

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

0510029

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Thomas B. Leary
 Pamela Jones Harbour
 Jon Leibowitz

In the Matter of)	
)	
PENN NATIONAL GAMING, INC.,)	Docket No. C-
)	
a corporation.)	
)	
)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Penn National Gaming, Inc. ("PNG"), hereinafter referred to as "Respondent," of Argosy Gaming Company ("Argosy"), and Respondent having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondent with violations of 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; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets ("Hold Separate Order" attached to this Order as Appendix I), and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1.

G. "Actual Cost" means all direct and indirect costs, including but not limited to, third party costs, labor, materials, and appropriately allocated overhead expenses and depreciation of capital equipment used to provide the relevant assistance or service, but "Actual Cost" does not include general administrative expenses.

H. "Application" means the forms and schedules, including, but not limited to, any information, disclosure statements, or financial statements prescribed by the LAGC upon which the applicant seeks a license, permit, or renewal or any other approval by the LAGC for the operation of a casino.

I. "Argosy Baton Rouge Assets" means all of the outstanding shares of capital stock, limited liability company interest, and partnership interests, as the case may be, of any of the ACBR Entities, and all of the real and personal, tangible and intangible, assets of the ACBR Entities, and any other assets of Respondent or Argosy, or any of their other subsidiaries used in or related to the Argosy Casino Baton Rouge, Catfish Town, and Centroplex Centre, including, but not limited to:

1. the Argosy Casino Baton Rouge;
2. Catfish Town;
3. Centroplex;
4. all owned or leased parking structures, parking garages, and parking lots used by or related to the Argosy Casino Baton Rouge, Catfish Town, or the Centroplex, including, but not limited to the Leased Properties;
5. all personal property (including, but not limited to, deck barges), fixtures, and improvements owned, placed on, located at, used in connection with the operation of, or related to the ACBR;
6. all studies, research, and data, including but not limited to, the Argosy Casino Babut not limited to, the Argosy Casino Ba

- b. leases related to the Levee Building/Argosy Landing, Maritime I Building, Beauregard Building, Armour Building, Corner of Europe Street and St. Phillip Street in Baton Rouge, LA, S. Front Street in Baton Rouge, LA, and the dock and walkway in the Maritime Building;
- 8. all governmental approvals, consents, licenses, waivers, or other authorizations related to the Argosy Casino Baton Rouge;
- 9. all trademarks, trade names, or copyrights owned or used by the ACBR, Catfish Town, and Centroplex, including, but not limited to irrevocable licenses for the use of all trade names related to Catfish Town and Centroplex; and,
- 10. all books and records related to the ACBR, Catfish Town, and Centroplex, including but not limited to:
 - a. documents containing information about customers or patrons of the ACBR, Catfish Town, and Centroplex;
 - b. documents containing information about suppliers of any goods or services to the ACBR, Catfish Town, and Centroplex; and,
 - c. documents relating to government approvals required for the construction, maintenance, operation, or licensing (including, but not limited to, regulation by the LAGC) of all or any part of the ACBR (including, but not limited to, the Vessel), Catfish Town, and Centroplex.

Provided, however, that the Argosy Baton Rouge Assets do not include:

- 1. any intellectual property owned, licensed to, or used by Respondent or Argosy, or their other subsidiaries, other than any and all intellectual property owned exclusively by the ACBR Entities;
- 2. any contract or agreement for the service, sale, or lease of gaming

- J. "Argosy Baton Rouge Employees" means:
1. all of those individuals compensated for at least thirty-five (35) hours a week for at least forty (40) weeks within the twelve (12) month period immediately prior to the Effective Date of Divestiture whose duties related primarily to the Argosy Casino Baton Rouge; and,
 2. all of those individuals employed by Argosy (including, but not limited to, Centroplex Centre Convention Hotel, L.L.C.) within the twelve (12) month period immediately prior to the Effective Date of Divestiture in the positions of Director of Hotel Operations, Rooms Division Manager, Revenue Manager, Sales & Catering Manager, Hotel Controller, or Executive Chef.
- K. "Argosy Baton Rouge Primary Employees" means all Argosy Baton Rouge Employees:
1. who are required to be licensed or to hold a permit from either the State of Louisiana or the United States Coast Guard as a condition of employment with one or more of the ACBR Entities; and,
 - 2.

