SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

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DEPARTMENT OF JUSTICE

Antitrust Division

Public Comments and Plaintiff's Response

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 Public Comments and Plaintiff's Response have been filed with the United States District Court for the District of Colorado in *United States and the State of Colorado* v. *Vail Resorts, Inc., Ralston Resorts, Inc., and Ralston Foods, Inc.*, Civ. Action No. 97–B–10.

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.

Public comment was invited within the statutory 60-day comment period. Such comments, and the responses thereto, are hereby published in the **Federal Register** and filed with the Court. Brochures, newspaper clippings and miscellaneous materials appended to the Public Comments have not been reprinted here; however they may be inspected with copies of the Complaint, Stipulation, proposed Final Judgment, Competitive Impact Statement, Public Comments and Plaintiff's Response 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.

United States District Court, District of Colorado, Lewis T. Babcock, Judge

[Civil Action No. 97–B–10]

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

United States' Response to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (the ''Tunney Act''), the United States responds to the public comments received regarding the proposed Final Judgment in this case.

I. Background

The United States and the State of Colorado filed a civil antitrust Complaint on January 3, 1997, alleging that the proposed acquisition of Ralston Resorts, Inc. (''Ralston Resorts'') by Vail Resorts, Inc. (''Vail Resorts'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleged that Vail Resorts and Ralston Resorts are the two largest owner/operators of ski resorts in Colorado, and that the proposed transaction would combine under common ownership several of the largest ski resorts in this region. In particular, the acquisition would increase substantially the concentration among ski resorts to which several hundred thousand skiers residing in Colorado's ''Front Range''—the major population areas along Interstate 25—can practicably go for day or overnight ski trips. As a result, this acquisition threatened to raise the price of, or reduce discounts for, skiing to Front Range Colorado consumers in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

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 Resorts to complete its acquisition of Ralston Resorts, but requires a divestiture that would preserve competition for skiers in the Front Range. This settlement consists of a Stipulation and proposed final judgment.

The proposed final judgment orders the parties to sell all of Ralston Resorts' rights, titles, and interests in the Arapahoe Basin ski area in Summit County, Colorado to a purchaser who has the capability to compete effectively in the provision of skiing for Front Range Colorado skiers. The parties must complete the divestiture of this ski area and related assets within five (5) days after the entry of the final judgment, in accordance with the procedures specified in the proposed final judgment, unless an extension is granted pursuant to the 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 Resorts' Arapahoe Basin operations will be held separate and apart from, and operated independently of, Vail Resorts' and Ralston Resorts' other assets and businesses. Defendants must hire, subject to the prior approval of the United States, a person to serve as chief executive officer or Arapahoe Basin, who shall have complete authority to operate Arapahoe Basin in the ordinary course of business as a separate and independent business entity.

A Competitive Impact Statement (''CIS''), explaining the basis for the complaint and proposed consent decree in settlement of the suit, was filed on January 22, 1997 and subsequently published for comment, along with the stipulation and proposed final judgment, in the **Federal Register** on February 3, 1997 (62 FR 5037 through 5046), as required by the Tunney Act. Notice was also published in the newspaper, as required by the Tunney Act. The CIS explains in detail the provisions of the proposed final judgment, the nature and purpose of these proceedings, and the proposed acquisition alleged to be illegal.

The United States, the State of Colorado, Vail Resorts, and Ralston Resorts have stipulated that the proposed final judgment may be entered after compliance with the Tunney Act. The United States and defendants have now, with the exception of publishing the comments and this response in the **Federal Register**, completed the procedures the Tunney Act requires before the proposed Final Judgment can be entered.[1] The United States received 14 public comments.

The comments, which are collected in the appendix to this Response,[2] came from a variety of sources, such as representatives of other ski areas and

[1] The United States will publish the comments and this response promptly in the **Federal Register.** It will provide the Court with a certificate of compliance with the requirements of the Tunney Act and file a motion for entry of final judgment once publication takes place.

[2] The comments have been numbered, and a log prepared. See Appendix. For ease of reference, the Untied States in this Response refers to individual comments by the log number assigned to the comment.

individuals such as skiers, property owners, local business persons, local officials, and others.

II. Response to Comments

A. Overview

Most comments are not supportive of the proposed final judgment principally for the reason that the commenters do not believe that the divestiture of Arapahoe Basin ski area acts as a sufficient check on the combined Vail Resorts and Ralston Resorts. Specifically, these comments claim that:

1. The government did not define the market properly in analyzing the acquisition;
2. Data used in analyzing this acquisition are flawed; and
3. Divestiture of Arapahoe Basin is an inadequate remedy.

The comments in opposition to the proposed final judgment are addressed in the following sections of this response and are arranged by the antitrust issues they raise.[3] For each issue, we discuss briefly the standard for merger analysis generally, what the analysis was in this case, what the relevant comments were and the response to them.

As an initial matter, we note that some commenters (e.g. Comments 1 and 7) questioned the adequacy of the investigation. This investigation was conducted like any full-scale merger investigation. The Department and the State of Colorado reviewed thousands of documents, not only from Vail and Ralston but also from other ski resorts; interviewed numerous business people at other Colorado ski resorts; interviewed and deposed Vail and Ralson officials; and contacted numerous groups and individuals, including substantial numbers of skiers, government officials, and others who might have insight into skiing in Colorado. In addition, the Department evaluated substantial amounts of sales, price, and survey data. The investigation lasted for several months.

B. Downhill Skiing Is the Relevant Product Market for Antitrust Purposes

The Antitrust Division's review of mergers is governed by the Clayton and Sherman Acts, judicial precedent, and the Horizontal Merger Guidelines issued jointly by the Department and the Federal Trade Commission in 1992 (and slightly revised in 1997). The first step is defining a relevant product market. In this case the Complaint alleged that downhill skiing is the relevant product market. The Department's investigation showed that if prices at ski resorts went up a small but significant amount after the merger (for example, by five percent without inflation or any quality improvements), people would continue to ski rather than switch to other recreational activities. Typical downhill skiers would not switch to an activity such as ice skating, for example, just because the price of a downhill ticket increases by a small amount. No commenter disagreed with this relevant product market analysis.

C. The Relevant Geographic Market Is for Front Range Day and Weekend Skiers

The relevant standard for defining a relevant geographic market is set forth below:

> [I]f a hypothetical monopolist can identify and price differently to buyers in certain areas (''targeted buyers'') who would not defeat the targeted price increase by substituting to more distant sellers in response to a ''small but significant and nontransitory'' price increase for the relevant product, * * * then a hypothetical monopolist would profitably impose a discriminatory price increase. * * * The Agency will consider * * * geographic markets consisting of particular locations of buyers for which a hypothetical monopolist would profitably and separately impose at least a ''small but significant and nontransitory'' increase in price.

Horizontal Merger Guidelines § 1.22; see also *Brown Shoe* v. *United States*, 370 U.S. 294 (1962).

Ski resorts may compete in several geographic markets at the same time. They may compete in local markets for day skiers, larger markets for weekend skiers, and quite large markets for extended vacations of destination skiers. The Department's investigation revealed that the defendants' ski resorts are able to identify different groups of skiers that ski at their resorts and to set prices differently for different groups. In the Guidelines' terms, these are ''targeted buyers.'' ''Destination'' skiers, or those that come from outside of Colorado (and often outside of the United States), usually travel a significant distance to arrive at the ski resort and then ski for extended periods of time. Destination skiers usually are attracted to the resort by both the skiing itself and the resort's amenities. The defendants market to destination skiers by advertising outside of the Front Range area of Colorado and emphasizing package pricing which typically includes one or more of lift tickets, lodging, and airfare. Advertisements targeted at destination skiers also tend to emphasize resort amenities. The Complaint did not allege a violation in a market for destination skiers.

Front Range skiers, in contrast, come from the geographic area lying just east of the Rocky Mountains and usually take day or overnight ski trips in Colorado. Front Range skiers are typically interested in the mountain and skiing facilities more than resort amenities. The defendants advertise to Front Range skiers in the Front Range: For example, through direct mail within certain zip codes and through local newspapers and billboards. Front Range advertising emphasizes discount prices on lift tickets to Front Range skiers. Front Range skiers usually drive to the ski resorts. Front Range skiers are more constrained by distance than destination skiers in choosing among resorts and are not willing to travel an unlimited distance to ski.

The defendants' resorts use different pricing strategies depending on whether they are selling tickets to destination skiers or to Front Range skiers. The resorts sell lift tickets to destination skiers through ticket windows, as well as including tickets as part of destination package deals. In selling tickets to Front Range skiers, in contrast, the defendants' resorts use off-mountain retailers located within the Front Range, where tickets are discounted below the ticket window price. The ski resorts also offer discount coupons to Front Range skiers and frequent skier cards that provide discounts off of the window price and sometimes give a free day of skiing after a certain number of paid days of skiing. The defendants attempt to limit the availability to destination skiers of those promotions targeted at Front Range skiers. Because the defendants can identify and use different marketing and sales strategies for destination and Front Range skiers, the average lift ticket prices that the defendants charge to Front Range skiers are different from the prices that they charge to destination skiers.

Because Vail Resorts and Ralston Resorts can offer different prices in the different markets for destination and Front Range skiers, each market is

[3] This Response addresses all of the antitrust issues that are raised in the comments related to the substance of the Compliant and proposed Final Judgment. A number of comments raised issues that are not related to standard merger analysis and do not raise issues under the Tunney Act. For example, a comment expressed concern about the ''Vail mentality'' taking over in Summit County. Whatever the validity of such a concern, it is not one to which a Tunney Act response can be made—such a ''mentality'' could have been adopted by any owner for any ski resort at any time. Only changes that are directly and uniquely the result of the merger would be cognizable in an antitrust action. Also in this category are complaints about the demise of multi-mountain tickets (Ski-the-Summit), which the commenters claim occurred before the merger, and comments about the atmosphere, premerger prices, or management style of Vail Resorts. These views may be valid or not, but they are not antitrust issues raised by this merger.

appropriate for antitrust analysis. If Vail Resorts could impose a ''small but significant and nontransitory'' price increase on Front Range skiers after the merger (for example, five percent) without causing a sufficient number of Front Range skiers to switch to ski resorts in other geographic areas and defeat the price increase, then the appropriate geographic market includes these ski resorts.

It is in the market for Front Range skiing that the Department and the State of Colorado alleged likely anticompetitive harm from the proposed transaction in this case. 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 but significant, non-transitory price increase imposed by resorts within this radius.

The investigation by the Department and the State of Colorado revealed that Vail and Ralston resorts compete directly to provide skiing to Front Range Colorado day and overnight skiers. During the 1995–96 ski season, Vail Resorts accounted for approximately 280,000 Front Range skiers 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. In this same season Ralston Resorts accounted for approximately 600,000 Front Range skiers 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.

The provision of downhill skiing to Front Range residents is therefore a relevant market within the meaning of Section 7 of the Clayton Act, Vail and Ralston resorts compete directly in this market, and as the Complaint alleges, the effect of Vail Resorts' acquisition of Ralston Resorts would be to lessen competition substantially in the provision of skiing to Front Range skiers.

Commenters 1 through 4 suggest that one of the relevant regional geographic markets for purposes of analyzing this proposed acquisition is a local Summit County skier market, and that the Department should have alleged harm to local skiers. The United States and the State of Colorado conducted a thorough investigation of the proposed merger and ultimately filed a complaint that did not allege a violation of the Clayton Act for skiers other than Front Range skiers. In evaluating these comments, it is important first to note that the merger of the Vail and Ralston resorts does not combine any competing ski resorts in Summit County; Keystone, Breckenridge and Arapahoe Basin ski resorts were already under single ownership before this proposed merger, and the Vail resorts are not in Summit County.[4] Indeed, the divestiture relief in the proposed Final Judgment will deconcentrate ownership of ski resorts located in Summit County. More important, however, as discussed in more detail in Section III, the Tunney Act does not contemplate judicial reevaluation of the wisdom of the government's determination of which violations to allege in the Complaint. Thus, the Court may not look beyond the Complaint ''to evaluate claims that the government did not make and to inquire as to why they were not made.'' Microsoft, 56 F.3d at 1459 (emphasis in original); see also Associated Milk Producers, 534 F.2d at 117–18.[5] A possible violation in a Summit County local skier market is a ''claim the government did not make.''

D. The Proposed Divestiture Solves the Anticompetitive Problem Alleged in the Complaint

The divestiture ordered in the proposed Final Judgment will resolve the substantial increase in concentration that is likely to be brought about by the proposed merger. In analyzing the proposed final judgment, ''the court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest.'' *United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.), *cert. denied*, 114 S. Ct. 487 (1993) (emphasis added, internal quotation and citation omitted). The relief in the proposed Final Judgment is sufficient to preserve competition for Front Range Colorado skiers.

The Complaint alleges that the combination of Vail Resorts and Ralston Resorts would substantially increase concentration in the Front Range skier market, using the Herfindahl-Hirschman Index (''HHI'')[6] 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 the HHI of about 643 points. During the 1995–96 skiing season, Vail Resorts accounted for about 12 percent and Ralston Resorts over 26 percent of Front Range skier days. If the proposed acquisition were consummated without divestiture, the combined company would account for over 38 percent of skier days in the Front Range market. The Complaint also alleges that successful entry or expansion in the skiing business is extremely unlikely for the reason that entry is difficult, time consuming and costly. Entry or expansion is unlikely to prevent any harm to competition.

Information about the Front Range Colorado skiing market permitted estimates of the relevant range of likely price increases that could result from the proposed merger without the divestiture of Arapahoe Basin. If the merger were allowed to take place without any divestiture, it was estimated there would be an overall

[4] Thus the merger could affect a possible Summit County market only if significant numbers of such skiers use Vail resorts frequently enough that they are a significant price constraint on Summit County prices, but other out-of-county resorts are not a comparable constraint. This possibility was considered in the investigation, but not accepted, and the theory was not incorporated in the Complaint. It is also worth noting that one commenter (Comment 3 at p. 4) confirmed that most local skiers buy season passes, which means that these skiers are committed to those resorts at which they have bought such passes. For such skiers, competition from Vail is not a significant constraint unless substantial numbers of Summit County skiers are likely to choose a Vail season pass instead of a Ralston season pass, which seems improbable.

[5] In the same vein as the comments about a possible Summit County market are comments about a ''Multi-Mountain Ticket market'' (Comment 3) (although multi-mountain tickets were considered carefully in analysis of their use in competition among ski resorts in the Front Range skier market); and a ''Colorado market'' (Comment 3) (although the investigation did consider, and reject, the possibility of an anticompetitive effect in the market for destination ski vacations). Similarly, concern that Vail may dominate a labor market for ski resort employees (Comment 11) is beyond the Complaint.

[6] 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.

average increase in Front Range discounted lift ticket prices on the order of 4%. This is an approximate average of about one dollar per lift ticket for all Front Range customers (considering actual average transaction prices for Front Range skiers, not list (ticket window) prices). It was also estimated that there would be higher price increases at the merging firms' resorts.

The divestiture ordered in the proposed Final Judgment is likely to resolve the anticompetitive problems raised by the proposed merger. Since Ralston Resorts has jointly owned Arapahoe Basin, Keystone, and Breckenridge, these three resorts have not been competing against each other for customers. Divesting Arapahoe Basin restores such competition and, more generally, permits Arapahoe Basin to serve as an independent competitor for Front Range skiers. The divestiture of the Arapahoe Basin ski area decreases the post-merger HHI for the Colorado Front Range skiing market to below 1800 and the defendants' post-merger market share in the Front Range to 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 merger with divestiture is not likely to have a significant anticompetitive impact through a unilateral effect or through a higher probability of coordinated behavior.

1. Market Share Calculations Were Accurate

Commenters 1–8, 11, and 12 all had comments on the market shares and the predicted post-merger price increases calculated by the Department. Commenter 1 pointed out that some destination skiers purchase discount tickets at Front Range locations, which might skew calculations of actual Front Range skiers. Commenter 5 commented that the ticket systems at the resorts do not accurately record skier days. Commenters 2 and 3 suggested that Arapahoe Basin's longer season may have caused it to appear to have a higher market share than it actually has.

Front Range skier days were calculated using a variety of documents obtained not only from the merging parties, but also from other sources involved in the Front Range skiing industry in Colorado. The shares were calculated from these documents in several different ways to check for accuracy. Adjustments were made to the calculations to account for several different factors, including those identified by the commenters, such as the purchase by destination skiers of tickets from Front Range outlets, and the way in which the length of Arapahoe Basin's ski season might affect the significance of the number of skier days there. In addition, the availability of data from several different sources allowed the Department to verify the accuracy of the skier day numbers used to determine market shares. The Department considered in its calculations all of the Colorado resorts that are used by Front Range skiers. Thus the Department considered the issues now raised by the commenters in calculating its market shares, and adjusted for those variables.

Several commenters claimed that Vail Resorts would have anywhere from 40% to 61.7% market share (Comments 6, 7, and 9) or contended that the HHI figures calculated by the Department were incorrect. One of these commenters said that the Arapahoe Basin divestiture does not have meaning in the total skier market (Comment 7), and another stated that Arapahoe Basin only has 4% of the skier-days in Colorado (Comment 9). These commenters all seem to have been looking at statistics other than those for Front Range skiers. These comments apparently consider a ''market'' for all skiing in Colorado—which ignores the important distinction between destination and Front Range skiers. In the Front Range market, the merged Vail/Ralston Resorts (other than Arapahoe Basin) had under a 32% market share; Arapahoe Basin had approximately a 6–7% market share.[7]

2. Predictions of Price Increases Were Appropriate

A number of comments addressed the estimates made by the Department and Colorado regarding likely post-merger price increases and questioned whether the Department had considered certain issues that might affect the integrity of its calculations. Commenter 1 questioned the validity of the surveys used by the Department, stating that these surveys were not valid because the commenter did not know of any skiers who were surveyed and the surveys were probably supplied to the Department by the merging companies. As stated above, the Department used information from a variety of sources in calculating both market shares and predicted price increases. Of course, the estimates made by the Department of likely price increases necessarily are just that—estimates—but they were based on a variety of surveys, including those done by Vail and Ralston in the ordinary course of business before the merger negotiations as well as those done by others. The Department analyzed the data in as many different ways as possible. While developing such estimates is inherently an imperfect process, the process in this case was based on a standard methodology and prepared with the detail and care associated with projects expected to be tested in litigation.

