

# Anticipated acquisition by Sabre Corporation of Farelogix Inc

## Decision on relevant merger situation and substantial lessening of competition

**ME/6806/19**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 16 August 2019. Full text of the decision published on 27 September 2019.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

### SUMMARY

1. Sabre GLOB Inc, a subsidiary of Sabre Corporation (**Sabre**) has agreed to acquire Farelogix Inc (**Farelogix**) (the **Merger**). Sabre and Farelogix are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Sabre and Farelogix is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of non-core Passenger Service System (**PSS**) merchandising modules. Non-core PSS merchandising modules sit within an airline's overall IT system and allow it to create travel offers for corporations and end consumers.
4. The Parties also both supply services that facilitate the indirect distribution of airline content. Sabre supplies these services through its global distribution system (**GDS**), which collects and aggregates information from airlines and other third parties so as to distribute offers to travel agents (including online travel agents, brick-and-mortar travel agents and travel management companies, which are hereafter collectively referred to as **travel agents**).

Farelogix supplies these services through a product that allows airlines to connect to travel agents directly.

5. The CMA has assessed the impact of the Merger in the following frames of reference:
  - (a) The supply of non-core PSS merchandising modules worldwide; and
  - (b) The supply of services that facilitate the indirect distribution of airline content worldwide.
6. The CMA believes that the Merger raises significant competition concerns in the supply of non-core PSS merchandising modules.
7. Within this frame of reference, Farelogix has developed a best-in-class New Distribution Capability (**NDC**) enabled merchandising product and established relationships with several Sabre core PSS customers. Sabre, while a more limited presence within this space at present, is one of only two GDSs that also provide core and non-core PSS services, and also has the significant commercial advantage of holding well-established relationships with several hundred airlines.
8. The available evidence in relation to how as the market operates at present shows a material level of competitive interaction between the Parties. This is reflected in the considerable focus that Sabre places on Farelogix in its internal documents, viewing the company as a significant competitor in both merchandising and the supply of non-core PSS services more generally. For its part, Farelogix's internal documents consistently highlight Sabre as one of a limited number of credible competitors in this space.
9. The CMA notes, however, that looking only at a 'snapshot' of the market structure at present does not fully capture the nature of the constraint that the Parties exert on each other when taking account of the expected future evolution of non-core PSS services. In particular, while the Parties' existing market position is moderate, both Parties hold capabilities that make them particularly significant competitive forces within the market as it is expected to evolve towards the development of NDC end-to-end solutions encompassing elements that currently form part of PSS and distribution offerings.
10. More specifically, Farelogix's best-in-class merchandising product and the distribution capabilities described elsewhere in this decision leave it particularly well-placed to compete for future business as the market evolves towards NDC end-to-end solutions. The available evidence shows, in this

regard, that the threat posed by Farelogix was one of the key drivers in Sabre's decision to develop its own NDC end-to-end strategy.

11. Sabre's own capabilities, including its core and non-core PSS offerings and extensive well-established relationships with airlines, also leave it particularly well-placed to compete for business as the market evolves.
12. The CMA considers that there would be insufficient competition from other suppliers to constrain the merged entity. While both Parties view Amadeus as a significant competitor, the fact that its product is not PSS-agnostic limits the extent to which it is able to constrain the Parties in relation to the customers for which they primarily compete at present. The available evidence indicates that the constraints exercised by other suppliers of non-core PSS services are limited, particularly when due weight is given to the capabilities that they possess (in particular in relation to NDC end-to-end solutions) to compete for future business as the market evolves. Any constraint from in-house self-supply is also very limited.
13. The CMA therefore believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of non-core PSS merchandising modules worldwide.
14. The CMA also believes that the Merger raises significant competition concerns in the supply of services that facilitate the indirect distribution of airline content.
15. Within this frame of reference, the CMA found that Sabre is a well-established incumbent player with a significant market presence. Sabre, along with Amadeus and Travelport, is one of three major GDSs that currently hold a significant degree of market power. Airlines are heavily dependent on the GDSs to distribute their content to travel agents (with some airlines describing the GDSs as an oligopoly or '*unavoidable gateway*' that they are unable to fully switch away from).
16. Farelogix, while a smaller player than the three major GDSs, has emerged, more recently, as a competitively significant force in the supply of services that facilitate the indirect distribution of airline content. The available evidence indicates that Farelogix is widely recognised as an important innovator and significant disruptive force within the industry.
17. The available evidence also shows a very significant degree of competitive interaction between the Parties. While Farelogix is smaller than Sabre and has a different service offering, its ability to 'deleverage' the traditional

commercial relationship between Sabre and its airline customers represents a considerable threat to Sabre because of the scope this offers for partial disintermediation. The available evidence shows, in this regard, that the threat posed by Farelogix was one of the key drivers in Sabre's decision to develop its own NDC end-to-end strategy. In general, Sabre places a strong focus on Farelogix in its internal documents ([§<]), with evidence from third parties also consistently supporting the position that Farelogix has created significant competitive pressure on Sabre (as well as the other GDSs).

18. Notwithstanding the differences in their respective service offerings, Sabre is also an important competitive constraint on Farelogix. While Farelogix might be expected to target all three of the incumbent players, the available evidence relating to its commercial strategy clearly shows that it focusses particularly closely on Sabre [§<].
19. The available evidence indicates that the Parties would, absent the Merger, continue to be very significant constraints on each other in future. Both Parties possess capabilities that, as the industry evolves (in particular towards end-to-end NDC solutions), leave them particularly well-placed (compared to other suppliers) to compete for future business. While the Parties have suggested that [§<], the available evidence does not support this position [§<].
20. The CMA considers that there will be insufficient competition from other suppliers to constrain the merged entity. While the available evidence supports the position that Amadeus is a strong competitor to both Parties, the constraint posed by Travelport, the other major GDS, appears to be far more limited. The available evidence also indicates that the constraints exercised by other non-GDS suppliers of services that facilitate indirect airline content distribution (such as Datalex, OpenJaw and TPConnects), in-house self-supply, and the airline.com direct channel are limited.
21. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of services that facilitate the indirect distribution of airline content worldwide.
22. The CMA also considered whether the Merger could lead to coordinated effects through coordination on innovation between the three main GDS services providers: Sabre, Amadeus and Travelport. The CMA found that while Sabre, Amadeus and Travelport might be able to reach agreement on coordination through press releases and other public comment, coordination may not be internally sustainable. The available evidence shows there is a time lag between developing and agreeing an NDC strategy (eg the budget allocation) and the actual launch and implementation of NDC-enabled

capabilities with carriers. This could incentivise deviation because rivals are likely to be unable to accelerate their development sufficiently swiftly to catch up, preventing enforcement of any coordination.

23. The CMA also considered whether the Merger could lead to conglomerate effects. The CMA found that although Sabre could bundle certain PSS products together, including Farelogix's non-core PSS modules, such a strategy would not significantly harm the Parties' rivals due to the relatively small scale of any effect relative to the market as a whole.
24. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). The Parties have until 23 August 2019 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

## **ASSESSMENT**

### **Parties**

25. Sabre, headquartered in Southlake, Texas, USA is a technology and software provider to the global travel industry. Sabre provides technology solutions to airlines and travel agents. Among these, Sabre provides core and non-core PSS services to airlines and operates a GDS which provides (amongst others) airline content distribution services to airlines and travel agents. Sabre's turnover in 2018 was approximately £2.8 billion worldwide and approximately [REDACTED] in the UK.
26. Farelogix, headquartered in Miami, Florida, USA, creates innovative technology solutions for airlines, including non-core PSS modules and airline content distribution services using the NDC standard. Farelogix's turnover in 2018 was approximately [REDACTED].

### **Transaction**

27. On 14 November 2018, Sabre GLOB Inc entered into an agreement to acquire the whole of the issued share capital of Farelogix.
28. The Parties informed the CMA that the Merger is also the subject of review by competition authorities in the United States of America.

## Procedure

29. The CMA's mergers intelligence function identified this transaction as warranting an investigation.<sup>1</sup>
30. The Merger was considered at a Case Review Meeting.<sup>2</sup>

## Background to the airline content distribution industry

### *Introduction*

31. Airlines can sell their content directly to end-customers, eg at their own kiosks or via their own website (referred to as the **direct channel**), or indirectly via travel agents (referred to as the **indirect channel**).
32. The creation, distribution and sale of airline content can be broken down into three stages:
  - (a) Retailing: this is also called 'offer creation' in the industry and captures the compilation of information on a number of relevant components, including the travel route, type of seat and other ancillaries, schedule, availability and price, into a single package that can ultimately be sold to the end customer;
  - (b) Distribution: this refers to the transfer of the offer (whether individually or as part of a package of comparable offers from multiple airlines) to the end customer or travel agent in a way which allows the end customer or travel agent to assess that offer; and
  - (c) Fulfilment: this refers to a booking being made with an airline but in the case of bookings via travel agents can refer to a number of associated post-booking services including travel agent back-office accounting and reporting, quality assurance, duty of care management, corporate policy compliance and reservation management in the event of a travel disruption.
33. These three stages are currently facilitated by a variety of technological solutions and involve a number of different parties. The following section describes the current supply chain and solutions, how these developed, the Parties' role in this and future industry development.

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<sup>1</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

<sup>2</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

## ***Airline IT***

34. Both Parties provide airline IT services. The heart of an airline's IT system is the PSS, which is a complex set of systems (**modules**) that manage various tasks, including inventory, reservation, departure control, ancillaries, loyalty products etc. An airline's PSS therefore contains and manages certain information needed for retailing.
35. The following PSS modules are generally considered to constitute an airline's **core PSS**, and were historically typically sold together:
- (a) The airline reservation system or central reservation system, which controls the sale of seats, scheduling, passenger name records (**PNRs**) and the issuance of tickets;
  - (b) The airline inventory system, which provides information on available seats; and
  - (c) The departure control system, which is used to check in passengers at the airport.
36. In addition, airlines have the option of purchasing additional add-on or **non-core PSS** modules, such as modules to define and price ancillary offers, modules to calculate and manage an airline's availability, and modules to administer loyalty products. Non-core modules have been developed by both core PSS providers and third parties. Non-core PSS modules can either be PSS-agnostic, meaning that they can be connected with any core PSS, or PSS-dependent, meaning that they can only be connected to a particular core PSS.

## ***GDS***

### *Services offered by GDSs and how they work*

37. GDSs developed from the original airline computer reservation systems. Today, GDSs facilitate transactions between many different travel services providers (such as airlines, hotels, car rental operators etc.) and travel agents. The three largest GDSs are Sabre, Amadeus and Travelport, which together account for approximately [80-90]%-[90-100]% of all indirect airline bookings worldwide.<sup>3</sup>

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<sup>3</sup> Excluding passengers booked through local GDSs in Russia, Japan, and China (eg Travelsky, Axess, Infini, etc.).

