

Complaint

IN THE MATTER OF

PENN NATIONAL GAMING, INC.,
AND
PINNACLE ENTERTAINMENT, INC.

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

Docket No. C-4658; File No. 181 0011

Complaint, September 28, 2018 – Decision, February 21, 2019

This consent order addresses the \$2.8 billion acquisition by Penn National Gaming, Inc. of certain assets of Pinnacle Entertainment, Inc. The complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by eliminating meaningful and substantial competition between Penn and Pinnacle for casino services in the St. Louis, Kansas City, and Cincinnati area markets. The consent order requires Penn to divest to Boyd Gaming Corporation: (1) one of Pinnacle's casinos in the St. Louis, Missouri area, the Ameristar Casino Resort Spa in St. Charles; (2) Pinnacle's only casino in the Kansas City, Missouri area, the Ameristar Kansas City Casino Hotel; and (3) both of Pinnacle's casinos in the Cincinnati, Ohio area: the Belterra Casino Resort in Florence, Indiana, and the Belterra Park casino and racetrack in Cincinnati.

Participants

For the *Commission*: Maria DiMoscato, Rohan Pai, and Cathleen Williams.

For the *Respondents*: Nelson O. Fitts and Katharine R. Haigh, Wachtell, Lipton, Rosen & Katz; Clifford H. Aronson, Thomas Pak, and Kenneth B. Schwartz, Skadden, Arps, Slate, Meagher & Flom LLP.

COMPLAINT

1. Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Penn National Gaming, Inc. ("PNG"), a corporation subject to the jurisdiction of the Commission, agreed to acquire Respondent Pinnacle Entertainment, Inc. ("Pinnacle"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

2. Respondent PNG is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its headquarters and

Complaint

principal place of business located at 825 Berkshire Boulevard, Suite 200, Wyomissing, Pennsylvania.

3. Respondent Pinnacle 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 3980 Howard Hughes Parkway, Las Vegas, Nevada.

II. JURISDICTION

4. Respondents, and each of their relevant operating subsidiaries and parent entities, are, and at all times relevant herein have been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

III. THE ACQUISITION

5. Pursuant to an Agreement and Plan of Merger dated as of December 17, 2017, PNG proposes to acquire Pinnacle in a cash and stock transaction valued at approximately \$2.8 billion (“the Acquisition”).

IV. THE RELEVANT MARKETS

6. The relevant line of commerce in which to analyze the effects of the Acquisition is casino services. Casino services include a combination of slot machine, video poker machine, and table gaming (*i.e.*, gambling) services, and associated amenities that are used to drive gaming revenue, which typically include some combination of hotel accommodations, food and beverages, entertainment, and other amenities.

7. The three relevant geographic markets in which to analyze the effects of the Acquisition are: (1) the St. Louis area, which approximately corresponds to, the St. Louis, Missouri MSA; (2) the Kansas City area, which approximately corresponds to, the Kansas City, Missouri MSA; and (3) the Cincinnati area, which approximately corresponds to, the Cincinnati, Ohio MSA.

V. THE STRUCTURE OF THE MARKETS

A.

Casino Services in the St. Louis Area

7. Casino services in the St. Louis area is a relevant market. The Acquisition will reduce the number of providers of casino services in the St. Louis area from four to three and result in a highly concentrated market.

Complaint

B.**Casino Services in the Kansas City Area**

8. Casino services in the Kansas City area is a relevant market. The Acquisition will reduce the number of providers of casino services in the Kansas City area from five to four and result in a highly concentrated market.

C.**Casino Services in the Cincinnati Area**

9. Casino services in the Cincinnati area is a relevant market. The Acquisition will reduce the number of providers of casino services in the Cincinnati area from five to four and result in a highly concentrated market.

VI. ENTRY CONDITIONS**A.****Entry Conditions in the St. Louis Area**

10. Entry into the St. Louis area market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition. The state of Missouri allows for the licensing of 13 riverboat casinos across the state, and all 13 licenses have been awarded. The state of Illinois caps the number of permitted riverboat casinos at 10, and all 10 licenses have been awarded. The relocation of any existing Missouri or Illinois riverboat casino to the St. Louis area to deter or counteract the anticompetitive effects described in Paragraphs 13-14 is unlikely to occur in a timely manner because of, among other things, the time and cost associated with acquiring the necessary state, county, and city approvals.

B.**Entry Conditions in the Kansas City Area**

11. Entry into the Kansas City area market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition. The state of Missouri allows for the licensing of 13 riverboat casinos across the state, and all 13 licenses have been awarded. The state of Kansas limits the number of permitted casinos in the state to four, and all four licenses have been awarded. The relocation of any existing Missouri riverboat casino to the Missouri side of the Kansas City area to deter or counteract the anticompetitive effects described in Paragraphs 13-14 is unlikely to occur in a timely manner because of, among other things, the time and cost associated with acquiring the necessary state, county, and city approvals.

