**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT**
***In the Matter of Penn National Gaming, Inc., File No. 051-0029***

## I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Penn National Gaming, Inc. ("PNG"), which is designed to remedy the likely anticompetitive effects resulting from Penn's acquisition of Argosy Gaming Company ("Argosy"). If the Commission grants final approval, PNG will be required to divest Argosy's Baton Rouge, Louisiana, casino and associated assets to Columbia Sussex Corporation within four (4) months after the Consent Agreement becomes final. The Consent Agreement also includes an Order to Hold Separate and Maintain Assets ("Hold Separate Order") that requires PNG to preserve Argosy's Baton Rouge casino and associated assets as a viable, competitive, and ongoing operation until the divestiture is achieved. The Commission has issued the Hold Separate Order.

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

Pursuant to the November 3, 2004, merger agreement, PNG proposes to acquire Argosy ("Proposed Acquisition"). The total value of the Proposed Acquisition is approximately $2.2 billion. The Commission's Complaint alleges 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 lessening competition in the Baton Rouge, Louisiana, metropolitan area casino services market.

## II. The Parties

PNG is a publicly traded company headquartered in Wyomissing, Pennsylvania. The company owns and operates: Casino Rouge in Baton Rouge, Louisiana; Hollywood Casino in Aurora, Illinois; Charles Town Races & Slots in Charles Town, West Virginia; the Bullwhackers casino properties in Black Hawk, Colorado; and three Mississippi casinos: Hollywood Casino in Tunica, Casino Magic in Bay St. Louis, and the Boomtown Biloxi casino in Biloxi. Penn also operates Casino Rama, a gaming facility located approximately 90 miles north of Toronto in Ontario, Canada, pursuant to a management contract.

Argosy is a publicly traded company headquartered in Alton, Illinois. The company owns and operates casinos and related entertainment and hotel facilities in the Midwestern and Southern United States. Argosy owns and operates the Argosy Casino-Baton Rouge in Baton

Rouge, Louisiana; the Alton Belle Casino in Alton, Illinois; the Argosy Casino-Riverside in Riverside, Missouri; the Argosy Casino-Sioux City in Sioux City, Iowa; the Argosy Casino-Lawrenceburg in Lawrenceburg, Indiana; and the Empress Casino Joliet in Joliet, Illinois.

## III. Casino Services

The casino services market includes a combination of slot machine, video poker machine, and table gaming services, and associated amenities such as parking, food and beverages, and entertainment.

There are three main categories of casino gaming: slot machines, video poker machines, and table and counter games. Coin or ticket-operated slot machines usually are allocated the largest portion of the gaming floor. These machines are controlled by random-number-generating computer chips that are set to return a percentage of the amount played to the player ("player win") and to keep a percentage for the casino ("casino win" or "hold"). The machines may be programmed to provide many different game styles or themes, but they all fall into the subcategories of traditional "reel" slot machines or video slot machines.

Video poker machines sometimes are counted among the slot machines, but they actually represent a separate gaming category. While still based on a random-number-generating computer chip, the programming of the video poker rules and pay tables allows an element of player skill to affect the outcome of a game.

Table and counter games represent the third gaming category. Table games include blackjack, craps, poker, and let it ride. Counter games, which are played without cards, include roulette and keno. Casinos have been quick to capitalize on their consumers' preference for slot machines, as those machines require far less labor, consume fewer square feet of the casino floor, and generate both greater profits and higher profit margins than other types of casino gaming.

Louisiana's riverboat casinos offer a number of games from each of the three main gaming categories. Each riverboat casino has a similar number of gaming machines and tables, because they are limited by statute to a maximum of 30,000 square feet of aggregated casino floor space. When riverboat casinos differ in gaming minimums, limits, denominations, and hold rates, it is likely in response to highly localized competition. Other differences among riverboat casinos are the colors and layout of the casino's decks, and the level of amenities provided within the shoreside pavilions alongside of which the riverboats are moored. In December 2004, Louisiana's riverboat casinos generated nearly $125 million in gaming revenue.[1]

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[1] Louisiana State Police, Gaming Revenue Report.

## IV. The Complaint

The Commission's Complaint alleges that the Proposed Acquisition would create a monopoly in the Baton Rouge, Louisiana, metropolitan area casino services market. This includes the combination of slot machine, video poker machine, and table gaming, and associated amenities such as parking, food and beverages, and entertainment. The Proposed Acquisition would combine the only two casinos – one owned by PNG, the other by Argosy – in Baton Rouge, Louisiana. Industry participants refer to the Baton Rouge, Louisiana, riverboat casinos as "locals' casinos" because the vast majority of their revenue comes from consumers who make frequent visits to the casinos and live in the Baton Rouge, Louisiana, metropolitan area.

The Complaint further alleges that new entry into the Baton Rouge, Louisiana, metropolitan area casino services market is not likely to occur in a timely manner, even if prices increased substantially after the Proposed Acquisition, because there are significant impediments to such entry. Louisiana law allows the operation of only 15 riverboat casinos, four racinos, and one non-Native American land-based casino. All those licenses have been granted, and there is no evidence that any of the licensees are planning to relocate.

## V. The Consent Agreement

The Consent Agreement effectively remedies the Proposed Acquisition's likely anticompetitive effects in the Baton Rouge, Louisiana, metropolitan area casino services market by requiring PNG to divest Argosy's Baton Rouge casino and associated assets. Pursuant to the Consent Agreement, PNG is required to divest Argosy's Baton Rouge casino to Columbia Sussex Corporation within four (4) months from the date the consent order is final. This period may be extended for an additional two (2) months to allow the State of Louisiana to determine whether to grant regulatory approvals required to operate the casino. If Columbia Sussex Corporation does not obtain regulatory approvals, the Consent Agreement provides PNG with up to ten (10) months from the date the Consent Agreement becomes final to divest the casino to a buyer approved by the Commission. The Commission's goal in evaluating possible purchasers of divested assets is to ensure that the competitive environment that existed prior to the acquisition is maintained. A proposed acquirer of divested assets must not itself present competitive problems.

Should PNG fail to accomplish the divestiture within the time and in the manner required by the Consent Agreement, the Commission may appoint a trustee to divest these assets. If approved, the trustee would have the exclusive power and authority to accomplish the divestiture within six (6) months of being appointed, subject to any necessary extensions by the Commission. The Consent Agreement requires PNG to provide the trustee with access to information related to Argosy's Baton Rouge casino as necessary to fulfill his or her obligations.

The Commission's Hold Separate Order requires that PNG hold separate and maintain the viability of the Argosy Baton Rouge casino as a competitive operation from the date PNG acquires Argosy until the business is transferred to the Commission-approved acquirer. Furthermore, it contains measures designed to ensure that no material confidential information is exchanged between the PNG and the Argosy Baton Rouge casino (except as otherwise provided in the Consent Agreement), and provisions designed to prevent interim harm to competition in the Baton Rouge, Louisiana, metropolitan area casino services market pending divestiture. The Hold Separate Order names Frank Quigley, the present general manager of the casino, as the Hold Separate Trustee who is charged with the duty of monitoring Penn's compliance with the Consent Agreement and Hold Separate Order until the casino is divested.

In order to ensure that the Commission remains informed about the status of Argosy's Baton Rouge casino's pending divestiture, and about the efforts being made to accomplish the divestiture, the Consent Agreement requires PNG to file periodic reports with the Commission until the divestiture is completed.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and is not intended to constitute an official interpretation of the proposed Decision and Order or the Order to Maintain Assets, or to modify their terms in any way.