts, Inc.
For Defendants Ralston Resorts, Inc. and Ralston Foods, Inc.:
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Bryan Cave, LLP, 700 13th Street, NW, Washington, DC 20004, (202) 508–6000.
Attorneys for Ralston Resorts, Inc. and Ralston Foods, Inc.
Dated: January 3, 1997.
So ordered:

United States District Judge.
Dated: January 3, 1997.

In the United States District Court for the District of Colorado

United States of America and the State of Colorado, Plaintiffs, v. *Vail Resorts, Inc., Ralston Resorts, Inc. and Ralston Foods, Inc., Defendants.*

Civil Action No. 97–B–10

Final Judgment

Whereas plaintiffs United States of America (hereinafter ''United States'') and the State of Colorado, having filed their Complaint herein on January 3, 1997, and plaintiffs 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 plaintiffs require defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas defendants have represented to plaintiffs that the divestiture 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 defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. *Ralston* means defendants Ralston Resorts, Inc., a Colorado corporation headquartered in Keystone, Colorado; and Ralston Foods, Inc., a Nevada corporation headquartered in St. Louis, Missouri, and includes their successors and assigns, and their parents, subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

B. *Vail* means defendant Vail Resorts, Inc., a Delaware corporation headquartered in Avon, Colorado, and includes its successors and assigns, and its parents, subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

C. *Divestiture Assets* means all rights, titles and interests, including all fee and all leasehold, permit and renewal rights, in Ralston's Arapahoe Basin resort in Summit County, Colorado, including, but not limited to, all real property (including but not limited to property owned in fee or used 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, grooming and snowmaking equipment), buildings, fixtures, inventories, contracts (including but not limited to customer contracts), customer lists, marketing or consumer surveys relating to Arapahoe Basin, 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, snowcats and other vehicles, water rights sufficient to implement the snowmaking already approved by the U.S. Forest Service for Arapahoe Basin and the snowmaking outlined in Arapahoe Basin's pending submission to the U.S. Forest Service, and all other interests, assets or improvements related to the provision of skiing services to customers at the Arapahoe Basin resort (collectively ''Arapahoe Basin'').

* Counsel of Record.

*Counsel of Record.

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, parents, 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 assets of their ski operations in Colorado, that the purchaser of such assets agree to be bound by the provisions of this Final Judgment; provided, however, that the defendants need not obtain such an agreement from the acquirer of the Divestiture Assets in the divestiture contemplated herein.

IV. Divestiture

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within one hundred and fifty (150) calendar days after the filing of the Stipulation settling this action, or within five (5) business days after notice of entry of this Final Judgment, whichever is later, to divest the Divestiture Assets to a purchaser acceptable to the United States, in its sole discretion, after consulting with Colorado.

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 all renewal or option rights.

C. Defendants agree to use their best efforts to accomplish the divestiture as expeditiously as possible. The United States, after consulting with Colorado, 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 divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants 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. 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 plaintiffs 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 to employ any employee of the defendants who works at Arapahoe Basin, or whose employment substantially relates to the provision of skiing services at Arapahoe Basin, or whose responsibilities include the management of or marketing for Arapahoe Basin.

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 the United States 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 Divestiture Assets to a purchaser in such a way as to satisfy the United States, in its sole discretion, after consulting with Colorado, that the Divestiture Assets can and will be used by the purchaser as part of a viable, ongoing business engaged in the provision of skiing services at Arapahoe Basin. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to the United States' sole satisfaction, after consulting with Colorado, that: (1) the purchaser has the capability and intent of competing effectively in the provision of skiing services at Arapahoe Basin; (2) the purchaser has or soon will have the managerial, operational, and financial capability to compete effectively in the provision of skiing services at Arapahoe Basin; and (3) none of the terms of any agreement between the purchaser and defendants give defendants the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in the provision of skiing services at Arapahoe Basin.