38. GDSs are involved in all three stages of airline content creation and distribution. GDSs respond to a booking enquiry by a travel agent by collating information on a given airline's offer. This information may be received from an airline's PSS, an integration sitting on top of the PSS (eg on availability) and/or third-party sources (eg in relation to fares, the Airline Tariff Publishing Company, **ATPCO**<sup>4</sup>). The GDS then consolidates this information with information on other airline and/or travel service providers' offers and distributes the consolidated information to travel agents in an aggregated display. This allows travel agents to compare information across providers and book offers, including complex itineraries, involving multiple airlines. In addition, GDSs also manage some aspects of fulfilment including travel agent back-office accounting and reporting, quality assurance, duty of care management, corporate policy compliance and reservation management in the event of a travel disruption. This can involve the GDS communicating further with an airline's PSS. Throughout this process, airlines only have limited visibility over the package offered to the end-customer. For example, on flights involving multiple carriers, each airline will typically only have limited information regarding legs of the journey operated by other airlines.
39. The content collected from ATPCO and the airline for use by the GDS to facilitate and manage a booking is typically communicated using the Electronic Data Interchange for Administration, Commerce and Transport (**EDIFACT**) messaging standard, an electronic data interchange system. The EDIFACT standard was created to handle high transaction volumes while requiring only limited bandwidth. Its structural limitations, as well as the fact that it represents legacy technology that is no longer widely taught and supported, mean that developing new products and services in a manner that allows them to be transmitted using EDIFACT is both very time-consuming and very complex (and for certain types of ancillaries, not possible).
40. GDSs currently have limited capabilities to distribute content provided using a different messaging standard. Even where a GDS has the capability to distribute content using a different messaging standard (eg XML, which is described in further detail below), non-EDIFACT based content (typically ancillaries) must under the current processes still be provided to the GDS by airlines via ATPCO. This means that the content is also static, ie it cannot be dynamically adapted depending on individual booking queries.

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<sup>4</sup> ATPCO is an airline-owned central clearing house for distribution of fare information. ATPCO collects fares and fare-related information from airlines and consolidates them into a single data file, which is distributed to the market every hour. Airlines use ATPCO to standardise fare and fare-related data, allowing this information to be provided to the market uniformly (which is important eg for interline or code-share flights, where more than one airline will form part of a single booking). Fares filed with ATPCO are referred to as 'static' fares, as they are only updated once the airline provides new fare data, rather than in response to individual booking queries.



### *Use of GDSs by airlines and travel agents*

41. As set out above, the GDS serves both the airline and travel agent. The airline is served by having its content effectively distributed and therefore making it more likely to be sold to end-customers. The travel agent is served by having access to airline content which it can present to end-customers. In general, the value of a GDS to an airline is greater the more effectively it is able to facilitate sales, eg because it is widely used by travel agents and has many travel connections. Similarly, the value of a GDS to a travel agent will be greater the more travel services providers it makes available, the greater the scope of content (eg available fare options and inventory) and the better the fulfilment support.
42. While the Parties submitted that many travel agents multi-home and can readily switch between GDSs, most travel agents submitted that they either only contract with one GDS, or if they contract with multiple GDSs, they train individual agents to use only one system and/or one GDS per region/corporate customer etc. A few travel agents also told the CMA that they may contract with a second GDS but only as a back-up option. This means that in order for airlines to provide their offering to the largest number of travel agents, airlines have to contract with and provide their content to each of Sabre, Amadeus and Travelport.
43. With regard to remuneration for GDS services, a number of different models exist today:
  - (a) Under the traditional revenue model, the airline pays the GDS a fee for each travel segment (ie individual flight forming part of an overall journey) in the GDS. The GDS in turn pays a fee to the travel agent that made the booking (a so-called **incentive fee**). The net amount that the GDS receives is the fee paid to the GDS less the incentive paid to the travel agent. The Parties submitted that generally the fee charged to airlines will be lower the more content (ie fares and travel options) it provides to the GDS.
  - (b) Under the wholesale model, airlines negotiate remuneration terms directly with a travel agent under a wholesale agreement. Pursuant to this model, the airline pays the travel agent directly and the travel agent in turn pays a technology fee to the GDS, which the Parties submitted may be comparable to the net amount the GDS would have received under the same booking using the traditional model. The Parties submitted that the vast majority of tickets booked in the wholesale model

are booked with [X]. The Parties submitted that in 2018, roughly [X]% of Sabre's bookings were made under the wholesale model.

- (c) Under the more recently developed private channel model, airlines provide different content to different travel agents, so that not all travel agents using a particular GDS receive the same content. Airlines will incentivise travel agents to join a private channel (hosted by the GDS) by imposing a surcharge on fees outside of the private channel. If a travel agent joins the private channel, they avoid this surcharge on fees and gain access to unique content that may not be available outside the private channel but receive lower or no incentive payments from the GDS. The Parties submitted that Sabre has entered into private channel arrangements with [X] and that currently ticket sales booked through private channels represent [X]% of Sabre's overall share of bookings and share of revenue. The Parties submitted that they expect the proportion of bookings made via the private channel to [X] in the foreseeable future.

#### ***Direct Channel - airline.com***

44. With the mass-marketisation of the internet, airlines developed their own websites (hereafter referred to as **airline.com**) and started taking bookings directly from end-customers, without GDS or travel agent involvement in the process.
45. In contrast to bookings made through a GDS, offers for bookings made through airline.com are created by the airline itself (albeit in some cases still relying on fare and scheduling information purchased from ATPCO, in particular for interline and code-share flights). By creating the offer themselves, airlines have better visibility of the end-customer and more control over the offer.
46. In addition, offers created for airline.com do not need to be EDIFACT-based and are therefore not constrained by the technological limitations as to the type of information that can be transmitted. By using a different standard, airlines were able to start offering more complex offers to their end-customers through the direct channel, eg selling airline tickets separately to ancillaries (eg extra legroom, additional luggage etc). The sale of ancillaries made up 10.7% of global airline revenue (as well as the vast majority of profits) in 2018.
47. In 2017, an estimated 42% of global airline tickets were sold through airline.com, up from 34% in 2012, meaning that the majority of tickets are still sold through travel agents (ie using the indirect channel). Airlines almost

uniformly told the CMA that they expected the direct channel to keep growing in the next three to five years.

## ***Direct Connect***

### *Development of Direct Connect*

48. Since the early 2000s, airlines have also developed one-to-one connections with travel agents or non-GDS aggregators (referred to as **Direct Connects** or the **Direct Connect channel**).<sup>5</sup> These allow airlines to transmit content directly to any third party they choose, outside the structure of the GDS. Direct Connects were traditionally often used by low cost carriers, who mostly did not distribute their content through the GDSs. More recently, Direct Connects have also been used to connect to GDSs as a means of delivering NDC content (explained further below). This type of Direct Connect is known as **GDS pass-through**.
49. Today, Direct Connects account for less than 2% of total bookings worldwide.
50. However, [redacted] Direct Connects may grow in European markets (in contrast to the US market) due to local market features including airlines having larger market shares (making travel agents more willing to use Direct Connects), travel agents being more technologically advanced (and therefore less reliant on GDSs) and the market consisting of more leisure travel agents and aggregators (which have fewer fulfilment requirements than the typically more business customer-oriented travel management companies).<sup>6</sup>

### *Services offered by Direct Connects*

51. To establish a Direct Connect, an airline or airline group has to provide the travel agent or other third party with access to parts of its IT system (either to its PSS or to an integration layer which sits on top of the PSS). This is done by building an Application Programming Interface (**API**) onto the airline's IT system and then building a connection between the airline or airline group and the travel agent. Some airlines (eg British Airways) have built these APIs in-house, while others (eg American Airlines) use third-party providers (such as Farelogix) for this purpose. Airlines generally pay Direct Connect providers set-up and maintenance fees, as well as per-transaction fees.

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<sup>5</sup> Non-GDS aggregators are technology providers that aggregate airline content from a variety of different sources, eg through Direct Connects or screen-scraping. Non-GDS aggregators typically provide more limited fulfilment services than GDSs. Travel agents generally pay non-GDS aggregators to receive access to content.

<sup>6</sup> [redacted].

52. The supply of Direct Connects, and therefore the specific services these entail in terms of retailing, distribution (including aggregation) and fulfilment, is less standardised than the supply of GDS services and can vary significantly between suppliers.
53. In terms of aggregation, as a Direct Connect is specific to a particular airline, it does not automatically aggregate content from multiple airlines. However, a Direct Connect can connect to other technology which can aggregate this content (eg non-GDS aggregators). In addition, some Direct Connect technology providers have themselves developed tools which allow for content aggregation, subject to commercial agreement between airlines for content to be distributed in this way.
54. In terms of fulfilment, some providers offer advanced solutions relating to managing bookings, eg in relation to partial exchanges etc. However, in general, Direct Connects are not able to fully facilitate interlining and corporate reporting/compliance, as is possible via a GDS.
55. Finally, in terms of retailing, Direct Connects are not involved in creating the retail offer, which is done by an airline's own systems. However, some Direct Connect suppliers also provide the PSS and related solutions that allow the airline to do this.

#### *Use of Direct Connect by airlines and travel agents*

56. Where Direct Connect third-party providers are used to build the API and establish connections to travel agents, the airline or airline group will enter into contracts with the third-party provider as well as the travel agent, before issuing a statement of work or work order to the Direct Connect technology provider to create a link between the airline or airline group and the travel agent. The CMA understands that the airline will pay the technology provider a combination of set-up and maintenance fees as well as regular subscription and transaction fees (ie fees per booking made using the individual direct connection).
57. Similarly to GDSs, Direct Connects serve both airlines and travel agents. Airlines are able to distribute their content and travel agents receive effective access to content which they consider valuable. As with GDSs, the value to the airline of the Direct Connect solution is greater the larger the volumes of sales made through that solution. The value to the travel agent is greater the better the content received via the Direct Connect solution and the more effectively it can view and manage that content. Therefore, while the principal supply agreement is between the airline and the Direct Connect supplier, the

attractiveness of the Direct Connect solution to travel agents is relevant to its effectiveness as a distribution channel.

58. As with GDSs, a number of different remuneration models between airlines and travel agents exist for the Direct Connect channel:
- (a) Airlines may pay travel agents directly per booking made through the Direct Connect channel;
  - (b) Airlines may impose a surcharge on tickets booked through the GDSs to incentivise travel agents to book through the Direct Connect channel; and/or
  - (c) Airlines may establish a Direct Connect with a non-GDS aggregator with the aggregator charging travel agents for bookings.

## **NDC**

### *What it is and how it works*

59. As set out in paragraph 46 above, richer content can be distributed through the direct channel better than through GDSs, such that airlines are better able to sell ancillaries through the direct channel. In addition, the direct channel typically allows airlines to create more dynamic offers and prices, ie offers created specifically with a particular end-customer in mind, than is possible through a GDS. This is because:
- (a) Content sold through the direct channel does not necessarily have to rely on static fare information provided by ATPCO (subject to exceptions for eg interlining) and can therefore be dynamically adapted depending on the end-customer making an enquiry; and
  - (b) The more direct interaction with the end-customer, and the ability to create the offer themselves, provides airlines with greater opportunities to collect data about their end-customers and tailor their offers accordingly.
60. In light of growing airline demand to sell ancillaries and the lack of ability to offer more sophisticated ancillary products and dynamic pricing of fares and ancillaries through the GDSs due to the limitations of the EDIFACT standard, the International Air Transport Association (**IATA**) launched the NDC standard in 2012.