C.**Entry Conditions in the Cincinnati Area**

12. Entry into the Cincinnati area market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition. The state of Ohio allows for the licensing of four casinos and seven racinos across the state, and all of these licenses have

Order to Maintain Assets

been awarded. The state of Indiana limits the number of casinos in the state to a total of 13, with 11 casinos and two racinos. All of these licenses have been granted. The state of Kentucky does not permit casino gaming. The relocation of any existing Indiana riverboat casino to the Indiana side of the Cincinnati area to deter or counteract the anticompetitive effects described in Paragraphs 13-14 is unlikely to occur in a timely manner because of, among other things, the time and cost associated with acquiring the necessary state, county, and city approvals.

VII. EFFECTS OF THE ACQUISITION

13. The Acquisition, if consummated, is likely to substantially lessen competition in the relevant line of commerce in the following ways, among others:

- a. by eliminating direct and substantial competition between Respondents PNG and Pinnacle; and
- b. by increasing the likelihood that Respondent PNG will unilaterally exercise market power.

14. The ultimate effect of the Acquisition would be to increase the likelihood that prices of casino services will increase, and that the quality associated with casino services will decrease, in the relevant geographic markets.

VIII. VIOLATIONS CHARGED

15. The agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, Federal Trade Commission on this twenty-eighth day of September, 2018, issues its complaint against said Respondents.

By the Commission, Commissioner Wilson not participating.

ORDER TO MAINTAIN ASSETS

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") (hereinafter referred to as "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

Order to Maintain Assets

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.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in 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 Maintain Assets:

1. Respondent Penn National Gaming, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its corporate head offices and principal place of business located at 825 Berkshire Boulevard, Suite 200, Wyomissing, Pennsylvania 19610.
2. Respondent Pinnacle Entertainment, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head offices and principal place of business located at 3980 Howard Hughes Parkway, Las Vegas, Nevada 89169.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

I. (Definitions)

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

- A. “Asset Maintenance Period” means, for each of the Assets To Be Maintained, the period commencing on the date this Order to Maintain Assets is issued by the Commission and ending on the respective Divestiture Date.
- B. “Assets To Be Maintained” means each of the Divested Casinos, and the Casino Business and Casino Assets related thereto.

Order to Maintain Assets

C. “Decision and Order” means:

1. The proposed Decision and Order contained in the Consent Agreement in this matter until issuance of a final Decision and Order by the Commission; and
2. The Final Decision and Order issued by the Commission in this matter, following the issuance of a final Decision and Order by the Commission.

II. (Asset Maintenance)**IT IS FURTHER ORDERED** that during the Asset Maintenance Period:

- A. Respondents shall take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Assets To Be Maintained, to minimize any risk of loss of competitive potential of the Assets To Be Maintained, to operate the Assets To Be Maintained in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Assets To Be Maintained, except for ordinary wear and tear. Respondents shall not sell, transfer, encumber, or otherwise impair the Assets To Be Maintained (other than in the manner prescribed in the Decision and Order), nor take any action that lessens the full economic viability, marketability, or competitiveness of the Assets To Be Maintained.
- B. Respondents shall not terminate the operation of any of the Assets To Be Maintained, and shall conduct or cause to be conducted the business and operations of the Assets To Be Maintained in the 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 Assets To Be Maintained, 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 Assets To Be Maintained. Included in the above obligations, Respondents shall, without limitation:
 1. Maintain all operations of the Assets To Be Maintained in the regular course of business and in accordance with past practices, keep the organization and properties of the Assets To Be Maintained intact, and not reduce operating hours, marketing and promotional efforts, customer programs, entertainment offerings, or other services, amenities, or offerings;
 2. Make any payment required to be paid under any contract or lease when due, and otherwise satisfy all liabilities and obligations associated with the Assets To Be Maintained;

Order to Maintain Assets

3. Provide the Assets To Be Maintained with sufficient funds to operate at least at current rates of operation, to meet all capital calls, to perform routine or necessary maintenance, to repair or replace facilities and equipment (including gaming equipment), and to carry on at least at their scheduled pace all capital projects, business plans, development projects, promotional activities, and marketing activities;
4. Provide such other resources as may be necessary to respond to competition against the Assets To Be Maintained, prevent diminution in sales of the Assets To Be Maintained, and maintain the competitive strength of the Assets To Be Maintained;
5. Provide support services at levels customarily provided by Respondents;
6. Maintain all licenses, permits, approvals, authorizations, or certifications related to or necessary for the operation of the Assets To Be Maintained, and otherwise operate the Assets To Be Maintained in accordance and compliance with all regulatory obligations and requirements;
7. Maintain the books and records (including but not limited to all customer databases, loyalty program databases, and records relating to regulatory compliance) of the Assets To Be Maintained;
8. Maintain the working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with the Assets To Be Maintained, including:
 - a. Continuing to provide each of the Key Employees and Casino Employees with all employee benefits offered by Respondents, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all benefits;
 - b. Providing reasonable financial incentives to encourage Key Employees and Casino Employees to continue in his or her position until the Divestiture Date, and as may be necessary to facilitate the employment of such Key Employees and Casino Employees by the proposed Acquirer following the Divestiture Date;
 - c. When vacancies occur, replacing the employees in the regular and ordinary course of business, in accordance with past practice; and
 - d. Not transferring any employees from any of the Assets To Be Maintained to any of Respondents' assets or businesses that Respondents will not divest;