V. Appointment of Trustee

A. In the event that defendants have not divested the Divestiture Assets within the time specified in Section 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 acceptable to the United States, after consulting with Colorado, 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 defendants must be conveyed in writing to plaintiffs 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 Vail 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 plaintiffs.

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 plaintiffs 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 plaintiffs of such notice, plaintiffs may request from defendants, the proposed purchaser, any other third party, or the trustee if applicable additional information concerning the proposed divestiture and the proposed purchaser. 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) days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information requested from defendants, the proposed purchaser, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States 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 the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV shall not be consummated. Upon objection by the United States, 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 thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Vail shall deliver to plaintiffs 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, Vail shall deliver to plaintiffs 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 Arapahoe Basin as an active competitor, maintain the management, sales, marketing and pricing of Arapahoe Basin apart from that of defendants' other businesses that provide skiing services, maintain and increase sales of skiing services at Arapahoe Basin, maintain the Divestiture Assets in operable condition, continuing normal maintenance. Vail shall deliver to plaintiffs and 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

Defendants shall not finance all or any part of any divestiture made pursuant to Sections IV or V of this Final Judgment without the prior written consent of the United States, after consulting with Colorado.

IX. Preservation of Assets

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendants shall take all steps necessary to ensure that the Divestiture Assets will be maintained and operated as an ongoing, economically viable and active competitor in the provision of skiing services; and that, except as necessary to comply with Sections IX(B) to IX(H) of this Final Judgment, the management of Arapahoe Basin 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 Arapahoe Basin 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 at Arapahoe Basin, and defendants shall maintain at 1996 or previously approved levels, whichever are higher, promotional, advertising, sales, marketing, skier transportation, reservation and merchandising support for skiing services sold at Arapahoe Basin. Defendants' sales and marketing employees responsible for sales of skiing services at Arapahoe Basin 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 provide and maintain sufficient lines of sources of credit to maintain the Divestiture Assets as viable, ongoing businesses.

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

F. Defendants shall not, except as part of a divestiture approved by the United States, after consulting with Colorado, remove, sell, or transfer any of the Divestiture Assets, other than sales in the ordinary course of business.

G. Unless they have obtained the prior approval of the United States, after consulting with Colorado, defendants shall not terminate or reduce the current employment, salary, housing, or benefit arrangements for any personnel employed by defendants who work at, or have managerial responsibility for, Arapahoe Basin, except in the ordinary course of business.

H. Defendants shall continue all efforts in progress to obtain permits for Arapahoe Basin, including, but not limited to, efforts to obtain permits relating to water rights or access or snowmaking.

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.

K. (a) Within five (5) days after the closing pursuant to the Stock Purchase Agreement amongst defendants, defendants shall hire, subject to the prior approval of the United States after consulting with Colorado, a person with the requisite experience and ability to serve as chief executive officer of Arapahoe Basin (the ''A-Basin CEO''). The A-Basin CEO shall have complete authority to manage and operate Arapahoe Basin in the ordinary course of business as a separate and independent business entity, including mountain operations, guest services, food and beverage operations, marketing, sales, lift ticket operations and pricing; provided, however, that the A-Basin CEO may continue A-Basin's participation in Ralcorp's previously announced marketing (e.g., Ski-3), skier transportation and reservations programs; and provided, further that, consistent with their obligations under Sections IX(B) to IX(H) of this Final Judgment, defendants shall provide the A-Basin CEO with whatever resources the A-Basin CEO requests. The A-Basin CEO may help facilitate the timely sale of the Divestiture Assets (e.g., by assisting in the due diligence process). In no circumstances shall defendants provide to, or receive from, the A-Basin CEO competitively sensitive marketing, sales and pricing information relating to their respective ski operations, and, further, except as is necessary for defendants to comply with Sections IX(B) to IX(H) of this Final Judgment or to effect the divestiture contemplated by Section IV(A), defendants shall not communicate with, or attempt to influence the business decisions of, the A-Basin CEO. The A-Basin CEO shall report directly in writing to the plaintiffs on the operation of A-Basin every thirty (30) days from the date he or she is hired until the divestiture required by this Final Judgment is completed.