One commenter (Comment 2) suggests that Copper Mountain and Arapahoe Basin will simply follow any price increase of Vail. Each competitor (in this or any market) sets a price considering whether a different price would be more profitable. A higher price, for example, may produce more revenue per customer but fewer customers, as some customers shift to other ski resorts and some ski less frequently. Each competitor must evaluate all these factors including other prices in the market. Thus a competitor will not necessarily follow every price increase, especially if it believes that it can increase revenues by retaining a lower price and capturing skiers that leave another resort in response to a price increase. For a general description of the methodology used in the Department's price increase estimates, see Carl Shapiro, Mergers with Differentiated Products, 10 Antitrust 23 (1996).

Some commenters (Comments 1, 2, 4, 8, 11, 12, and 13) felt that the Department relied too heavily on market share and HHI numbers, and opined that the Department used 35% market share as a benchmark market share for making a decision regarding the transaction. While the Department certainly uses market share numbers and HHIs as one way to look at mergers, these are only two among numerous factors considered when analyzing this, or any other, merger. As stated above, the Department and the State of Colorado performed a complete and thorough investigation that lasted several months, and analyzed all aspects of the transaction.

3. The Divestiture Relief is Likely to be Sufficient to Constrain Average Prices

Many commenters expressed the concern that the divestiture of Arapahoe Basin would not be enough to resolve the likely anticompetitive effects of the merger, and stated that if the Department and the State of Colorado had concerns about the merger of the Vail and Ralston resorts they should have required Vail and Ralston to divest a larger resort than Arapahoe Basin,

[7] Two commenters (Comments 3 and 11) inquired about the post-divestiture HHI. Using the same data as in the Complaint, the post-divestiture HHI would be approximately 1800.

such as Breckenridge or Keystone. Commenters stated that there are many unique aspects of Arapahoe Basin that they felt would make Arapahoe Basin insufficient to constrain any post merger price increase by Vail Resorts. Commenters 2, 3, 5, 6, and 7 cited qualities of Arapahoe Basin such as its terrain, altitude, ski lifts, extreme weather, and remoteness as factors making Arapahoe Basin very different than Vail Resorts, Keystone, and Breckenridge. These commenters cited in addition other qualitative differences between Arapahoe Basin and other ski resorts, such as lodging, dining, and other amenities, as reasons why skiers who left Vail Resorts after the merger in response to a price increase would not go to Arapahoe Basin. In addition, several of these commenters noted that Arapahoe Basin has a high proportion of advanced or expert skier slopes and therefore cannot cater to many of the skiers that will ski at Vail Resorts after the merger. Some commenters (Comments 2, 3, 5, 6, 10, and 11) focused on Arapahoe Basin's size as a reason for which Arapahoe would not constrain any post-merger price increase by Vail Resorts. These commenters pointed out that Arapahoe Basin does not have the capacity to serve the skiers that would leave Vail Resorts in response to a price increase.

As these commenters note, Vail, Breckenridge, and Keystone each is bigger than Arapahoe Basin. The relevant question, however, is not absolute size but the resort's relative significance in the Front Range skier market. While Arapahoe Basin is smaller than the other Ralston resorts in acreage and in total skier days, it has a high proportion of Front Range skiers. In this market, Breckenridge and Keystone together account for about 20% of skier days, Vail Resorts about 12% and Arapahoe Basin 6–7%. Arapahoe Basin accounted for approximately one-quarter of Ralston Resorts' Front Range skier days during the 1995–96 ski season.[8]

It is true, as commenters note, that Arapahoe Basin is more oriented to the intermediate or advanced skier than are other ski areas. Currently, approximately 7–10% of Arapahoe Basin's skiing terrain is considered beginner level, compared to 13% of Keystone, 22% of Copper Mountain, 22% of Winter Park and 17% of Breckenridge. In addition, 50% of Arapahoe Basin's terrain is considered intermediate level and 40% is advanced. This terrain does not mean that Arapahoe Basin is not attractive to Front Range skiers, however. The very characteristics that some commenters say detract from Arapahoe Basin's competitiveness actually are appreciated by many Front Range skiers. A very substantial portion of Front Range skiers are intermediate or advanced skiers. Indeed, with a large percentage of its terrain attracting intermediate and advanced skiers. Arapahoe Basin skiing compares closely with the bowl and glade skiing experience offered at a number of Vail Resorts' mountains. Skier surveys revealed that a substantial number of skiers who ski Vail, Breckenridge or Keystone also ski Arapahoe Basin, and vice versa. As commenters note, Arapahoe Basin is not all things to all skiers. But the Department's investigation revealed that a relatively small shift in skier days to Arapahoe Basin, when taken together with the shift in skier days to other independent resorts, would make any significant price increase by the merged firm unprofitable. Therefore, Arapahoe Basin does not have to be the ski resort to which every Front Range skier would go after leaving Vail Resorts in response to a price increase. The Department concluded that Arapahoe Basin is an appropriate divestiture because it appears to be sufficiently attractive to enough Front Range skiers who also use Vail, Breckenridge and Keystone that it can be a competitive alternative in the market. Therefore, once Arapahoe Basin is divested, any increase in average discounted prices to Front Range skiers is likely to be negligible, according to the same analytical framework that produced the estimates of post-merger price increases.

4. The Divested Assets Are Likely To Be Viable

Several commenters expressed concern that Arapahoe Basin cannot survive except as part of a large ski resort company, or at least as part of Keystone. A few of these commenters (Comments 1, 2, 5, 10, 13) thought that Arapahoe Basin should be left with keystone rather than being divested. Commenters 2 and 10 felt that Arapahoe Basin would suffer if it did not receive the destination skier business that it received through its affiliation with Ralston Resorts. They also noted that Arapahoe Basin currently is the beneficiary of certain services because it is affiliated with Keystone. Commenter 3 also mentioned that Arapahoe Basin would no longer benefit from the advertising efforts of Keystone and Breckenridge, which historically included all mountains within the multi-mountain group. Commenter 1 felt that Arapahoe Basin could not stand alone with 250,000 skiers per year and no town or amenities.

These comments ignore, however, the fact that there are several other ski areas of comparable or smaller size, such as Loveland and Eldora, which have been able to survive as stand-alone entities. These ski areas appeal particularly to Front Range skiers, the group that the relief in this case is intended to protect. Furthermore, there are other collaborative marketing arrangements that exist, such as ''Gems of the Rockies.'' a joint marketing program of a number of Colorado ski resorts, including Arapahoe Basin, so Arapahoe Basin need not be cut off from all joint marketing activities. In addition, the divestiture must be made to a new owner capable of operating a viable ski area business, which includes the ability to advertise and market Arapahoe Basin.

One commenter (Comment 6) observed that Arapahoe Basin is not likely to be able to expand or to ''reposition'' itself in the market. Another commenter (Comment 11) inquired whether the Department assumed that certain permits would be granted to allow expansion at Arapahoe Basin. While the Department fully investigated such relevant aspects when considering Arapahoe Basin as a possible divestiture entity, the Department did not assume that any expansion or repositioning would take place. The analysis considered current facts.

5. Predictions of Other Anticompetitive Actions by Vail Either Are Unfounded or Are Subject to Later Relief

Commenters 3, 6, and 11 suggest that Vail may engage in anticompetitve conduct after the merger. For example, one commenter (Comment 6) alleges that Vail Resorts either can engage in predatory conduct or can be a price leader that discipline other ski resorts. First, in predicting predation, this comment (from a competitor) claims that the merger will result in prices that are too low—not too high, as alleged in the complaint. Predation is a violation of the antitrust laws, albeit one more often alleged than proved; an injured competitor is not without remedy for true predation. Second, the allegations of possible disciplining conduct in support of price leadership discuss a risk that is part of the risk of anticompetitive outcomes considered in the investigation. In the judgment of the

[8] Of course it is true, as one commenter (Comment 6) notes, that many Front Range skiers also value the many amenities that are important to destination skiers; the relative significance of these amenities is greater to the average destination skier than the average Front Range skier, however.

Department, considering the post-divestiture market shares in the relevant (Front Range) market, the nature of the industry, the market in which a violation was alleged, and the number of competitors in the market, this risk did not warrant any additional remedy.

One commenter (Comment 3) addresses several possible post-merger actions by Vail Resorts that it claims could affect competition. Included are making package deals with airlines (which does not relate to the Front Range market), affecting the placement of competitors' radio, television, and print advertisements (which appears to be part of the ordinary give-and-take of competition and media scheduling practices (in the normal course of business, competitors' advertisements are not placed close together)), and contracting with retailers for exclusive distribution arrangements for ski tickets (which appears to be either part of the ordinary give-and-take of competition or, if it truly forecloses retail distribution, may itself be an antitrust violation.[9] In short, these additional concerns do not amount to significant criticisms of the proposed Final Judgment and the relief it contains.

One commenter claims that the government considered, but did not discuss, other possible relief in the form of other divestitures (Comment 6). The text of that comment itself, however, recognizes that any other such option that the government could have considered would have involved a full trial on the merits (with relief to be determined by the court after trial). A full trial on the merits is the alternative explicitly mentioned in Section VI of the Competitive Impact Statement filed with this Court. As stated there, the Department rejected that option because it was satisfied that the divestiture contained in the proposed Final Judgment will preserve competition and will there achieve the result that the government would have sought through litigation, but without the time, expense, and uncertainty of litigation.

The antitrust issues that commenters have raised were considered by the Department and the State of Colorado during the course of a thorough and extensive investigation into the proposed merger. Ultimately, the Department and Colorado found that any likely significant anticompetitive effect resulting from the merger would involve Front Range skiers, and the Plaintiff accordingly alleged such harm to Front Range skiers in their Complaint in this action. As described in detail above in response to the specific concerns voiced by commenters, the divestiture of Arapahoe Basin should resolve any anticompetitive effect associated with the merger and should restore significant competition to the Front Range market in Colorado.

III. The Legal Standard Governing the Court's Public Interest Determination

Once the United States moves for entry of the proposed final judgment, the Tunney Act directs the Court to determine whether entry of the proposed final judgment ''is in the public interest.'' 15 U.S.C. § 16(e). In making that determination, ''the court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest.'' *United States* versus *Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.) *cert. denied*, 114 S. Ct. 487 (1993) (emphasis added, internal quotation and citation omitted).[10] The Court should evaluate the relief set forth in the proposed Final Judgment and should enter the Judgment if it falls within the government's ''rather broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* versus *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); accord *United States* versus *Associated Milk Producers*, 534 F.2d 113, 117–18 (8th Cir.) *cert. denied*, 429 U.S. 940 (1976).

The Court is not ''to make *de novo* determination of facts and issues.'' Western Elec., 993 F.2d at 1577. Rather, ''[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General.'' *Id.* (internal quotation and citation omitted throughout). In particular, the Court must defer to the Department's assessment of likely competitive consequences, which it may reject ''only if it has exceptional confidence that adverse antitrust consequences will result—perhaps akin to the confidence that would justify a court in overturning the predictive judgments of an administrative agency.'' *Id.*[11]

The Court may not reject a decree simply ''because a third party claims it could be better treated.'' Microsoft, 56 F.3d at 1461 n.9. The Tunney Act does not empower the Court to reject the remedies in the proposed Final Judgment based on the belief that ''other remedies were preferable.'' *Id.* at 1460. As Judge Greene has observed:

> If courts acting under the Tunney Act disapproved proposed consent decrees merely because they did not contain the exact relief which the court would have imposed after a finding of liability, defendants would have no incentive to consent to judgment and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as an antitrust enforcement tool, despite Congress' directive that it be preserved.

United States v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) (Mem.).

Moreover, the entry of a governmental antitrust decree forecloses no private party from seeking and obtaining appropriate antitrust remedies. Defendants will remain liable for any illegal acts, and any private party may challenge such conduct if and when appropriate. The issue before the Court in this case is limited to whether entry of this particular proposed final judgment, agreed to by the parties as settlement of this case, is in the public interest.

Furthermore, the Tunney Act does not contemplate judicial reevaluation of the wisdom of the government's determination of which violations to allege in the Complaint. The government's decision not to bring a particular case on the facts and law before it at a particular time, like any other decision not to prosecute, ''involves a complicated balancing of a number of factors which are peculiarly within (the government's) expertise.'' *Hecklen* v. *Chaney*, 470 U.S. 821, 831 (1985). Thus, the Court may not look beyond the Complaint ''to evaluate claims that the government did not make and to inquire as to why they were not made.'' *Microsoft*, 56 F.3d at 1459 (emphasis in original); see also Associated Milk Producers, 534 F.2d at 117–18.

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[9] One commenter (Comment 3) suggests Vail Resorts' possible local transportation service may diminish the likelihood of the continuation of a local tax that funds a local bus service running to other ski areas. Such a change would have complicated effects, and the likelihood of any such change flows primarily from the previous Keystone-Breckenridge merger, not from this transaction.

[10] The Western Electric decision concerned a consensual modification of an existing antitrust decree. The Court of Appeals assumed that the Tunney Act was applicable.

[11] The Tunney Act does not give a court authority to impose different terms on the parties. *See, e.g., United States* versus *American Tel. & Tel. Co.*, 552 F Supp. 131, 153 n.95 (D.D.C. 1982), *aff'd sub nom. Maryland* versus *United States*, 460 U.S. 1001 (1983) (Mem.); *accord* H.R. Rep. No. 1463, 93d Cong., 2d Sess. 8 (1974). A court, of course, can condition entry of a decree on the parties' agreement to a different bargain, *see, e.g., AT&T*, 552 F. Supp. at 225, but if the parties do not agree to such terms, the court's only choices are to enter the decree the parties proposed or to leave the parties to litigate.

Finally, the government has wide discretion within the reaches of the public interest to resolve potential litigation. E.g., Western Elec. Co., 993 F.2d 1572; AT&T, 552 F. Supp. at 151. The Supreme Court has recognized that a government antitrust consent decree is a contract between the parties to settle their disputes and differences, *United States* v. *ITT Continental Baking Co.*, 420 U.S. 223, 235–38 (1975); *United States* v. *Armour & Co.*, 402 U.S. 673, 681–82 (1971), and ''normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.'' Armour, 402 U.S. at 681. This judgment has the virtue of bringing the public certain benefits and protection without the uncertainty and expense of protracted litigation. Armour, 402 U.S. at 681; Microsoft, 56 F.3d at 1459.

IV. Conclusion

After careful consideration of these comments, the United States concludes that entry of the proposed final judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the complaint and is in the public interest. The United States will therefore move the Court to enter the proposed final judgment after the public comments and this response have been published in the **Federal Register,** as 15 U.S.C. § 16(d) requires.

Dated: July 10, 1997.

Respectfully submitted,

Craig W. Conrath,

Chief

Reid B. Horwitz,

Assistant Chief

Susan Wittenberg,

*Trial Attorney**

John M. Lynch,

Trial Attorney, U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, NW, Suite 4000, Washington, DC 20530, (202) 307–0001.

*Counsel of Record.

In the United States District Court for the District of Colorado

[Case No. 97–B–10]

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

Certificate of Service

I hereby certify that on this 10 day of July 1997 a true and correct copy of the foregoing United States' Response to Public Comments and Appendix was delivered by overnight mail to the following persons:

Bruce F. Black,

Holme, Roberts & Owen, LLP, 1700 Lincoln, Suite 4100, Denver, Colorado 80203

and

Robert S. Schlossberg, Peter E. Halle,

Morgan, Lewis & Bockius, LLP, 1800 M Street, N.W., Washington, D.C. 20036.

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Paul C. Daw,

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and

E. Perry Johnson,

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and

J. Michael Cooper, Daniel C. Schwartz,

Bryan Cave, LLP, 700 13th Street, N.W., Washington, D.C. 20005.

Counsel for Ralston Resorts, Inc. and Ralston Foods, Inc.

Susan Wittenberg

In the United States District Court for the District of Colorado

Lewis T. Babcock, Judge

[Civil Action No. 97-B-10]

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

Appendix: Public Comments

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

Dear Sirs: We are writing this letter to you regarding the proposed merger between Vail Resorts and Ralston Resorts. We do not think the decision that was made, to allow Vail to purchase Keystone and Breckenridge, while merely spinning off Arapahoe Basin in the name of Competition, is a good one, NOR IS IT IN THE PUBLIC INTEREST!

It's a pretty well-accepted fact that only about four percent of people complain or write about issues for which they have a legitimate complaint. Since we have talked to many people here about this issue, unlike the Department of Justice, let this letter represent the feelings of a lot more skiers and residents than just the two of us. We know there are business/real estate people here who see the merger favorably, but they are concerned ONLY about increased dollars for themselves.

What must be a bigger JOKE than the sixty day appeal period is the decision itself! We realize that appealing this decision is probably useless, as everything we see and hear about the merger points to it being a ''done deal.'' This includes the IPO already done this past week by the parent company of Vail; how could they even do that before the sixty day appeal period ended, and a ''final'' decision is made??? Other things that point to a done deal are employee pass interchange, KAB pass interchange with additional dollars, special buses put on, and insufficient publicity that there is a sixty day appeal period before a final decision. *The Denver Post* says Vail now owns Keystone and Breck.

Nevertheless, we have the time to write, as we are retired. Being retired, we are watching our funds closely, and it is a foregone conclusion by everyone here we talked to that prices for EVERYTHING will be going up substantially with Vail involved in our valley. Haven't we learned from Aspen, Vail and Telluride that present locals here will be driven from our area. Many people here in Summit County have two or three jobs to make ends meet, and it will be much worse for them after Vail exerts their influence. It doesn't take a genius to know that prices, not only for lift tickets, but everything else, will rise steadily once Vail exerts their power and money. They will destroy the economy for middle level fixed-income and lower income residents/workers. Just look at the Vail area NOW!

This decision is the worst scenario of all possibilities the DOJ could have come up with. The best decision would have been as we requested in our original letter to the DOJ, a copy of which is attached. Barring that as an answer, if only Brechenridge would have gone with Vail, it may not have been too bad. Or, if Keystone went with Vail, and not Breckenridge, then A-Basin could have stayed with Keystone. Or, if you really thought Breckenridge and Keystone should go with Vail (which we'll never understand), then you should have left A-Basin with the other areas.