61. The NDC standard is an XML-based computer messaging standard which was originally developed by Farelogix.<sup>7</sup> The aim of NDC was to address the limitations of the airline content that could be distributed via GDSs, which resulted in limited product differentiation between airlines, a lack of standardisation in the delivery of 'rich content' (eg pictures and videos of content), and an inability to support personalised offers. NDC allows for dynamic and personalised offers to be created by airlines (instead of the GDS) and accessed by travel agents.
62. To transmit NDC content, airlines require an NDC API through which to connect to third parties. As with other APIs, the NDC API can either be developed by the airline in-house or by using a third-party technology provider such as Farelogix. Connections are subsequently established between airlines and third parties (eg travel agents and non-GDS aggregators) to transmit the NDC content.

#### *Adoption of NDC*

63. The majority of airlines submitted that NDC is important to them and that they have an NDC strategy (although progress varies). 21 IATA member airlines have committed to having 20% of their tickets distributed via an NDC API by 2020. Only one small airline told the CMA said that it did not yet see the need to adopt NDC.
64. Several airlines told the CMA that distributing NDC content outside the GDS is cheaper for them than distributing content through the GDS, and that adopting NDC has allowed them (or will allow them) to build out their Direct Connect capabilities and use this as leverage in negotiations with the GDSs. In this context, several airlines submitted that NDC technology providers such as Farelogix exert '*competitive pressure*' on the GDSs.
65. Travel agents also want access to the best content possible from airlines, including ancillaries. However, they have generally expressed an interest in consuming NDC content through their existing GDS and very few travel agents currently consume NDC content, whether through a Direct Connect or otherwise.
66. In terms of GDSs, the CMA understands that they were initially sceptical about the value and prospects of NDC. For example:

(a) In 2012, Travelport stated that '*At this time, much of the IATA NDC statement appears only conceptual in nature, based on high level*

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<sup>7</sup> [3<] deposition, page 61.

*principles that do not necessarily incorporate the input of all the critical components of the travel value chain from supplier to travel agent to consumer*;<sup>8</sup>

- (b) At the World Passenger Symposium 2012 in Abu Dhabi, a Sabre representative said *'Based on our extensive evaluation and deep technical analysis of IATA's proposal, our conclusion is clear. We do not see how the proposed NDC approach would work in the real world without sacrificing fare transparency, limiting comparison shopping and compromising data privacy rights'*;<sup>9</sup> and
- (c) Amadeus vice president industry affairs Svend Leirvaag, speaking at the CAPA World Aviation Summit 2015, said that *'IATA has wasted so much money trying to propagandise NDC, and I'm tired of it. We've wasted so much time and energy on this. It's time to demystify NDC. [...] NDC has derailed industry discussion. It's ill conceived. It has not contributed to the efficiency of the industry.'*<sup>10</sup>
67. Technologically, airlines can use their NDC API to connect and transmit content to GDSs via GDS pass-through. In theory, this should allow airlines to provide NDC-enabled content to travel agents at scale. However, currently, GDSs are not yet fully able to consume and manage NDC content, meaning that GDS pass-through arrangements do not allow airlines to share fully dynamic offers in the same way as using the direct channel or a Direct Connect.
68. The CMA understands that GDSs have only recently increased their engagement and attempts to integrate NDC and now recognise the importance of doing so. In this context, Sabre's recent internal documents note that it risked losing airline revenue and travel agent contracts if it did not adopt an NDC strategy.<sup>11</sup>
69. The CMA understands that each of Sabre, Amadeus and Travelport are working on developing the requisite capabilities to consume and distribute NDC content through their GDS. However, some airlines told the CMA that while they would be willing to implement GDS pass-through arrangements, GDSs have not always been willing to engage and negotiate with airlines on this and that progress has been slow.

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<sup>8</sup> <http://ir.travelport.com/news-releases?item=854> (accessed on 16 August 2019).

<sup>9</sup> <https://www.arabianindustry.com/design/news/2012/nov/11/iatas-ndc-wont-work-in-the-real-world-sabre-3417193/> (accessed on 16 August 2019).

<sup>10</sup> <https://centreforaviation.com/news/amadeus-says-iatas-ndc-has-wasted-time-and-energy-489455> (accessed on 16 August 2019).

<sup>11</sup> See eg Exhibit 5 to [S&C] deposition, pages 4-5 and Annex 4c.2 to the Merger Notice, page 26.

70. Non-GDS third party technology providers have also developed relevant NDC solutions, with different providers focusing on different parts of the overall distribution chain (retail, distribution, including aggregation, and fulfilment). For example, while some providers have developed or expanded their aggregation technology to allow travel agents to compare offers from several Direct Connects, others have focussed on developing offer creation engines for airlines.

### ***Future industry developments***

71. The available evidence indicates that NDC is a first step towards further significant industry changes in the coming years.
72. One such industry development is the development of NDC-enabled end-to-end solution encompassing elements currently forming part of an airline's PSS and its distribution technology (a so-called **Offer and Order Management System**). Broadly, Offer and Order Management Systems will allow airlines to create dynamic, personalised and fully NDC-enabled offers which can then be distributed (and managed) across all distribution channels using one provider. Several third parties told the CMA in this context that the further development and adoption of NDC would allow airlines to have more control over their offers than at present, and would likely reduce their current dependency on the GDS.
73. Some airline IT service providers submitted that they are working towards offering a fully developed Offer and Order Management Systems. The CMA understands that Offer and Order Management Systems could be built either on top of an airline's existing PSS environment or outside of it.
74. Another NDC-driven industry development is the IATA ONE Order initiative, which is an 'industry-led initiative intended to replace the multiple rigid and paper-based booking and ticketing records (ie the flight reservation, e-ticket and electronic miscellaneous document or EMD) by combining the contents into a single and flexible order record. At the same time, it aims to streamline the delivery and accounting methods by using standard order management processes.'<sup>12</sup> IATA's website explains that ONE Order complements NDC and 'is extending the capability of the Order Management system.'<sup>13</sup> While airlines told the CMA that full implementation of ONE Order was likely still years away, a few submitted that they view NDC as the first step in an industry movement towards ONE Order and part of their future strategy. Several

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<sup>12</sup> <https://www.iata.org/whatwedo/airline-distribution/one-order/Pages/index.aspx> (accessed on 16 August 2019).

<sup>13</sup> <https://www.iata.org/whatwedo/airline-distribution/one-order/Pages/index.aspx> (accessed on 16 August 2019).



airlines also told the CMA that implementation of ONE Order would likely reduce their dependency on their PSS providers in the next decade.

### ***The Parties' role within the travel ecosystem***

#### *Sabre*

##### *Products and services offered*

75. Sabre offers the full range of core and non-core PSS services through its SabreSonic Customer Sales & Service PSS, which can be used by an airline to internally manage reservations, inventory and departure control. Sabre offers a total of 106 non-core PSS modules, some of which are PSS-dependent (eg Sabre's merchandising products, SabreSonic CSS Dynamic Retailer and SabreSonic CSS Ancillary Services) and others which are PSS-agnostic (eg Sabre's inventory product, SabreSonic CSS Inventory).
76. Furthermore, Sabre operates a GDS known as Sabre Travel Network. Sabre also provides technological support for travel agents and travel services providers using its GDS services, which includes global 24/7 assistance. Sabre's GDS gives travel agents access to more than 400 airlines and [X]. Sabre's GDS uses the EDIFACT messaging standard and has some XML capabilities. Sabre has one operational NDC product, an NDC GDS pass-through product which launched with United Airlines in April 2019. In addition, Sabre operates two non-NDC Direct Connect products, which are only available to its core PSS customers [X].

##### *NDC strategy*

77. With regard to NDC, Sabre started developing its NDC strategy in [X] and publicly launched its strategy in October 2017. The Parties submitted that Sabre has plans to develop end-to-end NDC-enabled solutions for the travel industry under the headings of [X]. [X]'s aim is to provide offers, including ancillaries, to travellers based on information known about them and to manage orders efficiently. [X]'s aim is to display travel products across all channels chosen by an airline, while still allowing travel agents to comparison shop across dynamic personalised and traditional offers. The Parties submitted that building [X] capabilities form the first phase of Sabre's 'Beyond NDC' strategy and that Sabre would improve the sophistication of these capabilities in subsequent phases.
78. Sabre's internal documents show that Sabre's [X] solutions are meant to form part of an Offer and Order Management System, ie covering both airline

PSS technology / offer creation and distribution technology [REDACTED]. The CMA found that Sabre's plans [REDACTED].<sup>14</sup> Sabre's internal documents set out, in this context, that [REDACTED].<sup>15</sup>

79. Sabre's internal documents suggest that Sabre planned to launch its Beyond NDC strategy with several airlines in [REDACTED] and scale its offering from [REDACTED]. The Parties submitted that [REDACTED].
80. The available evidence further indicates that Sabre evaluated its strategy with regard to ONE Order and its internal documents show that while Sabre's current Beyond NDC strategy [REDACTED].<sup>16</sup>

### *Farelogix*

#### *Products and services offered*

81. Farelogix supplies a number of non-core PSS modules to airlines, all of which are PSS-agnostic:
  - (a) FLX Merchandise: an NDC-compatible product that allows airlines to create ancillary products and service offers;
  - (b) FLX Schedule Builder: an NDC-compatible product that enables airlines to create and schedule routes in real time;
  - (c) FLX Availability Calculator: an NDC-compatible product that enables airlines to calculate and manage their own availability; and
  - (d) FLX Shop and Price: an airline shopping, offer and pricing engine capable of NDC-aligned shopping, offer creation, faring and pricing. The tool allows airlines to shop and price offers from various different sources (ATPCO and others) with the goal of creating more dynamic / personalised pricing.
82. Farelogix also provides order distribution services through its FLX Open Connect product, which consists of two components:
  - (a) FLX OC, which translates various messaging protocols (eg EDIFACT, OTA, XML) into an NDC XML format and allows travel agents to make bookings through a Direct Connect solution with an airline; and

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<sup>14</sup> See eg Exhibit 5 to [REDACTED] deposition, page and Annex 4c.2 to the Merger Notice, page 11.

<sup>15</sup> See Exhibit 2 to [REDACTED] deposition, pages 3 and 7 and Exhibit 5 to [REDACTED] deposition, page 6.

<sup>16</sup> Exhibit 3 to [REDACTED] deposition, pages 8 and 43 and Exhibit 14 to [REDACTED] deposition, page 1.

- (b) FLX NDC API, which allows delivery of an airline's full suite of NDC content (including ancillaries) through any sales channels.
83. As part of its FLX Open Connect product, Farelogix also provides the SPRK tool, an interface which allows travel agents to make bookings via FLX Open Connect. Farelogix's SPRK tool can be used to aggregate offers from several airlines subject to [§<]. Farelogix also has the ability to carry out certain fulfilment functions such as PNR splitting, refunding, queuing and partial exchanges.
84. Farelogix presents on its website that its non-core PSS modules and its distribution solutions form part of its Airline Commerce Gateway, which is described as an '*Airline Controlled Offer and Order Management*' solution.<sup>17</sup> Two third parties also told the CMA that while it was unclear to them whether Farelogix's products already comprise a full end-to-end solution, one of them mentioned that Farelogix was one of the leaders in innovation in this field. With regard to ONE Order, Farelogix's internal documents show that it considered that it would play a significant role in ONE Order's development and implementation.<sup>18</sup>

*Farelogix as an industry innovator and disruptor*

85. Farelogix is widely recognised as a leader and innovator in NDC and NDC solutions. As set out in paragraph 61, the NDC standard was originally developed by Farelogix before being donated to IATA. Furthermore, Jim Davidson, Farelogix's CEO, has been a vocal proponent of the NDC standard, including as a means to diversify indirect airline content distribution. This is echoed in the Parties' internal documents, which [§<],<sup>19</sup> as well as in Sabre's press release announcing the Merger, which states that '*Sabre Corporation (NASDAQ: SABR) today announced that it has entered into an agreement to acquire Farelogix, a recognized innovator in the travel industry*'.<sup>20</sup> Third parties also confirmed that Farelogix plays an industry-leading and innovator role, with several noting that it has played a disruptive role in the industry.