(b) The appointment of the A–Basin CEO by defendants is for the purpose of facilitating defendants' compliance with Section IX(A) of this Final Judgment, and does not relieve defendants of whatever additional measures they may be required to take to comply fully with Section IX(A) of this Final Judgment. Furthermore, the appointment of the A–Basin CEO shall not be construed to relieve defendants of their obligations under Sections IX(B) to IX(J), VII and X of this Final Judgment.

(c) The A–Basin CEO's compensation shall not depend on A–Basin's revenues, profits, or profit margins, but may depend on a measure of output (e.g., skier days).

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 plaintiffs, including consultants and other persons retained by the United States or the State of Colorado , upon written request of the Assistant Attorney General in charge of the Antitrust Division, or the Attorney General of Colorado, 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 defendants, 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 them, to interview their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of Colorado 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 the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States or of the State of Colorado, except in the course of legal proceedings to which the plaintiffs are a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiffs, 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

In the United States District Court for the District of Colorado

United States of America and The State of Colorado, Plaintiffs, v. *Vail Resorts, Inc., Ralston Resorts, Inc., and Ralston Foods, Inc.*, Defendants.

Civil Action No. 97–B–10

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 and the State of Colorado filed a civil antitrust Complaint on January 3, 1997, alleging that the proposed acquisition by Vail Resorts, Inc. (''Vail'') of the ski resort businesses of Ralston Resorts, Inc. (''Ralston'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Vail and Ralston are the two largest owner/operators of ski resorts in Colorado, and that this transaction would combine several of the largest ski resorts in this region. In particular, this acquisition would increase substantially the concentration among ski resorts to which several hundred thousand skiers residing in the ''Front Range'' of Colorado—the geographic area lying just east of the Rocky Mountains, and including the metropolitan areas of Fort Collins, Boulder, Denver, Colorado Springs, and Pueblo and surrounding population areas—can practicably go for day or overnight ski trips. As a result, the acquisition would threaten to raise the price of, or reduce discounts for, weekend and day skiing to consumers living in these areas. The acquisition would thus violate 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 he Clayton Act, 15 U.S.C. 18; and (2) a permanent injunction preventing Vail and Ralston from carrying out the Stock Purchase Agreement, dated July 22, 1996, or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the businesses or assets of Vail and Ralston.

At the same time the Complaint was filed, the United States and the State of Colorado also filed a proposed settlement that would permit Vail to complete its acquisition of Ralston's ski resorts, but requires a divestiture that would preserve competition for skiers in the Front Range. This settlement consists of a Stipulation and a proposed Final Judgment.

The proposed Final Judgment orders the parties to sell all of Ralston's rights, titles, and interests in the Arapahoe Basin resort in Summit County, Colorado to a purchaser who has the capability to compete effectively in the provision of skiing for Front Range Colorado skiers at Arapahoe Basin. The parties must complete the divestiture of these ski resorts and related assets before the later of one-hundred-and-fifty (150) calendar days after the filing of the Stipulation settling this action or five (5) business days after the entry of Final Judgment, in accordance with the procedures specified in the proposed Final Judgment. 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, Ralston's Arapahoe Basin operations will be held separate and apart from, and operated independently of, Vail's and Ralston's other assets and businesses. Defendants must hire, subject to the prior approval of the United States, a person to serve as chief executive officer of Arapahoe Basin, who shall have complete authority to operate Arapahoe Basin in the ordinary course of business as a separate and independent business entity.

The United States, the State of Colorado, Vail, and Ralston have stipulated that 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

Vail Resorts, Inc. (''Vail''), a Delaware corporation headquartered in Vail, Colorado, owns Vail Associates, Inc., which owns and operates two Colorado ski resorts: Vail and Beaver Creek Resorts. (Beaver Creek Resort includes the formerly independent Arrowhead Mountain.) During the 1995–96 ski season, Vail's resorts accounted for approximately 280,000 Front Range skier days. A ''skier day'' is one day or part of a day of skiing for one skier. This is about a 12 percent share of the Front Range market. Overall, Vail's resorts had over 2.2 million skier days and had revenues of over $140 million.