You have sounded the death knell of Arapahoe Basin. There is not a local we have talked to yet who thinks it will survive on its own. It will not survive in today's economy with the decision you allowed. To spin off only A-Basin is absurd! It has approximately 250,000 skiers in a season, no base area and no town. The other two areas have about 1,000,000 skiers each and have a ''town'' and all the other amenities for year round activities and recreation. THEY CAN STAND ALONE.

Furthermore, the comparison of A-Basin to Vail and Copper because of glade and bowl skiing is completely invalid. For skiing, it compares more closely to Loveland. Has anyone involved in making this decision ever skied at A-Basin, or anywhere in Summit County? Also, on many days Loveland Pass on the Denver side to A-Basin is closed for various reasons, mostly avalanche work. Thus, the Front Range skiers go some place else. Their numbers will not support the area, and it is popular with destination skiers—and many of the locals who use it—only because it is part of another package.

Why such emphasis on Front Range skiers? Your release dated Jan 3 state. ''Justice Department set conditions that will preserve lower prices for hundreds of thousands of

skiers''. The locals and the destination skiers are going to be GREATLY affected by your decision. According to your documents the locals aren't even considered. Destination skiers we've talked to are already upset that they no longer have Ski-The-Summit ticket available to them to provide good rates to all four Summit County areas; it's one of the things that brought us here in the first place. We have a four-areas STS season pass that's available for early-season-buyers, locals or others. but the number is limited. We're certain that this wonderful Ski-The-Summit opportunity will be gone after this season.

We feel the surveys that were used as the basis for your Front Range skier numbers are not valid. We ski often, and we know of no surveys taken, nor do we know of others who ski often that were surveyed. Furthermore, we know many destination skiers, including family and friends from back East, who always pick up discount tickets or ''Colorado Cards'' at FRONT RANGE locations before they come up here. I am a retired engineer, and I know that numbers can be juggled to obtain desired results. To have used those numbers to arrive at a decision this monumental, looking at only a few percentage points difference, is ludicrous.

The numbers were supplied to you by the ski corporations who want this merger and will profit greatly from it. This decision will not benefit the average citizen. Your people did not contact our county commissioners, Summit County's town officials, the Forest Service here, the large senior population, or average families to question what effects Vail may have in our valley.

The ski companies are their own worst enemies! They complain that skier numbers are flat. But, the companies are constantly raising prices, including parking. Families are especially hard-hit by these increases. In the last few years, many destination skiers are skiing less days in their ski week, like four instead of six, and they are finding other things on which to spend their time and money. The number one reason why skiers—destination, Front Range and locals—are skiing less is the HIGH PRICE OF LIFT TICKETS!

This decision is NOT IN THE PUBLIC INTEREST. It is in the interest of big corporations only. Adam Aron, the CEO at Vail, has arrived on the Vail scene only as of July, 1996 after three years as president of NCL, where mergers were being effected, too. Before that it was UAL. Do you really think he cares about the real people here, or is he thinking of his career, his name and his big dollars—already guaranteed $250,000 bonus alone?

As an aide to this decision, maybe the DOJ should be looking at better Bankruptcy Laws. Ironically, George Gillett who filed two bankruptcies at Vail only four years ago, is not only receiving $2,500,000 annual salary from Vail, but has been named prominately as a possible buyer for our very own Arapahoe Basin. How many people got hurt in those bankruptcies? He and his two sons have already bought into about nine other ski areas around the country. Vail may even ignore an agreement they had with Gillett not to own a Colorado ski resort until 1998! How does this compute? Wheeling and dealing as usual!!!

Please give this merger a closer, second look because of its far-reaching ramifications.

Sincerely,

Joel R. Bitler,

Mern V. Bitler

cc:

Senator Ben Campbell
Representative Scott McInnis
Colorado Attorney General Gail Norton

U.S. Department of Justice, 10th and Constitution Avenues, Room 3304, Washington, DC 20530

Attn: Ms. Juthymas Harntha

Dear Ms. Harntha: We are writing to you regarding the possible merger whereby Vail would take over most of the Ralcorp ski properties of Breckenridge, Keystone and Arapaho Basin in Summit County, Colorado. We are adamantly opposed to this merger.

I, Joel, am a retiree of AT&T, and in 1984, as I'm sure you are aware, AT&T was torn apart by the Federal Government in the name of competition. We won't debate that case. But, it and the more recent case of ski areas in the East set examples for competition. Let's not allow this merger so that we may continue to have competition here.

Furthermore, we moved to Summit County because we like the ''atmosphere'' here. We don't like the Vail area for many reasons, including its high costs. We don't want that kind of thinking transferred here to Summit County. We won't be able to live here.

We are retired and don't want to see costs continuing to escalate as they have. With Vail involved it can only get worse. The only ones to really benefit from this will be ''big money'' people, not your average consumer. You can tell how important it is to the money people, as no sooner was the plan announced and a famous, and no-doubt high-priced lobbyist, was assigned to push for it in Washington.

Please do everything in your power to halt the merger. We were dissatisfied, along with many other consumers and workers, when Ralcorp was allowed to buy Breckenridge, which then formed quite a monopoly here in Summit County. There will be six resorts owned by the new group between Eagle and Summit Counties, leaving only Copper Mountain to try to survive the ''big guys''.

Thank you.

Sincerely,

Joel R. Bitler,

Mern V. Bitler

cc: Representative Scott McInnis

Jeffrey S. Bork,
914 Ruby Road, P.O. Box 23169, Silverthorne, CO 80498–3169

February 18, 1997.

Via Facsimile and First Class Mail

Mr. Craig W. Conrath,
Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Room 4000, Washington, D.C. 20530

Re: United States and State of Colorado v. Vail Resorts, Inc., Ralston Resorts, Inc., and Ralston Foods, Inc., No. 97B–10 (D. Co.)

Dear Mr. Conrath: I submit this letter to share with you my preliminary observations about Vail Resorts' proposed acquisition of the ski areas owned by Ralston Resorts. As a full-time resident of Summit County, Colorado, I can offer an unique and important perspective on this proposed business transaction.

I am troubled by two of the conclusions in your Division's Competitive Impact Statement, 62 Fed. Reg. 5037 (Feb. 3, 1997)(''CIS''). First, I cannot agree with your unexplained conclusion that local skiers like myself would not be adversely impacted by the merger. Second, I cannot agree with your conclusion that Vail Resorts' acquisition of Breckenridge and Keystone without Araphoe Basin would ''resolve the anticompetitive problems raised by the proposed transaction.'' CIS at 15. Based on the facts available to me, your Division's ''partial'' merger proposal would not resolve the problems raised by the proposed transaction. To the contrary, as explained below, the ''partial'' merger alternative appears to have more flaws than the defendants' original proposal.

Here is the principal problem I face: your Division did not disclose in its CIS the key facts and assumptions it used in arriving at its conclusions. Thus, I (or any other member of the public, for that matter) have no basis to assess the validity of the Department's conclusions.

I would like to exercise my right under the Antitrust Procedures and Penalty Act, 15 U.S.C. § 16(b)–(h), to submit informed comments. Both of the transactions now on the table—the original, ''acquire-all-three-resort'' proposal, or your partial, ''acquire-only-the-big-two'' alternative—will negatively impact me, my family, and my neighbors.

However, I cannot meaningfully exercise this right unless I have access to the material facts and assumptions your Division used in its analysis. So I have time to prepare informed comments before the close of the current filing deadline. I ask that you submit to me by Tuesday, March 4, 1997 the data identified below. I would, of course, be willing to execute any reasonable confidentiality agreement which you may deem appropriate.

I have two final requests. First, I would appreciate your notifying me immediately if your Division, or any other party, makes a filing with the District Court in this matter. Second, please identify and explain in your response any statements in this letter which you believe are erroneous or irrelevant. The public interest obviously is not advanced if anyone makes representations inconsistent with known facts.

I. Factual Background

In July 1996 Vail Resorts, Inc. announced it had reached it had reached an agreement to acquire the ski resort business of Ralston Resorts, Inc. for approximately $310 million. Vail Resorts is the largest owner of ski resorts in Colorado, owning all three resorts in Eagle County: Vail, Beaver Creek, and Arrowhead

Mountain.[1] Ralston Resorts is the second largest owner of ski resorts in Colorado, owning three of the four ski resorts in adjacent Summit County: Arapahoe Basin, Breckenridge, and Keystone.[2] A Vail Resort press release has claimed that, with its acquisition of the Ralston Resorts ski properties, it will become the largest ski resort operator in the world.[3]

On January 3, 1997, the State of Colorado and your Department, on behalf of the United States, filed a civil antitrust complaint against the two resorts alleging that their merger would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The complaint alleged that the combination of the two largest ski resort owner/operators in Colorado would end the current ''aggressive'' competition between them and would, as a result, ''increase substantially the concentration among ski resorts'' in Colorado. Complaint at ¶¶ 1, 3, and 4. More specifically, the complaint alleged:

This merger would eliminate the price constraining impact each has on the other. In particular, the combined Vail and Ralston resorts would be likely to raise prices or reduce the level of discounts offered to skiers from the Colorado Front Ridge. In addition, the transaction would give other ski resorts serving the Front Range the incentive to raise their lift ticket prices to Front Range skiers following a price increase at the combined Vail and Ralston resorts. *Id.* at ¶ 21.

The Complaint asked that this proposed acquisition ''be adjudged to violate Section 7 of the Clayton Act'' and that ''the defendants be permanently enjoined from carrying out the Stock Purchase Agreement . . . 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 Resorts and Ralston Resorts.'' *Id.* at 11 ¶¶ 1 and 2.

Also on January 3, 1997 the plaintiffs moved for entry of a stipulation and order in which all the parties agreed to entry of a proposed Final Judgment. In the proposed Final Judgment, Vail Resorts agrees to divest Arapahoe Basin within 150 days or within five business days after notice of entry of the Final Judgment, whichever is later. Proposed Final Judgment at 4–5 ¶ A. In return, the plaintiffs agree to drop their antitrust lawsuit and to permit Vail Resorts to acquire Breckenridge and Keystone.

In a press release also issued on January 3, 1997, your Department stated that,

notwithstanding its acquisition of the large Breckenridge and Keystone resorts, Vail Resort's divestiture of Arapahoe Basin would ''keep prices lower for skiers'':

[T]he Justice Department set conditions that will preserve lower prices for hundreds of thousands of skiers. * * * Without the divestiture, the deal likely would have resulted in higher prices to skiers who live in Colorado's Front Range. * * * The proposed settlement requires the sale of Ralston's Arapahoe Basin ski resort to an entity capable of operating the resort as a long-term, viable competitors in the market. The divestiture will prevent Front Range skiers from paying higher lift ticket prices.

Three weeks later, on January 22, 1997, your Department filed its Competitive Impact Statement (''CIS'') in compliance with the requirements of the Antitrust Procedures and Penalties Act. In this CIS, the Department repeated in position that Vail Resorts' acquisition of the Ralston Resort ski properties would ''violate Section 7 of the Clayton Act.'' CIS at 2. The Department further explained that the provision of downhill skiing is a relevant market and that customers of the defendants' ski resorts ''include two type of skiers; destination skiers and Front Range skiers,'' the later defined as skiers residing in ''the geographic area lying just east of the Rocky Mountains.'' CIS at 5–6, Complaint at ¶ 11. According to the Department, the proposed acquisition would have no impact on ''destination skiers [who] come from outside Colorado,'' but would negatively impact ''Front Range skiers [who] are day or overnight skiers'' and who drive to 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.''[4] CIS at 6.

Ignored altogether in the complaint, and without explanation in the CIS, the Department stated that the merger would have no impact on ''the local skier market.'' *Id.* at 6 n.2.

In its CIS, the Department repeated its views that the merger of Vail Resorts and Ralston Resorts ''would reduce competition significantly in the market for Colorado Front Range skiers,'' and it identified four separate adverse impacts from such a merger:

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;

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

4. Prices for skiing to Front Range Colorado skiers would likely be increased. CIS at 10.

The Department further observed that the merger would have negative impacts beyond the specific ski resorts at issue: ''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.''[5] *Id.* at 13–14.

The Department stated, however, that a partial merger—that is, Vail Resorts' acquisition of Breckenridge and Keystone, but not Arapahoe Basin—''would preserve competition'' and ''resolve the anticompetitive problems raised by the proposed transaction'';

Divesting Arapahoe Basin restores significant competition among these mountains 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 . . . and is thus relatively more competitively significant in the Front Range skiing market than its overall number of skier days might suggest. *Id.* at 14–15.

According to the Department, ''[a] relatively small shift in skier days to Arapahoe Basin would make any significant price increase by the merged firm unprofitable.'' *Ibid.* The Department further stated that, without Arapahoe Basin, the defendants' market share of Front Range skiers ''will be less than 32%.'' *Id.* at 16.

II. The Department's Conclusion That Local Skiers Would Not Be Adversely Impacted by the Merger Is Unexplained

The Department has stated that its ''investigation did not reveal any likely anticompetitive effect from the proposed merger . . . in other relevant markets such as the local skier market,'' CIS at 6 n.2. The Department did not explain this conclusion in the CIS. Because I believe local Summit County residents would be impacted more negatively by the merger than any other category of skier, I ask you to produce all the evidence you relied upon in reaching this conclusion.

The residents of Summit County are relatively small in number; I estimate the number of full-time residents approximates 18,000. However, Summit county residents are very avid skiers (in part explaining why they willingly suffer through a long mountain winter, with snow from October to June or July). We locals ski often—far more often than either destination or Front Range skiers.[6] While locals are perhaps small in number, we generate a considerable number

[1] As you know, Arrowhead Mountain is small, and Vail Resorts operates Arrowhead as part of Beaver Creek. Consequently, in this letter I will refer to Beaver Creek to include both Beaver Creek and Arrowhead.

[2] Ralston acquired Keystone during the 1970s and Arapahoe Basin in 1978. It did not acquire Breckenridge, which had been operated independently, until 1994 or 1995. Please identify in your response the date Ralston acquired Breckenridge and the name of the person or firm which sold Breckenridge to Ralston.

[3] Other state that Vail Resorts would ''only'' become the second largest operator, with the French Compagnie des Alpes retaining the top spot. In your response to this letter, please identify how big the merged Vail Resorts would become (with or without A-Basin) *vis-á-vis* other ski resort owner/operators in the world.

[4] The definition appears over broad; I know few people who are willing to sit in a car five hours in one day to ski that same day. Please produce all facts which you considered in developing this definition, and identify by name all the resorts which the Division believes are viable alternatives for Front Range skiers wanting to ski a single day. I can think of only five resorts other than those at issue here: Copper Mountain, Eldora, Loveland, Ski Cooper, and Winter Park.

[5] The Department has estimated that the merger would likely raise lift ticket prices ''on the order of 4%, or about $1 per lift ticket.'' CIS at 14. However, it nowhere explains how it computed this 4%/$1 figure. A 4% increase in the amount of $1.00 would suggest that current ticket prices are $25.00 per day, but daily passes at Breckenridge and Keystone are currently $45.00. In your response, please include the data you used to compute this ''4%/$1'' figure. Also please share the assumptions you used in arriving at this estimate (*e.g.*, how you determined the likely impact would be 4%/$1 as, for example, 8%/$2—or 12%/$3)?

[6] As but one small example, my 12-year-old son skis each weekend day. During his Christmas break, he skied on 16 of 18 available days.

of skier days and represent a sizable market for skiing in Summit and Eagle Counties.

Local skiers have two basic choices today: we can ski (1) at Copper Mountain, or (2) at one of the three Ralston Resorts: Breckenridge, Keystone, and Arapahoe Basin. Few locals ski A-Basin until the spring; the other three resorts are so much larger and offer so much more diverse terrain.[7] Simply put, A-Basin is simply not large enough for most people to ski an entire day.

Because of distance (25+ miles including Vail Pass), locals do not ski regularly at the Vail Resorts in adjacent Eagle County, perhaps one or two visits per season. Nevertheless, Vail Resorts has an enormous, positive impact on Summit county residents. Based on my past experience, none of the big three local resorts—Copper, Breckenridge, and Keystone—will charge lift ticket prices higher than that charged by Vail Resorts.[8]

At first blush, local skiers would appear to have three choices under the partial merger alternative advocated by the Department: we could ski (1) at Copper Mountain, (2) at an independently-owned Arapahoe Basin, or (3) at Breckenridge or Keystone, both of which would be owned by Vail Resorts. The reality is that, before the spring, A-Basin is not a meaningful alternative; as explained above, it is simply too small to accommodate a full day of robust skiing. As a practical matter, then, before the spring when other resorts are closing down, local Summit county skiers will continue to have the same two alternatives they have today: (1) Copper, or (2) Breckenridge/Keystone.

The difference in this new scenario is that Breckenridge and Keystone would now be owned by Vail Resorts, and the competitive pricing pressures Vail Resorts had once imposed on the Summit county resorts will have vanished. Given its massive size, it is reasonable to assume that, if the District Court ultimately approves Vail Resort's acquisition of Breckenridge and Keystone, Vail Resorts will increase the lift ticket prices at these two resorts to match that charged at its ski areas in Eagle County. Indeed, given that Vail Resorts (even excluding A-Basin) would be nearly five times larger than any other ski resort in Colorado, Vail Resorts could easily increase the prices of all of its lift tickets once the consummation of the merger becomes final.[9]

The competitive alternatives for locals in this situation would be to ski instead at either Copper Mountain or Arapahoe Basin—assuming these two resorts did not increase their prices as well in response to a price increase by Vail Resorts. A responsive price increase by these two areas would appear likely. For example, Copper has been enjoying substantial growth; during the 1995–96 season, it enjoyed a total of 967,074 skier days—a 25% increase over the previous year (1994–95: 770,973). If I managed Copper Mountain in these growth circumstances and my major competitor raised its prices, I would find the more attractive business alternative to raise Copper's prices as well.[10] After all, each one dollar increase in a lift ticket would generate nearly $1 million for Copper.

Thus, the most likely outcome of the Department's proposed partial merger on local Summit County skiers would be that we would (1) pay higher prices at Breckenridge, Copper, and Keystone; or (2) ski half days at Arapahoe Basin (assuming it can survive as discussed in Part IV below). Consequently, I cannot agree with your unexplained conclusion that local skiers would not be negatively impacted by either the defendant's proposed complete merger or the Department's alternative, the partial merger. At least for locals, neither alternative ''will preserve lower prices'' as the Department represented in its January 3, 1997 press release.