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<sup>17</sup> <https://www.farelogix.com/platform/> (accessed on 16 August 2019).

<sup>18</sup> Annex 30 to the Merger Notice and Exhibit 3 to [§<] deposition, page 5.

<sup>19</sup> See Exhibit 2 to [§<] deposition, page 6, Annex 4c.1 to the Merger Notice, page 5, Attachment K.2 to the Merger Notice, page 27 and Annex 4(c)(3) to the Merger Notice, page 3.

<sup>20</sup> <https://www.sabre.com/insights/releases/sabre-enters-agreement-to-acquire-farelogix-expanding-its-airline-technology-portfolio-and-accelerating-its-strategy-to-deliver-next-generation-retailing-distribution-and-fulfillment-capabilities/> (accessed on 16 August 2019)

## Jurisdiction

### *Relevant framework*

86. In the context of an anticipated transaction, a relevant merger situation exists where the following conditions are satisfied:<sup>21</sup>
- (a) two or more enterprises will cease to be distinct; and
  - (b) either:
    - (i) the value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year (the **turnover test**); or
    - (ii) the enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description (the **share of supply test**).

### *Enterprises ceasing to be distinct*

87. Each of Sabre and Farelogix is an enterprise. As a result of the Merger, Sabre will acquire a controlling interest in Farelogix. Therefore, as a result of the Merger, these enterprises will cease to be distinct.

### *The turnover test*

88. In 2018, Farelogix [~~£~~]. Therefore, the turnover test is not met.

### *The share of supply test*

89. The Mergers Guidance on the CMA's jurisdiction and procedure (**J&P Guidance**) sets out that the share of supply test is satisfied if the merged enterprises both either supply or acquire goods or services of a particular description, and will, after the merger, supply or acquire 25% or more of those goods or services in the UK.<sup>22</sup>
90. The Parties submitted that the CMA does not have jurisdiction over the Merger as the share of supply test has not been met.

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<sup>21</sup> Section 23 of the Act.

<sup>22</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2, January 2014\)](#), paragraph 4.53.

91. The CMA considered the Parties' submissions along with information provided by third parties. As further explained below, the CMA considers that it is or may be the case that the share of supply test is met.
92. The Competition Appeal Tribunal has previously noted that: '*The CMA's role in regulating merger activity, and its ability to do so effectively, is a matter of public importance.*'<sup>23</sup> The overall purpose of merger control is to regulate the conduct of companies in the market and to enable competition authorities to examine whether mergers will have a detrimental effect on competition. The CMA's well-established approach in carrying out its statutory duties in relation to merger control is to consider the commercial realities and results of transactions, focussing on the substance rather than the legal form of arrangements.<sup>24</sup>
93. Within this context, the CMA will have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met. The J&P Guidance sets out that the CMA has a wide discretion in describing the relevant goods or services and that, in applying the share of supply test, the CMA may have regard to value, cost, price, quantity, capacity, number of workers employed and any other criterion in determining whether the 25% threshold is met. The J&P Guidance further makes clear that the share of supply test is not an economic assessment of the type used in the CMA's substantive assessment and need not amount to a relevant economic market.<sup>25</sup>
94. Consistent with the findings in a number of recent expert reports,<sup>26</sup> the CMA notes that markets (including, in particular, digital markets) can be characterised by a variety of different business models and that the ways in which firms interact (with each other and other market actors) to win business over time can vary significantly. In practice, this means that competitive interactions between firms might not play out within single (formal) 'procurement' decisions giving rise to direct contractual relationships or, more broadly, be reduced to overlaps in directly-marketed products or services, as they might in more traditional markets.
95. The CMA's approach in this case (including in relation to the assessment of jurisdiction) has been to focus on whether the Merger might restrict

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<sup>23</sup>Electro Rent Corporation v CMA [2019] CAT 4, para. 120.

<sup>24</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2, January 2014\)](#), paragraphs 4.7 and 4.21.

<sup>25</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2, January 2014\)](#), paragraph 4.56.

<sup>26</sup> Report of the Digital Competition Expert Panel, [Unlocking digital competition](#) (March 2019); Crémer et al., [Competition policy for the digital era](#) (April 2019); and Stigler Center for the Study of the Economy and the State, [Report of the Committee for the Study of Digital Platforms](#) (May 2019).

competition in the UK and, as a result, harm UK consumers, taking into account the commercial realities of how the Parties interact with each other.

96. For the purposes of determining whether the share of supply test is met in this case, the CMA has considered:
- (a) The extent to which it is appropriate to analyse the interaction between the Parties' respective service offerings by reference to the supply of services to facilitate the distribution of airline content (including tickets and ancillaries);
  - (b) Whether there is a supply in the UK of such services by considering:
    - (i) The identity of the Parties' customers;
    - (ii) Whether the supply of services to these customers qualifies as supply of services in the UK; and
  - (c) Whether the acquisition will result in an increment to Sabre's share of supply for such services.

*Services to facilitate the distribution of airline content*

97. As set out in the Background section above, GDSs collect and collate information from airlines and third parties to create offers in response to booking enquiries from travel agents, consolidate this information with other airlines' and/or travel service providers' offers and distribute the information to travel agents in an aggregated display. This allows travel agents to compare information across providers and book offers, including complex itineraries involving multiple airlines.
98. Direct Connect suppliers (such as Farelogix) build APIs onto the airline's IT system as well as connections between airlines and travel agents, which then allow airlines to sell content to travel agents directly.
99. Both Sabre (via its GDS) and Farelogix (via its FLX Open Connect product) therefore provide services that facilitate the distribution of airline content (including tickets and ancillaries) for sale through travel agents.
100. Therefore, the Parties overlap in the supply of services to facilitate the indirect distribution of airline content.
101. The CMA considered whether the Parties supply such services in the UK, and whether the Merger will result in an increment of Sabre's share of supply for

such services in UK (or a relevant sub-set of such services in the UK), having regard to the activities of both airlines and travel agents.

*Shares of supply – British Airways*

102. Consistent with the approach described above, the CMA considered whether the Parties' supply of services that facilitate the indirect distribution of airline content to British Airways, the largest UK-based airline, meets the share of supply test.

*British Airways as a UK customer*

103. The evidence indicates that Sabre provides services to facilitate the indirect distribution of airline content to UK airlines (including British Airways). The CMA understands that these services are provided subject to contracts between Sabre and these airlines. Therefore, the CMA considers that British Airways is a UK customer of Sabre.
104. The Parties submitted that there is an [X] agreement between Farelogix and British Airways. However, the Parties submitted that this agreement [X]<sup>27</sup> [X] does not create a customer relationship between Farelogix and British Airways. In particular, the Parties submitted that:
- (a) The [X] agreement is necessary to provide [X] with the ability to use its FLX Open Connect API to communicate with British Airways' booking systems to allow [X] to sell British Airways tickets [X];<sup>28</sup>
  - (b) The relevant procurement decision for Farelogix's services was taken by [X], not British Airways;
  - (c) Farelogix is not providing British Airways with a service that would allow it to sell tickets directly to travel agents;
  - (d) Even if the [X] arrangement could potentially constitute relevant supply, it only relates to potential future supply;
  - (e) [X]; and
  - (f) [X].
105. The CMA considers that Farelogix, pursuant to its [X] agreement with British Airways, supplies services to British Airways (which, as noted above, is a UK

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<sup>27</sup> The evidence available indicates that [X].

<sup>28</sup> These [X] arrangements allow [X] to sell British Airways tickets [X].

customer) to facilitate the indirect distribution of airline content (including tickets and ancillaries) for the following main reasons:

- (a) British Airways is incorporated in the UK and operates mainly out of the UK;
  - (b) Pursuant to the [X] agreement between Farelogix and British Airways, Farelogix agrees to [X].<sup>29</sup> [X]; and
  - (c) The [X] agreement between Farelogix and British Airways provides that [X].<sup>30</sup>
106. The CMA does not consider that the fact that British Airways' flights [X], or the fact that [X] impacts this assessment. Farelogix is providing British Airways with services which allow its tickets to be sold through travel agents. The fact that Farelogix has not [X] does not undermine the conclusion that services have been provided to British Airways under this agreement.
107. The CMA also does not consider that the only relevant commercial decision for the purposes of the share of supply test was taken by [X]. The [X] contract with Farelogix was entered into and signed by British Airways, not [X]. Furthermore, the CMA understands that [X].

*Calculation of shares of supply to British Airways*

108. On the basis of data provided by Sabre and third parties on the number of bookings made through British Airways' indirect distribution channels in 2018, the CMA considers that Sabre's share of the supply of services to British Airways that facilitate the indirect distribution of airline content is [30-40]%. The indirect distribution services provided by Farelogix to British Airways in accordance with the [X] agreement constitute a small post-merger increment to this share of supply.
109. The Parties submitted that it is inappropriate for the CMA to determine whether the share of supply test is met based on the Parties' proportion of sales to a single airline customer.
110. As noted at paragraph 93 above, the CMA has a wide discretion in describing the relevant goods and services for the purposes of determining the scope of the share of supply test. Data provided by the Parties shows that British Airways' bookings accounted for more than [70-80]% of all bookings made with UK carriers through the three largest GDSs (Amadeus, Sabre and

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<sup>29</sup> Farelogix's [X] agreement with British Airways, clause 2.1.

<sup>30</sup> Farelogix's [X] agreement with British Airways, clause 6.1.



Travelport), indicating that bookings by British Airways represent a substantial portion of all UK airline bookings. British Airways is the flag carrier airline of the United Kingdom,<sup>31</sup> and its procurement choices are liable to have a material impact on UK consumers. The CMA therefore believes that it is reasonable and appropriate to consider the share of supply test with respect to the supply of services to British Airways that facilitate the indirect distribution of airline content.

111. The CMA therefore believes that it is or may be the case that the share of supply test in section 23 of the Act is met in the supply of services to British Airways that facilitate the indirect distribution of airline content.

#### *Shares of supply – travel agents*

112. The supply of indirect distribution of airline content has two-sided features, with services provided to both airlines and travel agents. While the CMA considers that the share of supply test is met with respect to the supply of services to British Airways that facilitate the indirect distribution of airline content, the CMA also considered, for completeness (and again consistent with the approach described in paragraphs 89 to 96 above), whether the Parties' supply of services that facilitate the indirect distribution of airline content to travel agents in the UK meets the share of supply test.

