

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

ORIGINAL

COMMISSIONERS:

Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright



_____)
In the Matter of)

Pinnacle Entertainment, Inc.,)
a corporation; and,)

Docket No. 9355

Ameristar Casinos, Inc.,)
a corporation.)
_____)

**APPLICATION FOR APPROVAL OF DIVESTITURE OF
THE AMERISTAR LOUISIANA ASSETS**

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Paragraph II of the Decision and Order accepted for public comment by the Commission on August 12, 2013 in the above-captioned matter, Respondent Pinnacle Entertainment, Inc. (“Pinnacle”) respectfully submits this Application for Approval of Divestiture of the Ameristar Louisiana Assets¹ (“Application”) to GNLC Holdings, Inc., the parent company of Landry’s, Inc. (“Landry’s”).

¹ Capitalized terms not defined in this Application have the definition given to them in the Decision and Order.

I. Background

On December 20, 2012, Pinnacle entered into an agreement to acquire Ameristar Casinos, Inc. (“Ameristar”) (together with Pinnacle “Respondents”). On May 31, 2013, the Commission served on Respondents a Complaint alleging that the acquisition would result in increased prices and lower quality for customers in the St. Louis, Missouri area, where Pinnacle and Ameristar both operate casinos, and in the Lake Charles, Louisiana area, where Pinnacle operates a casino and Ameristar is building a casino scheduled to open in 2014.

On August 2, 2013, Respondents executed an Agreement Containing Consent Orders (“Consent Agreement”) that included an Order to Hold Separate and Maintain Assets (“Hold Separate Order”) and a Decision and Order, which, if approved, would require Respondents to divest the Ameristar Louisiana Assets and the Lumiere Assets. On August 5, 2013, the Commission entered an Order Withdrawing Matter from Adjudication for the Purpose of Considering a Proposed Consent Agreement. On August 12, 2013, the Commission accepted the Consent Agreement and issued the Order to Hold Separate and Maintain Assets. On August 13, 2013, Pinnacle closed its acquisition of Ameristar.

This Application seeks approval of the proposed divestiture of the Ameristar Louisiana Assets to Landry’s. Respondents desire to complete the proposed divestiture of the Ameristar Louisiana Assets as soon as possible following the Commission’s approval of the Decision and Order and this Application, and the satisfaction of other closing conditions, including the approval of the Louisiana Gaming Control Board (“LGCB”). Prompt consummation of the proposed divestiture will further the purposes of the Decision and Order and is in the interest of the Commission and the public.

II. Request for Confidential Treatment

This Application contains confidential and competitively sensitive information relating to Respondents, the divestiture of the Ameristar Louisiana Assets, and the proposed Acquirer. Pursuant to Sections 6(f) and 21(c) of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2(c), and Sections 2.41(f), 4.9 and 4.10 the Commission's Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(f), 4.9 and 4.10, Pinnacle requests that nonpublic, commercially or competitively sensitive information contained in this Application be treated by the Commission as strictly confidential and not be made available to the public. The disclosure of this information would prejudice Pinnacle and Landry's, cause harm to the ongoing competitiveness of the Ameristar Louisiana Assets, and impair Pinnacle's ability to comply with its obligations under the Decision and Order. Pinnacle requests that the Commission inform it immediately if the Commission cannot treat the confidential information contained in this Application as confidential in order to provide Pinnacle an opportunity to seek relief.

For the convenience of maintaining the public record, Pinnacle is submitting two versions of this Application. The Confidential Version contains the information necessary to enable the Commission to assess the Application. The Public Version redacts confidential and proprietary information.

III. The Proposed Divestiture

On July 24, 2013, Pinnacle and Landry's entered into an agreement for the sale of the Ameristar Louisiana Assets.² The principle terms of the sale of the Ameristar Louisiana Assets to Landry's are described in the Membership Interests Purchase Agreement dated July 24, 2013 between GNLC Holdings, Inc., Pinnacle Entertainment, Inc. Ameristar Casino Lake Charles,

² In the previous year, there have been no sales or other transactions between Pinnacle and Landry's.

