**1310064**

**UNITED STATES OF AMERICA**
**BEFORE THE FEDERAL TRADE COMMISSION**

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

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| **In the Matter of** | ) | |
| **Pinnacle Entertainment, Inc., a corporation,** | ) | **Docket No. 9355** |
| **and** | ) | **PROVISIONALLY REDACTED PUBLIC VERSION** |
| **Ameristar Casinos, Inc., a corporation.** | ) | |

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by the Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondents Pinnacle Entertainment, Inc. ("Pinnacle") and Ameristar Casinos, Inc. ("Ameristar"), having entered into an agreement and plan of merger pursuant to which Pinnacle will acquire the capital stock of Ameristar, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated may substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

## I.

## NATURE OF THE CASE

1. Pinnacle's acquisition of Ameristar (the "Acquisition") will substantially lessen competition for casino services in the St. Louis, Missouri and Lake Charles, Louisiana areas, leading to higher prices and lower quality and levels of service for casino consumers.

As with any industry, competition among casinos in St. Louis and Lake Charles, respectively, lowers prices, improves quality, and increases consumer choices. By eliminating meaningful and substantial competition between Pinnacle and Ameristar, the Acquisition will harm consumers of casino services.

2. The Acquisition threatens competitive harm in the casino services market in two relevant geographic markets: the St. Louis Metropolitan Statistical Area ("MSA") and the Lake Charles area. In each of the affected markets, the Acquisition is presumptively unlawful under the relevant case law and the U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines"). Post-Acquisition market shares will exceed [redacted] percent, with correspondingly high concentration levels, in each geographic market.

3. Since Pinnacle entered the St. Louis market in 2007 and expanded in 2010, Pinnacle has sought to "steal share" from Ameristar – and it has succeeded. As Ameristar lost market share, lost revenue, and saw its profits decline, it responded with increased promotions and better service. For customers of Pinnacle and Ameristar casinos, this competition translated into better odds (directly or indirectly), free or lower-cost amenities, and a better gambling experience. That incentive and those efforts to take customers from each other continues to benefit customers to this day, but will be eliminated by the Acquisition.

4. The Acquisition reduces the number of casino service providers in the St. Louis area from four to three, with only one remaining competitor – Penn National Gaming, Inc. – providing meaningful competition to Pinnacle post-Acquisition. Absent competition from Ameristar, Pinnacle could profitably reduce its promotions and discounts to customers, reduce investment in amenities, and offer a lower-quality experience than it would have otherwise, without losing a substantial number of customers. As a result, consumers will face higher prices and lower quality.

5. In Lake Charles, Pinnacle operates L'Auberge Casino Resort Lake Charles ("L'Auberge"), the premiere casino property in the area. Ameristar is building a nearly identical casino property, Ameristar Casino Resort Spa Lake Charles, commonly referred to as Mojito Pointe. Mojito Pointe will be located directly adjacent to L'Auberge and will match or exceed the offering at L'Auberge when it opens next year. Ameristar plans to "[redacted]" with its entry into the Lake Charles area. Pinnacle acknowledges Ameristar will "compete directly" with its casino and recognizes that Ameristar's entry will substantially reduce L'Auberge's revenues. This competition will lead Pinnacle to offer "better events, better special promotions, better direct marketing, better advertising and a better service" to customers. Indeed, Ameristar anticipates that, with its entry, the "competition in Lake Charles may increase [redacted]" Post-Acquisition, there will be only one other meaningful competitor to Pinnacle – Coushatta Casino Resort – and two smaller, highly differentiated competitors.

6. If the Acquisition proceeds, the benefits of head-to-head competition between Pinnacle and Ameristar will vanish. Even though Pinnacle will be required by the State of Louisiana to open Mojito Pointe if the Acquisition proceeds, the Acquisition will eliminate the incentive

to attract customers from L'Auberge to Mojito Pointe, and *vice versa*, by offering lower prices and higher quality. Pinnacle and Ameristar will have no reason to offer promotions, discounts, and better amenities and services to keep L'Auberge and Mojito Pointe customers from switching to the other's casino.

