

ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

In the Matter of Pinnacle Entertainment, Inc. and Ameristar Casinos, Inc., Docket No. 9355

I. INTRODUCTION AND BACKGROUND

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (“Consent Order”) from Pinnacle Entertainment, Inc. (“Pinnacle”). The purpose of the proposed Consent Order is to remedy the anticompetitive effects that otherwise would result from Pinnacle’s acquisition of Ameristar Casinos, Inc. (“Ameristar”). Under the terms of the proposed Consent Order, Pinnacle is required to divest one of its casinos in St. Louis, Missouri, the Lumière Place Casino (“Lumière”), and all of Ameristar’s assets in Lake Charles, Louisiana, consisting of assets and rights relating to Ameristar’s Mojito Pointe casino (“Mojito Pointe”), which is currently under construction and scheduled to open next year. The divestitures must be completed within six months from the earlier of (1) the date of Pinnacle’s acquisition of Ameristar, or (2) the date the Decision and Order becomes final.

The proposed Consent Order has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission again will review the proposed Consent Order and comments received, and decide whether it should withdraw the Consent Order, modify the Consent Order, or make it final.

On December 21, 2012, Pinnacle agreed to acquire Ameristar for approximately \$2.8 billion, including the assumption of \$1.9 billion in debt. By unanimous vote on May 28, 2013, the Commission issued an administrative complaint alleging that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by eliminating meaningful and substantial competition between Pinnacle and Ameristar for casino services in the St. Louis and Lake Charles area markets. The elimination of this competition would have caused significant competitive harm, specifically higher prices and diminished quality and service levels in both markets. The proposed Consent Order would remedy the alleged violations by requiring a divestiture in the two affected markets. The divestitures will establish a new independent competitor to Pinnacle in both relevant areas, replacing the competition that otherwise would be lost as a result of the proposed acquisition.

II. THE PARTIES

Based in Las Vegas, Nevada, Pinnacle is a publicly traded casino operator and developer. Pinnacle owns and operates nine casinos and horseracing facilities in five states. In addition, Pinnacle owns a 26% stake in Asian Coast Development, Ltd., a British Columbia-based corporation that is developing Vietnam’s first integrated casino resort. Two of Pinnacle’s

casinos are in the St. Louis area. The first, Lumière, opened in late 2007 and is located in downtown St. Louis, north of the Gateway Arch. In March 2010, Pinnacle opened its second St. Louis casino, River City Casino, in the south St. Louis suburb of Lemay, Missouri. Pinnacle owns and operates one casino, L'Auberge Lake Charles ("L'Auberge"), in Lake Charles. For fiscal year 2012, Pinnacle generated nearly \$1.2 billion in net revenue, with EBITDA of \$285.2 million

Ameristar is a publicly traded casino operator and developer, headquartered in Las Vegas, Nevada, with eight properties in six states. Ameristar owns and operates one casino in the St. Louis area. Opened in 1994, the Ameristar Casino Resort Spa St. Charles ("Ameristar St. Charles") is located in the St. Louis suburb of St. Charles, Missouri, approximately 22 miles from downtown St. Louis. In Lake Charles, Ameristar is currently constructing Mojito Pointe, a casino resort directly adjacent to Pinnacle's L'Auberge, which is scheduled for completion next year. For fiscal year 2012, Ameristar generated over \$1.2 billion in net revenue, with EBITDA of \$361.6 million.

III. CASINO SERVICES IN ST. LOUIS AND LAKE CHARLES

Pinnacle's proposed acquisition of Ameristar poses substantial antitrust concerns for casino services. The casino services market consists of slot, video poker, and table gaming (*i.e.*, gambling) along with associated amenities that are used to drive gaming revenue, which typically include some combination of hotel accommodations, food and beverages, entertainment, and other amenities. Casino operators typically generate the vast majority of their revenues from gaming.

Other forms of entertainment activities do not meaningfully compete with casino services and are not in the relevant service market. Notably, casino operators—including the merging parties—do not track other leisure activities when assessing their competitors, tracking market shares, or making business decisions. Casino services differ significantly from other entertainment activities in a number of respects. For example, casinos are highly regulated, with a limited number of casinos licensed to operate in any given state, there are age restrictions on who can gamble, and, more generally, the casino experience differs greatly from other entertainment and leisure activities. Thus, consistent with prior Commission precedent, the evidence here supports a distinct relevant market consisting of casino services.

