IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 97-B-10

UNITED STATES OF AMERICA,
1401 H Street, N.W., Suite 4000
Washington, D.C. 20530
(202) 307-0001

and

THE STATE OF COLORADO
by its Attorney General, Gale A. Norton
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
(303) 866-4500

Plaintiffs,

v.

VAIL RESORTS, INC.,
137 Benchmark Road
Avon, Colorado 81620
(970) 476-5601

Filed: January 3, 1997

RALSTON RESORTS, INC.
P. O. Box 38, 22010 U. S. Highway 6
Keystone, Colorado 80435
(970) 468-2316

and

RALSTON FOODS, INC.
P. O. Box 618
800 Market Street, Suite 2900
St. Louis, Missouri 63101
(314) 877-7300

Defendants.

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, and the State of Colorado, by its Attorney General, bring this civil action to prevent the proposed acquisition by Vail Resorts, Inc. ("Vail Resorts") of the ski resort businesses of Ralston Resorts, Inc. ("Ralston Resorts").

1. Vail Resorts and Ralston Resorts are the two largest owner/operators of ski resorts in Colorado. This transaction would combine several of the largest ski resorts in this region. This 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.

2. During the 1995-96 ski season, Ralston Resorts accounted for over 26 percent and Vail Resorts accounted for about 12 percent of all Front Range skier days at those resorts typically used by Colorado Front Range skiers. Together they would have over 38 percent of the Front Range market. This would be approximately double the Front Range market share of the next competitor.

3. Vail Resorts and Ralston Resorts, along with other resorts accessible to Front Range skiers, compete aggressively for Front Range skiers. The resorts advertise extensively in a variety of local media targeted to the Front Range population, including newspapers, radio, television, and direct mail. They compete for the business of Front Range ski clubs and racing teams. They attend a number

of ski shows around the Front Range at which, among other things, they distribute or sell loyalty cards offering discounts on lift tickets and ancillary products. In addition to these loyalty cards, these resorts offer discounted lift tickets to Front Range customers through a number of other channels including sales in local retail establishments, newspaper coupons, direct mail, and coupon books.

4. The proposed merger will end this competition between defendants. As a result, this acquisition threatens 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.

I. JURISDICTION, VENUE AND STANDING

5. This action is filed under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain the violation by defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18. The State of Colorado brings this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain the violations by defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18.

6. Vail Resorts and Ralston Resorts each operate three ski resorts. They make sales and purchases of products and advertising in interstate commerce for these resorts. The operations of the ski resorts affect and are in the flow of interstate commerce. The Court has subject matter jurisdiction over this action and over the defendants pursuant to 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337.

II. DEFENDANTS

7. Vail Resorts, Inc., a Delaware corporation headquartered in Vail, Colorado, owns Vail Associates, Inc., which owns and operates three Colorado ski resorts: Vail, Beaver Creek Resort and Arrowhead Mountain. (Arrowhead Mountain is operated by Vail Resorts in conjunction with Beaver Creek Resort as a single resort operation; they will be referred to together as "Beaver Creek.") During the 1995-96 ski season all Vail resorts accounted for approximately 280,000 Front Range skier days. This is about a 12 percent share of the Front Range market. Overall, Vail Resorts had over 2.2 million skier days and had revenues of over $140 million.

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

III. THE TRANSACTION

9. Vail Resorts proposes to acquire all of the voting securities of Ralston Resorts pursuant to the Stock Purchase Agreement among Vail Resorts, Inc., Ralston Foods, Inc. and Ralston Resorts, Inc. of July 22, 1996 (the "Stock Purchase Agreement"). In return, Ralston Foods, Inc. will receive voting securities of Vail Resorts valued at approximately $145 million. Vail Resorts will also assume or pay off debt of Ralston Foods amounting to at least $132 million and as much as $165 million under the Stock Purchase Agreement. The total consideration is valued at approximately $310 million.

IV. TRADE AND COMMERCE

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

11. Customers of defendants' ski resorts include two types of skiers: destination skiers and Front Range skiers. Destination skiers come from outside Colorado. Many come from outside of the United States. These skiers ski for extended periods of time, typically for a week. Many destination skiers fly to their ski resort and are usually attracted to the resort by both the mountain and resort amenities. In contrast, Front Range skiers are day or overnight skiers. As used

here, the term "Front Range" means the geographic area lying just east of the Rocky Mountains, and including, from north to south, the metropolitan areas of Fort Collins, Boulder, Denver, Colorado Springs and Pueblo and surrounding population areas. Most Front Range skiers drive to their ski resort. Front Range skiers are typically more interested in the mountain and skiing facilities than in the resort amenities, and are more constrained by distance in choosing among resorts.