It is precisely for this reason that I ask you to produce all facts in your possession (whether you considered them or not) which relate to the size of the local skier market and the impact of the proposed merger on local skiers. In addition, your CIS limits its analysis to future pricing behavior to the five resorts that would be owned by enlarged Vail Resorts. What analysis have you performed about Copper's likely response to a price increase by an enlarged Vail Resorts? What analysis have you performed about the likely response an independent Arapahoe Basin would make to a price increase by an enlarged Vail Resorts? Please produce this data as well in your response to this letter.

III. Available Facts Suggest There Is a Substantial Question Whether an Independent Arapahoe Basin Would Restrain the Pricing Behavior of a Combined Vail Resorts/Breckenridge/Keystone Operations

According to the Department, while a complete merger would violate Section 7 of the Clayton Act, a partial merger—acquisition of Breckenridge and Keystone without Arapahoe Basin—would be lawful and pro-competitive. In the Department's view, the divestiture of A-Basin would ''restore significant competition among these mountains and, more generally, [would] permit Arapahoe Basin to serve as an independent competitor for skiers throughout the Front Range.'' CIS at 15. This divestiture, the Department states, ''will prevent Front Range skiers from paying higher lift ticket prices'' and ''will preserve lower prices for hundreds of thousands of skiers in one of America's most popular winter sports areas.'' DoJ News Release at 1 and 2 (Jan. 3, 1997).

The Department's assertion that an independent Arapahoe Basin will provide ''significant'' competition to a combined Vail Resorts/Breckenridge/Keystone operations and would, as a result, restrain the pricing behavior of this new giant does not appear to be credible. Consider the facts when an independent Arapahoe Basin is compared with the combined Vail Resorts/Breckenridge/Keystone operations:

	Arapahoe Basin	Combined Vail resorts/ Breckenridge/ Keystone operations
Total Skiable Acres	490	9,421
Acres of Snowmaking	None	2,284
Total Number of Trials	61	441
Longest Run (in miles)	1.5	4.5
Total Lifts	5	79
Total No. of Gondolas/High Speed ''Quads''	0	26
Night Skiing	No	Yes
Total Uphill Capacity (skiers per hour)	6,066	121,064
1995–96 Skier Days	241,435	4,615,358

	A-Basin	Breck	Keystone	Vail	Beaver creek
Total Skiable Acres	490	2,031	1,749	4,112	1,529
Acres of Snowmaking	None	369	859	347	709

[7] This difference in size among the four resorts is reflected in their lift ticket prices. A one-day lift ticket honored at any of the three Ralston ski areas is $45. A one-day ticket limited to Arapahoe Basin is $39.

[8] Please produce the one-day ticket prices charged by all Summit and Eagle County resorts over a period of time (*e.g.,* 5 years) so I can verify the accuracy of the statement.

[9] It is for this reason I need all the data you considered and assumptions you made in determining the likely impact on pricing that would occur if the defendants' original (all three) merger proposal were consummated. *See* note 5 *supra.*

[10] Historically, Copper Mountain has set its lift ticket prices lower than that charged at the Ralston Resort areas, the other ski resorts in Summit County. If Vail Resorts were to increase the prices at the former Ralston Resorts, Copper Mountain could easily increase its prices as well—and still be somewhat cheaper than the competition.

	A-Basin	Breck	Keystone	Vail	Beaver creek
Total Number of Trials	61	138	91	121	91
Longest Run (in miles)	1.5	3.5	3	4.5	3.5
Total Lifts	5	19	20	26	14
Total No. of Gondolas/High Speek ''Quads''	0	4	6	12	5
Total Uphill Capacity (skiers per hour)	6,066	26,030	26,582	45,213	23,739
1995–96 Skier Days	241,435	1,357,790	1,057,568	[1] 2,200,000	

[1] Combined.

The Department implies that Arapahoe Basin is a ''close competitive alternative'' to each of the other four resorts at issue. This unexplained conclusion is also difficult to square with the facts: [11]

It is my experience that all three categories of skiers—locals, destination, and Front Range—each view Arapahoe Basin as fundamentally different than each of the four other ski areas at issue:

1. *Local Skiers.* Because Arapahoe Basin is so small and more different to reach, locals generally ski A-Basin in two of two circumstances: (a) when they want to ski for several hours only; or (b) in the spring when, because of its location and elevation, A-Basin has much better conditions than at other resorts (even if they are open).[12]

2. *Destination Skiers.* Arapahoe Basin is not an alternative for destination skiers because it is completely undeveloped—that is, there are no shops; restaurants (other than the single lodge); hotels, or condominiums. Besides, even if it had a developed base, A-Basin is not large enough and does not have a complete set of terrain to attract families and groups of skiers with diverse skiing ability.

3. *Front Range Skiers.* While I am not personally familiar with the practices and preferences of many Front Range Skiers, I suspect they ski A-Basin under circumstances similar to local skiers. In addition, they may ski A-Basin for half a day, and use their ticket to ski Keystone the rest of the day.[13]

Thus, if my experience is accurate, it is unlikely that skiers preferring to ski at Breckenridge or Keystone would ski instead at A-Basin as a result of a price increase by a merged Vail Resorts (even assuming A-Basin does not make a responsive price increase as well). Indeed, as the Department stated last fall, ''[t]he typical downhill skier who goes to [large] resorts for the qualitative experience is unlikely to stop skiing or switch to smaller resorts with less aties because ticket prices increase by a small amount.'' [14]

I therefore ask the Department to produce all data in its possession (whether or not it was considered) which pertains to the question whether Arapahoe Basin is, or is not, a ''close competitive alternative'' to each of the other four resorts at issue. I suspect your Department has prepared ''elasticity'' studies to show the correlation between the prices charged at the other resorts and the likelihood that skiers would respond to a price increase by skiing instead at A-Basin. Please produce these studies, the underlying data, and the source of the underlying data (*e.g.,* whether it was produced by the defendants, the industry, or third-party sources).

The Department's sole explanation for opposing a complete merger but approving a partial merger is that with a complete merger the new giant would control 38% of all Front Range skiers, while with a partial merger this Front Range market share would be split between the new giant, with 32%, and Arapahoe Basin, with 6%. It is this sharing of the Front Range market that forms of the basis of the Department's representation that the divestiture of Arapahoe Basin ''would preserve competition'' and ''keep prices lower for skiers.'' In support, the Department undertook a Herfindahl-Hirschman Index (HHI) analysis, but it chose not to disclose the data used in this HHI analysis so the public could examine the accuracy of the Department's analysis—and, in the process, the legitimacy of the Department's conclusions.

At the outset, the Department never explains in its Complaint or its CIS how it arrived at its ''Front Range market share'' data—that is, the data used both to assess the total size of this market, and to allocate market share among different resorts. The accuracy of this data is obviously critical: it is this data on which the Department uses in its HHI analysis which, in turn, is used to explain the Department's willingness to approve the so-called partial merger.

The reason I ask is that your estimates do not correspond, even closely, with my own experience. According to your data, Front Range skiers constitute less than 13% of total skier days at Vail Resorts and less than 20% of total skier days at Breckenridge and Keystone.[15] My experience is that these numbers are understated substantially—perhaps as much as 50%.[16] While I am not very familiar with the HHI analysis, I suspect that understating the Front Range skier market share would skew the HHI results.

However, even assuming the accuracy of the market share data you used, the Department's statement that Arapahoe Basin currently serves 6% of the Front Range market is misleading, and may be misleading in a material way. The CIS does not acknowledge that, because of its elevation, A-Basin generally stays open months after other ski resorts close (including all other resorts in Summit and Eagle Counties).[17] I suspect a sizable number of A-Basin's total number of skier days—virtually all of whom are Front Range or local skiers—are generated after other ski resorts have closed. If this is the case, Arapahoe Basin may serve less of the Front Range skier market during the competitive period than the Department asserts.

I therefore ask the Department to submit skier day data by month, so I can ascertain how many of A-Basin's skier days are generated in a competitive environment and now many are generated when the competition has closed. This data may,

[11] This conclusion is also difficult to square with the Department's position last fall in reviewing another (but much smaller) merger in New England. There is stated that '[m]any of the other smaller resorts lack the qualitative aspects previously identified (number of trails and lifts, variety and difficulty of trails, snowmaking, night skiing, and other amenities) to constrain a small but significant price increase after the merger'' of larger resourts. Plaintiff's Response, *U.S.* v. *American Skiing Co.,* 61 Fed. Reg. 55995, 55998 (Oct. 30, 1996). *See also* Competitive Impact Statement, *U.S.* v. *American Skiing Co.,* 61 Fed. Reg. 33765, 33771 (June 28, 1996) (''Smaller ski resorts . . . 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 . . . resorts, skiing at such resorts is not a practical . . . alternative for most eastern New England skiers most of the time.'').

[12] Some locals ski A=Basin for a third reason: to ''extreme'' ski in out-of-bounds areas. Because this activity is not legal, I suspect the Department cannot consider it.

[13] In your response to this letter, please advise whether you and your staff (a) are downhill skiers, and (b) have skied at any of the Summit/Eagle County resorts (and, if so, which ones). Someone unfamiliar with the different ski areas may have a very different perspective than one who has actually skied the terrain in question. No skier I know of would say that A-Basin is ''comparable'' to the other resorts owned by either Ralston Resorts or Vail Resorts.

[14] Plaintiff's Response, *U.S.* v. *American Skiing Co.,* 61 Fed. Reg. 55995, 55999 (Oct. 30, 1996).

[15] The Department states that the six resorts owned by Vail Resorts and Ralston Resorts ''account for over 38 percent of skiers days in the Front Range market.'' CIS at 10. If this were true, then the other five resorts which serve Front Range skiers—Copper Mountain, Eldora, Loveland, Ski Cooper, and Winter Park—serve the remaining 62% of the market. This does not appear to be possible given that Eldora, Loveland and Ski Cooper are so small—with each being perhaps each smaller than A-Basin.

[16] Your production of this data may help explain this apparent discrepancy. For example, there are a substantial number of Front Range residents who own condominiums in Summit or Eagle Counties and who ski most weekends. Perhaps your data erroneously classified these skiers as ''destination'' skiers, although they obviously are more appropriately classified as Front Range skiers, if not local skiers.

[17] Most ski resorts in Summit and Eagle Counties generally close between mid-April and early May, depending upon the conditions in a given year. My recollection is that in 1996 A-Basin closed on July 4 and that in 1995 it closed on August 10—months after the other ski resorts had closed.

moreover, impact materially your HHI analysis.

At the core of the Department's ''partial-merger-is-OK'' position is that an independent Arapahoe Basin would provide ''significant competition'' with the four much larger resorts which would be owned by Vail Resorts because, if Vail Resorts increased its prices too much, Front Range skiers would instead ski at A-Basin:

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. CIS at 15–16.

The Department does not explain this conclusion, and objective facts would suggest otherwise.

To provide this ''significant competition.'' Arapahoe Basin must have the physical capacity to handle a sufficient number of additional skiers interested in skiing there rather than at one of the Vail Resort areas.[18] Put another way, the issue is not that A-Basin currently services 6% (or 4%) of the Front Range skier market; rather, the issue is whether A-Basin has the capacity to serve additional skiers who decide not to pay the high prices charged at the four much larger Vail Resorts.[19] It does not appear that A-Basin has such capacity—at least enough to make a difference.[20]

Arapahoe Basin's best season was in 1986–87, when it enjoyed total skier days of 269,399. According to the Department, last season A-Basin served approximately 150,000 Front Range skiers. *See* CIS at 4 and 15. Thus, even if A-Basin were able to repeat its best season, it would be able to accommodate only 120,000 or so additional Front Range skiers—approximately 5% of the total Front Range market.[21] Given that a combined Vail Resorts/Breckenridge/Keystone operations would average over 4.6 million skier days, and that the combined operations would still possess 27% of the Front Range market (even assuming A-Basin reaches its capacity by taking another 5% of the Front Range market), it is not realistic to think that an independent A-Basin will constrain Vail Resorts' pricing decisions in any way—much less ''prevent Front Range skiers from paying higher lift ticket prices'' as your Division represented in its January 3 press release.

In summary, I ask the Department to provide all available facts in its possession which relate to how an independent Arapahoe Basin can restrain the pricing behavior of a combined Vail Resorts/Breckenridge/Keystone operations. I also ask the Department to explain why, in response to a price increase by Vail Resorts and given its significant capacity constraints, A-Basin would not increase its prices as well—thereby defeating the very role the Department intends A-Basin to play.

IV. There Appears to be a Substantial Question Whether an Independent, Stand-Alone Arapahoe Basin Can Succeed as a Long Term Competitor to a Combined Vail Resorts/Breckenridge/Keystone Operations

There is a second, critically important component to the Department's theory that a partial merger ''resolves the anticompetitive problems'' raised by a complete merger—namely, that an independent Arapahoe Basin can be ''economically viable.'' CIS at 15. Even if, as the Department apparently believes, A-Basin can provide meaningful competition upon its divestiture. A-Basin can play this important price-constraining role only if it can survive over the ''long-term.'' DoJ Press Release at 2 (Jan. 3, 1997). If A-Basin cannot survive, consumers would be penalized twice under the Department's partial merger plan; (1) they will pay higher prices, *and* (2) they will lose the opportunity to ski at A-Basin altogether—in which case they will likely pay even higher prices at the remaining resorts.

There is a substantial question whether Arapahoe Basin can survive, much less provide ''significant'' competition, as ski resort on its own, especially when it must compete with a giant like the combined Vail Resorts/Breckenridge/Keystone operations. First, there is no recent history in which to evaluate the viability of Arapahoe Basin as an independent operation; Ralston Resorts acquired A-Basin almost 20 years ago to complement its Keystone operations. Consequently, anyone's representations about A-Basin's long term viability as an independent resort is, at best, speculation.

Second, the trend of the ski industry in recent years has been towards larger and larger consolidations, as evidenced by the merger proposed in this proceeding.[22] According to a recent news article, the number of ski resorts in this country has dropped by 63% over the last 20 years (from 1,400 to 519).[23]

Presumably, there are economic forces in the ski industry compelling this consolidation activity.[24] Divesting such a small resort as Arapahoe Basin to operate independently and to compete against so much larger rivals bucks this trend.

Third, Arapahoe Basin has not enjoyed the growth experienced by most other ski resorts in the Summit/Eagle County area.[25] During last ski season (1995–96), Arapahoe Basin had a total of 241,435 skier days—an 8% decrease over the previous, 1994–95 season (262.240). Indeed, A-Basin's skier day total last season was less than that 10 years ago (1985–86: 267,200) or even 14 years ago (1981–82: 254,618). Without growth, A-Basin may not generate the revenues it needs to make improvements (*e.g.*, install snowmaking equipment, newer lifts, electronic ticketing, and the like).

Four, as an independent, self-contained resort, it should be anticipated that Arapahoe Basin will lose much, if not all, of its destination skier business—approximately 35% of its current business.[26] The Department nowhere explains how A-Basin can survive with the likely loss of this business.

As noted, Arapahoe Basin does not have any base facilities to accommodate any destination skiers. In the past, A-Basin has been able to survive because it has been owned by Keystone, a major destination resort located five or so miles away, and Ralston Resorts has always operated the two resorts as one (*e.g.*, one life ticket honored at both resorts.). Ralston facilitated destination skiing at A-Basin by offering a free shuttle bus so destination skiers staying at Keystone could ski part of a day at A-Basin and by including A-Basin ''Ski the Legend'' advertising in its general advertising. Keystone, because of its large size, presumably offers A-Basin many other operating cost efficiencies such as joint purchasing.

This Keystone/A-Basin connection (*e.g.*, one ticket, free shuttle, extensive advertising) undoubtedly will be severed if Vail Resorts is allowed to acquire Keystone, but not A-Basin. To a layman like me, A-Basin must be

[18] During a dry season, Arapahoe Basin may provide no competition to any resort, because it has no snowmaking capabilities.

[19] Indeed, because of its major capacity constraints, the new owner of A-Basin may decide that the better course is to follow any price increases made by the Vail Resorts. The Department does not address this likely contingency in any of its papers.

[20] *See, e.g.*, Plaintiffs' Response, *U.S.* v. *American Skiing Co.*, 61 Fed. Reg. 55995, 55999 (Oct. 30, 1996) (''[M]any of the smaller resorts are unlikely to be able to expand facilities within a timely fashion to defeat an anticompetitive price increase. For example, to increase the number of lifts and trails or add snowmaking or night skiing capability would take these resorts more than two years in most cases and/or require a long regulatory approval process if their resort is on national forest land.''). To my knowledge, A-Basin is located on national forest land.

[21] A-Basin's capacity is limited both by its small skiable area and its small capacity to take people up the mountain. Given the terrain surrounding A-Basin, it is doubtful whether any expansion is possible.

[22] This consolidation trend is also demonstrated by the December 1996 announcement that the fourth Summit County resort, Copper Mountain, would be acquired by Intrawest and by the merger last year of American Skiing Company and S-K-I Limited, which own many large resorts in New England.

[23] *See* Penny Parker, *Vail Resorts, Inc. Sports New Power Thanks to Merger, The Denver Post On-line* (Feb. 2, 1977). Indeed, numerous small resorts in Colorado, including Berthoud Pass which once served one-third of all skier days in Colorado, have closed because of their inability to compete with larger resorts.

[24] Most industry observers believe the driving forces behind both consolidation and attrition are the need to gain access to capital to maintain state-of-the-art facilities, the need to retain professional management, and the inability of numerous resorts to keep pace with the competition with respect to one or both of these market forces. The trend among leading resorts is toward investing in improving technology and infrastructure so as to deliver a more consistent, high quality product.

[25] Nationally, growth in the ski industry over the last decade has been stagnant. Colorado resorts, and the resorts in Summit/Eagle Counties in particular (with the exception of A-Basin) have generally fared better.

[26] This 35% is based on the fact that A-Basin had a total of 241,435 skier days during the 1995–96 season and that, according to the Department, 150,000 of those skiers were Front Range skier days—leaving 90,000 days involving skiers other than Front Range skiers. *See* CIS at 4 and 15. Some of these 90,000 skier days were generated by local skiers, so the 35% estimate may be overstated.

concerned about the potential loss of up to one-third of its skier customer base.

I therefore ask you to produce data identifying all the services Keystone has provided to Arapahoe Basin before announcement of the acquisition, and to explain how the severing of the Keystone connection will impact A-Basin's future, including the likely loss of destination skiers.