LLC, and Ameristar Lake Charles Holdings, LLC (“Purchase Agreement”), which is attached as Confidential Exhibit A. Additional documents discussing the divestiture are attached in Confidential Exhibit B.

The precise formula for determining the Purchase Price is defined in Exhibit A to the Purchase Agreement. Landry’s has paid a \$50 million deposit as part of the transaction and will pay total consideration equal to all cash expenditures on the development of the Ameristar Louisiana Casino up until the date of closing, and either pay for or assume all outstanding payables related to the project at that time, less a \$37 million credit. Ameristar has previously reported that the cost of the Lake Charles construction project (including the original purchase price and escrow deposits) was expected to be between \$570-\$580 million, excluding capitalized interest and pre-opening expenses and that, through June 30, 2013, it had invested total capital of \$213.9 million in the Lake Charles project, including the original purchase price, capital expenditures and escrow deposits. Pinnacle expects the final purchase price at closing will be in the range of [REDACTED]. A portion of the consideration, \$10 million, will not be due until July 2016; however, this payment is not contingent upon any other event or the performance of Landry’s casino operations; nor is it secured by any interest in the assets to be divested. *See* Sections 1.3, 1.5, and 1.9 of the Purchase Agreement.³

As provided in Sections IV and V below, the proposed Acquirer Landry’s has the necessary financial, professional, and operational capacity to ensure that the Ameristar Louisiana Assets will continue to be developed into a competitive casino operating in the Lake Charles, Louisiana area, and the proposed divestiture conveys all the Ameristar Louisiana Assets.

³ Schedule A to the Purchase Agreement illustrates how the Purchase Price will be calculated. A \$25 million escrow deposit with the LGCB will only be released to Pinnacle upon the opening of Landry’s Lake Charles casino. This amount was previously deposited by Ameristar in escrow under an agreement with the LGCB, and pursuant to the conditions of the gaming license issued by the LGCB. *See* Section 6.23 of the Purchase Agreement.

Consequently, the proposed divestiture will accomplish the purposes of the Decision and Order as they relate to the Lake Charles area by creating an independent, viable, and effective competitor in the relevant market in which Ameristar was engaged at the time of the announcement of the Acquisition of Ameristar by Pinnacle.

IV. The Proposed Acquirer is Well-Qualified to be a Viable Competitor

A. Landry's is Financially Capable

Landry's is a privately owned, national, diversified restaurant, hospitality and entertainment company with over 500 properties and 40 unique brands, including the Golden Nugget Hotels and Casinos, Morton's The Steakhouse and McCormick & Schmick's.⁴ Landry's is headquartered in Houston, Texas, one of the primary sources of customers for casinos in Lake Charles, Louisiana.⁵ In addition to its headquarters, Landry's already has a significant presence in South Texas, where it owns and operates over 90 restaurants as well as various entertainment complexes. Landry's and GNLC Holdings, Inc., are indirectly owned by Tilman J. Fertitta. Tilman J. Fertitta is the sole shareholder of Fertitta Entertainment, Inc., the indirect parent of Golden Nugget, Inc. Fertitta Entertainment, Inc. is also the indirect Parent of Landry's Inc. An illustration of the corporate structure is attached hereto as Confidential Exhibit C. As indicated in the enclosed corporate structure, the Lake Charles operating company (currently Ameristar Casino Lake Charles, LLC) will be an indirect subsidiary of Golden Nugget, Inc. In connection with the acquisition, the development will be funded by financing to be entered into in the future between the Golden Nugget, Inc. and its lenders. Fertitta Entertainment, Inc. currently holds in

⁴ Pinnacle understands that Landry's will provide the Commission with a copy of its June 30, 2013 financial statements.