Order to Maintain Assets

9. Not display any signs or conduct any advertising or promotions (e.g., direct mailing, emails, social media postings), or do anything else visible to the public to indicate that Respondent is moving its operations to another location, or that indicates any of the Assets To Be Maintained will close;
10. Not reduce, change, or modify in any material respect, the level of marketing, promotional, pricing, or advertising practices, programs, and policies for the Assets To Be Maintained (including Respondent Pinnacle's mychoice customer rewards program), other than changes in the ordinary course of business consistent with changes made at Respondent Pinnacle's other casino businesses that Respondents will not divest; and
11. Not target, encourage, or convert customers of Divested Casinos to become customers of Respondents' other casino businesses 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 Respondents from engaging in advertising, marketing, and promotion activities: (i) generally applicable to all of Respondent Pinnacle's casinos or mychoice members, or (ii) in the ordinary course of business and in accordance with past practice.

Provided, however, that Respondents shall not be in violation of this Paragraph II if Respondents take actions (i) that are explicitly permitted or required by any Divestiture Agreement, or (ii) that have been requested or agreed-to by an Acquirer, in writing, and approved in advance by the Monitor (in consultation with Commission staff), in all cases to facilitate the Acquirer's acquisition of Casino Assets and consistent with the purposes of the Decision and Order.

III. (Additional Obligations)

IT IS FURTHER ORDERED that:

- A. During the Asset Maintenance Period, Respondents shall not:
 1. Provide, disclose, or otherwise make available any Confidential Business Information to any person, except as required or permitted by this Order to Maintain Assets, the Decision and Order, or a Divestiture Agreement; or
 2. Use any Confidential Business Information for any reason or purpose, other than: as required or permitted by this Order to Maintain Assets, the Decision and Order, or a Divestiture Agreement;

Order to Maintain Assets

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

- B. Respondents shall devise and implement measures to protect against the storage, distribution, and use of Confidential Business Information by Respondents that is not permitted by this Order to Maintain Assets, the Decision and Order, or any Divestiture Agreement. These measures shall include, but not be limited to, restrictions placed on access by any persons to information available or stored on any of Respondents' computers or computer networks.
- C. Not later than 30 days from the date this Order to Maintain Assets is issued, Respondents shall:
 - 1. Provide written notification of the restrictions on the use and disclosure of the Confidential Business Information by all of its officers, directors, employees, or agents who may have possession or access to such Confidential Business Information; and
 - 2. 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.
- D. During the Asset Maintenance Period, Respondents, in consultation with each proposed Acquirer, for the purposes of ensuring an orderly transition, shall:
 - 1. Develop and implement a detailed transition plan to ensure that the commencement of the operation of the Casino Assets by the Acquirer is not delayed or impaired by the Respondents;
 - 2. Designate employees of Respondents knowledgeable about the operation of the Casino Assets, and Casino Business conducted at the Divested Casinos, who will be responsible for communicating directly with the Acquirer, and the Monitor (if one has been appointed), for the purposes of assisting in the transfer to the Acquirer of the Casino Assets;
 - 3. Allow the Acquirer reasonable access to all Confidential Business Information related to the Casino Assets and to employees who possess or are able to locate such information; and

Order to Maintain Assets

4. Establish projected timelines for accomplishing all tasks necessary to effect the operational and marketing transition to the Acquirer in an efficient and timely manner.
- E. 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 to Maintain Assets and the Decision and 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.
- F. Respondents shall cooperate with and assist any person with whom Respondents engage in negotiations to acquire the Casino Assets in a due diligence investigation, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process.
- G. Respondents shall cooperate with and assist any proposed Acquirer of the Casino Assets to evaluate independently and offer employment to the 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; and
 - 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 to:
 - 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

Order to Maintain Assets

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; and

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 non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those 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 to Maintain Assets shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee.

IV. (Purpose Clause)

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to (i) maintain and preserve the Casino Assets, and the Casino Business conducted at each of the Divested Casinos, as viable, marketable, competitive, and ongoing businesses until the divestitures required by the Decision and Order is achieved; (ii) prevent interim harm to competition pending the relevant divestiture and other relief; and (iii) promote achieving the purposes of the Decision and Order.

