

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)
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)
ELDORADO RESORTS, INC.,) DOCKET NO. C-
a corporation;)
)
and)
)
CAESARS ENTERTAINMENT CORPORATION)
a corporation.)
)
)

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission initiated an investigation on April 22, 2015 (FTC File No. 15-0-0000) regarding the activities of Respondents. The Commission's Bureau of Competition prepared a Draft Complaint, which it proposed to present to the Commission. The Draft Complaint would charge Respondents with violations of the Clayton Act, as amended, 15 U.S.C. § 18, and the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders ("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, and (3) waivers and other provisions as required.

that respect The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. Now, in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission issues its complaint, makes the following jurisdictional findings and issues the following Order to Hold Separate and Maintain Assets (“Hold Separate 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 m

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II. Hold Separate and Asset Maintenance

IT IS FURTHER ORDERED that:

- A. Until the Casino Assets have been fully transferred to the Acquirer, Respondent Eldorado shall ensure that the Casino Assets and Casino Business are operated and maintained in the ordinary course of business consistent with past practices, and shall:
1. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Casino Assets and Casino Business, to minimize any risk of loss of competitive potential of the Casino Assets and Casino Business, to 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 terminate the operations of the Casino Assets and Casino Business, 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 and Casino Business. Included in the above obligations, Respondent Eldorado shall, without limitation:
 - a. Maintain all operations of the Casino Business in the regular course of business and in accordance with past practices, including regular repair and maintenance efforts, keep the organization and properties of the Casino Business intact, and not reduce operating hours, marketing and promotional efforts, customer programs, entertainment offerings, or other services, amenities, or offerings;
 - b. Make any payment required to be paid under any contract or lease when due, and otherwise satisfy all liabilities and obligations associated with the Casino Business;
 - c. Provide the Casino Business with sufficient funds to operate in the ordinary course of business, to meet all capital calls, to perform routine or necessary maintenance, to repair or replace facilities and equipment (including gaming equipment), and to carry out at their scheduled pace all capital projects, business plans, development projects, promotional activities, and marketing activities;

- d. Provide such other resources as may be necessary to respond to competition against the Casino Business, prevent

- j. Not reduce, change, or modify in any material respect the level of marketing, promotional, pricing, or advertising practices, programs, and policies for the Casino Business (including Respondent Eldorado's customer loyalty programs), other than changes in the ordinary course of business consistent with changes made at Respondent Eldorado's other casino businesses that Respondent Eldorado will not divest; and
- k. Not target, encourage, or convert customers of the Casino Business to become customers of Respondent Eldorado's other casino businesses in the same geographic area that will not be divested, or otherwise take actions to change the composition or makeup of the Casino Customer Database Records or the Retained Customer Database Records; provided, however, that nothing in this subparagraph shall prevent Respondent Eldorado from engaging in advertising, marketing, and promotion activities: (i) constituting general marketing and general advertising efforts to Respondent Eldorado's customer loyalty programs in effect at the Divested Casino; or (ii) in the ordinary course of business and in accordance with past practice.

B. During the Hold Separate Period, Respondent Eldorado shall operate the Hold Separate Businesses as independent, ongoing, economically viable businesses.

- 1. Hold the Hold Separate Businesses separate, apart, and independent of Respondent Eldorado's other businesses and assets, and vest the Hold Separate Businesses with all rights, powers, and authority necessary to conduct business in a manner consistent with this Hold Separate Order.
- 2. Not exercise direction or control over, or influence directly or indirectly, the Hold Separate Businesses or any of their operations, or the Hold Separate Managers, except to the extent that Respondent Eldorado must exercise direction and control over the Hold Separate Businesses to assure compliance with orders and applicable laws and regulations (including compliance with requirements or requests of state gaming commissions). Respondent Eldorado shall have the right, in consultation with the Monitor and Hold Separate Managers, to defend

continue the management and operation of the Hold Separate Businesses in the ordinary course of business and consistent with the obligations of Paragraph II.A of this Hold Separate Order;