#### *UK travel agents as customers*

113. The available evidence indicates that Sabre has a direct commercial relationship with UK travel agents for the indirect distribution of airline content. Therefore, the CMA considers that UK travel agents are customers of Sabre.
114. The Parties submitted that Farelogix does not have travel agent customers in the UK.
115. The Parties submitted that Farelogix's connection and airline content distribution product (FLX Open Connect, including both FLX OC and FLX NDC API) is not a 'platform' in the economic sense but is instead a product (or a combination of product and related services) that Farelogix supplies to airline customers. The Parties submitted that Farelogix cannot use or operate it to match-make or facilitate transactions between different classes of customers active in different markets.

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<sup>31</sup> The [Civil Aviation Authority 2018 dataset](#) for scheduled flights shows that, in 2018, British Airways was the largest airline on a number of measures, including aircraft km, stage flights, A/C hours, and number of passengers uplifted. The International Airlines Group (IAG) [2018 Annual Report](#) states that that British Airways 'already offer more choice of destinations than any other UK airline' (page 22).

116. The Parties submitted that Farelogix’s customers are the airlines with which it contracts and from which it receives revenues. The Parties submitted that Farelogix does not have any direct customer relationships with UK travel agents and does not supply the FLX Open Connect product to UK travel agents. In particular, the Parties submitted that:

(a) Farelogix deploys its products and services at the request or on the instruction of airlines (rather than travel agents) and may connect an airline NDC API to travel agents or GDSs where a customer airline requires it to do so;

(b) [REDACTED]; and

(c) The fact that demand from airline customers for Farelogix services is ‘derived’ from downstream demand from travel agents for airline services does not create a customer relationship between Farelogix and the travel agents.

117. The CMA considers that the supply of services to facilitate the indirect distribution of airline content has two-sided features, and that UK travel agents are customers of Farelogix for the supply of such services. This is supported, in particular, by the following evidence:

(a) Notwithstanding the position taken by the Parties, Farelogix refers to its FLX Open Connect product as a ‘platform’ [REDACTED],<sup>32</sup> [REDACTED].<sup>33</sup> The CMA considers that, in order to be an effective platform, Farelogix’s product has to meet the needs of both sides of the market;

(b) UK travel agents use Farelogix’s services to make airline ticket and ancillaries bookings. Some of these travel agents also use a user interface developed by Farelogix (SPRK) to make these bookings;

(c) Farelogix enters into ancillary contracts, [REDACTED], with travel agents;

(d) Travel agents (including a travel agent operating in the UK) told the CMA that they receive support from Farelogix in setting up and addressing any ongoing technical issues with the direct connection.<sup>34</sup> In this context, the CMA notes that section 128(4) of the Enterprise Act 2002 provides that ‘*the supply of services includes making*

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<sup>32</sup> [REDACTED].

<sup>33</sup> [REDACTED].

<sup>34</sup> Although the CMA understands that this support is provided on the basis of agreements between Farelogix and airlines, this does not undermine the conclusion that these are services provided to travel agents.

*arrangements for the use of computer software or granting access to data stored in any form which is not readily accessible’; and*

- (e) Farelogix charges airlines both flat subscription fees and transaction fees for airline tickets sold through FLX Open Connect product.<sup>35</sup> As such, Farelogix receives a direct financial benefit from UK travel agents’ decisions to purchase tickets through its FLX Open Connect product, [X]. This indicates that travel agent use and preferences are relevant to Farelogix’s commercial model.

### *Supply in the UK*

- 118. The Parties submitted that the procurement decision for Farelogix’s technology is made outside the UK by the airline when it selects Farelogix to be its technology provider. The Parties submitted that the procurement decision being made by a UK travel agent is which airline ticket to purchase, not which technology provider to use. The Parties submitted that if a UK based travel agent wishes to book with an airline that has purchased Farelogix’s technology, the travel agent does not have any choice as to whether it interacts with Farelogix’s technology. This is because, at the time of booking, the Farelogix product has already been selected and procured by the airline. The Parties also submitted that the locus of competition in this case is the location of the airline entering into the contract with Farelogix rather than that of the travel agent. At the point at which the travel agent is making the booking through the Farelogix Open Connect Product, there is no longer any relevant procurement decision and therefore no competition between suppliers.
- 119. The J&P Guidance states that services or goods are generally supplied in the UK where they are provided to customers who are located in the UK, as this is, in most circumstances, the place where competition takes place. The CMA will apply this general rule in a flexible and purposive way, having regard to all relevant factors, including where relevant procurement decisions are likely to be taken and where, in turn, any competition between suppliers takes place.<sup>36</sup> In the case of sales to multinational companies, irrespective of place of incorporation, domicile or principal place of business, the general question is the presumptive location of the procurement decision. There would generally

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<sup>35</sup> See eg Farelogix’s agreement with [X] and Farelogix’s Agreement with [X] each of which provides that Farelogix is paid net ticket fees, [X].

<sup>36</sup> [Mergers: Guidance on the CMA’s jurisdiction and procedure \(CMA2, January 2014\)](#), paragraph 4.58.

be UK supply if the procurement decision is made by a business unit located in the UK and non-UK supply if such decision is made outside the UK.<sup>37</sup>

120. Consistent with the purposes of the UK's merger control regime, the CMA considers that the overriding principle in assessing whether goods or services are supplied in the UK is where competition between suppliers takes place. This is reflected in the J&P Guidance.<sup>38</sup> In this context, while the location of a formal procurement decision is generally a relevant indicator of where competition between suppliers takes place, it is not the only identifier.
121. Therefore, and in line with the J&P Guidance, the CMA has had regard to all relevant factors in its assessment of where competition between the Parties takes place.
122. As set out in paragraph 117 above, the Parties operate in a market with two-sided features. This means that decisions taken on one side of the market (ie the travel agents' side of the market) may impact competition and/or give rise to direct or indirect network effects on the other side of the market (ie the airlines' side of the market), and vice versa.
123. Sabre has a direct commercial relationship with UK travel agents (see paragraph 113 above). The CMA considers (based on the available evidence described below) that the manner in which GDSs compete for travel agents in practice is liable to be affected, to some extent, by travel agents' views on those GDSs (eg in terms of effectiveness, quality of offering, and efficacy in processing bookings), as this will impact which GDS(s) a travel agent chooses to contract with and use.
124. With regard to Farelogix, it is the airline that chooses whether to use Farelogix in order to distribute its content in the first instance. Therefore, the success of the Farelogix Direct Connect product depends most immediately on an airline's decision to purchase that product. However, the CMA considers (again based on the evidence available described below) that the success of the Farelogix Direct Connect product also depends critically on the commercial choices of a travel agent to use its product (over other services facilitating the indirect distribution of airline content).

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<sup>37</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2, January 2014\)](#), paragraph 4.59. The position set out in the J&P Guidance in determining when goods or services should be regarded as supplied in the UK is consistent with the approach taken in section C(V) of the European Commission's Consolidated Jurisdictional Notice (2008/C 95/01).

<sup>38</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2, January 2014\)](#), paragraphs 4.58, 4.60.

125. The responses received from travel agents in the context of the CMA's investigation indicate that travel agents (including UK travel agents) make choices in relation to GDSs or Direct Connect products.
126. In particular, some travel agents (including UK travel agents) told the CMA that they had different preferences in relation to GDS and Direct Connect services and that they make commercial decisions that are driven by those preferences. For example, some travel agents (including UK travel agents) had a preference for GDSs because of certain large upfront costs to establish a Direct Connect, as well as differences in functionality (in particular comparison shopping and mid- and back-office support) and speed in making bookings through a GDS. The CMA considers that these preferences will affect a travel agent's willingness and incentive to approach an airline to set up a Direct Connect (as explained in paragraph 51 above, to establish a Direct Connect an airline or airline group has to provide the travel agent with access to parts of its IT system).
127. Other travel agents told the CMA that they can and do use both GDS and Direct Connect solutions and will refer to both channels when searching for and making bookings. This suggests that a travel agent's (including a UK travel agent's) views on a Direct Connect product may affect the travel agent's individualised choice over whether to make a particular booking through a GDS or a Direct Connect.
128. The impact of the UK travel agents' choices on the success of the Parties' products is supported by evidence received from the Parties. In this regard, the Parties submitted that the Direct Connect channel will not grow without travel agent buy-in, even if airlines feel positively about it. This is supported by the Parties' internal documents. [redacted].<sup>39</sup>
129. Therefore, the CMA considers that because travel agents' views (including those of UK travel agents) on the Parties' products will ultimately affect the success of such products, the Parties in practice compete to distribute content to travel agents (including UK travel agents).
130. The CMA therefore considers that Sabre and Farelogix supply services that facilitate the indirect distribution of airline content to travel agents in the UK.

*Calculation of the share of supply to travel agents in the UK*

131. As the Parties compete to distribute airline content to travel agents, who will refer to both GDS and Direct Connect solutions when searching for and

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<sup>39</sup> Annex 4c.15 to the Merger Notice, page 3.

making bookings, the CMA considers that the Parties are providing services each time that a ticket is booked. Furthermore, the choices available to a travel agent may vary by flight destination (depending on which airlines serve that destination and which distribution channels those airlines use), and therefore a travel agent's choice in relation to whether to make a particular booking through a GDS or a Direct Connect may be taken on an individualised basis for a specific flight destination.

132. Accordingly, for the purposes of this case, the CMA has calculated the Parties' share of supply of services that facilitate the indirect distribution of airline content to travel agents in the UK on the basis of the number of bookings for specific flights/travel destinations made by travel agents with a UK point of sale through Farelogix's Open Connect platform and through the three largest GDSs (Amadeus, Sabre and Travelport), adjusted using an industry estimate to take into account other indirect ticket distribution channels.
133. The Parties submitted that the CMA must have regard to any reasonable description of goods or services when determining whether the share of supply test is satisfied and that the CMA's proposed description of goods or services in this case is not reasonable. The Parties submitted that tickets sold by travel agents as a consequence of the Farelogix connection are not sales or supplies by Farelogix but are instead sales and supplies of the customer. The Parties submitted that they supply software to airlines globally or at most by reference to a large point of sale region. The Parties submitted that Farelogix does not supply software for use on particular airline routes or by specific destination country and that services and pricing are the same irrespective of the destination of a flight booked through the Parties' technology. As such, the Parties submitted that considering share of supply with respect to specific flights/travel destinations had no connection to the commercial reality in which Farelogix and its customers operate.
134. As noted at paragraph 93 above, the CMA has a wide discretion in describing the relevant goods and services for the purposes of determining the scope of the relevant services supplied for the share of supply test.
135. Moreover, the CMA considers that flights/travel destinations are a relevant and reasonable parameter to examine when considering the Parties' shares of supply in the UK for the reasons described in detail in paragraph 131 above. The CMA therefore believes that it is reasonable and appropriate to consider shares of supply in relation to specific flights/travel destinations.