V. (Monitor)

IT IS FURTHER ORDERED that:

- A. Jeffrey Hartmann shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents, and attached to the Decision and Order as Appendix IV (“Monitor Agreement”) and Non-Public Appendix IV-1 (“Monitor Compensation”). The Monitor is appointed to monitor Respondents’ compliance with the terms of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreements;
- B. No later than 1 day after the Acquisition Date, Respondents shall, pursuant to the Monitor Agreement, confer on the Monitor all rights, powers, and authorities necessary to permit the Monitor to monitor Respondents’ compliance with the terms of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreements, in a manner consistent with the purposes of the orders.
- C. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

Order to Maintain Assets

1. The Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and related requirements of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreements, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the orders and in consultation with the Commission.
 2. The Monitor shall act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondents or of the Commission
 3. The Monitor shall serve until all of Respondents' obligations under Paragraphs II and IV of the Decision and Order have been satisfied.
- D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with its obligations under this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement(s).
- E. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement(s).
- F. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
- G. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's 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, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph V.G, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph V.F of this Order to Maintain Assets.
- H. Respondents shall report to the Monitor in accordance with the requirements of this Order to Maintain Assets and the Decision and Order, and as otherwise

Order to Maintain Assets

provided in the Monitor Agreement approved by the Commission. The Monitor shall evaluate the reports submitted by the Respondents with respect to the performance of Respondents' obligations under this Order to Maintain Assets and the Decision and Order. Within 30 days from the date the Monitor receives the first such report, and every 90 days thereafter (and otherwise as the Commission or its staff may request), the Monitor shall report in writing 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 to Maintain Assets, the Decision and Order, 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 to Maintain Assets.
- M. The Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order

Order to Maintain Assets

VI. (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 the Decision and Order, no later than 5 days from each respective divestiture date.
- B. Within 30 days after this Order to Maintain Assets is issued, and every 30 days thereafter until this Order to Maintain Assets terminates, Respondents shall submit to the Commission verified written reports (“compliance reports”) setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all provisions of this Order to Maintain Assets. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with this Order to Maintain Assets. Conclusory statements that Respondents have complied with their obligations under this Order to Maintain Assets 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 this Order to Maintain Assets.
- C. 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.

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

VII. (Change in Respondents)

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

- A. Any proposed dissolution of Respondent Penn National Gaming, Inc.;

Order to Maintain Assets

- B. Any proposed acquisition, merger, or consolidation of Respondent Penn National Gaming, Inc.; or
- C. Any other change in Respondent Penn National Gaming, Inc., including but not limited to assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order to Maintain Assets.

VIII. (Access)

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in the Decision and Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the 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 Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order to Maintain Assets, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

IX. (Term)

IT IS FURTHER ORDERED that this Order to Maintain Assets 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 Divested Casino, the day after Respondents' (or a Divestiture Trustee's) completion of the divestiture of the Casino Assets related to such Divested Casino, as described in and required by 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 Order to Maintain Assets shall terminate three business days after the Decision and Order becomes final.

Decision and Order

Provided, further, however, that if the Commission, pursuant to Paragraph II.B of the Decision and Order, requires the Respondents to rescind any or all of the divestitures to Boyd, then, upon rescission, the requirements of this Order to Maintain Assets shall again be in effect with respect to the relevant Casino Assets until the day after Respondents' (or a Divestiture Trustee's) completion of the divestiture of those assets, as required by the Decision and Order.

By the Commission, Commissioner Wilson not participating.

DECISION

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.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in 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; at the same time, it issued and served its complaint and Order to 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 Penn National Gaming, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of

Decision and Order

Pennsylvania, with its corporate head offices and principal place of business located at 825 Berkshire Boulevard, Suite 200, Wyomissing, Pennsylvania 19610.

2. Respondent Pinnacle Entertainment, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head offices and principal place of business located at 3980 Howard Hughes Parkway, Las Vegas, Nevada 89169.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER**I. (Definitions)**

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

- A. “Penn National” means Penn National Gaming, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Penn National Gaming, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Penn National includes Pinnacle after the Acquisition Date.
- B. “Pinnacle” means Pinnacle Entertainment, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates case controlled by Pinnacle Entertainment, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Boyd” means Boyd Gaming Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its offices and principal place of business located at 3883 Howard Hughes Parkway, Ninth Floor, Las 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.

Decision and Order

- 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.

Decision and 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;

Decision and Order

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);

Decision and Order

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);
7. Any other data and information customarily used by Respondents at, 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; 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 at any time between December 1, 2017, and the Divestiture Date; and (2) the shared services employees identified on Non-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);

Decision and Order

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, sub-lease, license, and other agreement or obligation of any kind.
- U. “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 Transitional Services. “Direct Cost” to a Commission-approved Acquirer for its use of any of Respondents’ employees’ labor shall not exceed the then-current average wage rate for such employee, including benefits.
- V. “Divested Casino(s)” means, collectively or individually, Ameristar St. Charles, Ameristar Kansas City, Belterra Casino, and Belterra Park.
- W. “Divestiture Agreement” means:
1. The Boyd Divestiture Agreement; or
 2. Any other agreement between Respondents (or a Divestiture Trustee appointed pursuant to Paragraph IX of this Order) and an Acquirer to purchase any or all of the Casino Assets, and all amendments, exhibits, attachments, ancillary agreements (including any Transition Services Agreement and Brand License), and schedules thereto, that have been approved by the Commission to accomplish the requirements of this Order.
- X. “Divestiture Date” means, with respect to each of the divestitures required by Paragraph II.A of this Order, the date upon which the respective divestiture closes.
- Y. “Employee Information” means, for each Casino Employee and Key Employee, a profile prepared by Respondents summarizing the employment history of each

