

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)
)
ELDORADO RESORTS, INC.,)
a corporation;)
)
and)
)
CAESARS ENTERTAINMENT CORPORATION)
a corporation.)

DECISION AND ORDER
DOCKET NO. C-4721

DECISION

The Federal Trade Commission initiated an investigation of the proposed acquisition by Respondent Eldorado Resorts, Inc. of Respondent Caesars Entertainment Corporation. The Commission's Bureau of Competition prepared and furnished to Respondent the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint 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.

Respondent and the Bureau of Competition executed an Agreement Containing Consent Order ("Consent Agreement") containing (1) an admission by Respondent 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 Respondent 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 Hold Separate and Maintain Assets

The Commission considered the matter and determined that it is unable to believe that Respondent has violated the said Acts, and that a complaint should issue stating its charges in

that respect The Commission accepted the Consent Agreement and placed on the public record for a period of 30 days for the receipt and consideration of public comments. At the same time, it issued and served its Complaint and Order to Hold Separate and Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings, and issues the following Decision and Order (“Order”):

1. Respondent Eldorado Resorts, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its headquarters and principal place of business located at 100 West Liberty Street, Suite 1150, Reno, Nevada 89501.
2. Respondent Caesars Entertainment Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at One Caesars Palace Drive, Las Vegas, Nevada 89109.
3. The Commission has jurisdiction over the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS HEREBY ORDERED that, as used in this Order, the following definitions apply:

- A. “Eldorado” means Eldorado Resorts, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Eldorado Resorts, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Eldorado includes Caesars after the Acquisition Date.
- B. “Caesars” means Caesars Entertainment Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Caesars Entertainment Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Twin River” means Twin River Worldwide Holdings, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 100 Twin River Road, Lincoln, Rhode Island 02865, and including subsidiaries and affiliates controlled by Twin River Worldwide Holdings, Inc.

- D. "Commission" means the Federal Trade Commission.
- E. "Acquirer(s)" means Twin River or any other person that the Commission approves to acquire the Casino Assets pursuant to this Decision and Order.
- F. "Acquisition" means the proposed acquisition described in the Agreement and Plan of Merger dated as of June 24, 2019, by and among Caesars Entertainment Corporation, Eldorado Resorts, Inc., and Colt Merger Sub, Inc.
- G. "Acquisition Date" means the date Respondent consummate the Acquisition.
- H. "Business Information" means books, records, data, and information, wherever located and however stored, including documents, written information, graphic materials, and data and information in electronic format, along with the knowledge of employees, contractors, and representatives. Business Information includes records and information relating to sales, marketing, advertising, personnel, accounting, business stw 2.03 0 Td [(r3 0 T

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 Respondent Eldorado's customer loyalty programs effect at the Divested Casino and total point balance on or immediately prior to the Divestiture Date based on each person's visits to all of Respondent Eldorado's casinos participating in the shared customer loyalty program in the aggregate (including both Divested Casinos and any other casino participating in the same shared customer loyalty program as of the Divestiture Date)
5. The identity of excluded or disassociated customers along with any related information (including whether the exclusion or disassociation is voluntary or involuntary);
6. Incentives or offers extended (whether or not redeemed) to customers of any Divested Casino, including special event invitations, gaming incentives (including downloadable slot credits, table games match play, free bet offers and other similar incentives) and
7. Any other data and information customarily used by Respondent Eldorado, or on behalf of a Divested Casino to market or sell casino or amenity services to customers including but not limited to, survey data, Twitter accounts, and Facebook accounts

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

L. "Casino Employees" means

1. With respect to each Divested Casino, all of Respondent Eldorado's employees, agents, and contractors

2. Information that is not in the public domain when received by Respondent Eldorado and thereafter becomes public through no act or failure to act by Respondent Eldorado;
 3. Information that Respondent Eldorado develops 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 Respondent Eldorado from a third party not in breach of applicable law or a confidentiality obligation with respect to the information.
- N. "Contract" means a contract, lease, sublease, license, and other agreement or obligation of any kind.
- O. "Direct Costs" means cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide Transition Assistance "Direct Cost" to a Commission-approved Acquirer for its use of any of Respondent employees' labor shall not exceed the current average wage rate for such employee, including benefits.
- P. "Divested Casino(s)" means collectively or individually, Eldorado Shreveport and MontBleu.
- Q. "Divestiture Agreement(s)" means:

1. Contracts that are used solely by relate exclusively to assets owned by Respondent Eldorado other than the Divested Casinos
 2. Contracts that are used by relate to multiple casinos owned by Respondent Eldorado, including but not limited to the Divested Casinos, and identified on Non-Public Appendix II to this Order.
- CC. "Retained Customer Database Records" means the data and information, wherever located and however stored, relating to customers that visit Respondent Eldorado's properties other than the Divested Casinos or activities by customers at properties other than the Divested Casinos, including:
1. Each person's personal and demographic information;
 2. Each person's transactional history at Respondent Eldorado's casinos or hotels other than a Divested Casino and/or each person's patronage, purchase, and use of casino or amenity services during visits to Respondent Eldorado's casinos or hotels other than 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 customers during their visits to Respondent Eldorado's casinos or hotels other than a Divested Casino or value as a consumer of casino services at Respondent Eldorado's casinos or hotels other than 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 and amenity services at Respondent Eldorado's properties other than a Divested Casino;
 4. With respect to customer loyalty programs that are shared between a Divested Casino and Respondent Eldorado's other casinos, each person's tier status and total point balance in the shared program on or immediately prior to the Divestiture Date based on each person's visits to Respondent Eldorado's casinos participating in the shared customer loyalty program in the aggregate (including the Divested Casino and any other casino participating in the shared customer loyalty program as of the Divestiture Date)
 5. The identity of excluded and disassociated customers, along with any related information (including whether the exclusion or disassociation is voluntary or involuntary);
 6. Incentives or offers from casinos other than the Divested Casinos (whether or not redeemed) extended to customers, including special event invitations, gaming incentives (including downloadable slot credits, table games match play, free bet offers and other similar incentives); and
 7. Any other data and information customarily used by Respondent Eldorado at, or on behalf of, a casino or hotel other than a Divested Casino to market or sell

- C. No later than the Divestiture Date, Respondent Eldorado shall obtain at its sole expense all Governmental Authorizations and third party consents necessary to divest the Casino Assets and for the Acquirer to operate the Divested Casino in a manner that achieves the purposes of this Order. Respondent Eldorado shall assist the Acquirer in obtaining the transfer from Respondent Eldorado, or issuance to the Acquirer of any Governmental Authorization,

IV. Transition Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondent Eldorado has transferred all Business Information (including the Casino Customer Database Records) included in the Casino Assets, Respondent Eldorado shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall

Employees”); *provided, however* that the number of Additional Key Employees so designated may be limited to 35 employees.

B. Respondent Eldorado shall:

1. For a period of 1 year from the Divestiture Date, 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, the Acquirer to terminate his or her employment relationship with the Acquirer
2. For a period of 2 years from the Divestiture Date, 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, the Acquirer to terminate his or her employment relationship with the Acquirer

Provided, however, Respondent Eldorado may

1. Hire a Casino Employee or Key Employee whose employment has ceased or been terminated by the Acquirer
2. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more of the Casino Employees
3. Hire an employee who has applied for employment with Respondent Eldorado, as long as such application was not solicited or induced in violation of this Paragraph

VI. Asset Maintenance

IT IS FURTHER ORDERED that until the Casino Assets have been fully transferred to the Acquirer, Respondent Eldorado shall, subject to its obligations under the Hold Separate Order, ensure that the Casino Assets and Casino Business are operated and maintained in the ordinary course of business consistent with past practices, and shall:

- A. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Casino Assets and Casino Business, minimize any risk of loss of competitive potential of the Casino Assets and Casino Business, and operate the Casino Assets and Casino Business in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Casino Assets and Casino Business, except for ordinary wear and tear. Respondent Eldorado shall not sell, transfer, encumber, or otherwise impair the Casino Assets and Casino Business (other than in the manner prescribed in this Order and the Hold Separate Order), nor take any action that lessens the full economic viability, marketability, or competitiveness of the Casino Assets and Casino Business, and

2. Not use any Confidential Business Information for any reason or purpose other than as required or permitted by this Order, the Hold Separate Order, or a Divestiture Agreement;
3. To the extent practicable, maintain Confidential Business Information separate and apart from other data or information of Respondent Eldorado; and
4. Following the Acquisition Date, ensure that Confidential Business Information is not shared with Respondent Eldorado's employees working supporting any of Respondent Eldorado's retained business, other than employees who had access to the information prior to the Acquisition Date in the normal course of business and subject to the provisions of Paragraphs IV.B.1 and VI.B.2 above.