⁵ Landry's name and address are as follows: GNLC Holdings, Inc., c/o Landry's Inc., 1510 West Loop South Houston, Texas 77027. Staff may obtain, as necessary, additional confidential information directly from Landry's General Counsel Steven L. Scheinthal at (713) 386-7014 or SScheinthal@ldry.com.

excess of [REDACTED] in unencumbered cash, a portion of which will be used for an equity contribution of capital to Golden Nugget, Inc. in connection with the financing of the Lake Charles project. Landry's has been in active discussions with its lenders and evaluating various proposed financing alternatives for the Lake Charles project, which it anticipates to have finalized prior to closing.

B. Landry's Has Substantial Experience Developing and Operating Casinos

In September 2005, Landry's entered into the casino entertainment industry, when it acquired the Golden Nugget Hotels and Casinos located in Las Vegas and Laughlin, Nevada. Since then, Landry's has proven to be an innovative casino developer with an established record of successfully acquiring, renovating, and operating casinos. For example, in 2011, Landry's acquired the Trump Marina in Atlantic City, which is now the Golden Nugget Atlantic City. Landry's quickly transformed the property, investing over \$170 million and completely renovating every room, as well as the casino, and adding branded restaurants and an enticing retail mall. In late 2012, Landry's acquired the Isle Casino and Hotel in Biloxi, which opened as the Golden Nugget Biloxi in the summer of 2013. Landry's immediately began a \$100 million redevelopment project for the property. In the first phase, which was completed in the summer of 2013, Landry's implemented numerous changes to the facility, including redesigning the porte cochere; adding an exciting lounge, an Asian themed restaurant, as well as a Morton's Steakhouse; acquiring and placing into service more than 200 new slot machines; and launching its new players club. Landry's will continue redevelopment of the property. For example, second phase renovations to the Golden Nugget Biloxi will include the renovation of existing restaurants, retail outlets, and meeting space. The final phase of renovations to the property will include building a state of the art new casino to expand the existing casino footprint and release

convention space for its intended purpose, which is now used for gaming, as well as creating an innovative resort pool at the entrance.

The Golden Nugget brand name is one of the most recognized in the gaming industry and is highly complementary to Landry's portfolio of leading restaurant, hospitality and entertainment operations. Each of Landry's Golden Nugget locations offers an extensive array of amenities and a high level of hospitality, service and attention to detail. Landry's has capitalized on the Golden Nugget's strong name recognition and reputation for quality and value. In addition to the casino entertainment services offered at the Golden Nugget casinos, each Golden Nugget is home to multiple Landry's Inc. restaurant concepts, including Morton's The Steakhouse, Vic & Anthony's Steakhouse, Bubba Gump Shrimp Co., Red Sushi, and Chart House, among others.

C. Landry's Senior Management Has Significant Experience in the Casino Industry

Landry's senior management has substantial experience in the casino industry, specifically in acquiring, developing and operating casino businesses. Tilman J. Fertitta, the Chairman, President and CEO of Landry's Inc. presided over Landry's purchase of the Golden Nugget in 2005. In addition, Mr. Fertitta has approximately 30 years of related experience in the hospitality and restaurant industry and has been Chairman, President and Chief Executive Officer of Landry's since 1987. Steven L. Scheinthal, has served as Executive Vice President or Vice President of Administration, General Counsel and Secretary since September 1992. He devotes a substantial amount of time to lease and contract negotiations and is primarily responsible for compliance with all federal, state and local ordinances. Richard H. Liem serves as Executive Vice President and Chief Financial Officer and has served as Senior Vice President of Finance since June 2004. He started with Landry's in 1999 as the Vice President of

Accounting and Corporate Controller. Mr. Liem joined Landry's from Carrols Corporation, a restaurant company located in Syracuse, NY, where he was the Vice President of Financial Operations from 1994 to 1999. He was with the audit division of Price Waterhouse, L.L.P. from 1983 to 1994. Mr. Liem is a certified public accountant. Jeffrey L. Cantwell serves as Senior Vice President of Development and has served as Vice President of Development, and Director of Design and Construction. He was promoted to an executive officer in 2006. He has been employed by Landry's since his graduation from Southwest Texas State University in June, 1992. He has overseen numerous large construction and renovation projects as the head of development at Landry's, including the renovations at Golden Nugget Atlantic City, Golden Nugget Biloxi, as well as numerous large scale entertainment complex development projects. K. Kelly Roberts serves as Chief Administration Officer—Hospitality and Gaming Division and has served as Chief Financial Officer—Hotel Division and Controller—Hotel Division. He has been employed by Landry's since 1996. He has over 30 years' experience in the hospitality business in finance and operations working for various hotel chains and independent management companies. He formerly served on the executive board of The Greater Houston Convention and Visitor's Bureau.