Ralston Resorts, Inc. (''Ralston''), a Colorado corporation headquartered in Keystone, Colorado, owns three Colorado ski resorts: Keystone, Breckenridge, and Arapahoe Basin. Ralston is a subsidiary of Ralcorp Holdings, Inc., a Missouri corporation headquartered in St. Louis, Missouri. Ralston Foods, Inc., a Nevada corporation, is also a subsidiary of Ralcorp Holdings, Inc., and is headquartered in St. Louis, Missouri. During the 1995–96 ski season, Ralston accounted for approximately 600,000 Front Range skier days, or over 26 percent of the Front Range market. Overall, Ralston's resorts had more than 2.6 million skier days and had revenues of more than $135 million.

Pursuant to a Stock Purchase Agreement among Vail Resorts, Inc., Ralston Foods, Inc., and Ralston Resorts Inc. dated July 22, 1996, Vail proposes to acquire all of the voting securities of Ralston, in return for which Ralston Foods, Inc. will receive voting securities of Vail valued at approximately $145 million. Vail will also assume or pay off debt of Ralston Foods amounting to at least $132 million and as much as $165 million under the Stock Purchase Agreement. The total consideration is valued at approximately $310 million. This proposed transaction combining the two largest owner/operators of ski resorts in Colorado precipitated the plaintiffs' antitrust suit.

B. The Skiing Market

The Complaint alleges that the provision of downhill skiing to residents of Colorado's Front Range constitutes a relevant market for antitrust purposes—that is, in the language of the Clayton Act, it is a ''line of commerce'' and is in a ''section of the country.'' The Complaint further alleges that the effect of Vail's acquisition

would be to lessen competition substantially in the provision of skiing to Front Range skiers.

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. Downhill skiing differs from other winter recreational activities, such as cross-country skiing, ice skating, snow-mobiling, sleigh riding, tobogganing, ice fishing, and taking cruises or vacationing in places with hot climates.[1] A small but significant and nontransitory increase in prices for skiing would not cause a significant number of downhill skiers to substitute other recreational activities for skiing.

Customers of defendants' ski resorts include two types of skiers: destination skiers and Front Range skiers.[2] Destination skiers come from outside Colorado, many from outside of the United States. These skiers ski for extended periods of time, typically for a week. Many destination skiers fly to their ski resort and are usually attracted to the resort by both the mountain (e.g., terrain, trails, lifts, and grooming) and resort amenities (e.g., lodging and night life). In contrast, Front Range skiers are day or overnight skiers. Most Front Range skiers drive to their ski resort and limit the resorts they use for day trips to those which fall within a radius of about two-and-one-half-hour travel time from where they live, and a somewhat larger radius for overnight trips. Front Range skiers are typically more interested in the mountain and skiing facilities than in the resort amenities.

The defendants market their ski resorts differently to skiers depending on whether they are destination or Front Range skiers. They advertise their ski resorts outside the Front Range area of Colorado for destination skiers, for example, in major metropolitan newspapers and in magazines sold throughout the United States. In marketing to destination skiers, the resorts emphasize package pricing, which typically includes one or more of lift tickets, lodging, airfare, and also emphasize resort amenities as well as mountain features. In contrast, the defendants market their resorts to Front Range skiers by advertising in the Front Range, e.g., using direct mail within certain zip codes, billboards, and local newspapers. Front Range advertising, in contrast to destination skier advertising, emphasizes discount prices on lift tickets to the Front Range skier. There is also less emphasis on resort amenities as opposed to qualities of the mountains themselves.