136. On the basis of data provided by the Parties on the number of bookings by travel agents with a UK point of sale through Farelogix's Open Connect platform and through the three largest GDSs (Amadeus, Sabre and Travelport), adjusted using an industry estimate<sup>40</sup> to take into account other indirect ticket distribution channels, the Parties have a combined share of supply, with an increment, of over 25% in the supply of services that facilitate the indirect distribution of airline content (including tickets and ancillaries) to travel agents in the UK for travel to the following destinations:
- (a) Ireland ([20-30]%);
  - (b) Hungary ([20-30]%);
  - (c) Sweden ([20-30]%);
  - (d) Luxembourg ([30-40]%);
  - (e) Israel ([20-30]%);
  - (f) Puerto Rico ([30-40]%) and
  - (g) Kazakhstan ([30-40]).
137. The Parties submitted that UK point of sale bookings to the destination countries for which the share of supply test is allegedly met account only for a negligible share of total UK point of sale bookings. The Parties submitted that CMA is therefore focusing on a very small subset of flight destinations in circumstances where the subsets have no commercial or customary relevance to the services supplied by Farelogix. In addition, the Parties submitted that very few bookings were actually made through Farelogix's booking channel for flights to any of the destinations identified by the CMA. The Parties submitted that Farelogix processed less than [0-1,000] UK point of sale bookings during the entire year 2018 (representing at most [0-5]% of total indirect bookings for the destination country) for each of these destinations.
138. The CMA notes that with more than 1.1 million total bookings made in the UK to the destinations listed at paragraph 136 above, including more than 500,000 bookings made to Ireland alone, the Merger may ultimately have an impact on a substantial number of end-consumers in the UK. The CMA also

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<sup>40</sup> The CMA used figures provided by the Parties from T2RL, a market research company estimating the number of passengers boarded per distribution route in 2017. These show that GDSs account for approximately between [80-90]% and [90-100]% of all indirect bookings worldwide (excluding passengers booked through local GDSs in Russia, Japan, and China (eg Travelsky, Axess, Infini, etc.)). On a conservative basis, Sabre's shares of supply have been reduced on the basis that GDSs account for [80-90]% of indirect bookings.

notes, in this regard, that the share of supply test does not prescribe a minimum increment and that the CMA's guidance explicitly recognises that even mergers that bring about a very small increment might raise competition concerns in the UK.<sup>41</sup> The CMA therefore believes that the CMA's approach of considering the Parties' share of supply of services that facilitate the indirect distribution of airline content to travel agents in the UK for flights to the destinations listed at paragraph 136 above is reasonable and appropriate.

139. The Parties also submitted that in calculating shares of supply based on bookings, the CMA must have overstated the numerator in its calculations and/or understated the denominator, thereby inflating the share of supply that it seeks to attribute to the Parties. However, the CMA has not received any data (including from the Parties) which suggests that any margin of error in its share of supply calculation affects its findings at paragraph 136 above.
140. The CMA therefore believes that it is or may be the case that the share of supply test in section 23 of the Act is met in the supply of services that facilitate the indirect distribution of airline content to travel agents in the UK for flights to the destinations listed in paragraph 136.

### ***Jurisdiction - conclusion***

141. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
142. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 24 June 2019 and the statutory 40 working day deadline for a decision is therefore 16 August 2019.

### **Counterfactual**

143. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is

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<sup>41</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2, January 2014\)](#), paragraph 4.54.



a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>42</sup>

144. As set out in the Background section above, airline ticketing is a dynamic industry undergoing major developments, in particular as a result of NDC-related innovation. As such, the CMA considers that the prevailing conditions of competition are not static.

### ***The Parties' submissions***

145. The Parties submitted that the counterfactual for the Merger should be the pre-existing conditions of competition. [REDACTED]:

- (a) [REDACTED];
- (b) [REDACTED];
- (c) [REDACTED]; and
- (d) [REDACTED].

146. [REDACTED].

147. [REDACTED]:

- (a) [REDACTED];
- (b) [REDACTED];
- (c) [REDACTED]; and
- (d) [REDACTED].

148. [REDACTED].

### ***Sabre***

149. The available evidence indicates that Sabre would have continued to implement technological improvements related to its Beyond NDC strategy, including the development of an end-to-end solution straddling both non-core PSS modules and airline content distribution.

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<sup>42</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

150. The CMA notes that in its most recent quarterly earnings call on 1 August 2019, Sabre made no references to any [REDACTED] noting that *'We are accelerating new innovations to differentiate versus our competitors'*, *'We have[...] continued to progress in our NDC efforts'* and *'As a result of the improvements we have made over the past two years, our innovations are gaining traction with customers'*. Sabre also detailed specific progress on its NDC developments under a heading of *'technology leadership'* including implementation of an NDC API with United Airlines.<sup>43</sup>
151. The CMA notes that this is consistent with public statements made by Sabre prior to agreeing its acquisition of Farelogix. For example, during a presentation to investors from March 2018, Sean Menke (Sabre's CEO) told investors that Sabre was positioned to lead in retailing, distribution and fulfilment.<sup>44</sup> Similarly, in its February 2018 earnings call, Sabre represented to investors that its NDC strategy and execution was *'gaining steam'* and that Sabre was uniquely positioned to deliver an end-to-end NDC enabled solution.<sup>45</sup>
152. In that context, the CMA considers that [REDACTED], there is no suggestion that Sabre would not continue developing NDC solutions absent the Merger. The CMA also notes that the Parties submitted that [REDACTED].

### **Farelogix**

153. Farelogix's internal documents show that its existing product development roadmap included adding new features to its existing products ([REDACTED]), as well as the development of new capabilities including [REDACTED]. Some Farelogix internal documents also suggest that Farelogix was developing enhanced end-to-end distribution solutions by [REDACTED].<sup>46</sup>
154. [REDACTED],<sup>47</sup> [REDACTED].<sup>48</sup> [REDACTED]:
- (a) [REDACTED]; and
  - (b) [REDACTED].<sup>49</sup>

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<sup>43</sup> <https://investors.sabre.com/static-files/8aa595a4-c0fc-407f-8d3c-8ab7bed6163f> (accessed on 16 August 2019).

<sup>44</sup> Exhibit 4 to [REDACTED] deposition, page 37.

<sup>45</sup> Exhibit 5 to [REDACTED] deposition, page 16.

<sup>46</sup> Attachment K3 to the Merger Notice and Attachment K5 to the Merger Notice.

<sup>47</sup> Annex 97.50 to the Draft Merger Notice and Annex 5 to the Merger Notice.

<sup>48</sup> See Attachment N16 to the Merger Notice, page 54 of the Merger Notice. See also Exhibit 9 to [REDACTED] deposition at pages 34, 43, 50, and [REDACTED] deposition pages 489, 495-505.

<sup>49</sup> See Exhibit 9 of [REDACTED] deposition at pages 34, 43, 50, and [REDACTED] deposition, pages 489, 495-505.

155. [REDACTED].<sup>50</sup> [REDACTED].<sup>51</sup>
156. [REDACTED],<sup>52</sup> [REDACTED].
157. In any event, the available evidence indicates that Farelogix could have expanded further and achieved greater scale through external investment absent the Merger:
- (a) [REDACTED];<sup>53</sup> and
  - (b) [REDACTED]<sup>54</sup> [REDACTED].
158. While some airlines expressed concerns to the CMA that Farelogix's ability to grow would be limited in future, these statements were often caveated, noting that Farelogix could address any scalability issues through further investment and/or new equity partners.

### **Conclusion**

159. In light of the evidence set out above, the CMA has considered the impact of the Merger relative to the prevailing conditions of competition. Given the dynamic nature of the market, the CMA considers that the prevailing conditions of competition involve an environment where the Parties would have continued to pursue growth strategies, to improve their existing products, and to develop new ones in the foreseeable future. In addition, the CMA considers that, in the context of the dynamic nature of the market, Farelogix could have further expanded and achieved greater scale through internal efforts and/or external investment absent the Merger.

### **Frame of reference**

160. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important

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<sup>50</sup> [REDACTED] deposition, pages 489-495 and Exhibit 9 to [REDACTED] deposition, pages 34 and 42.

<sup>51</sup> Annex 4c.7 to the Merger Notice.

<sup>52</sup> Attachment M.3 to the Merger Notice.

<sup>53</sup> Exhibit 15 to [REDACTED] deposition.

<sup>54</sup> [REDACTED] deposition, pages 546-586.

than others. The CMA will take these factors into account in its competitive assessment.<sup>55</sup>

161. The CMA's approach to the frame of reference is typically to begin with the parties' overlapping products in the narrowest plausible candidate frame of reference and then to see if this should be widened. The CMA pays particular regard to demand-side factors (ie the behaviour of customers and its effects). However, it may also consider supply-side factors (ie the capabilities and reactions of suppliers in the short-term) and other market characteristics.<sup>56</sup>

### ***Non-core PSS modules***

#### *Product scope*

162. The Parties overlap in the supply of non-core PSS modules. Both Parties are active in the supply of the following modules:
- (a) Merchandising;
  - (b) Scheduling;
  - (c) Inventory and availability; and
  - (d) Shopping and pricing.
163. The Parties submitted that each of the four modules in which Farelogix is active should be considered a separate product frame of reference. From a demand side perspective, non-core PSS modules serve distinct purposes and an airline will not consider one module category substitutable for another. The Parties also submitted that airlines typically procure non-core PSS modules separately, sometimes from different suppliers. From a supply side perspective, while non-core PSS modules will involve much of the same technology, the Parties proposed on a cautious basis to consider separate product markets for each of the four modules in which Farelogix is active.
164. The Parties' internal documents, while acknowledging differences between non-core PSS modules, often discuss non-core PSS modules jointly, in particular when considering the future development of the industry relating to NDC development.<sup>57</sup> Furthermore, Farelogix markets each of the four non-core PSS modules as forming part of its overall Airline Commerce Gateway

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<sup>55</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>56</sup> [Merger Assessment Guidelines](#), section 5.2.17.

<sup>57</sup> See eg Exhibit 3 to [redacted] deposition, page 12 and Annex 45 to the Farelogix Response to the Section 109 Request dated 26 March 2019, page 1.

product,<sup>58</sup> although the Parties submitted that Farelogix has [X] sold this overall product (as opposed to individual modules) to [X].

165. Evidence available from third parties confirms that some airlines purchase different non-core PSS modules from different suppliers and that non-core PSS modules are not necessarily purchased simultaneously, although some airlines submitted that they purchase all non-core PSS modules from the same provider.

#### *Conclusion on product scope*

166. On the basis of the evidence set out above, the CMA has considered the impact of the Merger on each of the four overlapping non-core PSS modules.
167. With regard to the overlap in scheduling modules, the Parties submitted that Farelogix only had a negligible share of supply of [0-5]% in 2017 as a result of [X]. Most third parties also did not consider that Farelogix played a significant or leading role in this frame of reference. On the basis of this evidence, the CMA did not identify any competition concerns in the supply of non-core PSS scheduling modules and this frame of reference is not considered further in this decision.
168. With regard to the overlap in inventory and availability modules, the Parties submitted that Farelogix's availability calculator is functionally very different to Sabre's closest equivalent product. The Parties submitted that Sabre's availability and inventory product forms part of its core PSS modules, providing an inventory database and availability calculator, while Farelogix's availability calculator is merely a product that allows the airline to display availability without the need to interrogate the core PSS for every request. The Parties submitted in this context that Farelogix's availability calculator is dependent on access to data from 'true' inventory products, such as Sabre's. Most third parties also did not express concerns in this frame of reference. On the basis of this evidence, the CMA did not identify any competition concerns in the supply of non-core PSS inventory and availability modules and this frame of reference is not considered further in this decision.
169. With regard to the overlap in shopping and pricing modules, the Parties submitted that Farelogix only had a negligible share of supply of less than [0-5]%. The CMA also found that there are several third parties that offer comparable solutions to the Parties that could constrain the merged entity. On the basis of this evidence, the CMA did not identify any competition concerns

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<sup>58</sup> <https://www.farelogix.com/platform/> (accessed on 16 August 2019).

in the supply of non-core PSS shopping and pricing modules and this frame of reference is not considered further in this decision.

