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 is under construction and scheduled to open next year. The divestitures must be completed within six mont 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 (*ieInLi4(e)TJ (3)23(n*

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 compet[illegible] 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 Coushatta 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 (*ie* , 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.