

STATE OF MAINE  
KENNEBEC, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO.

STATE OF MAINE,	)	
	)	
Plaintiff	)	
	)	COMPLAINT
v.	)	(Injunctive Relief Requested)
	)	
AMERICAN SKIING COMPANY,	)	
	)	
Defendant	)	

I. INTRODUCTION

1. This is an antitrust enforcement action brought by the State of Maine by and through its Attorney General to obtain equitable and other relief to prevent the occurrence of adverse effects on competition which will otherwise result from Defendant's acquisition of the assets of S-K-I Limited.

II. PARTIES, JURISDICTION AND VENUE

2. Plaintiff, State of Maine, sues in its sovereign capacity. The State, through the Department of the Attorney General, is charged by statute with the enforcement of antitrust laws, including 10 M.R.S.A. §§1102-A and 1104.

3. Defendant American Skiing Company [hereinafter referred to as ASC] is a Maine corporation headquartered in Newry, Oxford County, Maine.

4. This Court has jurisdiction of this action pursuant to 4 M.R.S.A. §105, 10 M.R.S.A. §1104 and 14 M.R.S.A. §6051(13).

5. Venue is proper in this Court pursuant to 14 M.R.S.A. §501.

### III. THE PROPOSED ACQUISITION

6. ASC owns the following four ski resorts in northern New England: Sunday River in Maine, Attitash/Bear Peak in New Hampshire, Cranmore in New Hampshire and Sugarbush in Vermont.

7. Sunday River is the largest ski area in the State of Maine with 590,000 skier visits in the 1995-96 ski season.

8. S-K-I Limited is a Delaware corporation with headquarters in West Lebanon, New Hampshire which owns and operates four ski resorts in northern New England: Killington in Vermont, Mt. Snow/Haystack in Vermont, Waterville Valley in New Hampshire and 51% of Sugarloaf in Maine.

9. Sugarloaf is the second largest skiing resort in Maine with 349,000 skier visits in the 1995-96 ski season.

10. On or about June 30, 1996 ASC plans to acquire all the common stock of S-K-I Limited.

### IV. ANALYSIS OF MERGERS

11. Pursuant to 10 M.R.S.A. §1102-A, acquisitions and mergers which "may ... substantially ... lessen competition" or which will "tend to create a monopoly" in any line of commerce and any section of the State are illegal. Pursuant to 10 M.R.S.A. §1104, the Attorney General may seek injunctive relief to remedy a violation of §1102-A.

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12. In attempting to determine whether an acquisition may substantially lessen competition, it is first necessary to identify all distinct lines of commerce or product markets which are affected by the acquisition. After identifying affected product markets, the geographical areas or geographic markets in which the particular product is purchased or sold must be identified. Once the product and geographical markets are defined, market shares may be calculated for the acquiring firm, the acquired firm and other major firms in the market.

13. The Herfindahl-Hirschman Index, or HHI as it is commonly known, is a well recognized and accepted measure of market concentration. The HHI is utilized in the horizontal merger guidelines of the United States Department of Justice and the horizontal merger guidelines of the National Association of Attorneys General. The HHI is computed by squaring the market share percentage of each firm competing in the market and then totalling the resulting numbers. The reason for squaring the market shares is to reflect the more significant competitive position of firms holding larger market shares. For example, a firm with a 4% market share will result in a total of 16 points (4 squared) in the HHI while a firm holding 22% of the market will add a total of 484 points (22 squared) to the HHI. As the shares of the larger firms rise, the total HHI increases at a greater rate. Pursuant to the DOJ horizontal guidelines, any industry is considered to be unconcentrated if the post-merger HHI is less than 1000 points; any industry is considered to be moderately concentrated when the post-merger HHI is between

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1000-1800 points; and any industry is considered to be highly concentrated when the HHI exceeds 1800 points. Comparison of the HHI before and after an acquisition permits measurement of the addition to market concentration brought about by that acquisition. For example, according to the DOJ horizontal merger guidelines, in a highly concentrated market (over 1800 points), an increase of over 100 points creates a presumption that the merger is likely to create or enhance market power.

V. TRADE AND COMMERCE

A. The Provision and Pricing of Skiing Services

14. The sellers of skiing services, hereinafter referred to as skiing areas, offer customers downhill skiing and snowboarding on mountain slopes. Skiing areas operate a variety of ski lifts to take skiers up the slopes and utilize snowmaking equipment to add artificial snow to natural snow. Skiing areas also operate ski schools, restaurants, retail stores selling skiing equipment and apparel, ski rental shops and, frequently, lodging.

15. Skiing areas offer customers a wide variety of options for purchasing ski tickets, including single day (or a portion of a single day) tickets, multi-day combined tickets, ski and lodging passes and season passes. The prices for lift tickets vary depending on whether the skier is an adult, a teen-ager or a child.

