ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

In the Matter of Penn National Gaming, Inc. and Pinnacle Entertainment, Inc.
File No. 181-0011, Docket No. C-4658

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 Penn National Gaming, Inc. ("PNG") and Pinnacle Entertainment, Inc. ("Pinnacle"). The purpose of the proposed Consent Order is to remedy the anticompetitive effects that otherwise would result from Penn's acquisition of Pinnacle. Under the terms of the proposed Consent Order, Penn is required to divest to Boyd Gaming Corporation: (1) one of Pinnacle's casinos in the St. Louis, Missouri area, the Ameristar Casino Report Spa in St. Charles; (2) Pinnacle's only casino in the Kansas City, Missouri area, the Ameristar Kansas City Casino Hotel; and (3) both of Pinnacle's casinos in the Cincinnati, Ohio area: the Belterra Casino Resort in Florence, Indiana, and the Belterra Park casino and racetrack in Cincinnati. The divestitures must be completed within 10 days of Penn's acquisition of Pinnacle.

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 18, 2017, Penn agreed to acquire Pinnacle for approximately $2.8 billion, including the assumption of debt. On September 28, 2018, 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 Penn and Pinnacle for casino services in the St. Louis, Kansas City, and Cincinnati area markets. The elimination of this competition would have caused significant competitive harm, specifically higher prices and diminished quality and service levels in each of these markets. The proposed Consent Order would remedy the alleged violations by requiring divestitures in the three affected markets. The divestitures will establish a new independent competitor to Penn in each relevant area, replacing the competition that otherwise would be lost as a result of the proposed acquisition.

II. THE PARTIES

Penn is a publicly traded owner and manager of gaming and racing facilities, as well as video gaming terminal ("VGT") operations, focused on slot machine entertainment. In the U.S. and Canada, Penn owns and operates 29 properties in 17 states, and manages one property in San

Penn and Pinnacle are close and vigorous competitors in the St. Louis, Kansas City, and Cincinnati area markets. The acquisition would substantially lessen the head-to-head competition between PNG and Pinnacle in St. Louis, Missouri; Kansas City, Missouri; and Cincinnati, Ohio. Moreover, the acquisition would increase Penn's ability and incentive to raise prices post-acquisition, in the form of hold rates, rake rates, and table game rules and odds that are less favorable to customers, and lower player reinvestments. Finally, the acquisition would diminish Penn's incentive to maintain or improve the quality of its services and amenities to the detriment of casino customers in each of these markets. The evidence of close competition between Penn and Pinnacle comes from ordinary-course documents and data from the parties and various market participants.

In St. Louis, the acquisition would reduce the number of competitors from four to three, and result in a substantial increase in concentration, absent relief. Notably, the acquisition would result in a highly concentrated market with just two competitors to Penn, only one of which is significant and has a casino of a similar size and with similar offerings to the parties' casinos. In Kansas City, the acquisition would reduce the number of competitors from five to four and substantially increase concentration levels. Likewise in Cincinnati, the acquisition would reduce the number of competitors from five to four and would lead to a significant increase in concentration levels.

New entry or expansion is unlikely to deter or counteract the anticompetitive effects of the acquisition in the St. Louis, Kansas City, or Cincinnati area markets. The 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 area casino services market, Missouri and Illinois law limit the total number of casino licenses available, and both states have issued all their respective licenses. Both states have restrictions in their respective statutes and gaming license regulations that also make significant expansion by current market participants extr,on1 (ha) 0 T12.62available, by the Order to Maintain Assets, which requires them to maintain the viability, marketability, and competitiveness of the divestiture assets until the divestitures are completed. The proposed Consent Order appoints a Monitor to ensure the parties' compliance with the Order to Maintain Assets, Consent Order, and Divestiture Agreements following the divestiture.

Additionally, the proposed Consent Order requires the parties to provide transitional services to the approved acquirer for at least 24 months after the divestiture, as needed, to assist the acquirer with the transfer and operation of the divested assets. 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.

A. St. Louis

The proposed Consent Order remedies the likely anticompetitive effects in the St. Louis market by requiring the divestiture of Pinnacle's Ameristar St. Charles. The divestiture assets and rights include the casino (including gaming equipment, hotels, restaurants, spas, customer data, and property rights) and a perpetual, royalty-free license to continue use of the "Ameristar" trade name. Although the proposed consent only requires Penn to divest one of Pinnacle's two St. Louis casinos, this remedy will result in virtually no change to market concentration levels and preserve the status quo in the St. Louis casino services market because four independent casino operators will remain. The divestiture casino is the highest revenue-generating casino in the market.

B. Kansas City

The proposed Consent Order remedies the likely anticompetitive effects of the proposed acquisition by requiring Penn to divest the Ameristar Kansas City, Pinnacle's only casino in the Kansas City area. The divestiture assets and rights include the casino (including gaming equipment, hotels, restaurants, spas, customer data, and property rights) and a perpetual, royalty-free license to continue use of the "Ameristar" trade name. The proposed Consent Order will preserve five independent casino operators and result in no change in market concentration.

C. Cincinnati

In the Cincinnati area, the proposed Consent Order remedies the likely anticompetitive effects of the proposed acquisition by requiring Penn to divest both of Pinnacle's properties: Belterra Park and Belterra Resort. The divestitures include all rights and related assets, including gaming equipment, hotels, restaurants, spas, property rights, customer data, and trade names. The proposed Consent Order will preserve five independent casino operators and result in no change in market concentration.

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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.