UNITED STATES OF AMERICA
BEFORE 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- 4658**

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h it proposed to present to the Commission for its consideration. If issued by the
Draft Complaint would charge Respondents with violations of Section 7 of the
amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act,
U.S.C. § 45.

Respondents

Vegas, Nevada 89169, and including subsidiaries and affiliates controlled by Boyd Gaming Corporation.

D. "Commission" means the Federal Trade Commission.

E. "Acquirer" means Boyd, or any other persons 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, Inc., and Franchise Merger Sub, Inc.

H. "Acquisition Date" means the date Penn National closes its acquisition of Pinnacle, as described and contemplated by the Acquisition Agreement.

I. "Ameristar Kansas City" means Respondent Pinnacle's Ameristar Kansas City Casino Hotel located at 3200 North Ameristar Drive in Kansas City, Missouri, and including all casino, hotel, restaurants, alcoholic beverage services, retail space, and other businesses, operations, properties, and services related thereto.

J. "Ameristar St. Charles" means Respondent Pinnacle's Ameristar Casino Resort Spa St. Charles, located at 1 Ameristar Boulevard in St. Charles, Missouri, and including all casino, hotel, restaurants, alcoholic beverage services, retail space, and other businesses, operations, properties, and services related thereto.

K. "Belterra Casino" means Respondent Pinnacle's Belterra Casino Resort, located at 777 Belterra Drive in Florence, Indiana, and the off-site hotel d/b/a "Ogle Haus Inn" located at 1013 West Main Street in Vevay, Indiana, and including all casino, hotel, restaurants, alcoholic beverage services, retail space, and other businesses, operations, properties, and services related thereto.

L. "Belterra Park" means Respondents Pinnacle's Belterra Park casino and racetrack located at 6301 Kellogg Road in Cincinnati, Ohio, and including all casino, restaurants, alcoholic beverage services, retail space, and other businesses, operations, properties, and services related thereto.

M. "Boyd Divestiture Agreement" means the Membership Interest Purchase Agreement by and among Respondents and Boyd, dated as of December 17, 2017, and all amendments, exhibits, attachments, ancillary agreements (including the Transition Services Agreement and Brand License), and schedules thereto, approved by the Commission and attached to this Order as Non-Public Appendix I.

N. "Brand License" means a license agreement approved by the Commission between Respondents and an Acquirer granting a perpetual, royalty-free license to the "Ameristar" trade name for use by the Acquirer of the Ameristar Kansas City and the Ameristar St. Charles Divested Casinos, along with a royalty-free, non-exclusive license to certain of Respondents' Retained Intellectual Property (including rights relating to the "mychoice" customer loyalty program) for transitionary purposes, as 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 Non-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 and 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 to, 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 off-site properties, facilities, or assets used or available to 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 and from which Confidential Business Information has been redacted; and

7. Any original record that Respondents have a legal, contractual, or fiduciary obligation to retain so long as Respondents provide Acquirer with a copy of the record and access to the original materials if a copy is insufficient for regulatory or evidentiary purposes.

P. "Casino Business" means the business of marketing, selling, and providing casino gaming and related amenity services to customers, including gaming services such as slots, table gaming, poker, video poker, pari-mutuel wagering, video gaming terminals, and all other gaming services lawfully permitted in the jurisdiction where the casino is located (whether actually offered or which could be offered there), and amenities services such as hotel, restaurant, spa, retail, food, beverage, alcohol, entertainment, meetings and conferences, and other services typically provided by Respondent Pinnacle at its casino facilities.

Q. "Casino Customer Database Records" means Respondent Pinnacle's data and information, wherever located and however stored, provided to an Acquirer in a format and in a manner acceptable to that Acquirer, relating to customers that visit a Divested Casino or activities by customers at a Divested Casino, including:

1. Each person's personal and demographic information;

2. Each person's transactional history at a Divested Casino and/or each person's patronage, purchase, and use of casino or amenity services during visits to a Divested Casino, including the dates, game types, average wager, times, length of visits, and hotel room reservation details (i.e., room types, dates, booked rates for future reservations, payment method);

3. All data and information relating to the value spent or lost by a customer during its visits to the Divested Casino or value as a consumer of casino services at a Divested Casino, including information such as each customer's total actual win or loss, total theoretical win or loss value, average daily worth (ADW), average daily theoretical value (ADT or THEO), or other metrics related to customer's transaction history or purchases of casino or amenity services at a Divested Casino;

4. Each person's tier status in Pinnacle's customer loyalty program and total comp balance on or immediately prior to the Divestiture Date based on each person's visits to all of Pinnacle's casinos in the aggregate (including both Divested Casinos and any other casino operated by Respondent Pinnacle);

5. The identity of excluded or disassociated customers

"Direct Cost" to a Commission-approved Acquirer for its use of any of Respondents'

names, internet web sites, internet domain names, inventions, discoveries, written and unwritten know-how, trade secrets and proprietary information.

CC. “Monitor” means the person approved by the Commission to serve as a Monitor pursuant to this Order and/or the Order to Maintain Assets issued by the Commission.