Arapahoe Basin, currently celebrating its 50th anniversary, is a national treasure, and it is important that nothing be done to undermine its long-term viability. In my judgment, A-Basin is such a marginal player in the ski resort market that, given its beauty and unparalleled conditions for spring skiing, the Department should permit A-Basin to continue to be owned by the operator of Keystone—even if Vail Resorts eventually acquires Keystone. Put another way, from the perspective of the public interest, it would be preferable to approve the defendants' original, complete merger plan than to implement the Department's partial merger alternative. If the choice is paying higher prices or losing altogether the opportunity to ski at A-Basin, I would prefer to pay higher prices. I believe the vast majority of my fellow skiers would agree. Besides, if the partial merger is consummated, we will likely pay higher prices anyways.

V. Conclusion

For the foregoing reasons, I ask you to reconsider your unexplained conclusion that local skiers would not be negatively impacted by the merger. In addition, based on the data available to me, I believe that the State of Colorado and the Department should withdraw their support of the proposed Final Judgment and advise the defendants that they intends to to prosecute the complaint if the defendants decide to proceed with their merger. As discussed above, it would appear that the Department's partial merger alternative would not resolve the anticompetitive problems with the proposed acquisition.

I freely admit my current position may be based on incomplete facts, and it is precisely for this reason that I have identified the facts I need to submit informed comments. However, so I can meaningfully exercise my statutory right to submit comments. I ask that you produce the data requested by Tuesday, March 4, 1997.

Yours truly,

Jeffrey S. Bork,

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March 13, 1997.

Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street N.W., Suite 4000, Washington, DC 20530

Re: Proposed Merger of Vail Resorts, Inc. and Ralston Resorts, Inc.

Gentlemen: Please be advised that this firm represents Copper Mountain, Inc. (''Copper Mountain''). This letter is in response to your Stipulation and proposed Final Judgment filed in the United States District Court for the District of Colorado in the case of United States of America and the State of Colorado v. Vail Resorts, Inc., Ralston Resorts, Inc. and Ralston Foods, Inc., Civil Action No. 97–B–10 (the ''proposed Final Judgment'') and the Competitive Impact Statement filed in connection therewith (the ''CIS''). This letter sets forth Copper Mountain's opposition to Vail Resorts, Inc.'s (''Vail'') acquisition of the ski resorts in Summit County, Colorado owned by Ralston Resorts, Inc. (''Ralston''). Vail and Ralston are the two largest owner/operators of ski resorts in Colorado and the proposed acquisition would combine several of the largest ski resorts in that region. CIS page 2. Copper Mountain believes that the proposed acquisition, even if consummated in the manner contemplated in the proposed Final Judgment, will create and enhance market power in Vail and will greatly facilitate Vail's unilateral exercise of such market power. Copper Mountain respectfully disagrees with your conclusions that the proposed divestiture of Arapahoe Basin (''A-Basin'') will preserve competition and resolve the anticompetitive problems raised by the proposed transaction. We respectively request that the Department of Justice (the ''Department'') reconsider its position regarding the Vail/Ralston merger based on the following information.

I. Statement of Interest

Copper Mountain owns and operates the Copper Mountain ski resort located at Copper Mountain, Colorado off of Interstate Highway 70 at the intersection of State Highway 91 (''Copper''). The Vail resorts (i.e., Vail, Beaver Creek and Arrowhead) are located to Copper's west and the Ralston resorts (i.e., Keystone, Breckenridge and A-Basin) are located to Copper's east.

II. Statement of Position

Copper Mountain believes that the effect of the proposed acquisition will, if consummated, substantially lessen competition, create a monopoly and increase substantially the concentration among ski resorts to which Eagle County, Summit County and Front Range (as defined on page 2 of the CIS) residents practicably will go for day ski trips and to which skiers will go for destination skiing in Colorado. Copper Mountain believes that the proposed acquisition, if consummated, will create and enhance market power in Vail and greatly facilitate Vail's unilateral exercise of such market power. This acquisition threatens to raise the price of, or reduce discounts for, day skiing and destination skiing to consumers and is likely to result in other adverse competitive effects, all in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Copper Mountain does not believe the Department's proposed remedy of requiring the divestiture of A-Basin will rectify these adverse competitive effects.

III. Inadequate Remedy

The Department's Complaint, the proposed Final Judgment and the CIS all acknowledge and allege that the proposed acquisition would substantially increase concentration in the market, reduce competition in the market, and eliminate the price constraining impact Vail and Ralston currently have on each other. The economic models referred to in the CIS predict that such factors will result in higher prices and/or a reduction in the discounts offered to skiers in the relevant market. Copper Mountain does not believe the Department's proposed remedy of requiring the divestiture of A-Basin will rectify these adverse competitive effects to any meaningful degree. First, Copper Mountain believes the Department has substantially misstated the market share of A-Basin with respect to Front Range skiers. A substantial portion of the skier days at A-Basin occurs after the other Summit County and Eagle County ski resorts have closed. All of A-Basin's ''post-season'' skier days are part of a market in which the surrounding resorts do not compete and should be excluded in computing Front Range market share. Using such seasonally adjusted information, A-Basin's share of the Front Range market has to be less than currently calculated by the Department, and conversely, Vail's and Ralston's other resorts must have a greater market share. The logical conclusion from these facts is that a post-merger divestiture of A-Basin will have less of an impact on the Front Range market than that apparently presumed by the Department in the proposed Final Judgment and the CIS.

Second, several factors indicate that A-Basin's market presence after the proposed divestiture will be significantly less than that indicated by A-Basin's historical operating performance. After the divestiture A-Basin will lose the substantial benefit of being part of a Multi-Mountain Ticket (see below). A-Basin's historical operating performance has been enhanced by its pairing for many years with Keystone and more recently with Breckenridge. There is no question that skiers perceive a Multi-Mountain Ticket as a better value and we anticipate an appreciable drop-off in A-Basin's total ridership once it is severed from the remainder of the Ralston family. Also, A-Basin will no longer benefit from the huge advertising efforts of Keystone and Breckenridge (and now Vail) which historically have included all mountains within the multi-mountain group.

Moreover, prior to the current ski season, many of the skier days at A-Basin have been snowboarders who were prohibited from snowboarding at Keystone. Historically Keystone has been a skiers-only mountain and snowboarders holding Ralston's Multi-Mountain Tickets would utilize the close-by A-Basin facilities. Keystone's ban on boarders has been lifted effective with the 1996-1997 ski season. Since Vail's announcement of the proposed acquisition we believe many of the snowboarders who formerly boarded at A-Basin have migrated to Keystone. Copper Mountain understands that skier days at Keystone are up from last year while skier days at A-Basin are down from last year, and believes this is largely attributable to the change in Keystone's policy on snowboarders. Accordingly, the lost snowboarder days and anticipated loss of multi-mountain skier days should be factored

in when computing A-Basin's estimated Front Range market share after the proposed divestiture. Again, A-Basin's share of the Front Range market after the proposed divestiture must be signifcantly less than that calculated by merely extrapolating A-Basin's historical operating data.

Third, A-Basin has fewer lifts, trails, skiable area and other amenities than the other Eagle/Summit County resorts. These qualitative differences are so great that it is unlikely that those skiers who ski at the other Vail mountains after the divestiture would accept A-Basin as an alternative if Vail significantly raises prices. The Department specifically recognized in the recent *United States* v. *American Skiing Company* case that if there are significant qualitative differences between the resorts, price competition by the lesser resort will not be effective to constrain price increases by a dominant firm having resorts with more and better facilities. Neither the proposed Final Judgment nor the CIS discuss the overwhelming qualitative differences between A-Basin and the other Vail and Ralston mountains. A reader of the proposed Final Judgment and the CIS who is not familiar with these facilities could well assume that A-Basin's facilities and amenities are fungible with those of the other Vail and Ralston resorts. In fact, A-Basin has more in common with the lesser Front Range resorts which the proposed Final Judgment indicates are disdained by most skiers of the Vail and Ralston resorts. Please explain how A-Basin falls out of the general rule so forcefully put forward in the *United States* v. *American Skiing Company* case that such qualitatively disadvantaged competitors are unable to constrain price increases by their stronger competitors.

We find it interesting that neither the proposed Final Judgment nor the CIS quantify the ''post-divestiture'' HHI or the resulting change in HHI. We believe that both numbers (especially after making the appropriate seasonal and historical adjustments referred to in this section) will remain well in excess of the benchmarks which presumptively raise antitrust concerns under the Department's 1992 Horizontal Merger Guidelines. Please provide such calculations so that all parties will be better able to assess the anticipated effect of an A-Basin divestiture.

IV. Market Definition, Measurement and Concentration

A. Product Market Definition; Multi-Mountain Tickets

Copper Mountain agrees with the Department's definition of the business of skiing as set forth at pages 5 and 6 of the CIS and agrees that one of the relevant products for both Vail and Ralston in the instant case is downhill skiing. However, Copper Mountain believes that the Department has failed to consider another relevant product. In Colorado, several ski resorts offer a multi-mountain multi-day ski life ticket (a ''Multi-Mountain Ticket''). A Multi-Mountain Ticket allows a skier to ski on several mountains over a period of several days instead of just skiing at one location, thereby offering the purchaser of the ticket a greater variety of skiing opportunities. The price of the Multi-Mountain Ticket is usually cheaper than an equal number of one day lift tickets for the mountains the subject of such Multi-Mountain Ticket. A Multi-Mountain Ticket is perceived as a better value by a skier, and several such Multi-Mountain Tickets are offered in Colorado (e.g., Ski-The-Summit (discussed below), a multiple mountain ticket offered by Vail (Vail Mountain and Beaver Creek prior to the proposed acquisition and, as recently announced, Breckenridge and Keystone also), Ski The Gems (consisting of Silver Creek, Loveland, Ski Sunlight, Monarch, Powderhorn, Ski Cooper, Arapahoe Basin and Eldora), Aspen (Aspen Mountain, Aspen Highlands, Buttermilk and Snowmass) and Ski 3 (A-Basin, Breckenridge and Keystone prior to this proposed acquisition)). The firms offering a Multi-Mountain Ticket can price discriminate with respect to that ticket because it is a different product. Since both Vail and Ralston offer Multi-Mountain Tickets, Multi-Mountain Tickets are also a relevant product.

B. Geographic Market Definition

Both Vail and Ralston sell downhill skiing, including Multi-Mountain Tickets, to day skiers and destination skiers at each of their ski resorts. These skiers originate from many different geographic locations. The Department apparently has determined that the only relevant market which would experience anticompetitive effects from the proposed acquisition is the Front Range day and weekend skier market. Copper Mountain respectfully disagrees and believes that there are additional relevant geographic markets which will suffer anticompetitive effects from the proposed acquisition.

1. Local Skier Markets

Vail provides skiing to Eagle County, Colorado skiers at all three of its resorts and Ralston provides skiing to Summit County, Colorado skiers at all three of its resorts. Copper Mountain believes that these skiers are a significant element of Vail's and Ralston's ski resort income. Eagle County residents (which number approximately 25,000) generally turn to the Vail resorts for day skiing trips and Summit County residents (who number approximately 18,000) generally turn to the ski resorts located in Summit County (which are Copper, Breckenridge, A-Basin and Keystone) for day skiing trips since these are the resorts that are within a reasonable and economic traveling distance for these skiers. Local skiers generally purchase season passes to a local ski resort. This creates a ''lock-in'' effect and, once purchased, a local skier has little incentive to ski someplace else. Further, if the Eagle County local skiers did decide to ski elsewhere, the logical choice would be Summit County, which means they would be required to drive over Vail Pass (elevation 10,660 feet) twice, which can be treacherous during winter storms. If the Summit County local skier decided to ski outside of Summit County, assuming he headed east, he would be required to drive over Loveland Pass (elevation 11,990 feet) or through the Eisenhower Tunnel (elevation 11,160 feet) twice, both of which can be treacherous during winter storms. A trip in the other direction to Vail would be further and would require a drive over Vail Pass. Finally, local residents ski their local resorts due to the convenient access. A skier wanting to ski during his lunch hour, or work in the morning and ski in the afternoon (or vice versa), will ski locally and not at a more distant ski resort. As such, ski resorts located outside Eagle County and Summit County cannot (and would not after the proposed Vail/Ralston acquisition is consummated) constrain a significant non-transitory price increase charged to day skiers living in those Counties. It is of importance however that Vail currently influences the rates charged by the Summit County ski resorts. Summit County resorts generally set their prices beneath those charged by Vail. This constraint will be removed by consummation of the Vail/Ralston merger with respect to three of the four ski resorts in Summit County.

Eagle County and Summit County skiers can be identified easily by the ski resorts that are reasonable alternatives for these day skiers. Ski resorts can charge these skiers prices that differ from prices charged to out-of-county skiers or to destination skiers generally by increasing the cost of a season pass or reducing the discount offered on a season pass. This is done by, among other things, advertising in the Vail Trail, a local newspaper circulated in Eagle County or in the Summit Daily News and the Summit County Journal, local newspapers circulated in Summit County or by direct mailings to P.O. boxes in Eagle and Summit Counties and mailings to past season ticket holders. A single firm controlling all of the ski resorts in Eagle County and Summit County would be able to raise prices a small but significant amount to the local skiers without losing so much business as to make the price increase unprofitable.

Of further concern is transportation between these two Counties. In 1995, Vail began operating a bus from Breckenridge to Vail Mountain. Vail has announced its intentions to expand this bus service and thereby increase the interaction between the two counties. If Eagle County skiers do travel to other counties for skiing, the logical locations of choice are the ski resorts in Summit County, and vice versa. Nearby resorts outside of Eagle and Summit Counties are: Eldora, Loveland Basin, Silver Creek, Ski Cooper and Winter Park. Four of these five alternative resorts outside of the Eagle/Summit County area (i.e., Eldora, Loveland Basin, Silver Creek and Ski Cooper) generally have fewer lifts, trails, skiable area and amenities than the Eagle/Summit County resorts and are not of the same qualitative choice. Winter Park is comparable in size and amenities to the Eagle/Summit County resorts, but it is further away. Gasoline costs to any of the other five alternative ski resorts, on a round trip basis, would exceed a significant 5% increase by Vail to the one day lift ticket price. Finally, none of these five resorts are as convenient to local skiers as those in Eagle and Summit Counties for the reason set forth above. As such, ski resorts located outside Eagle/Summit County would not after the proposed Vail/Ralston acquisition is consummated constrain a

significant price increase charged to local skiers living in Eagle County or Summit County, Colorado.

2. The State of Colorado

Both Vail and Ralston provide skiing to day skiers and destination skiers (both residents and non-residents of Colorado) at all of their resorts, as do most ski resorts in Colorado. The ski resorts in Colorado specifically market Colorado as a skiing market, not only to residents of Colorado but also to skiers around the country and the world. The majority of the ski resort owners in Colorado are members of Ski Country. Ski Country publishes, among other things, a Consumer Ski Guide. According to this Ski Guide, Ski Country ''functions as the information source for the Colorado ski industry and serves as the voice for Colorado Skiing with many entities, including the travel trade, legislators, government officials, regulatory agencies, the media and skiers.''

Others also consider Colorado to be a separate market, even Vail. Adam Aron, Vail's new chairman and chief executive officer, has been quoted as saying: ''It's time to increase the number of people coming to Colorado to ski. . . .'' [1] Mr. Aron was also quoted that one of his goals was to ''[g]o right to work in promoting Colorado skiing to see if the market can be expanded.'' [2] Finally, he stated: ''If Colorado wants to remain a strong player, its resorts need to come together to keep the spotlight on the state as a destination.'' [3] Vail spokesperson Pat Peoples was quoted as saying: ''[T]his would make an incredible merger and keep Colorado in the forefront of world-class skiing. . . . Marketing will be directed toward the sport and Colorado and to the individual resorts.'' [4] Ralston also identifies Colorado as a distinct market: ''Jim Felton, communications director for Ralston resorts, said the merger 'helps us to fortify Colorado's stance as the gold standard in skiing.' '' [5]

Skiers ski in Colorado because of the abundance and quality of the snow, the variety of skiing conditions and the amenities offered at the destination resorts. In addition, Colorado is easily accessible from most places in the country. Colorado day skiers generally have no other place to go. Destination skiers generally fly to Colorado to ski and spend an average of seven nights on their ski trip. A price increase for lift tickets of five percent would not be sufficient to cause destination skiers to choose another state in which to ski.

Please provide more information to justify your conclusion that no relevant market other than the Front Range day and weekend skier market will be competitively disadvantaged by the proposed acquisition.

[1] *Vail 'will grow and grow'*, Michele Conklin, Rocky Mountain News, July 24, 1996, p. 4B.

[2] *Skiing behemoth formed*, Penny Parker, The Denver Post, July 24, 1996 p. 8C.

[3] *Aron Takes Reins at Vail Resorts; Firm Merges With Ralcorp*, Felicity Long, Travel Weekly, August 15, 1996, p. 15.

[4] *Vail Resorts buys into 3 local ski areas*, Marc Angelo, Summit Daily News, Volume VII, Number 339, July 24, 1996, p. 1.

[5] *Vail to buy three Summit resorts*, Madaeleine Osberger, Snowmass Sun, July 24, 19996, p. 1.

C. Calculating Market Share

In the downhill skiing business, market share has historically been determined on the basis of skier days (i.e., one person visiting a ski area for all or part of one paid day or night for the purpose of skiing). As such, skier days generally are the appropriate measure of market share for downhill skiing and Multi-Mountain Tickets. However, although total skier day information for Colorado resorts is readily available through Ski Country, definitive information breaking down skier days for Colorado resorts for the various relevant markets is not, to our knowledge, publicly available. As such, we have made some assumptions as to the local markets and the Multi-Mountain Ticket markets shares.

Vail currently owns all of the ski resorts in Eagle County. As stated above, local residents generally only ski in their own county. If that is true, then Vail's market share of Eagle County resident day skiers is close to 100%. As to the Multi-Mountain Ticket market in Eagle County, since Vail offers the only Multi-Mountain Ticket in Eagle County, its market share of Multi-Mountain Ticket users in Eagle County must also be 100%.