The defendants' ski resorts use different pricing strategies depending on whether they are selling tickets to destination skiers or Front Range skiers. These resorts sell single-day and multi-day lift tickets through the resort ticket window primarily to the destination skier. In selling to Front Range skiers, these ski resorts sell single-day lift tickets through off-mountain retailers located within the Front Range that are discounted below the window lift ticket price. These resorts also offer the Front Range skier coupons that discount off the window ticket price, as well as frequent skier cards that provide discounts from the window price and may also provide a free day of skiing after a Front Range skier has paid for a certain number of lift tickets. Promotions are targeted to Front Range skiers, and measures are taken successfully to limit the access of destination skiers to such promotions. Consequently, the lift ticket prices defendants charge to Front Range skiers are different from the prices they charge to destination skiers.

C. Competition Between Vail and Ralston

Vail and Ralston compete directly to provide skiing to Front Range Colorado day and overnight skiers.

As noted above, Front Range skiers typically drive to their ski resort and limit the resorts they use for day trips to those which fall within a radius of about two-and-one-half-hour travel time from where they live, and a somewhat larger radius for overnight trips. The most popular of these resorts are located off Interstate 70 west of Denver. The Vail and Ralston resorts are located within this radius. Front Range skiers would not turn to resorts that fall outside of this two-and-one-half-hour radius in sufficient numbers to defeat a small significant, non-transitory price increase imposed by resorts within this radius.

Resorts located farther away cannot, and after this transaction would not, constrain prices charged to skiers living in the Front Range. Although Front Range skiers occasionally choose to ski at more distant resorts, skiing at such resorts is not a practical or economic alternative for most Front Range skiers most of the time.

Ski resorts in Colorado that are within the distance which a Front Range resident will practically travel for a day or a weekend skiing trip can charge different prices to these skiers than they charge to customers coming from other parts of the country or the world.

Thus, the provision of downhill skiing to Front Range residents is a relevant market within the meaning of Section 7 of the Clayton Act (i.e., is a ''line of commerce'' and is in a ''section of the country''), and Vail and Ralston compete directly in this market.

D. Anticompetitive Consequences of the Acquisition

The Complaint alleges that the combination of Vail and Ralston would substantially increase concentration in the Front Range skier market, using the Herfindahl-Hirschman Index (''HHI'')[3] as a measure of market concentration. The post-merger HHI, based on Front Range skier days derived from surveys of skiers conducted in 1994, 1995, and 1996, would be approximately 2,228 with a change in HHI of about 643 points. During the 1995–96 skiing season, Vail's resorts accounted for about 12 percent and Ralston's resorts over 26 percent of Front Range skier days. If the proposed acquisition were consummated, the combined company would account for over 38 percent of skier days in the Front Range market.

The Complaint further alleges that the acquisition of Ralston by Vail would substantially lessen competition. The transaction would have the following effects, among others:

1. Competition generally in providing skiing to Front Range skiers would be lessened substantially;

2. Actual competition between Vail and Ralston in providing skiing to Front Range skiers would be eliminated;

[1] Skiing is a discretionary recreational activity, but this does not, in itself, affect the antitrust analysis of whether skiing constitutes a product market. The antitrust laws protect and respect consumers' choices for discretionary products as well as for nondiscretionary products.

[2] The Complaint does not allege a violation of the Clayton Act for destination skiers or for types of skiers other than Front Range skiers. The Division's investigation did not reveal any likely anticompetitive effect from the proposed merger in the destination skier market or in other relevant markets such as the local skier market.

[3] The Herfindahl-Hirschman Index, or ''HHI,'' is a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2+30^2+20^2+20^2=2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated.

3. Discounting to Front Range skiers by Vail and Ralston would likely be reduced;

4. Prices for skiing to Front Range Colorado skiers would likely be increased.

The Complaint also 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 sufficent to prevent any harm to competition.

Prices charged to Front Range skiers are constrained by competition among ski resorts for these skiers' business. That is, each ski resort is limited in raising its price by the fact that when a resort raises its price, it can lose revenues because customers switch to other ski resorts. Thus, a resort's prices are constrained by other resorts' prices. Similarly, if prices increase, some customers would ski less frequently. This, too, constrains the prices a resort may charge.