### *Geographic scope*

170. The Parties submitted that the European Commission's analysis of the geographic scope of the market in *Amadeus/Navitaire* can be applied to non-core PSS modules, including merchandising, since airlines procure these on a global basis. The Parties' internal documents discuss the competitive landscape of core and non-core PSS modules on a worldwide basis. Moreover, evidence received from airlines did not suggest that there were geographic differences in the procurement of non-core PSS merchandising modules.
171. On this basis, the CMA has considered the impact of the Merger in the supply of non-core PSS merchandising modules on a worldwide basis.

### ***Services that facilitate the indirect distribution of airline content***

#### *Product scope*

172. The Parties overlap in the supply of services that facilitate the indirect distribution of airline content.<sup>59</sup> This includes distribution through both GDSs and Direct Connect.

#### *The Parties' views*

173. The Parties submitted that the European Commission was correct to find in *Amadeus/Navitaire* that GDS services constitute a separate (two-sided) market distinct from direct distributors and content aggregators. The CMA notes that the European Commission left open whether direct distributors and content aggregators competed in the same market as GDSs.
174. From an airline perspective, the Parties submitted that there are a number of fundamental differences between the supply of GDS services and the supply of Direct Connect services as a means for airlines to provide content and allow travel agents to book and subsequently manage their clients' travel. These include that:

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<sup>59</sup> The CMA includes within '*services that facilitate the indirect distribution of airline content*' all services and technologies (including NDC enabled solutions) that an airline needs to distribute its content (including tickets and ancillaries) to travel agents, other than core and non-core PSS modules.

- (a) Contracting with a GDS instantly provides an airline with access to the GDS's network of travel agents, while Direct Connects require the airline to issue a statement of work and put in place agreements on a one-to-one basis;
  - (b) A GDS provides fulfilment services, which Direct Connects generally do not; and
  - (c) Direct Connects allow airlines to share personalised offers of bundled fares and ancillary products that match the offers available on their own websites, while generally GDSs are only able to show static offers limited to fares and availability.
- 175. The Parties also submitted that it is technically difficult for an airline to switch from a GDS to a Direct Connect. As such, the Parties submitted that GDSs and Direct Connects are complements and that those airlines that use Direct Connects will also use GDSs.
- 176. From a travel agent perspective, the Parties submitted that:
  - (a) While GDSs allow travel agents to comparison shop, travel content received from an airline through Direct Connects only contains information for that individual airline;
  - (b) GDSs typically allow travel agents to also search for non-airline content (eg car rentals and hotels);
  - (c) Direct Connects allow travel agents to access dynamic and customised offers, whereas GDSs generally only show static offers and availability; and
  - (d) The contractual arrangements differ with travel agents contracting directly with an airline when using Direct Connects (and the Direct Connect supplier therefore not providing any intermediary services), instead of with the GDS.
- 177. From a supply-side perspective, the Parties submitted that technological difficulties make it difficult for a Direct Connect supplier to create a competitive GDS.
- 178. The Parties therefore submitted that the supply of Direct Connect services forms a separate product frame of reference from the supply of GDS services. The Parties submitted that to the extent that there is some competitive interaction between Direct Connects and GDSs, in practice Direct Connects

are only a partial substitute to the GDS, and are, in any event, increasingly viewed as complements to be integrated into a GDS (via GDS pass-through).

179. The Parties submitted that if the CMA considered it appropriate to include both GDS services and Direct Connect services within the same product frame of reference, then that product frame of reference should also include all services used in indirect and direct airline ticket sales. The main reason given by the Parties was that more than [X] of Farelogix's ticket volumes flow through online travel agents and meta-search engines, the users of which are more likely to substitute for airline websites. Furthermore, the Parties submitted that the direct channel also constrains GDSs and travel agents and the fees they can charge and should therefore be included in the frame of reference.
180. Finally, the Parties submitted that NDC-enabled Direct Connects and non-NDC enabled Direct Connects may also be considered separate frames of reference, since the latter are not able to support airlines in providing dynamic and customisable offers.

#### *The CMA's assessment*

181. For the purposes of determining its frame of reference, the CMA has considered within the indirect channel:
- (a) In light of the two-sided nature of the supply of services to facilitate indirect distribution of airline content (see Background and Jurisdiction sections above), whether it is appropriate to distinguish between airlines and travel agents;
  - (b) Whether it is appropriate to distinguish between GDS and Direct Connect services;
  - (c) In light of the discussion outlined at paragraph 52 of the Background section, the extent to which it is necessary to consider certain components of a GDS or Direct Connect service offering separately, for example by assessing provision of APIs and aggregation services separately;
  - (d) The extent to which it is necessary to distinguish between NDC and non-NDC enabled solutions;
  - (e) Whether to include services to facilitate the direct distribution of airline content (ie whether to distinguish by sales channel) within the frame of reference; and



- (f) The extent to which it is necessary to distinguish by customer type and/or size.

*Airlines and travel agents*

182. As explained in the Background and Jurisdiction sections above, both Parties provide services that distribute airline content (including tickets and ancillaries) for sale through travel agents (ie they provide services to facilitate the indirect distribution of airline content). In this context, the available evidence indicates that that GDSs and Direct Connect suppliers both provide services to distinct groups, airlines and travel agents, notwithstanding the lack of direct commercial relationships between travel agents and Direct Connect suppliers.
183. The CMA therefore considers that supply of services that facilitate the indirect distribution of airline content can be considered a two-sided market.
184. In this case, where suppliers facilitate transactions between airlines and travel agents, the CMA considers that a single frame of reference including the services provided to both airlines and travel agents is appropriate. Nevertheless, the competitive constraints on each side of the market, including the availability and significance of substitutes on each side of the market, have been taken into account in the competitive assessment.

*GDS services and Direct Connect services*

185. The CMA considered whether the supply of GDS services and the supply of Direct Connect services form part of the same product frame of reference for airlines and travel agents. The CMA's assessment of this issue has taken into account the Parties' internal documents and submissions received from third parties.

- *Internal documents on services to airlines*

186. The CMA found that several Sabre internal documents reference the risk of airlines making increased use of the Direct Connect channel and the consequent reduction of GDS volumes.<sup>60</sup> This is also reflected in Sabre's 2018 annual report which includes '*direct connect initiatives linking their internal reservations systems directly with travel agencies or [travel*

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<sup>60</sup> See eg Annex 3.14, Annex 3.16, Annex 3.19 and Annex 3.21 to the Sabre Response to the Section 109 Request dated 26 March 2019, Exhibit 3 to [redacted] deposition, page 72, Board presentations dated 5-6 February 2018, page 247 (SABR-002907333.), Exhibit 15 to [redacted] deposition, page 4 and Exhibit 16 to [redacted] deposition, page 8.

management companies], *thereby bypassing the GDS*<sup>61</sup> as a risk factor. In addition, the CMA found that Sabre's internal documents show that one of the factors for its decision to develop an in-house NDC strategy was the risk of (at least partial) GDS disintermediation by the Direct Connect channel. Several Sabre internal documents also specifically single out Farelogix's offering in this context, eg [REDACTED].<sup>62</sup>

187. Some of Farelogix's internal documents also reference the disintermediation risk posed by the Direct Connect channel, with one noting that [REDACTED].<sup>63</sup>

188. In addition, both Farelogix and Sabre, when preparing their respective valuations of Farelogix in the context of the Merger, predicted the growth of Farelogix's Direct Connect channel, [REDACTED].<sup>64</sup>

- *Third party views on services to airlines*

189. The CMA found that airlines had mixed views on the extent to which GDS services and Direct Connect services compete with each other. In general, airlines considered that Direct Connect services and GDS services compete at least to some extent. Only a few airlines submitted that they thought that the two did not compete at all.

190. For example, airlines generally submitted that Direct Connects and GDSs both enable airlines to connect and distribute their content to travel agents and several also submitted that they planned to increase their use of the Direct Connect channel in the next few years. Some airlines also told the CMA that the Direct Connect channel offered airlines more control over the distribution of their content and provided them with the ability to provide content to travel agents outside of the structure of the GDSs.

191. In addition, the majority of airlines responding to the CMA's questionnaire also submitted that they would still use Direct Connects bypassing the GDS even if GDSs were able to offer fully NDC-enabled airline content distribution, with some responses suggesting that one reason for doing so would be to retain an alternative distribution channel to the GDSs. By way of example, one airline submitted that it would still consider using Direct Connects as it wants *'to reduce its dependency on only a few big aggregators (former GDS's [sic]) and not being dependent on any parity clause or legal framework'*. In this context, the majority of airlines indicated that they thought that the Direct Connect channel had the potential to become a stronger competitor to the

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<sup>61</sup> <https://investors.sabre.com/node/11511/html>, page 5 (accessed on 16 August 2019).

<sup>62</sup> Exhibit 4 to [REDACTED] deposition, page 1 and Exhibit 8 to [REDACTED] deposition, page 8.

<sup>63</sup> Attachment K.3 to the Merger Notice, page 16 and Annex 92.48 to the Draft Merger Notice, page 20.

<sup>64</sup> Annex 4c.15 to the Merger Notice.

GDSs in the next few years, although noting that it would not be able to fully disintermediate the GDSs.

192. However, several airlines submitted that Direct Connects could not fully substitute for the services provided by the GDSs, highlighting differences in functionality, the currently small size of the Direct Connect channel (with limited travel agent adoption), and the trend towards using a Direct Connect to connect to a GDS to distribute NDC-enabled content. Some airlines submitted in this context that they thought that the significance of the Direct Connect channel would decrease once GDSs were able to distribute NDC content.

193. With regard to the views of other suppliers of services that facilitate indirect airline content distribution services, most considered the distribution of airline content to travel agents via Direct Connect to compete with distribution through the GDSs. In this context, one supplier submitted that technology providers that provide services that enable airlines to distribute content to travel agents via Direct Connect *'are competing directly as they disintermediate the GDS, preventing the GDS from deriving revenue for those bypassed bookings.'*

- *Services to travel agents*

194. The Parties' internal documents and responses from travel agents indicated that due to functional differences, travel agents may have a preference for GDSs over Direct Connects. For example, one Sabre internal document notes that [REDACTED].<sup>65</sup>

195. Travel agents told the CMA that there are some functional features of the Direct Connect channel which compare less favourably to GDSs. In particular, travel agents referred to the absence of comparison-shopping functionality and mid- and back-office support (a comment also echoed by a few airlines). Some travel agents however indicated in this context that some of these functional differences could be overcome, eg through the use of in-house or non-GDS aggregators that consequently allow for all booking options to be presented to travel agents and customers on the same screen. Some airlines (eg [REDACTED]) directly incentivise travel agents to make bookings through a Direct Connect channel, either by paying them directly or by surcharging content provided through the GDS.