7. Entry or expansion by other casinos in the St. Louis and Lake Charles markets will not mitigate the loss of price and non-price competition in the near future, if ever. Missouri and Louisiana each restrict the number of casinos in the state by issuing a limited number of casino licenses, and every available casino license has already been issued. Similarly, expansion by existing casinos is unlikely to occur in a timely manner, if ever, and in most cases is prohibited by state regulations and licensure requirements. Finally, there are no cognizable efficiencies that would come close to offsetting the serious competitive harm threatened by the Acquisition.

## II.

## BACKGROUND

### A.

### Jurisdiction

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

9. The Acquisition constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

### B.

### Respondents

10. Respondent Pinnacle is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 8918 Spanish Ridge Avenue, Las Vegas, Nevada 89148. Pinnacle owns and operates nine casinos and horseracing facilities in five states. During fiscal year 2012, Pinnacle generated nearly $1.2 billion in net revenue with $285.2 million in earnings before interest, taxes, depreciation, and amortization ("EBITDA").

11. Pinnacle owns and operates two casinos in the St. Louis area. The first, Lumière Place Casino ("Lumière"), opened in 2007 and is located in downtown St. Louis, north of the Gateway Arch. The Lumière complex includes a casino with approximately 2,004 slot machines and 68 table games, the 200-guestroom luxury Four Seasons Hotel St. Louis, the 294-all-suite HoteLumière, seven restaurants, banquet facilities, retail shops, and more than 22,000 square feet of convention and meeting space. The second, River City Casino

("River City"), opened in March 2010 and is located on approximately 56 acres of land in the south St. Louis suburb of Lemay, Missouri. The River City complex includes a 90,000-square-foot casino with approximately 2,018 slot machines and 62 table games, parking for more than 2,900 vehicles, restaurants and bars, and retail shops. By Fall 2013, Pinnacle expects to complete an $82 million expansion of River City to add a 200-guestroom hotel, a multi-purpose event center, and a covered-parking structure. One-third of Pinnacle's revenue comes from its St. Louis-area casinos.

12. Pinnacle's largest property is L'Auberge, opened in May 2005, in Lake Charles, Louisiana. The L'Auberge complex includes a casino with approximately 1,616 slot machines, 75 table games, a hotel with 995 guestrooms, villas, and suites, as well as restaurants, retail shops, a golf course, a full-service spa, approximately 26,000 square feet of meeting space, and other amenities. One-third of Pinnacle's revenue comes from L'Auberge.

13. Respondent Ameristar is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Nevada, with its office and principal place of business located at 3773 Howard Hughes Parkway, Suite 490 South, Las Vegas, Nevada 89169. Ameristar owns and operates eight casinos in six states and is currently constructing a ninth casino. During fiscal year 2012, Ameristar generated approximately $1.2 billion in net revenue with $361.6 million in EBITDA.

14. Ameristar owns and operates one casino in the St. Louis area. Opened in 1994, the Ameristar Casino Resort Spa St. Charles ("Ameristar St. Charles") is located in the St. Louis suburb of St. Charles, Missouri, approximately 22 miles northwest of downtown St. Louis. Ameristar St. Charles includes a large casino with 130,000 square feet of gaming space, approximately 2,620 slot machines and 72 table games, as well as a 397-room luxury all-suite hotel, a 7,000-square-foot full-service spa, indoor/outdoor pool, seven dining venues, a state-of-the-art conference and banquet center, and several bars. One-quarter of Ameristar's revenue comes from Ameristar St. Charles.

15. Ameristar is currently constructing a casino on 242 acres in Lake Charles, Louisiana – adjacent to Pinnacle's L'Auberge Casino – that is commonly referred to as Mojito Pointe. Ameristar began building Mojito Pointe in July 2012, and the casino is scheduled to open by the third quarter of 2014. When finished, Mojito Pointe will include a casino with approximately 1,600 slot machines and 60 table games, an attached hotel with 700 guestrooms and 70 suites, bars and restaurants, an 18-hole golf course, tennis courts, swimming pools, and a spa.

## C.

## The Acquisition

16. Under the terms of a December 21, 2012 agreement and plan of merger, Pinnacle will acquire Ameristar for approximately $2.8 billion. Pinnacle has agreed to pay $869 million, or $26.50 per share, for all of Ameristar's outstanding stock. Pinnacle will also assume approximately $1.9 billion of Ameristar's outstanding debt.