Acting in light of these facts, a ski resort (like any business) attempts to set a price that will earn it the most profit. It does not want to charge a price so high that it loses too many customers, nor does it want to charge a price so low that it misses the opportunity for the revenue that a higher price would bring. For each resort, the price that will maximize profit balances these two conflicting goals—either a higher or a lower prices would be profitable. Businesses often cannot easily determine the profit-maximizing price, and may do so through trial and error. But the effort to find the profit-maximizing price—that is, the price that neither drives away too many customers because it is too high nor misses revenue opportunities because it is too low—is reflected in the day to day business decisions of ski resorts, as well as countless other businesses.

Economists have developed an analytical framework to explain how a merger can allow a firm to charge higher prices after acquiring a competitor, even if firms do not coordinate their behavior (such as by explicitly colluding with one another). Associated with this framework are standard tools that allow us to predict specific price effects. This framework has been called a unilateral effects'' mode. It is particularly useful in markets that have differentiated products, that is, where products of different firms are not identical [4] Each ski resort, for example, has characteristics, such as terrain and amenities, that different consumers value differently. This unilateral effects model is an additional tool to examine the accepted, common-sense notion that a merger is more likely to have a harmful effect if the merging firms are close competitors.

Before a merger, increases in price by two independent resorts are deterred by the loss of customers that would result from a price increase. If resorts are put under common ownership by a merger, however, they no longer constrain each other's prices in the same way. A merger can make a price increase profitable. In particular, before a merge, if two resorts are significant competitors to each other and one of these resorts increases its prices, a significant proportion of this resort's customers would be ''lost'' to the other resort. After merger between these two resorts, however, some customers who switch away from the resort that raises its price would no longer be lost, but rather would be ''recaptured'' at the newly-acquired resort. Price increases that would have been unprofitable to either firm alone, therefore, would become profitable to the merged entity.

As a result of this recapture phenomenon, a merged firm, acting independently to earn the most profits it can, will choose higher prices than its two component firms did before the merger, if those firms were significant competitors to each other before the merger. The loss of competition that arises as a result of this effect is what is meant by a ''unilateral'' anticompetitive effect, that is, an effect that does not depend on the firms in the market acting interdependently. This unilateral effect will be larger as the recapture rate (which is sometimes called the ''diversion ratio,'' see infra noted 4) is larger, as the margin earned on recaptured customers is higher, and as the customers who leave the merging firms in response to a price increase are fewer (in technical terms, the lower the ''own price elasticity'').

The Vail and Ralston resorts are close competitive alternatives for a number of Front Range skiers. Some of the customers who would switch away from Vail's resorts if Vail raised its price would instead go to Ralston resorts, and some customers who currently ski at Ralston's resorts would switch to Vail if Ralston raised its price. After the merger, Vail-Ralston would no longer lose revenues from these customers if it raised its price, because it would recapture the revenues from customers who would switch between Vail and Ralston in response to a price increase. The profit-maximizing price for the post-merger Vail-Ralston therefore would be higher than that for either firm before the merger. Moreover, once Vail and Ralston resorts charge higher prices, other resorts in the market have an incentive to raise their prices somewhat in response to less intense price competition for Front Range customers.

Economics allows us to estimate the likely unilateral effect of a merger if we have information on the elasticities, margins and recapture ratios. In this case, information about the Front Range Colorado skiing market permitted estimates of the relevant range of likely price increases. Existing surveys of Front Range skiers were used to estimate how many customers are likely to switch between Vail and Ralston resorts in response to a price change (the recapture ratios). Margin information was derived from accounting and marketing documents obtained from the parties. A range of likely elasticities was derived from a number of sources, including surveys, existing literature about the market, and market data on past price changes. In conjunction with other information about costs and demand in the market, this information permitted estimates of how much the profit-maximizing price for various resorts would increase as a result of the merger. It was estimated that, if the merger were allowed to take place without any divestiture, there would be an overall average increase in Front Range discounted lift ticket prices on the order of 4%, or about $1 per lift ticket on average to all Front Range customers, with higher price increases at the merging firms' resorts.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition for Front Range skiers in the operation of ski resorts in Colorado. Within one-hundred-and-fifty (150) calendar days after filing the proposed Final Judgment, defendants must sell all of Ralston's rights, titles, and interests in the Arapahoe Basin resort in Summit County, Colorado. The assets and interests will be sold to a purchaser who demonstrates to the sole satisfaction of the United States (which will consult with Colorado) that it will be an economically viable and effective competitor.