P. “Catfish Town” means all owned and leased real property and any servitudes

- U. "Divestiture Agreement" means:
1. if Respondent divests the Argosy Casino Baton Rouge Assets to Columbia Sussex, the Agreement to Execute Securities Purchase Agreement (dated as of June 20, 2005) among CP Baton Rouge Casino, L.L.C., Columbia Sussex Corporation, and Penn National Gaming, Inc., and any contract, exhibit, attachment or schedule, or agreement related thereto, including, but not limited to:
 - a. the Securities Purchase Agreement attached as Annex A to the Agreement to Execute Securities Purchase Agreement and all exhibits attached thereto;
 - b. the Seller Disclosure Letter attached as Annex B to the Agreement to Execute Securities Purchase Agreement and all exhibits or schedules attached thereto; and,
 - c. Any modifications of any such agreement, exhibit, attachment or schedule required by the Commission pursuant to Paragraph II. of this Order; or,
 2. if Respondent (or the Divestiture Trustee) divests the Argosy Casino Baton Rouge Assets to any Commission-approved Acquirer other than Columbia Sussex, any agreement that receives the prior approval of the Commission between Respondent and a Commission-approved Acquirer (or between the Divestiture Trustee and a Commission-approved Acquirer) related to the Argosy Baton Rouge Assets required to be divested pursuant to Paragraphs II or IV of this Order and the rights or assets to be licensed or otherwise made available to the Commission-approved Acquirer pursuant to Paragraph II of this Order, including, but not limited to, any agreement between the Respondent and the Commission-approved Acquirer required or permitted by or pursuant to Paragraph II. of this Order.
- V. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to Paragraph IV of this Order.
- W. "Effective Date of Divestiture" means the date on which Respondent (or a Divestiture Trustee) divests to a Commission-approved Acquirer the Argosy Baton Rouge Assets completely and as required by Paragraph II or IV of this Order.
- X. "Governmental Entity" means any Federal, state, local or non-U.S. government or any court, legislature, governmental agency or governmental commission or any judicial or regulatory authority of any government.

- Y. “Hold Separate Order” means the Order to Hold Separate and Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- Z. "Hold Separate Trustee" means the person appointed pursuant to Paragraph II of the Hold Separate Order in this matter.
- AA. “Land” means all real property and/or land parcels related to the operation of the Argosy Baton Rouge Assets, including, but not limited to, all buildings, hotels, parking garages, parking structures, parking lots, Catfish Town, the Sheraton Hotel, Centroplex, and any other buildings or structures located on such land.
- BB. “Leased Properties” means two parking lots on South Front Street, Baton Rouge, LA leased by Catfish through a leasing agreement dated June 27, 2002, and as extended on August 3, 2004, between Phillips Connell Witter, as landlord, and Catfish Queen Partnership In Commendam, as tenant.
- CC. “Louisiana Gaming Control” (“LAGC”) means the Louisiana Gaming Control Board, Louisiana Department of Public Safety - Office of State Police - Gaming Enforcement Section, Louisiana Attorney General’s Office - Gaming Division, Louisiana Riverboat Gaming Commission, or any other judicial or regulatory authority responsible for granting approval(s), qualification(s), license(s), or permit(s) for any aspect of gaming in the state of Louisiana.
- DD. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiaries, divisions, groups or affiliates thereof.
- EE. “Vessel” means the vessel known as Argosy III Riverboat, Official Number 1023758, including, but not limited to: (i) all superstructures currently constructed thereon; (ii) plans and specifications therefor; (iii) existing warranties therefor; and, (iv) all parts, spares, tools, equipment, machinery, gear, implements, broached and unbroached consumable stores, provisions for furniture, fixtures, fuel, pumps, anchors, cables, chains, apparel, rigging, tackle, fittings, accessories, appurtenances, appliances, supplies therefor, inventory parts, ramps, generators and related equipment (including, but not limited to, existing walkways), and all other appurtenances and accessories related to the vessel, whether located onboard the vessel or elsewhere;