## III.

## ANTICOMPETITIVE EFFECTS

17. Casinos use price and non-price incentives to compete with nearby casinos and attract customers. Although a lucky casino customer may leave the casino a winner, casino games are designed for the house to win over the long term. Slot hold rates (which determine a customer's theoretical loss at a given slot machine), rake rates (the casino's charge for certain table games, such as poker), and table game rules and odds create a house advantage that constitutes the primary "price" to the customer for playing at the casino. Player reinvestment, a broad term for offers, benefits, and rewards given to casino customers, is another form of casino pricing, akin to discounting. Non-price factors include the selection of slots and table games, the type and quality of amenities, and the quality of service.

18. The mechanisms underlying player reinvestment make the casino industry particularly vulnerable to unilateral effects. Casinos use sophisticated proprietary algorithms and direct mail to provide highly-targeted reinvestment offers to particular customers. As the Respondents acknowledge, this allows casinos to "effectively target critical segments of [their] business." Essentially, casinos have the ability to conduct highly-sophisticated price discrimination, offering (or not offering) discounts to particular customers based on their demographic characteristics or gambling behavior, thus exacerbating the potential for competitive harm.

19. The Acquisition will eliminate significant head-to-head competition between the Respondents and will increase Pinnacle's ability and incentive to raise prices post-Acquisition, in the form of less-customer-favorable hold rates, rake rates, table game rules and odds, and lower player reinvestments. The Acquisition also diminishes Pinnacle's incentive to maintain or improve the quality of services and amenities to the detriment of casino customers in the St. Louis and Lake Charles markets.

20. The Acquisition also increases the incentive and likelihood of coordinated interaction between Pinnacle and its two remaining competitors in the St. Louis market – only one of which is significant – to increase prices and lower quality to the detriment of customers.

### A.

### Loss of Vigorous Price and Non-Price Competition and Increased Market Power in the St. Louis Market

21. Pinnacle and Ameristar vigorously compete for casino customers in the St. Louis area. When Pinnacle opened its two St. Louis-area casinos – Lumière in 2007 and River City in 2010 – Pinnacle took significant business away from Ameristar St. Charles. Ameristar responded with more competitive pricing, increased gaming selection, and a wider variety of amenities.

22. When Lumière opened in 2007, Ameristar estimated that Pinnacle was "stealing" [redacted] from Ameristar St. Charles's revenues *per week*. Lumière also took market share from Ameristar St. Charles. In response, Ameristar increased player-development programs, altered its table game mix, and sought to improve its customer service.

23. Similarly, when River City opened in 2010, Ameristar again lost substantial revenues, EBITDA, and market share. Ameristar executives reported to the Ameristar Board of Directors that "[a]djusted EBITDA was down [redacted] primarily due to increased competition from the new River City property." Once again, Ameristar responded to the increased competition from Pinnacle. Ameristar's competitive response, which again benefitted casino customers, included aggressive promotions and offers targeted at customers who had "faded [*i.e.*, decreased or stopped play at Ameristar St. Charles] due to River City's opening." For example, Ameristar St. Charles hosted parties and events, provided attractive hotel offers, and distributed extra food credits to lure customers back to its casino.

24. The intense competition between Pinnacle and Ameristar has continued since the two Pinnacle casinos opened in the St. Louis area. Pinnacle executives frequently emphasize the need to "steal [market] share" from Ameristar in St. Louis. Pinnacle does so by aggressively targeting existing casino customers [redacted]. Pinnacle's other competitive tactics include direct mail cash offers, weekly progressive drawings, and million dollar giveaways.

25. In response to Pinnacle's competitive blitz, Ameristar has continued its aggressive marketing and promotional activity. In fact, an Ameristar executive wrote, "[m]y biggest concern continues to be Pinnacle . . . ." Ameristar also added benefits to its loyalty programs, lowered rake rates, and offered more favorable table odds. Ameristar gained back some lost market share – up to [redacted] percent of which was lost to River City – through these measures, as well as its [redacted] promotion, where customers could earn [redacted].

26. Pinnacle and Ameristar also engage in vigorous non-price competition in the St. Louis market. This non-price competition includes competition for the gaming products, amenities, and quality and level of service offered to casino customers.

27. In October 2010, Ameristar introduced a marketing campaign emphasizing its new slot machines. Within six months, Pinnacle responded with a marketing campaign of its own highlighting *its* new slot machines. Pinnacle's River City specifically added three new slot-machine themes that Ameristar St. Charles had introduced three months earlier. Similarly, Pinnacle's River City expansion project, which includes a new hotel, an events center, and covered parking, was spurred by "the need to match [the] amenity set of [its] closest competitors."