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(including downloadable slot credits, table games match play, free bet offers and other similar incentives);

7. Any other data and information customarily used by Respondents at a 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; 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 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 Respondents 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, and cooperation as required by an Acquirer to facilitate the transfer and operation of the Casino Assets in a manner consistent with the purposes of this Order. Transition Services may include (by way of example only) services, training, personnel, information, access, and support related to: audits; finance and accounting; human resources and employee benefits; information technology and systems; databases; technology transfer; regulatory compliance; maintenance and repair of facilities and equipment; supply chain; maintaining or establishing relationships with vendors or other third-parties having business relations with the Divested Casinos; room reservation systems; food services; sales, marketing, and promotion; customer services; use of Retained Intellectual Property for transitionary purposes; and other logistical, operational, and administrative support.

II. "Transition Services Agreement" means the Transition Services Agreement between Boyd and Respondents for the provision of Transition Services, attached to and made part of the Boyd Divestiture Agreement at Non-Public Appendix I to this Order, and/or any other written agreement that the Commission approves between Respondents and an Acquirer (or a Divestiture Trustee and an Acquirer) for the provision of Transition Services.

II. (Divestiture)

IT IS FURTHER ORDERED that:

A. No later than 10 days from the Acquisition Date, Respondents shall divest, absolutely and in good faith, the Casino Assets to Boyd, and grant the Brand License, pursuant to the Boyd Divestiture Agreement.

Provided, however, that, if within 10 days of the Acquisition Date, Boyd has not received each of the Governmental Authorizations necessary for Boyd to acquire the Casino Assets from Respondents, and:

1. Respondents have not otherwise violated this Order or the Order to Maintain Assets;

2. Respondents have not breached the Boyd Divestiture Agreement;

3. Respondents have provided in a timely fashion all information and documents requested by any of the various state regulatory or gaming authorities; and,

4. The sole remaining condition for closing on the Divestiture Agreement is Boyd obtaining one or more Governmental Authorizations, then

Respondents shall have until 30 days from the Acquisition Date to divest the assets to Boyd in the manner required by this Paragraph.

B. If, prior to the date this Order becomes final, Respondents have divested the Casino Assets to Boyd pursuant to Paragraph II.A and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that:

1. Boyd is not an acceptable Acquirer of the Casino Assets, then Respondents shall, within 5 days of notification by the Commission, rescind the Boyd Divestiture Agreement, and shall instead divest the Casino Assets as ongoing businesses, absolutely and in good faith, and grant the Brand License, at no minimum price, to one or more Acquirers and in a manner that receives the prior approval of the Commission, within 180 days of the date the Commission notifies Respondent that Boyd is not an acceptable Acquirer; or

2. The manner in which the divestitures identified in Paragraph II.A was accomplished was not acceptable, then the Commission may direct the Respondents (or appoint a Divestiture Trustee pursuant to Paragraph IX of this Order) to modify the divestiture in the manner the Commission determines is necessary to satisfy the requirements of this Order, which may include entering into additional agreements or arrangements, or modifying the Boyd Divestiture Agreement.

C. No later than the Divestiture Date, Respondents shall obtain at their sole expense all Governmental Authorizations and third-party consents necessary to divest the Casino

Assets and for the Acquirer to operate the Divested Casinos in a manner that achieves the purposes of this Order. Provided, however, that Respondents shall assist the Acquirer in obtaining the transfer from Respondents, or issuance to the Acquirer, of any Governmental Authorization, permit, license, asset, or right that Respondents have no legal right to divest or transfer to the Acquirer.

D. Respondents shall deliver all Casino Assets, including Confidential Business Information, to the Acquirer as soon as practicable in a (a)-6 (c)4 m7i33pb (ht)-2 (t)-2 (o1(nt)-2 (s)]TJ2f

V. (Employees)

IT IS FURTHER ORDERED that:

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necessary to facilitate the employment of such Key Employees and Casino Employees by the proposed Acquirer.

2. Use any Confidential Business Information for any reason or purpose, other than as required or permitted by this Order or a Divestiture Agreement.

Provided, however, that nothing in this Paragraph VI

(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; and

B.

to the Commission concerning performance by Respondents of their obligations under the orders.

I. Respondents may require the Monitor and each of the Monitor's consultants, accountants, and other representatives and assistants to sign a customary confidentiality agreement. Provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commission.

J. The Commission may require, among other things, the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:

1. The Commission shall select the substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within 10 days after the notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.

2. Not later than 10 days after the appointment of the substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the relevant terms of this Order, the Order to Maintain Assets, and the Divestiture Agreement(s) in a manner consistent with the purposes of the orders and in consultation with the Commission.

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 II of this Order, the Commission may appoint one or more Divestiture Trustees to divest any or all of the Casino Assets, enter Transition Services Agreements, and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. In the event that the I3tll

bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. Any Divestiture Trustee shall account for all monies derived from the divestitures and all expenses incurred. After 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 Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of any 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 this Order.

f. Respondents shall indemnify any Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result

X. (Compliance Reports)

IT IS FURTHER ORDERED that:

A. Respondent Penn National shall notify Commission staff via email at bccompliance@ftc.gov of: (1) the Acquisition Date no later than 5 days after 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 non-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 Officer or another officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

XI. (Change in Respondents)

XIII. (Term)

IT IS FURTHER ORDERED that this Order shall terminate February 21, 2029.

By the Commission & R P P L V V L R Q H[H U V H G L V R D W L R Q J

April J. Tabor
Acting Secretary

SEAL
ISSUED: February 21, 2019

APPENDIX I

Boyd Divestiture Agreement

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

APPENDIX II

APPENDIX III

Respondent Corporate Contracts

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

APPENDIX IV-1

Monitor Compensation

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

APPENDIX V

Shared Services Employees

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