The Landry's senior management team has grown its revenues from approximately [REDACTED] in 1998 to [REDACTED] for the year ended December 31, 2012.

V. The Proposed Divestiture Conveys All the Ameristar Louisiana Assets Required to be Divested and is Consistent with the Terms and Purposes of the Order

A. The Proposed Divestiture is Consistent with the Terms of the Order

Paragraph II of the Decision and Order requires the divestiture of the Ameristar Louisiana Assets no later than the earlier of (i) six (6) months from the date the Decision and Order become final or (ii) six (6) months from the date Pinnacle closes its acquisition of

Ameristar. The transaction described in the Purchase Agreement conveys all of the Ameristar Louisiana Assets as described in Paragraph I.F of the Decision and Order. Specifically Section 1.2(a) of the Purchase Agreement conveys the “Membership Interests,” which are defined as 100% of Ameristar Casino Lake Charles, LLC (the “Company”), a Louisiana limited liability company’s membership interests. The Company, in turn, owns all of the Facility Assets used by, necessary for, or relating to the Ameristar Louisiana Casino.

The Purchase Agreement also effectively conveys Ameristar’s rights, title, and interest in the property known as the “Festival Grounds.”⁶ The Festival Grounds is an area of real property located between Pinnacle’s L’Auberge Lake Charles resort and the planned Ameristar Casino Lake Charles resort (collectively, the “Resorts”) that is owned by the Lake Charles Harbor & Terminal District (“District”). Prior to Pinnacle’s acquisition of Ameristar, the District had agreed to lease the Festival Grounds to a joint venture to be owned by Pinnacle and Ameristar for the development and operation of certain shared facilities and amenities that would serve both Resorts. The Parties have signed a Term Sheet which would expand the size of the Festival Grounds to include additional shared amenities, the “Shared Space”, including a clubhouse, golf driving range, tennis courts, parking lots, helistop, administrative offices, as well as retail, recreation and entertainment venues that would be operated by the parties for the benefit of both Resorts. Under the Purchase Agreement, Pinnacle has agreed to terminate any existing leases with the District relating to the Shared Space. Although the exact structure is not yet resolved, it is expected that Pinnacle and Landry’s will enter into a lease for the Shared Space with the District, and enter into a new Shared Space Agreement with the District. Although the final Shared Space Agreement has not been finalized, Pinnacle and Landry’s currently contemplate

⁶ See Purchase Agreement, Exhibit C Shared Space Term Sheet.

that the shared Festival Grounds area will be expanded to accommodate the shared facilities and amenities. The parties may also agree to adjust the precise structure of the Shared Space Agreement as they finalize the agreement, but the basic objectives of the arrangement would remain the same.

Additionally, under Section 1.5 of the Purchase Agreement, at closing, Landry's will receive all Books and Records of the Company, including the Construction Contracts and any information of the Company held by Ameristar and its affiliates. Finally, the Purchase Agreement includes the contracts used by, necessary for, or relating to the Ameristar Louisiana Casino.⁷ The Ameristar Louisiana Assets do not have a Casino Customer Database, and thus none is conveyed in the Purchase Agreement.