28. Competition between Pinnacle and Ameristar has also led to such additions and improvements as an increased variety of table games, entertainment options, food offerings, alcohol selection, even improved lighting and higher-quality WiFi service.

29. The St. Louis-area casinos are differentiated, but the Respondents' casinos are close substitutes for one another. Lumière, River City, and Ameristar St. Charles are all large, high-quality, and high-service casinos. They offer a similar number, type, and quality of slot machines, table games, and amenities.

30. In contrast, except for Penn Gaming's Hollywood Casino, the other casinos in the St. Louis market – the Argosy Alton Casino and Casino Queen – are highly differentiated. Penn Gaming's Argosy Alton Casino is a significantly smaller, lower-end, first-generation riverboat casino located in Alton, Illinois. When Pinnacle completes its hotel construction at River City, the Argosy Alton Casino will be the only St. Louis-area casino without a hotel. Casino Queen is also a small, lower-end casino with only a small hotel and recreational vehicle park. Casino Queen is located in East St. Louis, Illinois, which Ameristar St. Charles's general manager described as "[redacted]." Pinnacle's former general manager at River City described the Argosy Alton Casino and the Casino Queen as "[redacted]."

31. The Argosy Alton Casino and Casino Queen are also competitively disadvantaged by unfavorable laws and casino regulations in Illinois. The State of Illinois taxes the Argosy Alton Casino and Casino Queen at a higher rate than Missouri taxes its casinos. The Illinois gaming license also limits the number of slot machines and table games at each casino, while the Missouri gaming license does not. Finally, Illinois law bans smoking at casinos, while Missouri law does not.

32. Because of the acquisition of Ameristar, Pinnacle will no longer face the competitive pressure from a close competitor that has generated significant benefits for casino-services consumers in the St. Louis market. The Acquisition will reduce Pinnacle's incentive to offer better player reinvestments or discounts, comps, favorable hold rates and table odds, a wide variety of gaming options, and high-quality services and amenities at its St. Louis-area casinos.

## B.

## The Acquisition Increases the Likelihood of Coordinated Interaction in the St. Louis Market

33. The Acquisition is also likely to increase substantially the risk of coordinated interaction among the remaining market participants in the St. Louis market. Under the Merger Guidelines, anticompetitive coordination need not rise to the level of explicit agreement. It may involve a "common understanding that is not explicitly negotiated[,]" or even merely "parallel accommodating conduct not pursuant to a prior understanding."

34. Post-Acquisition, the St. Louis market will be ripe for coordination. The Acquisition will leave just two competitors to Pinnacle, only one of which is significant and has a casino of a similar size, offering similar amenities as Respondents' casinos. Post-Acquisition, the

market will be highly concentrated, with Pinnacle and Penn Gaming together controlling nearly 90 percent of the casino-services market in St. Louis.

35. Other market dynamics make the ability and incentive to coordinate more likely. In Missouri, competitively significant operating metrics are published monthly, most notably every casino's hold rate by slot-machine denomination and table game, the number of units of each slot-machine denomination and type of table game, and the slot handle for each slot-machine denomination and the table drop for each type of table game. Additionally, casinos "comp shop" each other regularly by monitoring the promotions, comps, and player reinvestment offerings of their competitors. Indeed, at one point, Pinnacle's CEO wrote in an email that, "[redacted] (GM of Ameristar [St. Charles]) has been on our property 4 of the last 6 days. Every time he has brought a different person with him (Corporate head of F&B [food and beverage], head of Player Development, slots, etc.)." The Executive Vice President for Pinnacle's St. Louis-area casinos wrote that "Ameristar folks are here all of the time[.]"

36. Many casino executives and employees have worked for competitor casinos in the past and maintain relationships with former co-workers. Notably, Pinnacle's CEO, Executive Vice President for Regional Operations, and Vice President of Relationship Marketing each spent considerable time as Harrah's employees. Harrah's formerly owned what is now the Hollywood Casino.

37. There is already evidence of information exchange as well as "price following" behavior in the St. Louis market. In one instance, a *Pinnacle* executive sent [redacted] to a *Harrah's* executive and wrote: "[redacted]" Pinnacle regularly monitors comps and fees at its competitors' casinos and adjusts its own fees to match.