- iii. Respondent Eldorado shall continue to provide the Hold Separate Managers with all employee benefits, including regularly scheduled raises, bonuses and vesting of pension benefits (as permitted by law), and shall provide the Hold Separate Managers with additional financial incentives as may be necessary to undertake these positions and to assure continued viability, marketability, and competitiveness of the Hold Separate Businesses and achieve the purposes of this Hold Separate Order
- iv. The Hold Separate Managers shall serve, without bond or other security, at the cost and expense of Respondent Eldorado, on such reasonable and customary terms as the Commission may set, and commensurate with the person's experience and responsibilities. The Hold Separate Managers shall have the authority to employ, at Respondent Eldorado's expense, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Manager's duties and responsibilities;
- v. Respondent Eldorado shall indemnify the Hold Separate Managers and hold them harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Managers' duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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 or willful misconduct.
- vi. The Hold Separate Managers shall be in regular contact with the Monitor. Nothing shall preclude the Hold Separate Managers from contacting or communicating directly with the Monitor or the staff of the Commission, either at the request of the staff of the Commission or the Monitor, or in the discretion of the Hold Separate Manager.
- vii. The Hold Separate Managers shall have the authority to staff the Hold Separate Businesses with sufficient employees to maintain the viability and competitiveness of the Hold Separate Businesses, including:

- a. Replacing any departing or departed employeewith a person who has similar experience and expertise, determining not to replace such departing or departed employee
- b. Removing any employee

6. Prior to the Acquisition Date, implement written procedures, subject to the approval of the Monitor, regarding the operational independence of the Hold Separate Businesses, the independent management of the Hold Separate Businesses by the Hold Separate Managers, restrictions on access and use of Confidential Business Information, consistent with the provisions of the Order. Respondent Eldorado shall provide notice of those procedures to the Casino Employees, Respondent Eldorado's employees that may provide support services to the Hold Separate Businesses and to Respondent Eldorado's employees who have responsibilities associated with businesses that compete with the Hold Separate Businesses.

Provided, however, that Respondent Eldorado and the Hold Separate Managers may operate the Casino Assets and Casino Business subject to restrictions imposed or recommended by any federal, state, or local governmental agency having jurisdiction over the property (including the Centers for Disease Control and Prevention) otherwise as reasonable or necessary to respond to or mitigate any pandemic or public health emergency caused by COVID-19. Respondent Eldorado shall operate the Casino Assets and Casino Business in a manner consistent with Respondent Eldorado's efforts at its casino properties located in the same jurisdictions that are not being divested.

Provided further, however, that Respondent Eldorado and the Hold Separate Managers may take actions that the Acquirer has requested or agreed in writing and that has been approved in advance by the Monitor (in consultation with Commission staff), in all cases to facilitate the Acquirer's acquisition of the Casino Assets and consistent with the purposes of this Order and the Hold Separate Order.

III. 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 provide the Acquirer with access to records and information (wherever located and however stored) that Respondent Eldorado has not yet transferred to the Acquirer, and to employees who possess the records and information.
- B. Respondent Eldorado shall provide the Acquirer with Transition Assistance sufficient to
 - (i) efficiently transfer the

b. At the price set forth in a Divestiture Agreement, or if no price is set forth, at Direct Cost; and

c.

otherwise interfere with the recruitment of any Casino Employees by a proposed Acquirer;

4. Respondent Eldorado shall remove any impediments within its control that may deter any Casino Employees from accepting employment with the Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondent Eldorado that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to any Casino Employees who receive an offer of employment from the Acquirer; provided, however, that nothing in this Order shall be construed to require Respondent Eldorado to terminate the employment of any employee or prevent Respondent Eldorado from continuing the employment of any employee;
5. Respondent Eldorado shall continue to provide Casino Employees with all employee compensation and benefits offered by Respondent Eldorado in the ordinary course of business.

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

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pursuant to the Orders, 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 the Orders.

- 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 any 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 3 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, or agents who may have possession or access to the Confidential Business Information.
Respondent Eldorado

C. Respondent Eldorado shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

1. The Monitor shall have the power and authority to monitor Respondent Eldorado's compliance with the investiture and other

other reasonable expenses incurred in connection with the preparations 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, or willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph VI.G, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph VI.F of this Hold Separate Order.