Decision and Order

employee and including, as requested by the proposed Acquirer and to the extent permitted by applicable law:

1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee's responsibilities;
 3. The base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year, and current target or guaranteed bonus, if any;
 5. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 7. At the Proposed Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.
- Z. "Governmental Authorization" means any license, registration, approval, or permit issued, granted, given or otherwise made available by or under the authority of any governmental agency or pursuant to any legal requirement, and all applications and documents related thereto, related to or necessary for the operation of the Casino Business (and any other lawful business) at each of the Divested Casinos.
- AA. "Key Employees" means the individuals listed on Non-Public Appendix II to this Order.
- 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 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.
- DD. "Order to Maintain Assets" means the Order to Maintain Assets (including any modifications thereto) issued by the Commission in this matter.

Decision and Order

EE. “Respondent Corporate Contracts” means:

1. Contracts that are used solely by, or relate exclusively to, assets owned by Respondents other than the Divested Casinos; and
2. Contracts that are used by or relate to all of the casinos owned by Respondent Pinnacle, including but not limited to the Divested Casinos, and identified on Non-Public Appendix III to this Order.

FF. “Retained Customer Database Records” means the data and information, wherever located and however stored, relating to customers that visit Respondents’ 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 Respondents’ 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 Respondents’ 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 Respondents’ casinos or hotels other than a Divested Casino or value as a consumer of Casino Services at Respondents’ 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 Respondents’ properties other than a Divested Casino;
4. Each person’s tier status 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 Divested Casinos);
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 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 other similar incentives);

Decision and Order

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 transitional 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.

Decision and Order

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

Decision and Order

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 manner that ensures its completeness, accuracy, and usefulness. Respondents shall provide the Acquirer with access to Confidential Business Information, and employees who possess or are able to locate the Confidential Business Information, until Respondents complete delivery of such materials to the Acquirer in the manner required by this Paragraph.
- E. At least 30 days in advance of each Divestiture Date, Respondents, in consultation with each proposed Acquirer, for the purposes of ensuring an orderly transition, shall:
 - 1. Develop and implement a detailed transition plan to ensure that the commencement of the operation of the Casino Assets by the Acquirer is not delayed or impaired by the Respondents;
 - 2. Designate employees of Respondents knowledgeable about the operation of the Casino Assets, and Casino Business conducted at the Divested Casinos, who will be responsible for communicating directly with the Acquirer, and the Monitor (if one has been appointed), for the purposes of assisting in the transfer to the Acquirer of the Casino Assets;
 - 3. Allow the Acquirer reasonable access to all Confidential Business Information related to the Casino Assets and to employees who possess or are able to locate such information; and
 - 4. Establish projected timelines for accomplishing all tasks necessary to effect the operational and marketing transition to the Acquirer in an efficient and timely manner.
- F. Respondents shall cooperate with and assist any person with whom Respondents engage in negotiations to acquire the Casino Assets in a due diligence investigation, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process.

Decision and Order

- G. The purpose of this Order is to remedy the harm to competition resulting from the Acquisition as alleged in the Commission's Complaint, and to ensure Boyd (or another Acquirer(s) approved by the Commission) can operate the Divested Casinos as an independent, viable and effective competitor and in a manner equivalent in all material respects to the manner in which Pinnacle operated the Divested Casinos prior to the Acquisition.

III. (Divestiture Agreements)**IT IS FURTHER ORDERED** that:

- A. The Divestiture Agreements shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms of the Divestiture Agreements shall constitute a violation of this Order; *provided, however*, that the Divestiture Agreements shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in any Divestiture Agreement varies from or conflicts with any provision in the Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order.
- B. Respondents shall not modify, replace, or extend the terms of a Divestiture Agreement after the Commission issues this Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

IV. (Transitional Assistance)**IT IS FURTHER ORDERED** that:

- A. Respondents shall provide the Acquirer with Transition Services sufficient to enable the Acquirer to transfer the Casino Assets efficiently and operate the Casino Business at the Divested Casinos in a manner equivalent in all material respects to the manner in which Pinnacle operated the Casino Business at the Divested Casinos prior to the Acquisition, in accord with the following:
1. Respondents shall provide Transition Services to an Acquirer:
 - a. As set forth in a Divestiture Agreement; and
 - b. As otherwise reasonably requested by the Acquirer (including before the Divestiture Date, if so requested);
 2. Respondents shall provide Transition Services at no more than Respondents' Direct Cost;
 3. Respondents shall provide Transition Services, as requested by the Acquirer, for at least 24 months after the Divestiture Date;

Decision and Order

4. Respondents shall allow the Acquirer to terminate, in whole or part, any agreement for Transition Services upon commercially reasonable notice and without cost or penalty.