## C.

## Loss of Vigorous Price and Non-Price Competition and Increased Market Power in the Lake Charles Market

38. The St. Louis-area competition between Pinnacle and Ameristar foreshadows the vigorous, head-to-head competition that the Acquisition threatens to smother in its incipiency in the Lake Charles area. The Respondents are now preparing to be each other's closest competitor – literally and figuratively – and this competition has already manifested itself in benefits for consumers.

39. Ameristar's Mojito Pointe casino will undoubtedly be the closest competitor to Pinnacle's L'Auberge. Not only is Mojito Pointe being constructed immediately adjacent to L'Auberge, it is also designed to include the same type and level of amenities and approximately the same number of slot machines and table games.

40. Pinnacle's CEO has been worried about "parasitic" competition coming to Lake Charles that "would be able to tap into [L'Auberge's] customer base." In fact, Pinnacle filed two

lawsuits to block the former license holder from building a casino on the Mojito Pointe site. He was rightly concerned: Ameristar's CEO expects Mojito Pointe to "[redacted]" In fact, Ameristar identified "[redacted]" at L'Auberge that "[redacted]" and planned to exploit [redacted] by "[redacted]."

41. The Respondents estimate that Mojito Pointe will take significant revenue and profit from L'Auberge. Pinnacle forecasts that L'Auberge will lose approximately [redacted] percent of its revenue during the first year Mojito Pointe is open. Ameristar and third parties also predict that Mojito Pointe will steal significant business from L'Auberge. Ameristar projects that, in the first year alone, L'Auberge will lose [redacted] in revenues to Mojito Pointe. Pinnacle does not plan to take this threat lying down. According to L'Auberge's general manager, Ameristar's entry will cause L'Auberge to offer "better events, better special promotions, better direct marketing, better advertising and most importantly a better service." Thus, Ameristar's entry into the Lake Charles market will benefit customers; the Acquisition will eliminate the significant benefits of this imminent competition.

42. The remaining Lake Charles-area casinos are highly differentiated and not close competitors to the Respondents' casinos. Isle of Capri Lake Charles does not have the high-end amenities of L'Auberge or Mojito Pointe and has 350 fewer slot machines, a third fewer tables, and half the number of hotel rooms. L'Auberge's general manager described Isle of Capri Lake Charles as "[redacted]." Ameristar's CEO wrote that the [redacted]"

43. Delta Downs Racetrack Casino ("Delta Downs"), owned and operated by Boyd Gaming Corp., is also substantially differentiated from the Respondents' casinos. Delta Downs is a racino – a combined horserace track and casino – and is limited to half the gaming space of the Respondents' casinos (15,000 square feet versus 30,000 square feet) and, by law, cannot offer table games – it can only offer slots. Ameristar's CEO has written that [redacted]."

44. The last independent casino in the Lake Charles area is Coushatta Casino Resort ("Coushatta"), a Native-American tribe-owned casino. Coushatta is located nearly an hour northeast from Lake Charles – thus, farther from Texas – making the drive from Houston nearly three hours. This location places Coushatta at a competitive disadvantage, as a casino-services consumer from Texas would have to drive past the casinos in Lake Charles to reach a casino of less quality than L'Auberge or Mojito Pointe.

45. Because of the acquisition of Ameristar, Pinnacle will eliminate the competitive pressure from its would-be closest competitor. As a result, the Acquisition will reduce Pinnacle's incentive to offer better player reinvestments or discounts, comps, favorable hold rates and table odds, a wide variety of gaming options, and high-quality services and amenities at its casinos in the Lake Charles market.

## IV.

## THE RELEVANT SERVICE MARKET

46. The direct evidence discussed above demonstrates significant head-to-head competition between Pinnacle and Ameristar, which will be lost if the Acquisition is consummated. From this evidence, it can be inferred that the Acquisition will result in serious competitive harm. Moreover, this direct evidence also confirms and strengthens the presumption of harm under the case law and Merger Guidelines that is triggered by the substantial increases in market share and market concentration in the relevant service market for casino services, as a result of the Acquisition.

47. The casino services market consists of slot, video poker, and table gaming (*i.e.*, gambling) with associated amenities that are used to drive gaming revenue, which typically include some combination of hotel accommodations, food and beverages, entertainment, and other amenities. Casino operators typically generate the vast majority of their revenues from gaming. A hypothetical monopolist of casino services could profitably impose a small but significant non-transitory increase in price.