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

13. The defendants' ski resorts also use different pricing strategies

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

Relevant Markets

14. Downhill skiing differs from all other weekend or one or two day winter recreational activities, such as cross-country skiing, ice skating, sleigh rides and tobogganing. A small but significant and nontransitory price increase for skiing would not cause so many Front Range downhill skiers to substitute other winter recreational activities for skiing that the price increase would be unprofitable.

15. Most Front Range skiers 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 important of these resorts are located off Interstate 70 west of Denver. The Vail resorts and Ralston resorts fall within this range.

16. Front Range skiers would not turn to resorts that fall outside of this range in sufficient numbers to defeat a small but significant, non-transitory price increase imposed by resorts within this radius.

17. The provision of skiing to residents of Colorado's Front Range is a relevant market (i.e., is a line of commerce and is in a section of the country) within the meaning of Section 7 of the Clayton Act.

Anti-Competitive Effects and Entry

18. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), which is defined and explained in Appendix A, a combination of Vail Resorts and Ralston Resorts would substantially increase concentration in the market alleged in this complaint.

19. The post-merger HHI, based on total 1995-96 Front Range skier days, would be approximately 2,228 with a change in HHI of about 643 points. "Skier day" means one day or part of a day of skiing. A weekend trip, for instance, is equivalent to two skier days, assuming the skier skis both days. 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, the combined company would account for over 38 percent of skier days in the Front Range market.

20. Because of such factors as their proximity to the Front Range, the quality and variety of their terrain, and the number high speed lifts, the Vail and Ralston resorts are viewed by Front Range skiers as significant alternatives to each other. Because of the preferences Front Range skiers have for the Vail and Ralston resorts, a substantial portion of these skiers would continue to ski at these resorts, even if lift ticket prices at these resorts were increased.

21. The elimination of the competition between Vail Resorts and Ralston Resorts resulting from this transaction would reduce competition significantly in the market for Colorado Front Range skiers. Because the Vail and Ralston resorts are close competitive alternatives for a substantial number of Front Range skiers, competition between the resorts limits the ability of each resort to raise prices. 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 Range. 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.

Entry

22. Successful entry into the skiing business and expansion of existing ski resorts would be difficult, time consuming, and costly, as well as extremely unlikely. Entry and expansion therefore would not be timely, likely, or sufficient to prevent any harm to competition.

V. HARM TO COMPETITION

23. The effects of the proposed transaction between Vail Resorts and Ralston Resorts may be to lessen competition substantially and to tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

24. The transaction would have the following effects, among others:

a. competition generally in providing skiing to Front Range Colorado skiers would be lessened substantially;

b. actual competition between Vail Resorts and Ralston Resorts in providing skiing to Front Range Colorado skiers would be eliminated;

c. discounting to Front Range Colorado skiers by Vail Resorts and Ralston Resorts would likely be reduced or eliminated; and

d. prices for skiing to Front Range Colorado skiers would likely increase.

VI. STATUTORY VIOLATIONS

25. The proposed acquisition will violate Section 7 of the Clayton Act. 15 U.S.C. § 18.

VII. PRAYER FOR RELIEF

Plaintiffs request:

1. That the defendants' proposed acquisition of the skiing businesses of Ralston Resorts by Vail Resorts be adjudged to violate Section 7 of the Clayton Act;

2. That the defendants be permanently enjoined from carrying out the Stock Purchase Agreement, dated July 22, 1996 or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the businesses or assets of Vail Resorts and Ralston Resorts;

3. That plaintiffs be awarded the costs of this action and plaintiff State of Colorado its attorneys fees; and

4. That plaintiffs have such other relief as the Court may deem just and proper.

Dated: January 2, 1997

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Acting Assistant Attorney General
Antitrust Division
U. S. Department of Justice

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/s/ Henry L. Solano
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United States Attorney
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APPENDIX A

DEFINITION OF HERFINDAHL-HIRSCHMAN INDEX ("HHI")

"HHI" means the Herfindahl-Hirschman Index, 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. Transactions that increase the HHI by more than 100 points in moderately concentrated and concentrated markets presumptively raise antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.