

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

_____)	
In the Matter of)	
)	
)	
PENN NATIONAL GAMING, INC. ,)	
a corporation; and,)	DECISION AND ORDER
)	DOCKET NO. C-
)	
PINNACLE ENTERTAINMENT, INC.,)	
a corporation.)	
)	
_____)	

DECISION
[Public Record Version]

The Federal Trade Commission (“Commission”) initiated an investigation into the proposed acquisition by Respondent Penn National Gaming, Inc. (“Penn National”) of Respondent Pinnacle Entertainment, Inc. (“Pinnacle”) (collectively, “Respondents”) The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents 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.

Respondents and the Bureau of Competition executed an agreement (“Agreement Containing Consent Orders” or “Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

principal place of business located at 3883 Howard Hughes Parkway, Ninth Floor, Las Vegas, Nevada 89169, including subsidiaries and affiliates controlled by Boyd Gaming Corporation.

- D. "Commission" means the Federal Trade Commission.
- E. "Acquirer" means Boyd or any other person or entities approved by the Commission to acquire any or all of the Casino Assets pursuant to this Order.
- F. "Acquisition" means Penn National's acquisition of Pinnacle, as described and contemplated by the Acquisition Agreement.
- G. "Acquisition Agreement," means the Agreement and Plan of Merger dated as of December 17, 2017, by and among Pinnacle Entertainment, Inc., Penn National Gaming, lern6 (r)3 (a)(i)-12o0

customer loyalty program) for transitional purposes may be reasonably requested by an Acquirer. "Brand License" includes the brand license agreement attached to and made part of the Boyd Divestiture Agreement at ~~Public~~ Appendix I to this Order.

- O. "Casino Assets" means all of Respondents' rights, title, and interests in and to all tangible and intangible assets relating to each Divested Casino, and the Casino Business conducted at each Divested Casino, including but not limited to the following:
1. Real property interests, whether owned or leased, together with all easements, rights of way, buildings, improvements, facilities, parking lots, and appurtenances thereto and including any options to acquire or lease additional properties for future use or development;
 2. Tangible personal property, including but not limited to ~~fixtures~~ equipment (including gaming equipment), machinery, vehicles, supplies, and inventories;
 3. Intellectual Property
 4. Contracts and Governmental Authorizations;
 5. All books and records;
 6. Casino Customer Database Records;
 7. All issued and outstanding membership interests in ~~and~~ respectively PNK (Ohio), LLC; Belterra Resort Indiana LLC; Ameristar Casino Kansas City, LLC; and Ameristar Casino St. Charles, LLC; and
 8. All other assets available to, or reserved for use by, each Divested Casino, wherever located, ~~including~~ but not limited to ~~offsite~~ properties, facilities, or assets used or available ~~at~~ each Divested Casino for event hosting, parking, storage, office space, billboards, advertising, and employee training or administration.

Provided, however, the ~~Casino~~ Assets need not include:

1. Retained Intellectual Property;
2. Respondent Corporate Contracts;
3. Retained Customer Database Records;
4. Enterprise software that Respondents also use to manage and account for businesses other than the Divested Casinos;
5. Corporate headquarters of Respondents;
6. The portion of any books and records ~~that~~ contains information about any other business that Respondents are not required to ~~divest~~ from which Confidential Business Information has been ~~redacted~~
7. gv(s)-1 (ot) I

including but not limited to, survey data, Twitter accounts, and Facebook accounts and

8. Demographic, preference and other information (i) captured from the Respondent Pinnacle's enterprise-wide loyalty program system, (ii) maintained in connection with Respondent Pinnacle's mychoice customer loyalty program website guest portal (including PIN data, email preferences, contact preferences and other similar information), (iii) contained in hosted customer relationship management systems (including guest contact history, host bonus goals and calculation), (iv) regarding mileage and database elements required to compile the lifecycle score, (v) regarding yield management score and (vi) regarding group sales (including lead, contact, room count, food and beverage spend and similar information), in each case relating to any Divested Casino

Provided, however, Casino Customer Database Records does not include a copy of the Retained Customer Database Records.

- R. "Casino Employees" means: (1) with respect to each Divested Casino, each of Respondents' employees who were employed or under contract at the Divested Casino any time between December 1, 2017, and the Divestiture Date; and (2) the shared services employees identified on NE Public Appendix V.
- S. "Confidential Business Information" means any non-public information relating to the Casino Assets and the Casino Business operated at the Divested Casinos, either prior to or after the Divestiture Date, including, but not limited to, all customer lists, Casino Customer Database Records, customer loss data, customer spending data, price lists, marketing methods, intellectual Property, technologies, processes, written or unwritten know-how, or trade secrets and:
 1. Obtained by Respondents prior to the Divestiture Date; or,
 2. Obtained by Respondent after the Divestiture Date, in the course of performing Respondents' obligations under any Divestiture Agreement (including any Transition Services Agreement);

Provided, however, that Confidential Business Information shall not include:

1. Information that is in the public domain when received by Respondents;
 2. Information that is not in the public domain when received by Respondents and thereafter becomes public through no act or failure to act by Respondents;
 3. Information that Respondents develop or obtain independently, without violating any applicable law or this Order, and without breaching any confidentiality obligation with respect to the information; and
 4. Information that becomes known to Respondents from a third party not in breach of applicable law or a confidentiality obligation with respect to the information
- T. "Contracts" means any written or unwritten contract, lease, sublicense, and other agreement or obligation of any kind.