48. Other forms of entertainment activities do not meaningfully compete with casino services and are not in the relevant service market. Pinnacle's CEO testified that the core component that draws customers to casinos is gaming. Gaming distinguishes casino services from other entertainment activities, such as sporting events. Third-party casino operators and developers confirm that casinos compete only with other casinos. The Respondents do not track other entertainment when assessing their competitors, tracking market shares, or making business decisions.

## V.

## THE RELEVANT GEOGRAPHIC MARKETS

49. The direct evidence of head-to-head competition between Pinnacle and Ameristar also confirms that the two relevant geographic markets in which to analyze the effects of the Acquisition are: (1) the St. Louis area, which includes the casinos located in, and approximately corresponds to, the St. Louis, Missouri MSA; and (2) the Lake Charles, Louisiana area, which includes the area containing the casinos located in Calcasieu and Allen parishes.

50. The appropriate geographic markets are "the area[s] in which consumers can practically turn for alternative sources of the product [or service] and in which the antitrust defendants face competition." A relevant test to determine the boundaries of the relevant geographic market is whether a hypothetical monopolist of the relevant service within the geographic area could profitably raise prices by a small but significant amount. If so, that geographic area is an appropriate geographic market for assessing the effects of the merger. Defining the geographic market is a "pragmatic undertaking" and it should "correspond to the commercial realities of the industry."

## A.

## St. Louis Area

51. The Respondents' own ordinary-course documents reveal that they do not regard casinos outside of the St. Louis area as meaningful competitors. Instead, Respondents focus their competitive efforts on casinos in the St. Louis MSA, and especially on each other.

52. Both Pinnacle and Ameristar analyze competitive landscapes and market shares consisting of only those casinos in the St. Louis area. Only St. Louis-area competitors are considered when Pinnacle and Ameristar make pricing decisions.

53. A Pinnacle executive acknowledged in preparation for an investor call that "St. Louis is a very locals market with the majority of the population living in a 30 mile radius." Data confirm the market is local in nature: St. Louis-area casinos generate approximately [redacted] percent of their revenue from customers residing within the St. Louis MSA. As a result, the Respondents only advertise for their St. Louis-area casinos within the St. Louis area.

54. St. Louis-area gaming consumers will not travel outside of the St. Louis area for casino services in response to a small but significant and non-transitory increase in price ("SSNIP"). In 2012, when a new casino opened in Cape Girardeau, Missouri – 120 miles south of St. Louis – Pinnacle expected that it would put at risk only [redacted] percent of Pinnacle's monthly St. Louis revenues.

55. Industry participants also view the St. Louis area as a separate market. Third-party casino operators state that St. Louis-area casinos do not face meaningful competition from casinos outside the St. Louis MSA. The Missouri Gaming Commission has prepared studies and reports that analyze the St. Louis market separately from the Kansas City and other gaming markets in Missouri. The American Gaming Association recognizes St. Louis as its own gaming market, distinct from Kansas City and other gaming markets in the United States.

56. Based on the foregoing, a hypothetical monopolist of casino services in the St. Louis area could profitably raise prices by a small but significant amount. Therefore, the St. Louis area is a relevant geographic market.

## B.

## Lake Charles Area

57. Similarly, the Respondents ordinary-course documents demonstrate that they do not view casinos outside of the Lake Charles area as meaningful competitors to their Lake Charles-area casinos. These documents show that Pinnacle does not consider casinos outside of the Lake Charles area when calculating market shares. In strategic plans and investor presentations, Pinnacle limits references of L'Auberge's competitors to those casinos in the Lake Charles area.

58. Respondents focus their competitive efforts on other casinos in the Lake Charles area. For example, Pinnacle tracks – or "comp shops" – other Lake Charles-area casinos, and not more distant casinos, when analyzing the competition to its L'Auberge casino. Ameristar's CEO made site visits only to L'Auberge and the other Lake Charles-area casinos in 2012 when assessing Ameristar's future competition in Lake Charles. Ameristar projections show that it expects a substantial portion of its revenue at Mojito Pointe to come at the expense of other Lake Charles-area casinos.