The Decision and Order requires Pinnacle to divest all Intellectual Property used by, necessary for, or relating to, the Ameristar Louisiana Casino other than Intellectual Property used by Respondents' casinos or hotels other than the Ameristar Louisiana Casino, including the brands set forth in Exhibit A of the Decision and Order, or any license to use Ameristar's trademarks. Paragraph II.B of the Decision and Order, however, permits Respondents to divest any names, service marks, trademarks, trade names, and other Intellectual Property owned by Respondents that are related to the brand "Mojito Pointe" to an entity established by and jointly owned by Respondents and the Acquirer of the Ameristar Louisiana Assets (hereinafter referred to as the "Management Company"). Paragraph II.C of the Decision and Order also prohibits Respondents from joining, filing, prosecuting, or maintaining any suit, in law or equity, against the Commission-approved Acquirer alleging that the use on or after the Divestiture Date of any of the trademarks or trade names on the List of Designated Trademarks and Trade Names in

⁷ See, e.g., Purchase Agreement Sections 3.11, 3.17 and 6.9.

Exhibit A of the Decision & Order infringes any Intellectual Property owned or licensed by Respondents as of the Divestiture Date.

The Purchase Agreement is consistent with these requirements. Section 6.21 of the Purchase Agreement requires that, at or prior to the Closing, Ameristar and its Affiliates shall contribute to a Management Company jointly owned by Pinnacle and Landry's any names, service marks, trademarks, trade names, domain names and other intellectual property owned by them associated with the brand "Mojito Pointe." Pinnacle will also contribute to a Management Company any names, service marks, trademarks, trade names, domain names and other intellectual property owned by the company and associated with the brand "Sugarcane Bay." Section 1.7 of the Purchase Agreement excludes the sale of certain intellectual property that the Company had the right to use under license from Ameristar Casinos, Inc., including the Excluded Intellectual Property and List of Designated Trademarks and Trade Names identified in Exhibit A of the Decision and Order. Pinnacle will comply with Paragraph II.C of the Decision and Order, and by letter dated August 23 ,2013 (attached as Confidential Exhibit D), Pinnacle expressly confirmed to Landry's that the Purchase Agreement's exclusion of these intellectual property assets "has no effect on the rights [Landry's] may have apart from any rights granted or reserved in the [Purchase] Agreement to use the common law marks in the List of Excluded Intellectual Property such as "gold", "elite", "new slots", etc. To the extent that [Landry's] (or those acting in privity with it) would otherwise have the right to use such terms under the law in the absence of the [Purchase] Agreement, the [Purchase] Agreement has not altered such right."

Paragraph II.D of the Decision and Order requires Respondents to enter into a Transition Services Agreement relating to the Ameristar Louisiana Assets, at the option of Acquirer.

Sections 1.7 and 6.1 of the Purchase Agreement provide that following the closing date, Respondents will assist the Acquirer to obtain necessary software licenses.

Paragraph II.E.1 of the Decision and Order requires Respondents to secure all consents related to or necessary for the divestiture of the Ameristar Louisiana Assets to the acquirer. The Purchase Agreement provides representations that no authorization, consents, order, license, permit or approval will be required with the exception of (a) the approval of the FTC, (b) the approval required by the Louisiana Gaming Control Board (“LGCB”) and (c) the approval by the Lake Charles Harbor & Terminal District (“District”) of the Shared Space Agreement.⁸

Pinnacle is filing this Application to obtain the approval of the FTC. With respect to the required approvals from the LGCB and District, Paragraph II.E.2 of the Decision and Order requires that Respondents use best efforts to assist the Ameristar Louisiana Acquirer in obtaining any permits, license asset or right that Respondent have no right to divest or transfer. Under Sections 6.4 and 6.22 of the Purchase Agreement, Pinnacle has agreed to cooperate with Landry’s and use reasonable best efforts to obtain all necessary consents and approvals, including the approvals required by the LGCB and the District. On August 2, 2013, Landry’s petitioned the LGCB for Approval of the Acquisition of Ameristar Lake Charles Casino by GNLC Holdings, LLC; the petition is attached as Confidential Exhibit E. Pinnacle understands that Landry’s will provide the FTC with additional submissions it makes to the LGCB.