There are two relevant geographic markets in which to analyze the merger's effects: (1) the St. Louis, Missouri metropolitan statistical area ("MSA"); and (2) the Lake Charles, Louisiana area. The conclusion that these are the relevant geographic markets is supported by party and third-party ordinary-course documents, testimony, and data, and is consistent with how the state gaming regulators view the gaming markets. A hypothetical monopolist of casino services in each relevant area could profitably impose a small but significant non-transitory increase in price.

Pinnacle and Ameristar are close and vigorous competitors in the St. Louis area market and—but for the acquisition—soon will be each other’s closest competitor in the Lake Charles area market. Absent relief, the proposed acquisition would eliminate the significant head-to-head competition between Pinnacle and Ameristar and would increase Pinnacle’s ability and incentive to raise prices post-acquisition, in the form of less-customer-favorable hold rates, rake rates, table game rules and odds, and lower player reinvestments. The proposed acquisition also would diminish Pinnacle’s incentive to maintain or improve the quality of services and amenities to the detriment of casino customers in the St. Louis and Lake Charles markets. The evidence of close competition between Pinnacle and Ameristar in both markets comes from numerous sources: testimony of Pinnacle and Ameristar executives, ordinary-course documents, data from the parties and various market participants, and third-party testimony. Additionally, the evidence suggests that the proposed transaction would substantially increase the risk of coordinated effects in the St. Louis market. The acquisition would result in a highly concentrated market with just two competitors to Pinnacle, only one of which is significant and has a casino of a similar size and with similar offerings to the parties’ casinos. There is already evidence of information exchange as well as “price following” behavior in the St. Louis market.

In St. Louis, the proposed acquisition would reduce the number of competitors from four to three, increasing the Herfindahl-Hirschman Index (“HHI”) 1,667 points to 4,443. Under the Horizontal Merger Guidelines (“HMG”), such concentration levels trigger the presumption that the transaction likely enhances Pinnacle’s market power in St. Louis. Additionally, the parties’ ordinary-course documents show they are close competitors, compete vigorously with one another, and respond to each other on price and non-price terms. For example, Pinnacle entered the St. Louis market in 2007 with Lumière; shortly after, in 2010, Pinnacle opened River City. In both instances, Pinnacle took sales and market share from Ameristar, and Ameristar responded.

In Lake Charles, Ameristar’s Mojito Pointe will be located directly adjacent to Pinnacle’s existing casino resort, L’Auberge. Ameristar’s planned casino will be nearly identical to Pinnacle’s high-end L’Auberge casino in gaming and amenities offered. The remaining casino services competitors in the Lake Charles area are highly differentiated and not nearly as close substitutes for the merging parties’ casinos as the merging parties’ casinos will be for each other. Based on Ameristar’s ordinary-course revenue projections, the proposed acquisition increases the HHI in the market by 1,306 points to 3,514. This delta and concentration level triggers the presumption that the transaction would enhance Pinnacle’s market power in Lake Charles. If the merger is consummated, the significant competitive impact of Ameristar’s entry and close competition with Pinnacle—and the benefits that competition would generate—will be eliminated.

New entry or expansion is unlikely to deter or counteract the anticompetitive effects of the proposed acquisition in the St. Louis or Lake Charles area markets. The two affected markets are insulated from new entry or expansion by significant regulatory barriers, including limitations on the number of casino licenses available and the ability to expand existing gaming

operations. In the St. Louis casino services market, Missouri and Illinois law limit the number of casino licenses and both states have issued all of their respective licenses. Missouri and Illinois also have restrictions in their respective gaming license regulations that make significant expansion by current market participants extremely unlikely in the St. Louis market.

Entry and expansion is also unlikely in the Lake Charles area casino services market. Louisiana law limits the number of casino licenses to fifteen and all fifteen licenses have been issued. Louisiana law also limits the size of each existing casino's gaming floor, thus preventing material expansion by current market participants, except for Native-American tribe-owned Coshatta Casino Resort. Entry by a casino in Texas is highly unlikely to occur soon as the Texas Constitution prohibits gambling.