- H. Respondent Eldorado shall report to the Monitor in accordance with the requirements of the Orders and as otherwise provided in the Monitor Agreement approved by the Commission. The Monitor shall evaluate the reports submitted by Respondent Eldorado with respect to the performance of Respondent Eldorado's obligations under the Orders.
- I. Respondent Eldorado may require the Monitor and each of the Monitor's consultants, accountants, and other representatives and assistants to sign a 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 who will have the same authority and responsibilities as the original Monitor pursuant to this Paragraph VI.
 - 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 the Orders and the Divestiture Agreements in a manner consistent with the purposes of the Orders and in consultation with the Commission.

Trustee to effectuate the divestitures required by, and satisfy the additional obligations imposed by the Decision and Order. Any failure by Respondent Eldorado to comply with a trust agreement approved by the Commission shall be a violation of the Orders.

2. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VII .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, the Decision and Order.

b. The Divestiture Trustee shall have, within 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 1 year period, the Divestiture Trustee has not submitted a plan to the Commission for the divestiture of the assets required by this Order, the Commission may, at its discretion, appoint a Trustee to effectuate the divestitures required by this Order. The Trustee appointed by the Commission shall have the same powers, duties, authority, and responsibilities as the Divestiture Trustee appointed by the Commission.

and Order; provided, however, if any Divestiture Trustee receives bona fide offers for any asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent Eldorado from among those approved by the Commission; provided further, however, that Respondent Eldorado 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 Respondent Eldorado, 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 Respondent Eldorado, such consultants, accountants, attorneys, investment 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 Respondent Eldorado, 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 the Decision and Order.
- f. Respondent Eldorado 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 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 rel-2 (n c)-1 (on w)2 (i)3 (t)3-2 (os)-1 (s)-1ndemn(ur)-2 4d

- i. Respondent Eldorado may require any Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement provided, however, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- 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, and who will have the same authority and responsibilities of the original Divestiture Trustee pursuant to this Paragraph VII
- D. The Commission or, in the case of a 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 the Decision and Order

VIII. Compliance Reports

- A. Respondent Eldorado shall:
 - 1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date and the Divestiture Date no later than 5 days after the occurrence of each; and
 - 2. Submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.
- B. Respondent Eldorado

contacts or negotiations for the divestitures and the identities of all parties contacted, and such supporting materials shall be retained and produced later if needed.

3. Respondent Eldorado shall verify each compliance report 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. Respondent Eldorado 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, Respondent Eldorado shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

Provided, however, that, after the Decision and Order in this matter is issued as final, the reports due under this ~~the~~ Separate Order may be consolidated with, and submitted to the Commission on the same timing as, the compliance reports required to be submitted by Respondent Eldorado pursuant to the Decision and Order.

IX. Change in Respondent

IT IS FURTHER ORDERED that Respondent Eldorado shall notify the Commission at least 30 days prior to:

- A. The dissolution of Eldorado Resorts, Inc.;
- B. The acquisition, merger, or consolidation of Eldorado Resorts, Inc.; or
- C. Any other change in Respondent Eldorado, including assignment and the creation, sale, or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

X. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with the Orders, 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 the Orders, registered office of its United States subsidiary, or its headquarters office, Respondent Eldorado shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission

XII. Term

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate at the earlier of:

- A. 3 business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. With respect to each of the Divested Casinos, the day after Respondent Eldorado (or a Divestiture Trustee) completes the divestiture of the Casino Assets required by Paragraph II of the Decision and Order;

Provided, however, that if at the time such divestitures have been completed, the Decision and Order in this matter is not yet final, then this Hold Separate Order shall terminate three business days after the Decision and Order becomes final

Provided, further, however, that if the Commission, pursuant to Paragraph II of the Decision and Order, requires the Respondent to rescind the divestitures to Twin River, then, upon rescission, the requirements of this Hold Separate Order shall again be in effect until the day after Respondent Eldorado (or a Divestiture Trustee's) completion of the divestiture of the assets required by the Decision and Order.

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

April J. Tabor
Secretary

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ISSUED: - X Q H