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 the 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; and
 - 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 to:
 - 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 non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by a proposed

Decision and Order

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. Respondents 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 Respondents, 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, Respondents 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, an 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. Respondents advertise 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. Respondents hire a Key Employee who has applied for employment with Respondents, 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, Respondents 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, an 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. Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at any one or more of the employees of the Acquirer; or

Decision and Order

3. Respondents hire a Casino Employee who has applied for employment with Respondents, provided that such application was not solicited or induced in violation of this Order.

VI. (Additional Obligations)**IT IS FURTHER ORDERED** that:

- A. After the Divestiture Date, Respondents shall not:
 1. Provide, disclose, or otherwise make available any Confidential Business Information to any person, except as required or permitted by this Order or a Divestiture Agreement; or
 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 shall prevent Respondents from retaining and using any tangible or intangible property (including Retained Customer Database Records) that Respondents retain the right to use pursuant to this Order, provided further that to the extent that the use of such property involves disclosure of Confidential Business Information to another person, Respondents shall require such person to maintain the confidentiality of such Confidential Business Information under terms no less restrictive than Respondents' obligations under this Order.
- B. Respondents shall devise and implement measures to protect against the storage, distribution, and use of Confidential Business Information that is not permitted by this 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 Respondents' computers or computer networks.
- C. Not later than 30 days after the Divestiture Date, and not less than annually for 3 years after the Divestiture Date, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information by Respondents' personnel to all of its officers, directors, employees, or agents who may have possession or access to such Confidential Business Information. Respondents 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

Decision and Order

- D. Notwithstanding this Paragraph VI of this Order, and subject to the Order to Maintain Assets, Respondent may use Confidential Business Information:
1. For the purpose of performing Respondents' obligations under this Order, the Order to Maintain Assets, or the Divestiture Agreements; and
 2. To ensure compliance with legal and regulatory requirements, or as necessary to defend against legal claims.

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; and
- B. Respondents shall not terminate the operation of any of the Casino Assets, and shall conduct or cause to be conducted the business and operations 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 VII if Respondents take actions (i) as explicitly permitted or required by any Divestiture Agreement, or (ii) that have been requested or agreed-to by an Acquirer, in writing, and 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 the Order.

VIII. (Monitor)

IT IS FURTHER ORDERED that:

- A. Jeffrey Hartmann shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents, and attached as Appendix IV ("Monitor

Decision and Order

Agreement”) and Non-Public Appendix IV-1 (“Monitor Compensation”). The Monitor is appointed to monitor Respondents’ compliance with the terms of this Order, the Order to Maintain Assets, and the Divestiture Agreements;

- B. No later than 1 day after the Acquisition Date, Respondents shall, pursuant to the Monitor Agreement, confer on the Monitor all rights, powers, and authorities necessary to permit the Monitor to monitor Respondents’ compliance with the terms of this Order, the Order to Maintain Assets, and the Divestiture Agreements, in a manner consistent with the purposes of the orders.
- C. Respondents 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 Respondents’ compliance with the divestiture and related requirements of this Order, the Order to Maintain Assets, and the Divestiture Agreements, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the orders and in consultation with the Commission.
 - 2. The Monitor shall act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondents or of the Commission.
 - 3. The Monitor shall serve until all of Respondents’ obligations under Paragraphs II and IV of this Order have been satisfied.
- D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents’ personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents’ compliance with its obligations under this Order, the Order to Maintain Assets, and the Divestiture Agreement(s).
- E. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor’s ability to monitor Respondents’ compliance with this Order, the Order to Maintain Assets, and the Divestiture Agreement(s).
- F. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor’s duties and responsibilities.

Decision and Order

- G. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's 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, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph VIII.G, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph VIII.F of this Order.
- H. Respondents shall report to the Monitor in accordance with the requirements of this Order or the Order to Maintain Assets, and as otherwise provided in the Monitor Agreement approved by the Commission. The Monitor shall evaluate the reports submitted by the Respondents with respect to the performance of Respondents' obligations under this Order and the Order to Maintain Assets. Within 30 days from the date the Monitor receives the first such report, and every 90 days thereafter (and otherwise as the Commission or its staff may request), the Monitor shall report in writing 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

Decision and Order

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 Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), 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 IX 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(l) 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,

Decision and Order

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 1 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 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. Respondents shall develop such financial or other information as any Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede any Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondents shall extend the time under this Paragraph IX for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
 - d. Any Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest

Decision and Order

expeditiously and at no minimum price. The divestitures shall be made in the manner that receives the prior approval of the Commission and to an Acquirer that receives the prior approval of the Commission as required by this 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 Respondents from among those approved by the Commission; *provided further, however*, 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, 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 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 from gross negligence, malfeasance, willful or wanton acts, or bad faith by the Divestiture Trustee.