provided, however, if any plans or specifications are not owned by or in the

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall divest, absolutely and in good faith and at no minimum price, the Argosy Baton Rouge Assets to Columbia Sussex pursuant to and in accordance with the Divestiture Agreement by the earlier of: (1) three (3) days after the date upon which the LAGC grants the Application to transfer the interest of the licenses held by Catfish Town Partnership in Commendam (doing business as Argosy Casino Baton Rouge), Argosy of Louisiana, and Jazz Enterprises, Inc. to Columbia Sussex or its designee as required by the State of Louisiana to own and operate any of the Argosy Baton Rouge Assets (as determined pursuant to LAC 42:XIII.2501,2503,2505,2507); or, (2) one hundred and twenty (120) days after the date this Order becomes final.
- B. Within ten (10) days after the date Respondent signs the Agreement Containing Consent Orders in this matter, Respondent shall ensure that Columbia Sussex files a completed Application with the LAGC .
- C. Respondent shall cooperate fully and expeditiously with the Commission-Approved Acquirer and the LAGC in obtaining all approvals (including, but not limited to, approval of a transfer of interest in any of the Argosy Baton Rouge Assets) required by the State of Louisiana to own and operate any of the Argosy Baton Rouge Assets, including, but not limited to, providing the Commission-Approved Acquirer and the LAGC with any books, records, and information necessary to complete an Application or obtain a gaming license and any other approvals required by the State of Louisiana to own and operate any of the Argosy Baton Rouge Assets.

provided, however, that, if Respondent has divested the Argosy Baton Rouge Assets to Columbia Sussex prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that:

1. Columbia Sussex is not an acceptable purchaser of the Argosy Baton Rouge Assets, then Respondent shall immediately rescind the transaction with Columbia Sussex and, within six (6) months from the date the Order becomes final, shall divest the Argosy Baton Rouge Assets to a Commission-approved Acquirer absolutely and in good faith, at no minimum price, and only in a manner that receives the prior approval of the Commission; or,

2. the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, pursuant to Paragraph IV. of this Order, to effect within sixty (60

months from the date of such LAGC disapproval, the Commission may appoint a Divestiture Trustee.

- D. Subject to the prior approval of the Commission, the Divestiture Agreement shall include the following provisions and terms:
1. The Commission-approved Acquirer shall use best efforts expeditiously to file an application with the LAGC to acquire a gaming license and any other approvals required by the State of Louisiana to own and operate any of the Argosy Baton Rouge Assets;
 2. Respondent shall cooperate fully (including, but not limited to, providing to the Commission-approved Acquirer or the LAGC any books, records, and information, and any required consents) and expeditiously with the Commission-approved Acquirer in obtaining a gaming license and any other approvals required by the State of Louisiana to own and operate any of the Argosy Baton Rouge Assets;
 3. Respondent shall:
 - a. Not provide, disclose, or otherwise make available any Confidential Business Information to any Person; and,
 - b. Not use any Confidential Business Information for any reason other than as required or permitted by this Order;

Provided, however, that the Divestiture Agreement shall permit Respondent to use Confidential Business Information only: (i) for the purpose of performing or complying with the Respondent's obligations

u1.000 0.000vm.00000 0.00000 1.n0.060T180.0.5600 0.0000 TD(oo7drof pe shall:)TjET

1. A transition services agreement for a term not to exceed six (6) months following the Effective Date of Divestiture pursuant to which Respondent shall provide at its Actual Cost to the Commission-approved Acquirer such administrative, human resource, accounting, and other services as are reasonably necessary to achieve the purposes of this Order;
 2. Contracts, licenses, or other agreements sufficient to permit the Commission-approved Acquirer to use, for a period of one (1) year after the Effective Date of Divestiture, any tangible or intangible assets that are not included in the definition of the Argosy Baton Rouge Assets, but that have been used by the Argosy Casino Baton Rouge in some way in the twelve (12) months preceding the date this Order is accepted for public comment;
 3. Contracts, licenses, or other agreements sufficient to permit the Commission-approved Acquirer to obtain the equivalent economic and competitive benefit of any rights or obligations of the Argosy Baton Rouge Assets under any existing contract, license, or other agreement that, for any reason, Respondent did not divest to the Commission-approved Acquirer, which contract, license, or other agreement is reasonably necessary to achieve the purposes of this Order; and,
 4. A license for no longer than six (6) months for the use of the Argosy name and tradenames.
- G. Until the Effective Date of Divestiture of the Argosy Baton Rouge Assets, Respondent shall take such actions as are necessary to maintain the viability and marketability of the Argosy Baton Rouge Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of the Argosy Baton Rouge Assets, except for

addition, Respondent shall not make any counteroffer to a Argosy Baton Rouge Employee who receives a written offer of employment from a Commission-approved Acquirer;