There are only four ski resorts in Summit County. Ralston currently owns three of the ski resorts and Copper Mountain owns the fourth. Since there is more than one firm participating in this relevant market, market share should be determined by skier days. Again, we do not have definitive information regarding skier days at the Ralston resorts (other than total skier days). However, we believe Ralston's market share of Summit County local day skiers is approximately 75%. Ralston's records should substantiate this. There are only two Multi-Mountain Tickets offered in Summit County, i.e., the Multi-Mountain Ticket offered by Ralston and the Multi-Mountain Ticket offered by Ski-The-Summit (see the discussion below). Since Ski-The-Summit has effectively been eliminated with respect to local skiers, Ralston has 100% of the Multi-Mountain Ticket market in Summit County.

The relevant indicator of market share for the entire Colorado market is total skier days (i.e. day skiers and destination skiers). The calculation of market share for all Colorado resorts for the 1995/1996 season is as follows:

Resort	Market share (percent)
Ralston resorts	23.39
Vail resorts	19.56
Copper	8.49
Silver Creek	0.80
Winter Park	8.89
Eldora	1.50
Loveland Basin	2.68
Ski Cooper	0.58
Aspen	11.78
Crested Butte	4.45
Monarch	1.19
Purgatory	2.70
Steamboat	8.93
Cuchara Valley	0.17
Howelson Hill	0.16
Powderhorn	0.46
Ski Sunlight	0.80
Telluride	2.38
Wolf Creek	1.09
Total	100.00

Vail, Ralston, Ski The Gems and Aspen are the only firms effectively offering Multi-Mountain Tickets in Colorado. We do not know the number of skier days attributable to Multi-Mountain Tickets at these locations. However, based upon total 1995/1996 skier days, Vail, Ralston, Ski The Gems and Aspen would have the following Multi-Mountain Ticket market shares pre-merger:

Firm	Skier days	Percentage (percent)
Vail	2,228,419	30.10
Ralston	2,665,307	36.01
Ski The Gems	1,166,461	15.76
Aspen	1,342,109	18.13
Total	7,402,296	100.00

The Department should be able to obtain the actual information from Vail, Ralston and the other resorts.[6]

D. Proposed Acquisition (HHI Analysis)

In the local markets and the Colorado market, it appears that Vail's post-merger market share will result in an HHI factor substantially in excess of 1800. In addition, it appears that Vail's increase in the HHI after the merger will be in excess of 3000 points in the case of the Eagle/Summit County market, 4000 points in the case of the Eagle/Summit County Multi-Mountain Ticket market, 900 points in the case of the Colorado market and 2000 points in the case of the Colorado Multi-Mountain Ticket market. These HHI numbers and increases in concentration are substantially in excess of what the Department considers acceptable.

V. Potential Adverse Competitive Effects of the Proposed Acquisition

Market share and concentration as well as the HHI factor provide only the starting point for analyzing the competitive impact of a merger. Other factors to review are: the firm's ability to unilaterally increase prices; the ability of other firms to enter the market; the efficiencies achieved through the merger; and whether one or more of the firms are failing or their assets will be leaving the market. A merger may diminish competition because the merging firms may find it profitable to alter their behavior unilaterally following the acquisition by elevating price. Based on the prior acts of Ralston after its acquisition of the Breckenridge ski resort (as described

[6] It is interesting to note that the Ski The Gems ticket is a season pass at each of its participating resorts as opposed to a multi-day ticket. Generally the multi-day ticket is practical only at the same mountain or at mountains in close proximity to each other. Looking strictly at true multi-day tickets (as opposed to a season pass), the top three firms in Colorado (based on skier days) offer the Multi-Mountain Ticket.

below), and some of the announced intentions of Vail if the proposed acquisition is consummated, we believe that Vail will take these unilateral acts. The Department has stated in the CIS that its ''unilateral effects'' economic models predict significant post-acquisition price increases at the Vail and Ralston resorts. In addition to these effects on price, we believe the proposed acquisition will have numerous other deleterious effects on competition.

A. Multi-Mountain Tickets; Ski-The-Summit

In May 1984, Keystone organized the Ski-The-Summit (''STS'') program for Summit County. STS allowed skiers to visit any of the four participating areas (A-Basin, Breckenridge, Copper and Keystone) for a package price pursuant to a Multi-Mountain Ticket. Summit County restaurants, hotels and condos were also advertised together. The idea behind STS was that skiers would find a ticket usable at four mountains more favorable than a ticket usable at only one mountain. From the mid 1980's until after the Breckenridge merger, STS sold season passes and Multi-Mountain Tickets, as well as selling cards (the ''STS Club Card'') which allowed discounts off of various purchases at participating ski resorts, lodges and merchants in Summit County. STS marketed Summit County to Front Range and out-of-state skiers.

After Ralston acquired Breckenridge in 1993, the Ralston effectively excluded Copper from a Multi-Mountain Ticket. Ralston set its price for its season pass to the Ralston resorts below the season pass price of STS, thereby drawing the multiple-mountain season pass holder away from STS.[7] Prior to the 1993 Breckenridge/Keystone acquisition, STS offered a four or six day Multi-Mountain Ticket. After the 1993 Breckenridge/Keystone acquisition, Ralston refused to allow any STS Multi-Mountain Ticket for a period shorter than ten days, while at the same time Ralston marketed its own Multi-Mountain Tickets from 2 to 14 days. These actions have effectively eliminated STS as a viable competitor, the result of which is to exclude Copper Mountain from Multi-Mountain Tickets. The only area in which STS still has remaining viability is in the international arena.

STS used to offer the STS Club Card for $30 per skier per season. STS used the revenues from the sales of the card for STS marketing. As noted above, the STS Club Card allowed skiers discounted ski tickets and discounts for food and lodging in Summit County. After the Breckenridge merger, Ralston created its own ''Ski 3'' cards, and distributed over 100,000 of the Ski 3 cards free of charge to local and Front Range skiers via mass mailings. The Ski 3 card could only be used at the Ralston resorts. This undercut the STS Club Card, STS Club Card sales went to zero and the STS Club Card was discontinued, eliminating an important source of revenue to market STS.

[7] STS still sells some season passes (approximately 2,000 for the 1995/1996 season, with less than 1,500 expected for the 1996/1997 season).

Ralston's actions have effectively precluded Copper Mountain's access to a Multi-Mountain Ticket other than in the international market. A Multi-Mountain Ticket is perceived by the skier as a better value. Vail's tentative plans call for creating a Multi-Mountain Ticket for all five resorts if the acquisition is consummated. Copper will be excluded from this ticket also, thereby eliminating a choice to skiers in the Multi-Mountain Ticket market. Furthermore, these past actions predict that A-Basin will be excluded from the Vail Multi-Mountain Ticket after the proposed divestiture.

B. Lift Ticket Marketing

Copper Mountain and Ralston sell their lift tickets both on-site and through off-site merchants. Copper Mountain sets its on-site price, but Copper Mountain's off-site vendors are allowed to set their own lift ticket prices. Copper Mountain establishes the amount per off-site ticket which must be passed back to Copper Mountain by the off-site vendor, but the off-site vendor is free to establish whatever retail price it desires. We believe, however, that Ralston may exercise significant resale price maintenance with respect to its off-site lift tickets. Several vendors have expressed to Copper Mountain dissatisfaction with Ralston's setting of prices, but the vendors felt they had no choice but to go along with Ralston's requirements because of Ralston's huge market presence.

Ralston also may have entered into contracts with off-site merchants which preclude the merchants from selling other lift tickets, including Copper Mountain's lift tickets and Ralston may have used its market power to discourage the selling of Copper tickets by vendors. The means used by Ralston to achieve these ends we believe are several. First, Ralston may have entered into exclusive contracts with retailers which provide that the retailer can only sell tickets to the Ralston resorts. Second, Ralston may set favorable commissions, or discounts for the retailer's purchases from Ralston, which are available only if the retailer agrees to sell Ralston tickets exclusively. Finally, Ralston may provide incentives, such as additional tickets, season tickets, lodging packages, free transportation, joint advertising promotion, public relations or other forms of consideration, if the retailer sells more Ralston tickets than Copper tickets, or has a sliding scale of consideration based on their selling a high, or increasing percentage of, Ralston tickets. These methods would effectively reduce competition by preventing the off-site sale of other ski resort lift tickets or by providing a greater incentive to sell only Ralston resort tickets. Because of these practices, Copper Mountain has been able to find only a few retailers in Breckenridge who will sell Copper Mountain's tickets, and none in Keystone. Copper is concerned that Vail may exclude Copper Mountain from selling its tickets in all of the Vail resorts and Ralston resorts, and will continue the anticompetitive attempts with Front Range vendors if the proposed acquisition is allowed to proceed.

C. The ''Summit Stage'' Local Bus Issue

STS used to expand a large portion of its budget to pay for buses running between the four ski areas in Summit County. Several years ago, Summit County passed a one-half per cent sales tax to pay for public buses (the Summit Stage) that drive to all four ski areas and intermediate towns and carry passengers without charge. After the merger between Keystone/A-Basin and Breckenridge in 1993, Ralston started operating buses that drive only between the Ralston resorts. Summit County residents are now suggesting a repeal of the tax,

D. Other Concerns

One of the more important benefits which a ski resort can offer its employees is a season multi-mountain pass. With the demise of STS, Copper Mountain can no longer offer this benefit, potentially resulting in a loss of a substantial number of employees. This problem will become even more acute if Vail offers a five-mountain lift ticket. Vail is expected to have a $20,000,000 advertising budget. Cooper Mountain is concerned that Vail could dictate the placement of print advertisements and time slots for radio and television. Finally, Copper Mountain is concerned that Vail can make package deals with the airlines which other ski resorts cannot match or will not be given the opportunity to match. Further, Copper Mountain currently has an agreement with United Airlines whereby United provides discount airline tickets to Copper Mountain in exchange for Copper Mountain meeting a set quota for tickets sold to Copper customers. Copper Mountain is concerned that Vail will cause United to increase the quota or increase the penalty for falling short of the quota. In effect, Vail would be raising a rival's costs.

VI. Conclusions

Vail has and will continue to have a virtual monopoly on ski resorts in Eagle County, Colorado. In addition, Ralston currently has (and Vail will have if the proposed acquisition is consummated) a substantial portion of the market in Summit County, Colorado. As to the Eagle/Summit County market. Vail will own six (or five if the A-Basin divestiture is completed) of the seven ski resorts in that two-county market. Finally, the proposed merger will decrease the number of participating firms in the Colorado market and will decrease the number of participating firms in the Multi-Mountain Ticket markets as follows: which could leave Copper without a transportation system. The Summit Stage is very important to transport both guests and employees to Copper, and its elimination or replacement with a system that did not serve Copper would harm both guests and employees. Vail's tentative plans call for creating bus service among all five resorts. Copper Mountain believes this will bring further pressure to eliminate the tax that supports the Summit Stage, thereby eliminating an important source of transportation in Summit County. In addition, Copper Mountain is concerned that it would be precluded from such bus service, meaning that skiers using such service would not have readily available access to skiing at Copper or other resorts if they so chose.

Market	From	To
Eagle/Summit County	2	1
All Front Range Resorts	3	2
Colorado	4	3

In summary, Copper Mountain agrees with the Department as to the likely anticompetitive effect of the merger on the Front Range skiers. There will be significant nontransitory price increases and past behavior in this market indicates that numerous other anticompetitive effects in the Front Range market will follow. However, Copper Mountain also believes there will be an anti-competitive effect on local skiers as well as Colorado skiers in general, and in the Multi-Mountain Ticket market as well. Finally, Copper Mountain respectfully disagrees with the Department's conclusion that a post-acquisition divestiture of A-Basin will do anything to ameliorate the deleterious effects of the Vail/Ralston combination. A-Basin is too small and too ill-equipped to constrain price increases by its monopolistic neighbor and otherwise is unlikely to be an effective competitor. Nothing short of prohibiting the merger or at least requiring the divestiture of either Breckenridge or Keystone will adequately lessen the anti-competitive effects which otherwise will ensue.

Sincerely,

Douglas D. Hommert

January 18, 1997.

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H St., N.W., Room 4000, Washington, D.C. 20530.

Dear Mr. Conrath, I am extremely disappointed to hear of your preliminary approval of Vail Associates quest to buy Breckenridge and Keystone ski areas. I am a native Coloradan and Denverite. I have been skiing here for 30 years. I share the opinion of many that this is a monopolistic move by Vail Associates. The figures published in the paper indicate Vail Associates will have ''between 32% and 34% of the front range ski market''. The article in the January 4, 1997 Rocky Mountain News goes on to say that 35% market share is a benchmark used in federal law to determine when a company can raise prices unilaterally.

I would like you to consider my argument from a local skiers point of view. Consider that these acquisitions are along the I–70 corridor. A front range skier considers the winter road conditions as we decide where to ski. We travel I–70 past Idaho Springs (approximately 45 minutes from Denver) to the major fork where US 6 and US 40 split. Hundreds of millions of federal and state dollars have been spent to improve I–70, including the building of the Eisenhower Tunnel. Little if any money (beyond maintenance) has been used to make the road over Berthoud Pass any easier in tough winter conditions. Obviously it is a much more difficult trip to go skiing.

The majority of the money has been spent on roads in the I–70 corridor. Therefore, that is the easiest route to take skiing. Vail's acquisition of Keystone and Breckenridge gives them *dominance* in the heart of Colorado's prime ski market. They have continued to raise prices and it is difficult for my family or four to ski more than once per month at best. Arrowhead, under Vail's management, has gone from an affordable family resort to a prohibitively expensive place to ski.

I ask you to consider my argument and reconsider this decision. It's not healthy for one organization who is known for catering to out of state wealthy people to suddenly have reign over two more strategic ski areas so near to the Denver market. As a last request, ask them to keep Arapahoe Basin but divest of Keystone or Breckenridge. That would leave a larger resort like Keystone or Breckenridge independent. If Vail Associates is effective in their marketing as they always have been, what happens when their market share of 32% to 34% grows to 35% to 40%? Will they have the ability to raise prices unilaterally? Will you have any control at that point?

Please rethink this issue. It's not good for Colorado's ski industry. I'll look forward to your reply.

Sincerely,

Greg Horstman,

5892 E. Geddes PL., Englewood, Colorado 80112.

1101 Market Street, 29th Fl., Philadelphia, PA 19107.

March 14, 1997.

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

Re: Vail Resorts, Inc., C.I.S., Civ. Action No. 97–B–10

Dear Mr. Conrath: This is a comment on the above-captioned Competitive Impact Statement as filed by the Department of Justice (''DOJ'') in U.S. and Colorado v. Vail Resorts, Inc. et al.

Having just returned from my annual ski trip to the Front Range, I must advise you that a major topic of conversation out there was how the DOJ got sucked into accepting that the sale of A-Basin (the Front Range name for Arapahoe Basin) could save us from the inevitable lift ticket increases which will surely come about with Vail's acquisition of Keystone and Breckenridge.

The CIS for this transaction, and the lack of factual detail therein is fascinating. I'll wager that not one of the attorneys or economists representing the Government in this matter has ever ridden the Pavliacini lift! Therefore, some ''real skier'' (and antitrust lawyer) facts:

1. A-Basin is a bowl. It is high, stark, open and tough. It tends to magnify adverse weather conditions, notably wind, cold and flat-light white-outs. A large number of those who ski The Basin do so to ski non lift-serviced terrain. This is very different skiing from the standard groomed and semi-groomed runs which constitute the bulk of skier business at Keystone, Breckenridge and Copper Mountain. In addition, A-Basin is a much smaller resort than the others.

2. Because of the items set forth in 1. above, A-Basin has traditionally been a cheaper place to ski than the other Summit County resorts. Even after Ralston bought it, an A-Basin only ticket (not usable at Keystone) was cheaper than the Keystone/A-Basin combined ticket.

3. No one goes to A-Basin to ski because the weather is bad at Keystone. It is, however, common for skiers to go to Keystone, buy a ticket, take the little shuttle from Keystone up to The Basin, and check out the conditions frequently by taking the bottom chair up to the bottom of the bowl which allows a skier to check out the bowl conditions without having to actually ski the bowl. The significance of this pattern is that such a skier's ticket would be recorded at the bottom of A-Basin as an A-Basin skier, although the skier almost immediately leaves the hill and returns to Keystone. Note that the CIS statistics are skier-days, not skier-runs. Having bought tickets and ridden ski lifts in this area since before electronic scanning existed, I do not believe that either Keystone or A-Basin has sufficiently sophisticated systems to draw the kinds of differentiations which would really indicate the degree to which A-Basin is a meaningful skiiing alternative to Keystone.

4. Breckenridge and Keystone do in fact compete with Copper and Vail in the minds and planning of Front Range skiers. Copper Mountain has for a number of years been cheaper than the others, but that may change given Copper Mountain's new ownership. Vail has for many years placed large quantities of Vail/Beaver Creek deep discount coupons and lift tickets in the Dillon/Silverthorne/Frisco/Breckenridge areas serviced by Breckenridge, Keystone/A-Basin and Copper. However, even with the deep discounting, Vail/Beaver Creek lift tickets are much more expensive than the Summit County alternatives. A half-day ticket purchased at Beaver Creek on March 7 was $44. On the same day, a half-day ticket at the other resorts would have cost as follows: Breckenridge or Keystone/A-Basin, $36; Copper, $33. (Due to high winds at no time during the course of a week could we ski at A-Basin alone).

5. The only resort with which A-Basin alone (without Keystone) might be considered competitive by local Front Range skiers is Loveland Basin (which is on the other side of the continental divide (and the Eisenhower Tunnel) from A-Basin).

In conclusion, I offer another wager: allow this transaction to proceed and within 2–3 seasons lift ticket prices at Keystone and breckenridge will have gone up and prices at Vail/Beaver Creek will not have gone down. In addition, those of us who love A-Basin are seriously concerned that being contaposed to the big resorts it will not survive. It is readily understandable that Vail is delighted to not have to carry the burden of this small and peculiar operation. However, if the Department of Justice wants to allow this transaction to occur, please do not orphan A-Basin—make Vail buy it and keep it.

Very truly yours,

Jones, Day, Reavis & Pogue

Metropolitan Square, 1450 G Street, N.W., Washington, DC 20005–2088

April 4, 1997.

Via Hand Delivery

Craig W. Conrath,
Esquire, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW Ste. 4000, Washington, DC 20530.

Re: United States v. Vail Resorts, Inc.