Decision and Order

- 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 to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestitures.
 - i. Respondents 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 IX.
- D. The Commission or, 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 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;

Decision and Order

- 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)

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

- A. Any proposed dissolution of Respondent Penn National Gaming, Inc.;
- B. Any proposed acquisition, merger, or consolidation of Respondent Penn National Gaming, Inc.; or
- C. Any other change in Respondent Penn National Gaming, Inc., including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

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 the relevant Respondent, made to its principal place of business as identified in this

Decision and Order

Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the 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 Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

XII. (Term)

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

By the Commission.

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]

Decision and Order

APPENDIX III

Respondent Corporate Contracts

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

APPENDIX IV

Monitor Agreement

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]

ANALYSIS OF CONSENT ORDERS TO AID PUBLIC COMMENT**I. INTRODUCTION AND BACKGROUND**

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (“Consent Order”) from Penn National Gaming, Inc. (“PNG”) and Pinnacle Entertainment, Inc. (“Pinnacle”). The purpose of the proposed Consent Order is to remedy the anticompetitive effects that otherwise would result from Penn’s acquisition of Pinnacle. Under the terms of the proposed Consent Order, Penn is required to divest to Boyd Gaming Corporation: (1) one of Pinnacle’s casinos in the St. Louis, Missouri area, the Ameristar Casino Resort Spa in St. Charles; (2) Pinnacle’s only casino in the Kansas City, Missouri area, the Ameristar Kansas City Casino Hotel; and (3) both of Pinnacle’s casinos in the Cincinnati, Ohio area: the Belterra Casino Resort in Florence, Indiana, and the Belterra Park casino and racetrack in Cincinnati. The divestitures must be completed within 10 days of Penn’s acquisition of Pinnacle.

The proposed Consent Order has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission again will review the proposed Consent Order and comments received, and decide whether it should withdraw the Consent Order, modify the Consent Order, or make it final.

On December 18, 2017, Penn agreed to acquire Pinnacle for approximately \$2.8 billion, including the assumption of debt. On September 28, 2018, the Commission issued an administrative complaint alleging that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by eliminating meaningful and substantial competition between Penn and Pinnacle for casino services in the St. Louis, Kansas City, and Cincinnati area markets. The elimination of this competition would have caused significant competitive harm, specifically higher prices and diminished quality and service levels in each of these markets. The proposed Consent Order would remedy the alleged violations by requiring divestitures in the three affected markets. The divestitures will establish a new independent competitor to Penn in each relevant area, replacing the competition that otherwise would be lost as a result of the proposed acquisition.

II. THE PARTIES

Penn is a publicly traded owner and manager of gaming and racing facilities, as well as video gaming terminal (“VGT”) operations, focused on slot machine entertainment. In the U.S. and Canada, Penn owns and operates 29 properties in 17 states, and manages one property in San Diego, California, and one in Orillia, Ontario. Penn is headquartered in Wyomissing, Pennsylvania, and operates most of its properties under its “Hollywood” brand. Penn also owns Prairie State Gaming, a VGT operator with more than 1,700 VGTs in bar and retail gaming establishments throughout Illinois. In the St. Louis area, Penn operates two casinos: the Hollywood Casino St. Louis, approximately 22 miles northwest of St. Louis in Maryland Heights, Missouri, and the Argosy Casino Alton, approximately 20 miles northeast of St. Louis

Analysis to Aid Public Comment

in Alton, Illinois. In Kansas City, Penn operates two casinos: the Hollywood Casino at Kansas Speedway, approximately 17 miles west of Kansas City, and the Argosy Casino Riverside, approximately five miles north of Kansas City. In Cincinnati, Penn operates the Hollywood Lawrenceburg casino, approximately 15 miles west of Cincinnati in Lawrenceburg, Indiana.

Headquartered in Las Vegas, Nevada, Pinnacle is a publicly traded casino entertainment operator and developer. Pinnacle owns and operates 16 properties across 10 states and manages a property near San Antonio, Texas. In the St. Louis area, Pinnacle owns and operates two casinos: the Ameristar Casino Resort Spa St. Charles (“Ameristar St. Charles”), approximately 22 miles west of downtown St. Louis, and the Ameristar Casino River City, approximately nine miles south of St. Louis in Lemay, Missouri. In Kansas City, Pinnacle operates the Ameristar Casino Hotel Kansas City (“Ameristar Kansas City”), approximately seven miles northeast of downtown Kansas City, Missouri. In Cincinnati, Pinnacle operates two facilities offering casino services: Belterra Park, a gaming and racetrack facility approximately 10 miles southeast of downtown Cincinnati, and Belterra Casino Resort (“Belterra Resort”), approximately 46 miles southwest of Cincinnati in Florence, Indiana.

III. CASINO SERVICES IN ST. LOUIS, KANSAS CITY, AND CINCINNATI

Penn’s proposed acquisition of Pinnacle poses substantial antitrust concerns for casino services. The casino services market consists of casino-based gaming services (e.g., slots and table games), as well as related amenities such as lodging, entertainment, and food and beverage services. Casino operators typically generate the vast majority of their revenues from gaming. Casino services differ significantly from other entertainment activities in a number of respects. For example, casinos are highly regulated, with a limited number of casinos licensed to operate in any given state and age restrictions on who can gamble. More generally, the casino experience differs greatly from other entertainment and leisure activities. Thus, consistent with prior Commission precedent, the evidence here supports a distinct relevant market consisting of casino services.