BB. "Intellectual Property" means intellectual property of any kind including patents, patent applications, ~~mask~~ works, trademarks, service marks, copyrights, trade dress, commercial names, internet web sites, internet domain n

6. Incentives from casinos other than the Divested Casinos extended to (whether or not redeemed) customers, including special event invitations, gaming incentives (including downloadable slot credits, table games match play, free bet offers and othersimilar incentives);
 7. Any other data and information customarily used by Respondent casino or hotel other than a Divested Casino to market or sell casino or amenity services to customers, including survey data, twitter accounts, and Facebook accounts;
 8. Demographic, preference and other information (i) captured from the Respondent Pinnacle's enterprise-wide loyalty program system, (ii) maintained in connection with Respondent Pinnacle's mychoice customer loyalty program website guest portal (including PIN data, email preferences, contact preferences and other similar information), (iii) contained in hosted customer relationship management systems (including guest contact history, host bonus goals and calculation), (iv) regarding mileage and database lifecycle score, (v) regarding yield management score and (vi) regarding group sales (including lead, contact, room count, food and beverage spend and similar information), in each case relating to properties other than Divested Casinos.
- GG. "Retained Intellectual Property" means Intellectual Property owned or licensed by Respondent that prior to the Acquisition, was used by Respondent solely or primarily for purposes other than the Divested Casinos.
- HH. "Transition Services" means services, assistance, cooperation as required by an Acquirer to facilitate the transfer and operation of Casino Assets in a manner consistent with the purposes of this Order. Transition Services may include (way of example only) services, training personnel, information, access, and support related to: audits; finance and accounting; human resources and employee benefit information

III. (Divestiture Agreement

V. (Employees)

IT IS FURTHER ORDERED that:

- A. Respondents shall cooperate with and assist any proposed Acquirer of the Casino Assets to evaluate independently and offer employment to Key Employees and Casino Employees relating to each of the Divested Casinos, with such cooperation to include at least the following:
1. Not later than 5 business days after a request from a proposed Acquirer, Respondents shall, to the extent permitted by applicable law:
 - a. Provide to the proposed Acquirer a list of all Key Employees and Casino Employees and provide Employee Information for each;
 - b. Allow the proposed Acquirer a reasonable opportunity to interview any Key Employees and Casino Employees;
 2. Within 10 days after a request from a proposed Acquirer, Respondents shall provide an opportunity for the proposed Acquirer:
 - a. Meet personally, and outside the presence or hearing of any employee or agent of Respondents, with any of the Key Employees and Casino Employees; and
 - b. Make offers of employment to any of the Key Employees and Casino Employees;
 3. Respondents shall not directly or indirectly interfere with a proposed Acquirer's offer of employment to any one or more of the Key Employees and Casino Employees, not offer any incentive to Key Employees and Casino Employees to decline employment with a proposed Acquirer, and not otherwise interfere with the recruitment of any Key Employees and Casino Employees by a proposed Acquirer;
 4. Respondents shall remove any impediments within the control of Respondents that may deter any Key Employees or Casino Employees from accepting employment with a proposed Acquirer, including, but not limited to, removal of any noncompete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of individuals to be employed by a proposed Acquirer, and shall not make any counteroffer to any Key Employees or Casino Employees who receive an offer of employment from the Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee.

5. Respondent shall provide Key Employees and Casino Employees with reasonable financial incentives to continue in their positions and/or as may be necessary to facilitate the employment of such Key Employees and Casino Employees by the proposed Acquirer. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondent, including regularly scheduled or merit raises and bonuses, regularly scheduled vesting of pension benefits, and additional incentives as may be necessary.
- B. For a period of 2 years from the Divestiture Date, Respondent shall not directly or indirectly, solicit or induce, or attempt to solicit or induce, any Key Employee who has accepted an offer of employment with, or who is employed by, Acquirer to terminate his or her employment relationship with the Acquirer.
- Provided, however, a violation of this provision will not occur if:*
1. The Key Employee's employment has been terminated by the Acquirer;
 2. Respondent advertises for employees in newspapers, trade publications, or other media not targeted specifically at any one or more of the employees of the Acquirer; or
 3. Respondent hires a Key Employee who has applied for employment with Respondent, provided that such application was not solicited or induced in violation of this Order.
- C. For a period of 1 year from the Divestiture Date, Respondent shall not, directly or indirectly, solicit or induce, or attempt to solicit or induce, any Casino Employee who has accepted an offer of employment with, or who is employed by, Acquirer to terminate his or her employment relationship with the Acquirer.
- Provided, however, a violation of this provision will not occur if:*
1. The Casino Employee's employment has been terminated by the Acquirer;
 2. Respondent advertises for employees in newspapers, trade publications, or other media not targeted specifically at any one or more of the employees of the Acquirer; or
 3. Respondent hires a Casino Employee who has applied for employment with Respondent, provided that such application was not solicited or induced in violation of this Order.