16. Ski areas market a variety of types of lift tickets which are directed to persons who travel to a ski area to ski for one day, including corporate tickets, day group tickets and single-day tickets sold at the ski area's ticket counter.

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17. Ski areas also offer customers a variety of discounts off of posted lift ticket prices. These discounts include coupons advertised in newspapers, coupons given out by retail establishments such as convenience stores or gas stations, ski and lodging passes, corporate tickets provided by ski areas to businesses, group tickets provided to organizations such as schools or churches, discounted season passes to teenagers and children and complementary tickets.

18. Ski areas offer substantial discounts for different types of tickets to skiers living in distinct geographical areas. For example, ski areas provide discounted season passes and other types of discounted tickets to residents of certain states or other specific areas. Additionally, ski areas advertise discounts or coupons through media such as newspapers or radio that reach only particular geographic areas.

B. Relevant Markets

19. In order for a ski area to be able to offer a full day of skiing to a range of skiers of different skill levels, from beginning to intermediate to advanced, it generally must have a vertical drop of at least 1000 feet. Ski areas which have over 1000 feet of vertical drop generally have a wider array and number of trails, more and faster lifts and more complete snow-making than smaller areas. Ski areas with less than 1000 feet of vertical drop generally are not able to provide advanced skiers with enough trails and variety for a full day of vigorous skiing.

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20. For purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the proposed acquisition is the sale of skiing services to persons seeking to ski for the day (or a portion of the day) at a mountain with a vertical drop of 1000 or more feet.

21. Skiers residing in the State of Maine who travel for one day of skiing generally drive to ski areas located in Maine which are within a two and one-half hours drive of their homes.

22. Ski areas in the State of Maine provide day skiers from within Maine with discounts on lift tickets through a variety of different marketing programs focused on skiers residing in Maine.

23. For purposes of this Complaint, the relevant geographic area in which to analyze the effects of the proposed acquisition is the State of Maine.

C. Market Concentration

24. The total number of persons who ski at a ski area during a particular ski season, commonly referred to as the number of skier days, is an appropriate and accepted indicator of market share within the skiing industry.

25. The market for day skiing by Maine residents at Maine mountains with 1000 feet or greater of vertical drop [hereinafter referred to as the Maine day ski market] is highly concentrated. Prior to the proposed acquisition, the HHI for the Maine day ski market is over 2100.

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26. If the proposed acquisition is completed and ASC owns and operates both Sunday River and Sugarloaf, ASC would rank first in the Maine day ski market with 54% of total skier days and the HHI would increase by over 1450 to 3600.

27. The Sunday River ski area and the Sugarloaf ski area have for a number of years competed aggressively with each other both through advertising directed at emphasizing the particular attributes of each ski area and through discount pricing directed at Maine residents. For example, Sunday River and Sugarloaf each offer substantial discounts to Maine skiers under the age of 18 who purchase season passes. These particular discounts are not available to non-residents.

28. Sunday River and Sugarloaf are currently the number one and two day ski areas within the State of Maine. Sunday River and Sugarloaf are also the number one and two skiing areas for all types of skiing within the State of Maine. Sunday River and Sugarloaf are the closest substitutes for each other. Although other Maine ski areas with more than 1000 vertical feet of drop are included in the relevant market, they offer far less variety, number and miles of trails, number and speed of lifts, and extensiveness of base lodge services (such as restaurants and shops) than are offered by Sunday River and Sugarloaf.

D. Barriers to Entry

29. Significant barriers exist for the development of new ski areas, including the difficulty in finding and acquiring suitable mountain terrain, the

length of time needed to construct a new ski area, and the length of time needed to secure environmental permits.

30. Significant barriers exist to substantial expansion of existing ski areas due to the lack of suitable mountain terrain to provide for substantial expansion and the length of time needed to secure required environmental permits.

#### VI. CAUSE OF ACTION

31. Paragraphs 1 through 30 are realleged and incorporated into this Cause of Action.

32. The effect of the proposed acquisition of the Sugarloaf ski area by ASC may be to substantially lessen competition in the day ski market within the State of Maine in violation of 10 M.R.S.A. §1102-A in the following ways, among others:

- (a) By eliminating direct competition between Sunday River and Sugarloaf; and
- (b) By increasing the likelihood that ASC will unilaterally exercise market power by increasing prices.

33. Unless ASC's proposed acquisition of Sugarloaf is modified by appropriate restrictions governing ASC's pricing of day ski services to Maine residents, skiers in the State of Maine will be injured.

34. The proposed acquisition as described above would violate 10 M.R.S.A. §1102-A.



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VII. REQUEST FOR RELIEF

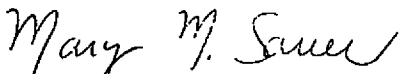
Wherefore, the State of Maine requests that this Court:

- A. Subject the proposed acquisition to terms and conditions which will protect Maine day skiers from the anti-competitive effects described above; and
- B. Award such other relief as the Court deems just and proper.

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Date: June 27, 1996

  
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