59. The vast majority of consumers of gaming services in the Lake Charles area come from an area within a two-hour drive of the casinos, including the Houston, Texas area and the East Texas panhandle. Overwhelmingly, these consumers travel by car – many for just the day – with one or more companions. The difference in cost and convenience between a drive to Lake Charles versus a flight to casinos in Las Vegas, Biloxi, or New Orleans highlights the lack of meaningful competition between casinos in these different areas. A Pinnacle study confirms that "southwest Louisiana's advantage in [the Houston] market is proximity: for someone who wants to make a short one or two night trip, the cost of and inconvenience associated with commercial air travel renders a Las Vegas trip unfeasible."

60. Industry participants also view the Lake Charles area as a separate market. Third-party casino operators in the area state that Lake Charles casinos do not face meaningful competition from casinos outside of the Lake Charles area. The Louisiana Gaming Control Board has prepared reports that analyze the Lake Charles market separately from the Shreveport/Bossier City and other gaming markets. The American Gaming Association recognizes Lake Charles as its own gaming market, apart from New Orleans and Shreveport/Bossier City, Louisiana, the Gulf Coast and Tunica/Lula, Mississippi, and Las Vegas, Nevada and other gaming markets in the United States.

61. Based on the foregoing, a hypothetical monopolist of casino services in the Lake Charles area could profitably raise prices by a small but significant amount. Therefore, the Lake Charles area is a relevant geographic market.

## VI.

## MARKET STRUCTURE AND THE ACQUISITION'S PRESUMPTIVE ILLEGALITY

### A.

### Casino Services in the St. Louis Area

62. The Acquisition will reduce the number of providers of casino services in the St. Louis area from four to three. Only one of the other casino operators in St. Louis is significant – and only one of its two casinos is even comparable to the Respondents' casinos in terms of quality and size.

63. Under the relevant case law and the Merger Guidelines, the Acquisition is presumptively unlawful by a wide margin as it would significantly increase concentration in a market that already is highly concentrated.

64. Pinnacle's post-Acquisition market share in the St. Louis-area casino-services market will be 58.4 percent, far surpassing levels held to be presumptively unlawful by the Supreme Court.

65. The Merger Guidelines measure market concentration using the Herfindahl-Hirschman Index ("HHI"). An acquisition is presumed likely to create or enhance market power, and thus is presumed illegal, when the post-merger HHI exceeds 2,500 points and the acquisition increases the HHI by more than 200 points. Here, the market concentration levels exceed these thresholds by a wide margin. The post-Acquisition HHI in the St. Louis-area casino-services market will be 4,443, an increase of 1,667 points. The HHI figures for the St. Louis-area casino-services market are summarized in the table below.

| **St. Louis Casinos Services Market Concentration (Based on Gaming Revenue)** | | |
|---|---|---|
| **Casino** | **Pre-Acquisition Market Share** | **Post-Acquisition Market Share** |
| **Pinnacle** | **33.6%** | **58.4%** |
| Lumière Place | 14.9% | |
| River City | 18.7% | |
| **Ameristar St. Charles** | **24.8%** | |
| Penn Gaming | 29.9% | 29.9% |
| Hollywood Casino | 23.5% | |
| Argosy Alton | 6.4% | |
| Casino Queen | 11.8% | 11.8% |
| | **Pre-Acquisition HHI** | **2,776** |
| | **Post-Acquisition HHI** | **4,443** |
| | **Increase in HHI** | **1,667** |

**B.**

**Casino Services in the Lake Charles Area**

66. The Acquisition will reduce the number of providers of casino services in the Lake Charles area from five to four. The remaining casino-services competitors in the Lake Charles area are highly differentiated and not nearly as close substitutes for the Respondents' casinos as Respondents' casinos will be for each other.

67. Under the relevant case law and the Merger Guidelines, the Acquisition raises significant competitive concerns in the Lake Charles-area casino-services market. Based on Respondents' own projected gaming revenue, Pinnacle's post-Acquisition market share will be [redacted] percent.

68. According to the Merger Guidelines, market shares are "based on the best available indicator of firms' future competitive significance in the relevant market." In this case, where Ameristar's Mojito Pointe is still under construction – but whose entry and competitive significance is certain – the "reasonably predictable effects of recent or ongoing changes in market conditions" should be considered "when calculating and interpreting market share data."