VI. (Additional Obligations)

IT IS FURTHER ORDERED

VII. (Asset Maintenance)

IT IS FURTHER ORDERED that, pending divestiture of the Casino Assets, Respondents shall:

- A. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Casino Assets, to minimize any risk of loss of competitive potential of the Casino Assets, to operate the Casino Assets in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Casino Assets, except for ordinary wear and tear. Respondents shall not sell, transfer, encumber, or otherwise impair the Casino Assets (other than in the manner prescribed in this Order), nor take any action that lessens the full economic viability, marketability, or competitiveness of the Casino Assets.
- B. Respondents shall not terminate the operation of any of the Casino Assets, and shall conduct or cause to be conducted the business and operation of the Casino Assets in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and as may be necessary to preserve the full economic viability, marketability, and competitiveness of the Casino Assets, and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Casino Assets.

Provided, however, that Respondents shall not be in violation of this Paragraph V

to Maintain Assets, and the Divestiture

- L. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
- M. The Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order

IX. (Divestiture Trustee)

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations of Paragraph 1 of this Order, the Commission may appoint one or more Divestiture Trustees to divest any or all of the Casino Assets, ~~or~~ Transition Services Agreements, and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including one or more court appointed Divestiture Trustees, pursuant to Section 5 of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- B. The Commission may select one or more Divestiture Trustees, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Commission may appoint one Divestiture Trustee or separate Divestiture Trustees to divest one or more of the Divested Assets and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. Any Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, and stated in writing their reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
 - 1. Not later than 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement for any divestitures required by this Order that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestitures required by, and satisfy the additional obligations imposed by this Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of this Order.

2. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

a. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestitures required by, and satisfy the additional obligations imposed by, this Order.

b. The Divestiture Trustee shall have one year after the date the Commission approves each trust agreement described herein to accomplish the divestitures required by this Order, which shall be subject to the prior approval of the Commission. If, however, at the end of the one year period, the Divestiture Trustee has submitted a plan to satisfy the divestiture obligations of this Order, or believes that such obligations can be satisfied within the one year period, the Commission may, at its discretion, extend the one year period for a period of up to six months.

that Respondents shall select such entity within 5 days after receiving notification of the Commission's approval.

- e. Any Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. Any Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other professionals.

- C. If the Commission determines that any Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- D. The Commission, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of any Divestiture Trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

X. (Compliance Reports)

IT IS FURTHER ORDERED that:

- A. Respondent Penn National shall notify Commission staff via email at bccompliance@ftc.gov: (1) the Acquisition Date no later than 5 days of the Acquisition Date; and (2) the date Respondents complete each of the divestitures required to be made pursuant to Paragraph II of this Order, no later than 5 days from each respective divestiture date.
- B. Respondents shall submit verified written reports ("compliance reports") in accordance with the following:
 1. Interim compliance reports 30 days after the Order is issued, and every 30 days thereafter until Respondents have fully complied with their obligations under Paragraph II of this Order;
 2. Annual compliance reports 1 year after the date this Order is issued, and annually for the next 2 years on the anniversary of that date; and
 3. Additional compliance reports as the Commission or its staff may request;
- C. Each compliance report shall set forth in detail the manner and form in which Respondents intend to comply, are complying, and have complied with this Order. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Order. Conclusory statements that Respondents have complied with their obligations under the Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of the Order, and a description of all substantive contacts or negotiations for the divestitures and the identities of all parties contacted. Respondents shall retain copies of all material written communications to and from such parties, as well as all privileged internal memoranda, reports, and recommendations concerning completing their obligations under the Order for a period of 3 years and shall provide copies of those records to Commission staff upon request.

- D. Each compliance report shall be verified in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Offi

XIII. (Term)

IT IS FURTHER ORDERED that this Order shall terminate 10 years after the date this Order is issued

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

APPENDIX I

Boyd Divestiture Agreement

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX II

Key Employees

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX III

Respondent Corporate Contracts

APPENDIX IV
Monitor Agreement

APPENDIX IV-1

Monitor Compensation

[Redacted From the Public Record Version, But Incorporated By Reference]