IV. THE PROPOSED CONSENT ORDER

A. St. Louis

The proposed Consent Order remedies the likely anticompetitive effects in the St. Louis market by requiring the divestiture of Lumière to a Commission-approved buyer within six months. The divestiture assets include the Lumière casino (including hotels, restaurants and retail assets) and the set of associated assets—such as real property, licenses and permits, equipment, customer databases, intellectual property, contracts, and books and records—necessary for a Commission-approved acquirer to independently and effectively operate Lumière. The proposed Consent Order would preserve four independent casino operators in St. Louis. Although the proposed consent only requires Pinnacle to divest one of its two St. Louis casinos, this remedy likely will result in a St. Louis casino services market that is even more competitive than it is today. By requiring a divestiture of Lumière, the proposed Consent Order will maintain the premerger competition between Lumière and Ameristar St. Charles and will enhance competition between Lumière and River City—which Pinnacle tries to minimize today. The geographic positioning of the casinos (*i.e.*, the fact that Lumière is closer to Ameristar St. Charles and River City than Ameristar St. Charles and River City are to each other) and the quantitative and qualitative evidence gathered during the investigation support the conclusion that competition will be enhanced by the divestiture of Lumière notwithstanding the competition of Ameristar and River City.

If Pinnacle does not divest Lumière to a Commission-approved acquirer within six months, the Consent Order provides that a divestiture trustee may be appointed to sell Lumière, and includes a crown-jewel provision requiring the divestiture trustee to divest either Lumière or the Ameristar St. Charles casino. Until the completion of the divestiture, Pinnacle is required to abide by the Order to Hold Separate and Maintain Assets, which requires Pinnacle to hold Lumière separate and maintain its viability, marketability, and competitiveness until the Lumière divestiture is completed. The proposed Consent Order appoints a Hold Separate Monitor to manage Lumière's operations pending the divestiture.

Additionally, the proposed Consent Order requires Pinnacle, upon request by the acquirer and subject to prior approval of the Commission, to provide transitional services to the approved acquirer for one year, as needed, to assist the acquirer with the transfer of necessary administrative support services. Finally, the proposed Consent Order contains standard terms regarding the acquirer's access to employees, protection of Material Confidential Information, and compliance-reporting requirements, among other things.

B. Lake Charles

In Lake Charles, the proposed Consent Order remedies the likely anticompetitive effects of the proposed acquisition by requiring Pinnacle to divest all of the assets associated with Ameristar's development and construction of Mojito Pointe to a Commission-approved buyer within six months. The divestiture assets include the Mojito Pointe real property, licenses and permits, equipment, customer databases, intellectual property, contracts, books and records, including construction documents, and other assets necessary for a Commission-approved acquirer to independently and effectively build, open, and operate Mojito Pointe. The proposed Consent Order would preserve five independent casino operators in Lake Charles and ensure that the owner of the Mojito Pointe assets has the incentive to expedite construction of Mojito Pointe and to compete vigorously with Pinnacle's L'Auberge casino.

Under the proposed Consent Order, the potential acquirer of Mojito Pointe is subject to prior approval by the Commission. If Pinnacle is unable to find a Commission-approved acquirer for Mojito Pointe within six months, the Consent Order provides for the appointment of a divestiture trustee and includes a crown-jewel provision that permits the divestiture trustee to divest either Mojito Pointe or Pinnacle's L'Auberge casino. Additionally, the proposed Consent Order requires Pinnacle, upon request by the acquirer and subject to prior approval of the Commission, to provide transitional services to the approved acquirer for one year, as needed, to assist the acquirer with the transfer of necessary administrative support services. The proposed Consent Order also contains standard terms regarding the acquirer's access to employees, protection of Material Confidential Information, and compliance-reporting requirements, among other things.

The Hold Separate Order requires Pinnacle to hold Mojito Pointe separate until the Mojito Pointe divestiture is completed. Pinnacle is also required to maintain the economic viability, marketability, and competitiveness of Mojito Pointe and L'Auberge, the crown-jewel asset. The proposed Consent Order appoints a Hold Separate Monitor to oversee the development and construction of Mojito Pointe prior to divestiture.

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The sole purpose of this analysis is to facilitate public comment on the proposed Consent Order. This analysis does not constitute an official interpretation of the proposed Consent Order or modify its terms in any way.