The divestiture ordered in the proposed Final Judgment resolves the anticompetitive problems raised by the proposed transaction. Since Ralston has jointly owned Arapahoe Basin, Keystone, and Breckenridge, these three resorts have not been competing against each other for customers. Divesting Arapahoe Basin restores significant competition among these mountains

[4] See, e.g., Carl Shapiro, *Mergers with Differentiated Products*, 10 Antitrust 23 (1996).

and, more generally, permits Arapahoe Basin to serve as an independent competitor for skiers throughout the Front Range. While Arapahoe Basin is smaller than the other Ralston resorts in absolute size, it has a high proportion of Front Range skiers (roughly one-quarter of Ralston's Front Range skier days last year were at Arapahoe Basin) and is thus relatively more competitively significant in the Front Range skiing market than its overall number of skier days might suggest. Furthermore, with a large percentage of its terrain attracting advanced intermediate and expert skiers, Arapahoe Basin competes directly with the bowl and glade skiing experience offered at a number of Vail's mountains. A relatively small shift in skier days to Arapahoe Basin would make any significant price increase by the merged firm unprofitable. The calculations of profit-maximizing behavior described above suggest that, after the merger, once Arapahoe Basin is divested, any increase in average discounted prices to Front Range skiers would be negligible.

With this divestiture, the post-merger HHI for the Colorado Front Range skiing market will be below 1800 and the defendants' post-merger market share in the Front Range will be less than 32%. Given the post-divestiture HHI level, the combined firm's post-divestiture market share, and the number and size of independent competing ski resorts remaining in the affected markets, the proposed transaction is not likely to lead to a significant anticompetitive effect—provided that Arapahoe Basin is divested.

Until the ordered divestiture takes place, defendants must take all reasonable steps necessary to accomplish the divestiture, and cooperate with any prospective purchaser. If defendants do not accomplish the ordered divestiture within the specified one-hundred-and-fifty (150) calendar day time period, which may be extended by the United States for two additional periods of time not to exceed (90) calendar days in toto, the proposed Final Judgment provides for procedures by which the Court shall appoint a trustee to complete the divestiture. 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 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, Ralston's Arapahoe Basin operations will be held separate and apart from, and operated independently of, defendants' other assets and businesses. Defendants must hire, subject to the prior approval of the United States, a person to serve as chief executive officer of Arapahoe Basin, who shall have complete authority to operate Arapahoe Basin in the ordinary course of business as a separate and independent business entity.

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 substantial private lawsuit that may be brought against Vail or Ralston.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States, the State of Colorado, and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of APPA, provided that the United States has now 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 proceeding 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, after consultation with the State of Colorado, will 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, 1402 H Street, NW., Suite 4000, Washington, DC 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 Vail or Ralston. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve 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 could shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the coust *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 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 has held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific alleviations 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.'' [5] 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-American Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 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 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.[6]

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).'' [7]

VIII. Determinative Documents

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

Dated: January 21, 1997.

Respectfully submitted,

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In the United States District Court for the District of Colorado

United States of America and the State of Colorado, Plaintiffs, v. *Vail Resorts, Inc., Ralston Resorts, Inc., and Ralston Foods, Inc.* Defendants.

Case No. 97–B–10

Certificate of Service

I hereby certify that on this 21st day of January, 1997 a true and correct copy of the foregoing Competitive Impact Statement was delivered by overnight mail to the following persons:

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[5] 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.

[6] *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).

[7] *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).