Dear Craig: I have enclosed for filing the Tunney Act comments of the City and County of Denver and the Winter Park Recreational Association. Please acknowledge your receipt of these materials by signing and dating one original of this letter and returning it with our messenger.

Needless to say, we would be happy to answer any questions you might have.

Sincerely,

Charles A. James

Received by the Antitrust Division:

_____
(Name)

_____
(Date)

United States v. *Vail Resorts, Inc.*

[Civil Action No. 97–B–10]

United States District Court for the District of Colorado

Comments of the city and county of Denver and the Winter Park Recreational Association in opposition to the proposed final judgment.

Submitted to the Antitrust Division of the U.S. Department of Justice pursuant to 15 U.S.C. 16(b)–(h).

April 4, 1997, Washington, D.C.

The City and County of Denver (''Denver''), together with the Winter Park Recreational Association (''Winter Park''). hereby comment in opposition to the proposed final judgment resolving *United States* v. *Vail Resorts, Inc.*, Civil Action No. 97–B–10, (D.Col.). We fully agree that Vail's acquisition of Ralston Resorts threatens substantial harm to competition in the Front Range ski market. The proposed relief, however, falls well short of what would be required to eliminate that threat and restore competition.

This matter involves the combination of the two premier ski resort operators serving Colorado Front Range skiers. The transactions places under single ownership the three top ski resorts in North America and four of the top six resorts serving the Front Range skier. Following the transaction, Vail will own properties that accounted for 61.7 percent of total 1995–96 visits to ski areas serving Front Range skiers, as measured by Colorado Ski Country USA data. Five of the remaining eleven Front Range resorts each reported 305,000 or fewer 1995–96 visits, an amount that represented less than twenty percent of the 1995–96 visits to Vail's largest single resort alone. After an extensive investigation, the U.S. Department of Justice found that the merger would allow Vail, single-handedly, to raise prices above competitive levels.

The proposed consent decree calls for the divestiture of Arapahoe Basin, a small, remote ski area that is little more than a few ski trails and a parking lot. It has none of the amenities that characterize the year-round, full service resorts that have been combined under the Vail/Ralston transaction, and has virtually no potential to expand into a major resort property. Because of its location, altitude and ski conditions, Arapahoe Basin has a limited following, even among advanced Front Range skiers. The divestiture of this small ''niche'' ski area cannot be expected to check the enormous economic power that will be gained through the Vail/Ralston merger. Accordingly, we urge the Antitrust Division to reconsider its decision to accept this paltry divestiture or, failing that, we urge the Court to reject the proposed decree.

The Commentors

Denver is the local governing authority for the 153 square mile land area encompassing the City and County of Denver and is responsible for a population of approximately 484,000. The City Attorney is the chief local attorney responsible for civil matters affecting Denver residents.

Denver is vitally interested in the competitive health of the Colorado ski industry. By virtue of its Rocky Mountain location and climate, winter sports, especially skiing, are a major engine of economic activity and development for the Denver area. Skiing generates tourist trade, as well as tax revenues associated with lodging, travel, dining, entertainment, equipment purchases and other ski-related expenditures. Winter Park estimates that the ski industry is worth about $2.5 billion to the Colorado economy. Perhaps even more importantly, skiing is a vital component of the recreational life of the community. The availability of winter sports is a major factor in drawing residents and industry to the Denver area.

Having closely evaluated the Vail/Ralston transaction, Denver believes that the combination will harm resident skiers. Among other things, Denver concurs in the Antitrust Division's conclusion that Vail will have the ability to raise prices charged to Front Range skiers.

Winter Park is a not-for-profit corporation formed in 1950 by Denver to operate, maintain and develop the Winter Park Recreational Area for the benefit of the people of the City and County of Denver and the general public. By virtue of its charter, the Winter Park resort operates to advance the public interest by providing an enjoyable winter sports experience at reasonable prices, providing unique programs for special populations, such as young skiers and the disabled, and subsidizing non-ski recreational activities throughout the community. The Winter Park Board of Trustees believes that its corporate charter is furthered by the preservation of a fully competitive ski industry in the Colorado Front Range area.

Like Denver, Winter Park is concerned about the market power created by the Vail/Ralston transaction. It believes that, having acquired the Ralston resorts, Vail will have the ability to discipline other ski areas so as to discourage aggressive price and service competition. Further, Winter Park believes that Vail will be well positioned to pursue predatory strategies directed at other ski areas and resorts toward the ends of eliminating competitors and perhaps softening potential acquisition targets.

The Front Range Ski Market

The complaint supporting the proposed final judgment defines the relevant market as the provision of skiing services to residents of the Front Range. The Front Range is defined as the geographic area just east of the Rocky Mountains, including, from north to south, the metropolitan areas from Fort Collins to Pueblo. The complaint goes on to allege that most Front Range skiers limit their day trips to resorts within two and one-half hours travel time, and somewhat longer for overnight trips. For all practical purposes, this definition excludes thirteen of the twenty-four Colorado ski areas, including the major resorts at Aspen and Steamboat Springs. The remaining market participants are: Arapahoe Basin, Beaver Creek/Arrowhead, Breckenridge, Copper Mountain, Eldora, Keystone, Loveland, Silver Creek, Ski Cooper, Vail and Winter Park. Five of them—Arapahoe Basin, Breckenridge, Beaver Creek/Arrowhead, Keystone and Vail—are now owned by Vail.

Although there are eleven ski areas that serve the Front Range Skier, the market has been dominated by the Vail and Ralston resorts, which are now a single competitive entity. Since consummation of the merger, Vail controls three of the four resorts that attracted 1 million or more 1995–96 skier visits. Indeed, according to the prospectus accompanying Vail's most

recent stock offering, Vail, Breckenridge and Keystone, in that order, are the three most popular ski resorts in North America. Together the four Vail resorts, excluding Arapahoe Basin, accounted for just under 62 percent of total skier visits to resorts serving the Front Range. According to the complaint in this matter, they accounted for over 38 percent of skier days in the Front Range market.

Among the remaining Front Range resorts, only Winter Park had one million or more skier visits in the 1995–96 season. Three resorts—Copper Mountain, Beaver Creek/Arrowhead and Loveland—had skier visits between 970,000 and 300,000. The remaining four competitors—Arapahoe Basin, Eldora, Silver Creek and Ski Cooper—each had 250,000 or fewer 1995–96 skier visits, with Silver Creek and Ski Cooper each having less than 100,000.

The four Vail resorts dominate the Colorado ski market for a variety of reasons. Each is a modern winter sports complex, offering a variety of ski terrains and non-ski recreational facilities. Each is located within a well-developed resort community, featuring lodging, dining and entertainment. According to the White Book of U.S. Ski Areas, the Vail Resort, for example, offers a full-service school with 1100 instructors, has 20,000 beds for lodging on the resort and in the immediate community, offers nine restaurants on the mountain itself and over 100 in the surrounding community and has over 250 shops and services in the area. Even Beaver Creek/Arrowhead, Vail's smallest property, offers a full-service ski school with 400 instructors, 4700 beds for lodging and six on-mountain restaurants.

By way of contrast, the smaller areas, such as Arapahoe Basin and Eldora, offer no lodging and few other amenities. Indeed, the White Book directs Arapahoe Basin skiers to the Keystone Resort for lodging, dining and entertainment.

The Antitrust Division's Competitive Analysis

The competitive impact statement accompanying the proposed final judgment states that the Antitrust Division's opposition to the Vail/Ralston merger is premised upon the ''unilateral effects'' model. Competitive Impact Statement at 12. This model, as articulated in the 1992 DOJ/FTC Horizontal Merger Guidelines, posits that a merger may enable the surviving firm to raise prices where ''a significant share of sales in the relevant market are accounted for by consumers who regard the products of the merging firms as their first and second choices and that repositioning of the non-parties' product lines to replace the localized competition lost through the merger (is) unlikely.'' Merger Guidelines at 23.

The Antitrust Division described the application of the unilateral effects model to this case as follows:

> (B)efore a merger, if two resorts are significant competitors to each other and one of these resorts increases its prices, a significant portion of this resort's customers would be ''lost'' to the other resort. After a 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 merger entity.

Competitive Impact Statement at 12. Based upon its analysis of costs and demand in the market, the Antitrust Division estimated the adverse price effect of the merger to be an increase of roughly four percent or about $1 per lift ticket. Competitive Impact Statement at 14.

The conclusion that the Vail resorts would be able to increase prices following the merger necessarily means that the six non-party ski areas (excluding Arapahoe Basin) do not provide a sufficient constraint upon the combined Vail and Ralston resorts to discipline pricing in the Front Range market. That conclusion also means that the Antitrust Division has concluded that none of the non-party resorts could ''reposition'' their service offerings so as to enhance localized competition between their resorts and those of Vail. An effective remedy, therefore, requires the creation of a new competitive entity attractive enough to Vail patrons to capture sales to consumers switching away from the Vail resorts in response to a price increase.

Inadequacy of the Proposed Final Judgment

By the very terms of the Antitrust Division's competitive effects analysis, the divestiture of Arapahoe Basin would serve to constrain price increases at the Vail resort only to the extent that Arapahoe Basin is a close competitive substitute for each of the Vail properties. Otherwise, the run-off resulting from a Vail price increase at one of its resorts would be recaptured by another Vail resort. It would be virtually impossible to find anyone acquainted with the various ski areas serving Front Range skiers who would even suggest that Arapahoe Basin is a close substitute for any of the Vail properties.

Arapahoe Basin has the highest altitude base among the ski areas serving the Front Range. This, together with the fact that much of it is situated above the timberline, means that is suffers extreme weather conditions, including frequent ''white-outs,'' more intense winds and much colder temperatures than other Front Range properties. Additionally, unlike most of the other resorts serving Front Range skiers, Arapahoe Basin is not located on the Interstate 70 corridor. Indeed, the most direct route to and from Arapahoe Basin requires traversing one of the highest and most frequently closed highway passes in the United States.

As a winter sports experience, Arapahoe Basin bears not even the slightest resemblance to the Vail resorts. First and foremost, Arapahoe Basin is not a resort at all. It is more properly characterized as a pure ski area. Unlike the Vail resorts, which boast full-service ski schools, cross country skiing, curling, ice skating, indoor tennis, sledding and snowcat riding, among other activities, Arapahoe Basin has ski lifts and trails, a snack bar and a parking lot. Unlike the Vail resorts, which feature a balanced skiing experience to accommodate skiers of varying skill levels, 90 percent of Arapahoe Basin's trails are listed as intermediate or advanced.

Moreover, contrary to the suggestion in the competitive impact statement that Front Range skiers are less interested in amenities than destination skiers, the social aspects of a ski trip often are just as important to the Front Range skier as they are to those who travel from more distant locations. Front Range skiers are as diverse as destination skiers. They are not just ski fanatics willing to drive two and one-half hours simply to take a few runs down the mountain and return home. Thus, it would be preposterous to suggest that Front Range skiers, even those travelling on a day-trip basis, have no interest whatsoever in non-ski winter sports activities, dining, entertainment and shopping.

The Vail resorts and Arapahoe Basin simply are at opposite ends of the spectrum of ski experiences available to Front Range skiers. Front Range skiers who are inclined toward the Vail resorts obviously are attracted by the full package of services and amenities they offer. It taxes the imagination to believe that Front Range skiers would find a ''no-frills'' ski area like Arapahoe Basin to be the next best thing to a visit to any one of the Vail properties.

Nor can it be believed that Arapahoe Basin, if placed under new ownership, can be transformed into a more significant competitive rival to the Vail

resorts than it is at present. As an initial matter, all of the lands at and around Arapahoe Basin are owned by the federal government, meaning that government permission would be required for any major development effort. Moreover, by virtue of its remote location, altitude and terrain, Arapahoe Basin is a highly unlikely site for major development. These conditions not only increase construction costs by several orders of magnitude, but also call into question whether any meaningful development effort would have any prospect of success. Finally, even if the governmental approval, engineering, construction and financial obstacles could be overcome, it would take decades to develop sufficient lodging, dining establishments, entertainment venues, and shopping facilities necessary to even approach the type of resort communities available at the Vail resorts. In the terminology of the Merger Guidelines, Arapahoe Basin cannot be ''repositioned'' to become a close competitive substitute for any of the Vail properties.

Arapahoe Basin has functioned as a specialized satellite operation of the Keystone resort, catering to a small cadre of hardcore, advanced skiers who appreciate its unique ski conditions and no-frills character. Indeed, in the 1996–97 edition of Colorado Ski Country USA Travel Agent Guide, Arapahoe Basin is advertised as a part of the Keystone resort; it is not listed as having any independent existence. Travel Agent Guide at 52–3. Given this history, it is unclear that Arapahoe Basin can even survive on its own, much less offer the type of competition necessary to check the economic power of the Vail resorts.

For all of the foregoing reasons, a strategic price increase by one of the Vail resorts would not cause any significant shift of patronage to Arapahoe Basin. By the Antitrust Division's own theory, the switch likely would be to one of the more similar resorts within the Vail resorts family. The proposed divestiture of Arapahoe Basin, therefore, fails miserably as a means of preventing an exercise of market power by Vail. Short of seeking to untangle the now-consummated merger, the only remedy that would stand any chance of constraining Vail's market power would be the divestiture of one of its more substantial resorts—*i.e.*, one that has scale, ski characteristics and amenities comparable to the resorts Vail will continue to operate.

Other Competitive Issues

In challenging the proposed merger solely under the unilateral effects model, the Antitrust division either rejected or ignored other possible adverse consequences of this transaction. It is worth noting that the transaction, which increases the Herfindahl-Hirschman index by 643 points to over 2200, is presumptively anticompetitive under the Merger Guidelines, without regard to any unilateral effects scenario. Denver and Winter Park believe that the proposed merger has created a market force in the Vail resorts that can wield power in a variety of anticompetitive ways, ranging from discouraging aggressive price competition by smaller rivals to outright predatory conduct.

Through this merger, Vail has brought under common ownership four of the premier ski resorts available to Front Range skiers. They are geographically dispersed along the Interstate 70 corridor in varying proximity to the other ski areas. Vail has complete freedom to price each resort separately or to bundle resorts together in special promotional packages. Under these circumstances, Vail has both the incentive and the ability to target particular competitors with disciplinary or predatory conduct.

For example, as the market share leader, Vail has the most to lose from any softening of prices in the market. Should any other ski area seek to increase its share through special promotions or other competitive initiatives, Vail has the economic power to respond with pricing counter-measures that would render the other resort's pricing initiative useless. Given the prospect of a Vail pricing response, the other ski area would recognize that a decrease in price would neither increase revenues nor increase market share. In this way, Vail has the ability to stabilize market pricing. While the other ski areas might benefit in the short term from this price stability, it simultaneously locks them into a subordinate economic position, since any attempt to grow their business relative to Vail can be crushed. Alternatively, Vail has the ability and incentive to target smaller ski areas with predatory prices, at least to the point where they might become acquisition targets.

These potential adverse effects are the direct result of combining so many of the premier Front Range resorts under the Vail banner. The transaction gives Vail enough distinct resorts to pursue selective strategies directed at individual competitors and the ability to subsidize such strategies at one property with supracompetitive profits earned at another. The divestiture of the Arapahoe Basin ski area does nothing to address these potential competitive effects. Once again, Arapahoe Basin is far too remote, small and specialized to provide any meaningful constraint on Vail's market power.

Alternatives to the Final Judgment

The competitive impact statement asserts that the only alternative the Antitrust Division considered to the proposed final judgment is a full trial on the merits of the complaint. Competitive Impact Statement at 19. These commentors, however, find it hard to believe that the Antitrust Division did not at least consider requiring the divestiture of one of Vail's more prominent resorts. Given the process the Antitrust Division says it went through to analyze the effects of the merger—a close examination of localized competition between each possible pairing of resorts—it would be surprising indeed that no similar analysis was performed with respect to the remedy or, if such an analysis were performed, that it would lead so definitely to the conclusion that Arapahoe Basin is the ideal divestiture candidate.

Very clearly, the Antitrust Division considered, and perhaps sought, other possible divestitures, but were rebuffed by the parties. Vail likely would not give up one of its premier resorts without a fight, but probably commenced the Hart-Scott-Rodino process willing to divest Arapahoe Basin if challenged on the merger. It is equally clear that any sane businessperson would readily give up a tiny resort like Arapahoe Basin in exchange for the opportunity to own the top three resorts in the market and four of the top six.

Although we can see why this is a more than satisfactory settlement from Vail's perspective, we fail to see how it protects the public interest. If the adverse effects the Antitrust Division alleges in the complaint are real ones, and we most certainly believe they are, then they merit an effective remedy. Here the proposed remedy is completely hollow. Having asserted that the merger likely would cause anticompetitive effects if the parties were not willing to offer meaningful divestiture in settlement, the Antitrust Division should have been willing to obtain meaningful relief through litigation.

Conclusion

There is absolutely no sense in which the divestiture of Arapahoe Basin can be expected to remedy the severe economic harm likely to be caused by the Vail/Ralston merger. Accordingly, we urge the Antitrust Division to insist upon

more meaningful relief in the form of more extensive divestiture. The divestiture of either Breckenridge or the Keystone/Arapahoe Basin combination would provide more appropriate relief.

Dated: April 4, 1997.

Respectfully Submitted,

Daniel E. Muse,

City Attorney, Denver, Colorado.

Gerald F. Groswold,

President, Winter Park Recreational Association.

532 Oakwood Drive, Castle Rock, CO 80104

15 January 1997.

U.S. Department of Justice,
1401 H St. N.W., Room 4000, Washington, DC 20515.

Attn: Mr. Craig W. Conrath, Merger Task Force Antitrust Division.

Re: Vail's acquisition of Breckenridge, Keystone, and A–Basin

Dear Mr. Conrath: I offer this in opposition to the above acquisition. Justice Department approval has been granted so this effort will be nothing but an expression of frustration and incredulity. Why does Justice think this is good for Colorado skiing? Such an acquisition (merger is a euphemism) places Vail in control of 40% (not 35% as you say) of the Colorado ski market. Your denial of A-Basin from the acquisition has no meaning in total skier market. A-Basin is absolutely a great ski area but for expert skiers—a small group by comparison. Breckenridge or Keystone has to remain a competitor of Vail to keep any sense of fairness for the skiing public. Otherwise, Vail will control the most accessible and significant skiing in Colorado. That is plainly enough reason to deny such concentration of market. How can anyone see Colorado skiing being better served with this acquisition than without it?