Provided, however, that nothing in this Paragraph IV.B shall prevent Respondent Eldorado from retaining and using any tangible or intangible property (including Retained Customer Database Records) that Respondent Eldorado retains right to use pursuant to this Order and the Hold Separate Order, provided further that to the extent that the use of such property involves disclosure of Confidential Business Information to another person, Respondent Eldorado shall require such person to maintain the confidentiality of such Confidential Business Information under terms no less restrictive than Respondent Eldorado's obligations under this Order and the Hold Separate Order

- C. Respondent Eldorado shall implement measures to protect against the storage, distribution, and use of Confidential Business Information that is not permitted by this Order, the Hold Separate Order, or a Divestiture Agreement. These measures shall include, but not be limited to, restrictions placed on access by persons to information available or stored on any of Respondent Eldorado's computers or computer networks.
- D. Not later than 90 days after the Acquisition Date, and no less than annually for years after each Divestiture Date, Respondent Eldorado shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information by Respondent Eldorado's personnel to all of its officers, directors, employees and agents who may have possession or access to the Confidential Business Information. Respondent Eldorado shall require such personnel to acknowledge in writing or electronically their receipt and understanding of these written instructions, and shall maintain custody of these written instructions and acknowledgments for inspection upon request by the Commission
- E. Notwithstanding to the Commission, Respondent Eldorado shall

VIII. Monitor

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Eldorados

1. The Commission shall select the substitute Monitor, subject to Respondent Eldorado's consent, which consent shall not be unreasonably withheld. If Respondent Eldorado has 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 Respondent Eldorado of the identity of any proposed Monitor, Respondent Eldorado 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, Respondent Eldorado 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 Respondent Eldorado's compliance with the relevant terms of this Order, the Hold Separate Order and the Divestiture Agreements 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 ensure 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 Respondent Eldorado has not fully complied with the divestiture and other obligations as required by Paragraph I.A and II.B of this Order, the Commission may appoint one or more Divestiture Trustees to divest any or all of the Casino Assets and agreements for Transition Assistance and perform Respondent's 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, Respondent Eldorado 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 other relief available to it, including one or more co-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 Respondent Eldorado to comply with this Order.
- B. The Commission may select one or more Divestiture Trustees subject to Respondent Eldorado's consent, 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 Casino Assets, enter agreements for Transition Assistance and perform Respondent Eldorado's 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 Respondent Eldorado has opposed, in writing, and stated in writing its reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondent Eldorado of the identity of any proposed Divestiture Trustee, Respondent Eldorado 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, Respondent Eldorado 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 Respondent Eldorado 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 X.B, Respondent Eldorado 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 (including obligations to provide Transition Assistance) 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 achieved within a reasonable time, the period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, that the Commission may extend the period only 2 times.
 - c. Subject to any demonstrated legally recognized privilege, any 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, as the Divestiture Trustee may request. Respondent Eldorado shall develop such financial or other information as any Divestiture Trustee may request and

shall cooperate with the Divestitu

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 from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

- g. Any Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
- h. Any Divestiture Trustee shall report in writing Respondent Eldorado and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestitures.
- i. Respondent Eldorado may require a Divestiture Trustee and each of the

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1. Respondent Eldorado shall submit interim compliance reports 30 days after the

XII. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to Respondent Eldorado, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters of of

NON-PUBLIC APPENDIX II d46

NON-PUBLIC APPENDIX III

Respondent Corporate Contracts

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

APPENDIX I V
Monitor Agreement

NON-PUBLIC APPENDIX IV -1

Monitor Compensation

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