69. Under the Merger Guidelines' market concentration test, the Acquisition will result in a highly concentrated market, and is presumptively illegal, because the post-Acquisition HHI increases 1,306 points to 3,514. The HHI figures for the Lake Charles-area casino-services market are summarized in the table below.

| **Lake Charles Casinos Services Market Concentration (Based on Projected 2015 Gaming Revenue)** | | |
|---|---|---|
| **Casino** | **Pre-Acquisition Market Share** | **Post-Acquisition Market Share** |
| **L'Auberge** | [redacted] | [redacted] |
| **Ameristar Mojito Pointe** | [redacted] | |
| Coushatta | [redacted] | [redacted] |
| Delta Downs | [redacted] | [redacted] |
| Isle of Capri Lake Charles | [redacted] | [redacted] |
| | **Pre-Acquisition HHI** | **2,207** |
| | **Post-Acquisition HHI** | **3,514** |
| | **Increase in HHI** | **1,306** |

## VII.

## ENTRY BARRIERS

70. Neither entry by new firms nor expansion by the few remaining competitors will be timely, likely, or sufficient to deter or mitigate the Acquisition's likely serious competitive harm in the St. Louis-area or Lake Charles-area casino-services markets.

### A.

### Casino Services in the St. Louis Area

71. Entry into the St. Louis-area casino-services market is extremely unlikely because Missouri law limits the number of casino licenses to thirteen and all thirteen have been issued. Similarly, Illinois has issued all of its existing casino licenses. It is unlikely that either Missouri or Illinois will issue a new gaming license to build a casino in the St. Louis area.

72. Expansion by current market participants is also extremely unlikely in the St. Louis-area market. Casinos in Missouri must be within 1,000 feet of the closest edge of the

Mississippi or Missouri Rivers, which limits their ability to expand gaming floor space. In Illinois, casinos are limited to 1,200 gaming positions.

### B.

### Casino Services in the Lake Charles Area

73. Entry and expansion is also extremely unlikely in the Lake Charles-area casino-services market. Louisiana law limits the number of casino licenses to fifteen and all fifteen have been issued. Louisiana law also limits the size of each existing casino's gaming floor, thus preventing material expansion by current market participants, except for Native-American tribe-owned Coushatta. Entry by a casino in Texas is highly unlikely to occur soon; indeed, the Texas Constitution prohibits gambling and can only be modified by a supermajority vote of the Texas state legislature, which meets only once every two years.

## VIII.

## EFFICIENCIES

74. Extraordinary merger-specific efficiencies are necessary to justify the Acquisition in light of its vast potential to harm competition. No court has ever found, without being reversed, that efficiencies rescue an otherwise illegal transaction. Respondents cannot show that the purported efficiencies outweigh the competitive harm that will be caused by the Acquisition.

75. Nearly all of the Respondents' alleged efficiencies are either speculative, unsubstantiated, or not merger-specific. Pinnacle has acknowledged that it has "a lot of work to do" before its synergy estimates can be finalized. Respondents cannot show that any asserted cost savings or efficiencies are merger-specific or verifiable.

## IX.

## VIOLATIONS

### COUNT I – ILLEGAL AGREEMENT

76. The allegations of Paragraphs 1 through 75 are incorporated by reference as though fully set forth.

77. The agreement and plan of merger constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

## COUNT II – ILLEGAL ACQUISITION

78. The allegations of Paragraphs 1 through 75 are incorporated by reference as though fully set forth.

79. The Acquisition, if consummated, may substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

## NOTICE

Notice is hereby given to the Respondents that the twenty-eighth day of October, 2013, at 10:00 a.m. is hereby fixed as the time, and Federal Trade Commission offices, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580 as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth ($14^{th}$) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the Respondents file their answers. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C.

20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the Respondents file their answers). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

## NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Acquisition challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the Clayton Act, as amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. If the Acquisition is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant markets, with the ability to offer such products and services as Pinnacle and Ameristar were offering and planning to offer prior to the Acquisition.

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2. A prohibition against any transaction between Pinnacle and Ameristar that combines their businesses in the relevant markets, except as may be approved by the Commission.

3. A requirement that, for a period of time, Pinnacle and Ameristar provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant markets with any other company operating in the relevant markets.

4. A requirement to file periodic compliance reports with the Commission.

5. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to restore Ameristar as a viable, independent competitor in the relevant markets.

**IN WITNESS WHEREOF**, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this twenty-eighth day of May, 2013.

By the Commission.

Donald S. Clark
Secretary

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