2. provide all the Argosy Baton Rouge Employees with reasonable financial incentives to continue in their positions until the Effective Date of Divestiture. Such incentives shall include, but are not limited to, a continuation of all employee benefits, including regularly scheduled raises and bonuses and a vesting of all pension benefits (as permitted by law and for those Argosy Baton Rouge Employees covered by a pension plan), offered by Respondent until the Effective Date of Divestiture;
3. not, for a period of eighteen (18) months following the Effective Date of Divestiture, directly or indirectly, employ or enter into a contract for the services of any Argosy Baton Rouge Primary Employees;

Provided, however, that this Paragraph II.H. shall not prohibit Respondent from entering into a contract for the services of, making offers of employment to, or employing or contracting with any Argosy Baton Rouge Primary Employees:

- a. when a Commission-approved Acquirer has notified Respondent in writing that the Commission-approved Acquirer:
 - (1) does not intend to make an offer of employment to that employee; or,
 - (2) has terminated that employee without cause; or,
- b. when that employee voluntarily has declined to contract with or continue employment with the Commission-approved Acquirer, and the Commission-approved Acquirer has:
 - (1) not offered to contract with or employ that employee in a position with the same or similar duties as the position occupied by that employee immediately prior to the Effective Date of Divestiture; or,
 - (2) not offered that employee the same or increased monetary compensation and a substantially similar or better package of benefits and other compensation as the employee received immediately prior to the Effective Date of Divestiture.

- I. Prior to the Effective Date of Divestiture, Respondent shall secure all consents and waivers from all Persons that are necessary for the divestiture of the Argosy Baton Rouge Assets to a Commission-approved Acquirer.
- J. Respondent shall comply with all terms of the Divestiture Agreement, and any breach by Respondent of any term of the Divestiture Agreement shall constitute a violation of this Order. If any term of the Divestiture Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondent cannot fully comply with both terms, the Order Term shall determine Respondent’s obligations under this Order. Notwithstanding any paragraph, section, or other provision of the Divestiture Agreement, any failure to meet any condition precedent to closing (whether waived or not) or any modification of the Divestiture Agreement, without the prior approval of the Commission, shall constitute a failure to comply with this Order.
- K. The purpose of the divestiture of the Argosy Baton Rouge Assets is to ensure the continuing, viable, and competitive operation of the Argosy Baton Rouge Assets in the same manner and in the same business in which the Argosy Baton Rouge Assets were engaged at the time of the announcement of the proposed Acquisition, and to remedy the le

IV.

IT IS FURTHER ORDERED that:

- A. If Respondent has not fully complied with the obligations to divest the Argosy Baton Rouge Assets as required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the Argosy Baton Rouge Assets in a manner that satisfies the requirements of Paragraph II. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the FTC, the Commission may appoint a Divestiture Trustee in such action to divest the Argosy Baton Rouge Assets. Neither

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information (including, but not limited to, information related to any regulation of the Argosy Baton Rouge Assets by the LAGC), as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph IV in an amount equal to the delay, as determined by the Commission.
4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; and, *provided further, however*, that Respondent shall select such entity within five (5) days after receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities.

The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After the approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by

- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

V.

IT IS FURTHER ORDERED that:

- A. Within five (5) days after the Acquisition, Respondent shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Within five (5) days after the earlier of the LAGC's approval of a motion to transfer interest in the Argosy License, or the LAGC's issuance of a notice of decision to Respondent or the Commission-approved Acquirer, Respondent shall submit to the Commission a letter certifying the date on which the approval was granted or the notice was issued.
- C. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondent has fully complied with Paragraphs II and IV of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall submit at the same time a copy of its report concerning compliance with this Order to the Hold Separate Trustee, if any Hold Separate Trustee has been appointed pursuant to the Hold Separate Order in this matter. Respondent shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all Persons (including, but not limited to, the LAGC) contacted. Respondent shall include in its report copies of all written communications to and from such Persons, all internal memoranda, and all reports and recommendations concerning completing the obligations.
- D. One (1) year after the date this Order becomes final, annually until Respondent has complied fully with its obligations under Paragraphs II and IV of this Order, and at other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