There are three relevant geographic markets in which to analyze the merger’s effects: (1) the St. Louis, Missouri, metropolitan area; (2) the Kansas City, Missouri, metropolitan area; and (3) the Cincinnati, Ohio, metropolitan area. Casinos in these markets tend to attract customers from the local vicinity, and view one another as competitors.

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

Analysis to Aid Public Comment

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

New entry or expansion is unlikely to deter or counteract the anticompetitive effects of the acquisition in the St. Louis, Kansas City, or Cincinnati area markets. The affected markets are insulated from new entry or expansion by significant regulatory barriers, including limitations on the number of casino licenses available and the ability to expand existing gaming operations. In the St. Louis area casino services market, Missouri and Illinois law limit the total number of casino licenses available, and both states have issued all their respective licenses. Both states have restrictions in their respective statutes and gaming license regulations that also make significant expansion by current market participants extremely unlikely. Similarly, in the Kansas City area market, Missouri and Kansas law limit the total number of casino licenses available and both states have issued all their respective licenses. Expansion in Missouri is unlikely and only limited expansion in Kansas is possible. Entry or repositioning would be unlikely to be sufficient to deter or counteract the anticompetitive effects of the proposed acquisition. In the Cincinnati area market, Ohio and Indiana law limit the total number of casino licenses available and both states have issued all their respective licenses. Expansion is possible in Ohio, but would be unlikely to deter or counteract the proposed acquisition's anticompetitive effects due to the time and expenses involved. Entry by a tribal casino is possible along the Ohio border, but would not likely be timely enough to deter or counteract the proposed acquisition's anticompetitive effects.

IV. THE PROPOSED CONSENT ORDER

The proposed Consent Order remedies the likely anticompetitive effects in each of the three markets by requiring divestitures to a Commission-approved buyer within 10 days of the acquisition's closing. Until the completion of each divestiture, the parties are required to abide by the Order to Maintain Assets, which requires them to maintain the viability, marketability, and competitiveness of the divestiture assets until the divestitures are completed. The proposed Consent Order appoints a Monitor to ensure the parties' compliance with the Order to Maintain Assets, Consent Order, and Divestiture Agreements following the divestiture.

Additionally, the proposed Consent Order requires the parties to provide transitional services to the approved acquirer for at least 24 months after the divestiture, as needed, to assist the acquirer with the transfer and operation of the divested assets. Finally, the proposed Consent Order contains standard terms regarding the acquirer's access to employees, protection of Material Confidential Information, and compliance reporting requirements, among other things.

Analysis to Aid Public Comment

A. St. Louis

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

B. Kansas City

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

C. Cincinnati

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

* * *

The sole purpose of this analysis is to facilitate public comment on the proposed Consent Order. This analysis does not constitute an official interpretation of the proposed Consent Order or modify its terms in any way.

Complaint

IN THE MATTER OF

**SOCIAL FINANCE, INC.,
AND
SOFI LENDING CORP.,
BOTH D/B/A SOFI**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT

*Docket No. C-4673; File No. 162 3197
Complaint, February 22, 2019 – Decision, February 22, 2019*

This consent order addresses Social Finance, Inc.’s and SoFi Lending Corp.’s savings claims regarding consumers refinancing their student loans with SoFi. The complaint alleges that SoFi makes savings claims that, as detailed below, misrepresent how much money students have saved, will save, or will likely save by refinancing their student loans with SoFi. The consent order prohibits SoFi from misrepresenting that consumers who obtain a credit product have saved, will save, or will likely save money, or a specific amount of money, over the lifetime of a credit product or over any other time period (*e.g.* monthly), including by representing that the amount of money saved over a specific time period will be zero when consumers will instead pay more money over that specific time period.

Participants

For the *Commission*: *Patrick Roy* and *Evan Zullow*.

For the *Respondents*: *John Direnfeld, Sulina Gabale, Antony Kim, and Garret Rasmussen, Orrick, Herrington & Sutcliffe, LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Social Finance, Inc., a corporation, also doing business as SoFi, and SoFi Lending Corp., a corporation, also doing business as SoFi (collectively, “Respondents” or “SoFi”) have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Social Finance, Inc., also doing business as SoFi, is a Delaware corporation with its principal office or place of business at One Letterman Drive, Building A, San Francisco, California 94129.

2. Respondent SoFi Lending Corp., also doing business as SoFi, is a California corporation with its principal office or place of business at 375 Healdsburg Avenue, Suite 280, Healdsburg, CA 95448. SoFi Lending Corp. is a wholly owned subsidiary of Respondent Social Finance, Inc.

3. Respondents have marketed, advertised, offered, and originated a variety of credit products to consumers, including unsecured loans for the purposes of refinancing consumers’