The acquisition by Vail eliminates the need to compete with Summit County ski areas. It is that simple and it is Vail's true purpose. Vail's incentive is to maximize profit, not to improve the skiing experience. Vail has the highest ticket prices of all these areas. There is no way Vail will not equalize prices among a combine they control. Vail is buying what they could not otherwise get thru competition. After skiing here 25 years I can say few mid-westerners (I recently moved from Illinois) ski Vail for more than a day or two. Vail is congested, overdeveloped, elitist, very expensive and one goes away feeling taken. Most people I talk to in this area feel the same thing will happen to Breckenridge and Keystone.

Skiers prefer skiing to bigger and grander resorts or more extravagant hotels. Where base areas build out, as Vail has, further growth is thru acquisition and/or market consolidation. It will not benefit less affluent skiers to allow Vail to exploit a market segment they cannot otherwise attract. Instead of Justice rewarding Vail for poor business decisions, you should encourage them to address skier concerns and attract more skiers. Skiers have not disappeared. The population is bigger today than yesterday. If ski areas gave attention to providing reasonable access, accommodations, parking and ticket prices, a huge market exists.

Some say skiing is recreation and unimportant in a bigger picture of important business activity. That argument is specious and ignores significant contribution to the economy. So isn't this grab by Vail just another step towards the insidious and relentless pressure to control by elimination of competition? There are few business consolidations that improve the product with consequent lower user prices? The incentive to do that is absent! Consolidation is for the benefit of the surviving company. Like other business, ski areas should take the consequences for bad business decisions. Overdevelopment rather than improving access to their product is the problem.

I have seen the cost of lift tickets increase from $6.00 in mid-1970 to $48/$50 to date in Breckenridge and Vail. That calculates as 32% per year. In comparison with other business, ski area prices are way ahead of inflation. While that increase is huge the market has expanded till recent years. I will continue to pay for the pleasure but I worry for younger skiers. The point is, few new ski areas are likely to open to the public, because skiing growth has been made flat. Cost has something to do with flat growth but other factors enter the equation as well. Further public land availability is improbable. Yet, most, if not all, ski areas are on public land and enjoy the benefits of low rent and good profitability. Ski areas do not have to provide the capital for land ownership. The government provides it to them at a bargain from the taxes of skier and non-skier alike. Should consolidation of these ski areas, on public land, be approved in what is already a limited market with limited entry for new ski areas?

Governments already subsidize in the form of low rent, highways and maintenance, snow removal, tax abatements, utilities and other subsidies that do not come to mind. It is apparent to the most uninformed that healthy competition is what is needed to keep this industry vying for skier business. What is wrong with competition among the ski areas? It serves both skier and ski area well? Vail has opted for the top income bracket skier and has exploited their base operation to such an extent they can attract only the most affluent skiers. Now with Justices blessing they buy their competition. You cannot tell me this will be an improvement for Breckenridge, Keystone or the skiing public.

As said above, public comment will not halt the Vail acquisition because the Justice Department has rolled over to mega mergers and mega business. They now bless mega ski corporations. It is sad to see the demise of Breckenridge and Keystone because of the resultant loss to skiers. Skiers are served best as competition now exists. Each area vigorously competes for the skier and although ticket prices have soared year after year each area offers special prices that help to stabilize costs. Justice now says this will continue if Vail owns it all. How gullible do you think the public is? You allow this because skiing is small concern to big government but most of all because you are lazy. It is easier to accept this as an unimportant merger than to do your job of preserving balance in the marketplace. Vail is buying out their competition pure and simple and it is sad for the loss to skiers.

Disappointed in Denver,

Mr. Craig W. Conrath,
Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H St., N.W., Room 4000, Washington, D.C. 20530.

Dear Sir: I am writing to protest the proposed Vail Associates buyout of Breckenridge and Keystone ski resorts. I understand the standard for determining an antitrust violation is control of 35% of the market. In this case, the Denver Front Range skier is the market considered. It may be true that by selling off Arapahoe Basin, that percentage falls below the magic percentage, but an important aspect is being ignored.

If one makes the more realistic evaluation comparing the big resorts as a group (toss in Winter Park and Cooper as biggies), the market controlled by Vail Associates would be a much higher percentage. It is not realistic to include Arapahoe Basin, Eldora, Loveland, and Ski Cooper in the same market. They are fun little areas, but these niche areas are already much cheaper than the biggies and do not have a major effect on pricing. Vail Associates has been advertising their good intentions in supporting the local skier. It looks good in print. Then one should take a look at what happened to Arrowhead lift prices once VA purchased them. Prices went up . . . way up. Image what happens when Vail introduces the All VA ticket for Beaver Creek, Breckenridge, Vail, and Keystone. Ski Keystone for the price of a Vail ticket!

I do believe Breckenridge and Vail Associates make a good fit—I'm not anti-everything. I just believe the entire package cannot help but increase lift prices. Please prevent it.

Regards,

David LeBlang.

James E. Leibold, MD,

3458 S. Columbine Cr., Englewood, CO 80110.

Jan. 14, 1997.

Mr. Craig W. Conrath,
Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H St., N.W., Room 4000, Washington, D.C. 20530.

Dear Mr. Conrath: When word of Vail's plan to buy Breckenridge, Keystone and Arapahoe Basin Ski Areas appeared in the press, we wrote to your department protesting this plan. As senior citizen skiers we are very concerned about lift ticket prices as their cost continually increase whereas our income is fixed. Vail does not offer skiers over age 60 the same discounts as Breckenridge and Keystone presently do. Therefore, we are fearful of losing these discounts if Vail owns these resorts also. We simply have not been able to afford to ski at Vail the past few years.

To think that asking Vail to divest Arapahoe Basin will prevent a monopoly in

Summit County is ludicrous. Arapahoe is a small ski area with only 4% of the skier days in central Colorado. If you truly wanted to avoid monopoly issues, divestiture of either Keystone or Breckenridge would have been far more effective.

Vail's clout in marketing will surely have a severe adverse impact on Central Colorado ski areas not under Vail's mantle and this is bound to eventually cause a rise in lift ticket prices. Surely, this is not in the public interest. We again urge you to disapprove the buyout plans as now proposed. Thank you for your consideration of this matter.

Your truly,

James E. Leibold,

Angela M. Leibold.

James W. Margolis

1250 Golden Circle, #509, Golden, CO 80401

January 6, 1997.

Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H St., N.W., Room 4000, Washington, D.C. 20530.

Dear Mr. Conrath: As an economist and regular skiier in Summit County for nearly 20 years now, I have followed the news about Vail's purchase very carefully.

Based on the limited coverage in the Denver newspapers, I must say that I am dumbfounded that the ''regulators'' determined the proposed merger would have anti-competitive effects and that the solution would be to sell A-Basin. Although I certainly believe that the merger would be anti-competitive (by whatever definition), the proposed solution to sell off A-Basin makes no sense. A-Basin is simply too small to make a difference. If you are not going to force Vail to sell Keystone or Breck, you are better off doing nothing.

The public interest is best served by keeping Keystone and A-Basin together and treating them as a single unit for analyses purposes. Without Keystone, A-Basin has no lodging or transportation link. Also, even hard core skiiers have been known to go to Keystone on white-out days when it is very difficult to ski at A-Basin due to flat light. Keystone and A-Basin are wonderful complements to each other. It is unfortunate that in your efforts to quantify ''market share and competition'' you have simply ignored common sense.

Is there any report that your office could mail to me? I would be interested in reading the details of your assumptions and analyses.

If you have any questions about the trade-off between quantitative analyses and common sense, please feel free to contact me.

Thank you,

James W. Margolis

Summit County

Joe Sands, District 3, County Commissioner

January 8, 1997.

Mr. Craig Conrath,

Chief, Merger Task Force, U.S. Department of Justice, Anti-Trust Division, City Center Building #4000, 1401 H Street, N.W., Washington, D.C. 20005.

Dear Mr. Conrath: Speaking as a commissioner, not for the Summit County Board of Commissioners, this letter is a further interrogatory and follow-up to my September 30, 1996, letter of concern about the proposed Vail Resorts-Ralcorp merger. I have compliments to your team mixed with puzzlement about issues unanswered. I am having to write this before the Competitive Impact Statement is released, but based on my conversations with the Taskforce, I would be surprised if that document answers these questions.

First the compliments. My staff and myself are pleasantly surprised at the availability and responsiveness of your task force members to whom we have inquired. We haven't always agreed with their answers, but that is not due to any obfuscation on your team's part.

Most importantly, from a community need, ski culture diversity, and front range experienced skier need, the divestiture of Arapahoe Basin is great. I hope that order in your decision does not assume some very hotly debated proposed additions to the A-Basin permit (controversial alpine slide, and major new water works for snowmaking). You need to clarify this. If I am reading correctly that the trustee is paid a commission on this sale, that becomes an immense issue.

Almost as important, is if your order means Andy Daly and Vail Resorts can start to manage the former Ralcorp remaining properties, then I'm all for that. The outgoing Ralcorp leadership caused many societal controversies; their own employees, guests, and the local community is ready to give a parade for any new management.

Unfortuntely, there is also puzzlement. I haven't found *anyone* who thinks A-Basin has enough unused skier day capacity to be a market competition leveling effect as the stipulation and order indicate. If the five million skier day Apollo consortium does anything negative to its customers, at most the 100,000 new skier day absorption at A-Basin, is not a significant competitive alternative. Plus a lot of Vail/Apollo's skier days are closely tied to real estate purchases and lodging geography. Both of which make the remote A-Basin less of an alternative. I also predict the H.H.I. formula you used could create a new round of jokes at an economics convention (make them forget the C.P.I. controversy). Divesting the non-compatible A-Basin so as to sneak your H.H.I. to 1781 and just below the 1800 points of a concentrated market appears hollow. Taking this into consideration, I would hope you would see that A-Basin does truly offer competition to the other mountains in the merger. Therefore the stipulation offered with A-Basin's divestiture does nothing to guarantee competition.

Probably my biggest personal puzzlement is your team's efficiency assumptions. Many items they see as savings passed on to the customer, I see as expanding the corporate profit margin, not going to the customer, because the competition's ability to be an alternative is inconsequential. I've seen nothing in these documents that addresses my September 30th, 1996, concerns on:

- controlling airplane seats, transportation access, etc.;
- ad/promoting control;
- lodging reservation favoritism;
- labor market, control of salaries;
- societal impacts (healthcare, donations, infrastructure support);
- and their past practices of ''shutting out others'' in a lot of these areas.

Even if I were to allow the Department of Justice's assumption that the efficiency will benefit the customer, I would have to challenge the assumption that this necessarily will be maintained long term or sustain competition from A-Basin or the other ski resorts. The efficiency will give the merged mountains the power to undercut prices to the point of eliminating your so called competition.

The good news of this proposed settlement, is I had challenged Vail/Apollo in a Labor Day thesis of community concerns to answer some of this. Maybe without the excuse they have used your process for, they will finally address these matters. But my conclusion today is doubtful. All of this is about the profit to be gained when Vail goes public in I.P.O. I hope the judge who decides this sees that.

My closing thought is an objection to a far-fetched insulting statement (enclosed) quoted to Colorado's First Assistant Attorney General. I'd accept an apology if offered. For the second most politically motivated state office to present this thought, * * * while ignoring the powerful 17th Street law firm and political handler who were hired ''to facilitate'' this matter, is the ultimate in hypocrisy. Possibly this last sentence is incorrect, the judge ruling should also question if the ultimate hypocrisy is the campaign contributions from Leon Black, Apollo parties, Vail, Ralcorp, etc., to all interested political groups since this has started.

I would hope the Department of Justice would have a change of heart/position and consider more action before the United States consent to entry of the Final Judgment.

Sincerely,

Joe Sands,

County Commissioner.

Enclosure

6299 E. Caley Dr., Englewood, CO 80111

Feb. 11, 1997.

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H St. NW., Room 4000, Washington, DC 20530.

Dear Sir: I am writing to protest the proposed Vail Associates buyout of Breckenridge and Keystone ski resorts. I understand the standard for determining an antitrust violation is control of 35% of the market. In this case, the Denver Front Range skier is the market considered. It may be true that by selling off Arapahoe Basin, that percentage falls below the magic percentage, but an important aspect is being ignored.

If one makes the more realistic evaluation comparing the ''big'' resorts as a group (toss in Winter Park and Copper as biggies), the market controlled by Vail Associates would be a much higher percentage. It is not realistic to include Arapahoe Basin, Eldora,

Loveland, and Ski Cooper in the same market. They are fun little areas, but these niche areas are already much cheaper than the biggies and do not have a major effect on pricing.

Vail Associates has been advertising their good intentions in supporting the local skier. It looks good in print. Then one should take a look at what happened at Arrowhead lift prices once VA purchased them. Prices went up * * * way up. Imagine what happens when Vail introduces the *All VA* ticket for Beaver Creek, Breckenridge, Vail, and Keystone. Ski Keystone for the price of a Vail ticket!

I do believe Breckenridge and Vail Associates makes a good fit—I'm not anti everything. I just believe the entire package cannot help but increase lift prices. Please prevent it.

Regards,

Dick Thompson,

Front Range skier.

Thomas J. Tomazin, P.C.

Attorney at Law, 5655 South Yosemite, Suite 200, Englewood, Colorado 80111

January 17, 1997.

Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Room 4000, Washington, D.C. 20530.

Re: *Vail/Ralcorp Merger*

Dear Mr. Conrath: I am a life-long resident of the State of Colorado. While I was born in the rural part of Colorado, I have lived in the Denver metropolitan area for the past thirty-one years. Both myself and my five children have enjoyed skiing in Colorado since 1969.

I am writing regarding the proposed merger between Vail and Ralcorp. I have skied at all of the ski areas that are involved. Overall, I am in favor of the merger and do not believe that there is any risk of a monopoly being created by permitting the merger. To the contrary, all of the Colorado ski areas cater tremendously to the Colorado skier. All of the ski areas are well-aware that their customer base and profit are to a large extent dependent upon the Colorado skier rather than the out-of-state skier.

My only objection to the merger as proposed is that Vail and Ralcorp must divest Arapahoe Basin. From comments I have read in the newspaper, it is conceded that the requirement for the divestiture of Arapahoe Basin makes no sense. Rather, the reasons assigned in the newspaper was that it was a negotiated settlement. One account I read indicated that by taking out the annual number of Arapahoe Basin skiers, approximately 258,000, it would reduce the percentage share of Vail/Ralcorp from approximately thirty-eight percent to approximately thirty-four percent.

Regardless of the rationalizations, reasons or negotiations, as a practical matter, the requirement that Arapahoe Basin be divested spells a death knell for Arapahoe Basin. Any proposed purchaser will essentially be unable to maintain the area in the manner in which Ralcorp has done to date nor will the purchaser be able to compete effectively. Arapahoe Basin will surely deteriorate and, I am fearful, cease to exist.

In an era where Keystone, Breckenridge and Vail continue to grow and become more technologically advanced, it was always refreshing to have Arapahoe Basin as a throwback to an era long since past.

I would strongly request that reconsideration be given in this matter and that as part of the merger, Vail and Ralcorp *not* be required to divest Arapahoe Basin.

Should you have any questions, please do not hesitate to contact me. Thank you in advance for your cooperation and assistance in this regard.

Very truly yours,

Thomas J. Tomazin, P.C.

Town of Montezumza

P.O. Box 1476 Dillon, Colo. 80435

Hon. Lewis T. Rebcock,

District Judge, United States District Court for the District of Colorado, 1961 Stout Street, Denver, Colo. 80202.

Re: U.S. v. Vail Resorts, 97B–10

Dear Judge Babcock, The Town of Montezumz opposes Vail's acquisition of the Ralston Resorts ski areas of Breckenridge, Keystone, and Arapahoe Basin. We apologize for not submitting our comments earlier, but likemost people in Summit County we believe the merger was a done deal and had closed without the opportunity for public comment. Our apparent misconception was corrected by a recent article in our local newspaper, The Summit Daily, indicating that the City of Denver had recently opposed the merger.

Montezuma is an incorporated Town (1862) 6 miles from the Keystone ski area at 10,400's in the center of 5 major Forest Service trailheads and by their 1996 count 15,000 persons pass through here annually. One concern is the increased vehicle traffic that will impact the Town with the obvious growth expected from the merger. The additional recreational users in the area can only harm the delicate surrounding forest. This 100 year old growth is very susceptible to fire. The only road to Montezuma and these trailheads off Hwy 6 is narrow and winding causing additional concern of the increased traffic.

Hwy 6 is the main artery for trucks carrying hazardous material crosscountry East and West. They must, at the bottom of Loveland Pass, drive through the already congested skier traffic. This situation with the additional development can only create further dangers to the public safety.

We are a working class population proud of the modest homes we live in, but fearful the rising taxes the merger will create could prohibit local ownership as has happened in other communities. We realize we are only a very small voice in this vast expansion but we are the voice of people and ask you to consider the far reaching effects this ''monopoly will have on our communities, the work force, the skiers, and the State of Colorado. Adam Arron of Vail Resorts has acknowledged the present problems and has said new problems could be on the horizon if the company's plans for increased growth are realized.

Thank you for your time and consideration.

Sincerely,

Town Trustee,

Town of Montezuma.

[FR Doc. 97–19164 Filed 7–21–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

NIC Service Plan for Fiscal Year 1998

The National Institute of Corrections (NIC), U.S. Department of Justice, has published the NIC Service Plan for Fiscal Year 1998. The document describes the technical assistance, training, and information services to be available to the corrections field during the next fiscal year, which begins October 1, 1997, and ends September 30, 1998.

The Service Plan combines two previously issued annual NIC documents: the Annual Program Plan and the Schedule of Training Services. It describes all NIC seminars and videoconferences to be available for state and local practitioners in adult corrections and contains application requirements and forms. A separate Schedule of Training Services will not be issued this year.

The Service Plan is available on the Internet at www.bop.gov. From the menu, select the National Institute of Corrections, then Publications. The document may also be obtained by contacting NIC at 320 First Street, NW. Washington DC 20534; telephone 800–995–6423; fax 202–307–3361; or the NIC Longmont, Colorado, offices at 800–995–6429; fax 303–682–0469.

Morris L. Thigpen,

Director.

[FR Doc. 97–19165 Filed 7–21–97; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 17, 1997.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of the ICR, with applicable supporting documentation,