Paragraph IV.A of the Decision and Order provides that Respondents shall cooperate and assist any proposed Acquirer of the Ameristar Louisiana Assets to evaluate independently and retain any Key and Knowledgeable Employees of the Ameristar Louisiana Assets, including providing the proposed Acquirer with a list of all Key and Knowledgeable Employees and an

⁸ See Sections 2.2, 3.3, 4.2, and 7.2 of the Purchase Agreement.

opportunity to meet with and interview such employees. Section 6.11(a) of the Purchase Agreement provides Landry's with the ability to contact and make offers of employment to the employees identified in Schedule 6.11(a), which includes all the Ameristar Louisiana Key Employees and Ameristar Louisiana Support Service Employees. Section 6.11(b) of the Purchase Agreement also complies with Paragraph IV.B of the *Décision and Order*, as it contains Pinnacle's agreement not to solicit or hire for employment any of the specified employees that accept offers of employment from Landry's after the closing of the transaction.⁹ Furthermore, pursuant to Section 6.11(d) of the Purchase Agreement, even if [REDACTED] is not offered employment by, or does not accept employment with, Landry's, Pinnacle has agreed (assuming [REDACTED] remains employed by Pinnacle) that it will make the services of [REDACTED] available to Landry's until December 31, 2013 pursuant to a customary secondment agreement (providing for, among other things, payment by Landry's of a proportionate share of the cost of [REDACTED] salary and other compensation and benefits based on the amount of time [REDACTED] devotes to his services to Landry's).

B. The Proposed Divestiture Is Consistent With The Purpose Of The Order

Paragraph II.G. of the *Decision and Order* provides that the purpose of the divestiture of the Ameristar Louisiana Assets to an Acquirer is to create an independent, viable, and effective competitor in the relevant market in which Ameristar was engaged at the time of the announcement of the Acquisition, or would have been engaged in absent the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

By divesting the Ameristar Louisiana Assets as contemplated by the *Decision and Order*,

⁹ [REDACTED]

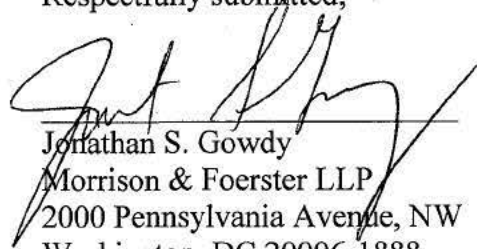
the proposed divestiture will ensure that the development of the Ameristar Louisiana Assets will be completed in a timely manner, and that the Ameristar Louisiana Assets will be a viable and effective competitor in the Lake Charles, Louisiana area. As discussed in Section IV above, Landry's has the financial capability to complete successfully the construction of the Ameristar Louisiana Assets and the experience to operate a viable, competitive casino in Lake Charles, Louisiana. Moreover, Landry's management team has the necessary experience to operate the Ameristar Louisiana Assets. In short, as Landry's has the ability to create and operate an independent, viable, and effective competitor in the Lake Charles area, Respondent's sale of the Ameristar Louisiana Assets to Landry's will remedy the competitive harm alleged in the Complaint.

VI. Conclusion

Because the proposed divestiture of the Ameristar Louisiana Assets to Landry's is pro-competitive, in the public interest and addresses the competitive concerns raised in the Complaint and the Decision and Order, and for the additional reasons set forth above, Respondents respectfully request that the Commission approve the divestiture of the Ameristar Louisiana Assets to Landry's.

Dated: August 30, 2013

Respectfully submitted,



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Docket No. 9355

**CONFIDENTIAL EXHIBITS TO
APPLICATION FOR APPROVAL OF
DIVESTITURE OF THE AMERISTAR
LOUISIANA ASSETS**

CONFIDENTIAL
EXHIBIT A

This exhibit has been redacted.

CONFIDENTIAL
EXHIBIT B

Confidential Exhibit B

This exhibit has been redacted.

CONFIDENTIAL
EXHIBIT C

Confidential Exhibit C

This exhibit has been redacted.

CONFIDENTIAL
EXHIBIT D

This exhibit has been redacted.

CONFIDENTIAL
EXHIBIT E

Confidential Exhibit E

This exhibit has been redacted.