196. However, some travel agents also told the CMA that they can and do use both GDS and Direct Connect solutions, and choose between them when making

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<sup>65</sup> Exhibit 1 to [REDACTED] deposition, page 141.

specific transactions, eg by searching for fares on a GDS and a Direct Connect channel simultaneously. In addition, some travel agents noted that, where certain fares are only available without surcharge through Direct Connects, they would be less willing to make bookings through the GDSs and would switch those transactions to a Direct Connect to get a lower price. Several travel agents also submitted that, in order to stay competitive, they required access to the best available content (including NDC content) to offer to their customers, noting that this was sometimes only available through a Direct Connect.

197. With regard to the future of the Direct Connect channel, travel agents again highlighted the efforts required to establish a Direct Connect to an airline as a barrier to growth. However, a few travel agents told the CMA that they expected the relevance of the Direct Connect channel to increase in the next few years, in particular through alternative non-GDS aggregators such as Travelfusion.

- *The CMA's assessment*

198. Based on the evidence above, the CMA considers that the Parties provide alternative services that facilitate the indirect distribution of airline content.

199. The available evidence indicates that Sabre's strategy has been influenced by the risk of airlines distributing more content through the Direct Connect channel, suggesting that there is competitive interaction between services to provide Direct Connects and GDS services to airlines. The CMA also considers that while airlines generally recognise some of the weaknesses of the Direct Connect channel as against the GDSs, in the round, the available evidence shows that airlines use Direct Connects as an alternative distribution channel to the GDSs for at least a portion of their ticket and ancillary volumes. The available evidence also indicates that airlines value the existence of a distribution channel outside the GDS structure.

200. Furthermore, the CMA considers that travel agents' use and preferences in relation to airline content distribution through Direct Connects is relevant to its assessment of whether the Direct Connect channel constrains the distribution of airline content through the GDSs. In this respect, the CMA considers that while there is a clear preference for an aggregated solution, which is currently primarily available from GDSs, some travel agents will refer to both the Direct Connect channel and the GDS options when searching for and making bookings. The CMA also notes that some travel agents thought that the Direct Connect channel would grow through the increased presence of non-GDS aggregators. The CMA considers that the use of incentives by airlines could

also contribute to the Direct Connect channel becoming more material for travel agents in the next few years.

201. Furthermore, the CMA considers in this context that travel agents' stated desire to have access to rich NDC content, in most cases only currently available through a Direct Connect, has been a driver for GDSs to develop capabilities to distribute NDC content, further suggesting competitive pressure from the Direct Connect channel on the GDSs.
202. The CMA therefore considers that the supply of Direct Connect services and the supply of GDS services form part of the same product frame of reference.

*Segmentation by different components of indirect distribution solutions*

203. As discussed in the Background section above, indirect distribution solutions today can play several roles in indirect airline content distribution including:
- (a) Facilitating connectivity to allow for the distribution of content from an airline to a travel agent;
  - (b) Aggregation of content from different airlines and distribution of content to travel agents; and
  - (c) Servicing bookings made by travel agents.
204. While these three services can be provided together (as is the case by some GDSs), they can also be provided separately. By way of example, non-GDS aggregators do not always provide the services that facilitate connectivity (ie the API).
205. The CMA has therefore considered the extent to which it is necessary to consider certain components of a GDS or Direct Connect service offering separately.
206. The CMA considers that both Parties compete across the entire spectrum of activities set out in paragraph 203 above:
- (a) Farelogix is active in the facilitation of connectivity, content distribution, and to a more limited extent content aggregation through its SPRK tool, which has the ability to aggregate content from different airlines, subject to [REDACTED].<sup>66</sup> In addition, [REDACTED] Farelogix has the ability to provide some fulfilment services, including [REDACTED].<sup>67</sup> Furthermore, Farelogix

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<sup>66</sup> The CMA understands that currently only the Lufthansa Group allows for aggregated content including the Lufthansa and Swiss airlines to be provided to travel agents via SPRK.

<sup>67</sup> [REDACTED] deposition, page 158.

provides its connection and distribution services together and gives airlines the option to use its SPRK tool free of charge; and

- (b) Sabre provides an end-to-end solution for airlines and travel agents, including facilitation of connectivity, content distribution and aggregation, and fulfilment services.
207. The CMA therefore considers it appropriate to assess the Merger in a frame of reference including all of the services set out in paragraph 203 above. However, the CMA will take into account differences between different competitors based on the suite of services they provide in its competitive assessment.

*Indirect and direct channels to distribute airline content*

208. The CMA considered whether to include sales via the direct channel (ie airline.com) within the product frame of reference.
209. From an airline perspective, the available evidence indicates that indirect distribution reaches a different group of end-customers, ie those who use travel agents and may not want to book a ticket directly, and therefore would not be substitutable. With regards to travel agents, the CMA has not received strong evidence to indicate that airline.com exerts a significant constraint on the indirect channel. Only a few travel agents told the CMA that they use airline.com websites to make bookings. In this context, the Parties also submitted at the Issues Meeting that the direct channel mainly serves leisure travellers, while travel agents rarely use airlines' websites to book tickets.
210. The CMA therefore considers that the available evidence does not support widening the product frame of reference to include the direct channel. Nevertheless, the CMA will take into account the constraint from the direct channel in its competitive assessment to the extent relevant.

*NDC-enabled and non-NDC-enabled indirect distribution solutions*

211. The CMA considered whether NDC-enabled Direct Connects and non-NDC-enabled Direct Connects should both be included within the same product frame of reference.
212. The available evidence suggests that the basic functionality provided by Direct Connects, whether NDC-enabled or not, is the same, namely to provide a connection between an airline and a travel agent. As set out in further detail above, airlines submitted that they use Direct Connects as alternative

distribution channels to the GDSs, which is possible with both NDC- and non-NDC-enabled Direct Connects.

213. The CMA therefore considers that both NDC-enabled Direct Connects and non-NDC-enabled Direct Connects should be considered as part of the same product frame of reference. The CMA has however taken into account differences in NDC functionality across all indirect distribution solutions in its competitive assessment.

*Segmentation based on customer size and/or type*

214. The CMA considered whether a segmentation of the product frame of reference by airline and/or travel agent size and/or type is appropriate.
215. The available evidence indicates that both Parties provide services to airlines of various sizes, including large airlines such as American Airlines and smaller ones such as Aegean Airlines and Copa Airlines. Although some third parties submitted that larger airlines may have better capabilities to enable Direct Connects, the available evidence indicates that the Parties' products are designed to be used by airlines regardless of size and there are no functionalities that would make them unsuited for either large or small airlines. Therefore, the CMA has not segmented the product frame of reference to distinguish the supply of indirect distribution solutions by airline size and/or type.
216. With regard to possible segmentations by travel agent size and/or type, other suppliers of services that facilitate indirect airline content distribution submitted that their products are designed to enable connections between any airlines and travel agents or GDSs, and that there were no technical differences in this respect.
217. In this context, several airlines told the CMA that they do not discriminate between travel agents on the basis of size or type. For example:
- (a) One airline told the CMA that '*We distribute the same product in all channel [sic] for all agencies [sic] types*'; and
  - (b) Another submitted that '*We do not typically restrict distribution channels by type of agency. We have GDS, NDC and non-NDC API connections to all types of agency*'.
218. Some third parties told the CMA that some travel agents may have stronger preferences on the use of Direct Connects than others (eg based on the percentages of tickets sold with one or two suppliers, technological

capabilities etc.). However, responses were not consistent in identifying which sizes and/or types of travel agents would have such preferences, with travel agents of all types and sizes expressing differing views on their use and adoption of indirect distribution solutions and Direct Connects.

219. The CMA therefore considers that while the supply of indirect distribution solutions may differ between travel agents, there is insufficient evidence to support segmentation by size and/or type. The CMA has therefore not segmented the product frame of reference to distinguish the supply of indirect distribution solutions by travel agent size and/or type. The CMA has however taken into account different travel agent views in its competitive assessment.

#### *Conclusion on product scope*

220. On the basis of the above evidence, the CMA believes that the appropriate frame of reference is the supply of services that facilitate the indirect distribution of airline content, including both GDS and Direct Connect services.

#### *Geographic scope*

221. The Parties submitted that the European Commission considered that the relevant geographic frame of reference was worldwide for the upstream side of the market and was left open for the travel agents (although it had previously been considered national). The Parties submitted that both the upstream and the downstream geographic frame of reference for GDS services is global. The Parties submitted that the analysis in *Amadeus / Navitaire* can also be applied to the Direct Connect channel because airlines procure this technology on a global basis. Similarly, the Parties submitted that Direct Connect technology can be connected to travel agents globally, as an increasing number of travel agents are active globally, frequently through online channels.
222. The CMA has not seen any evidence that suggests that airlines do not procure Direct Connect technology on a worldwide basis. In this context, the CMA notes that Farelogix's customers (eg American Airlines, Qantas and Emirates) are located around the globe. Submissions from travel agents similarly do not indicate that there are geographic differences in how they choose to use Direct Connect arrangements.
223. Therefore, the CMA has considered the impact of the Merger in the supply of services that facilitate the indirect distribution of airline content on a worldwide basis.



### ***End-to-end NDC enabled solutions for airline content distribution***

224. The CMA considered whether to widen the PSS and distribution frames of references to include end-to-end NDC solutions covering airline content creation, distribution and fulfilment.
225. As set out in the Background section above, the airline indirect distribution ecosystem is currently undergoing significant change, with the introduction of NDC being a first step towards further forthcoming industry changes, including the development of Offer and Order Management Systems as well as ONE Order. In this context, the CMA understands that several ongoing industry developments may be liable to have a significant impact on the way in which the services described above are provided. For example:
- (a) Offer and Order Management Systems straddle both an airline's PSS system and its content distribution technology and some suppliers have developed or are developing Offer and Order Management Systems designed to make the PSS redundant; and
  - (b) ONE Order's features and capabilities will likely have an impact on the structure and process for content creation, distribution and fulfilment.
226. Given that these developments are ongoing, their ultimate impact is not fully apparent, and suppliers are at different stages of development, the CMA does not consider that the frame of reference should be widened to include end-to-end NDC enabled distribution solutions. Nevertheless, in keeping with the dynamic counterfactual, the CMA has taken these developments into account in its competitive assessment. In particular, in assessing the competitive constraint of suppliers in both the frame of reference for non-core PSS merchandising modules and the frame of reference for the supply of services that facilitate the indirect distribution of airline content, the CMA has considered the constraint that suppliers provide by reference to (i) the role they are playing in driving these developments and (ii) how well placed they are to provide NDC-enabled end-to-end solutions in the future.

### ***Conclusion on frame of reference***

227. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- The supply of non-core PSS merchandising modules on a worldwide basis; and

- The supply of services that facilitate the indirect distribution of airline content on a worldwide basis.

## **Competitive assessment**

### ***Horizontal unilateral effects in the supply of non-core PSS merchandising modules***

228. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.<sup>68</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors.
229. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of non-core PSS merchandising modules.
230. The Parties submitted that they are not each other's closest competitors on any metric as their products are highly differentiated from the perspective of both airlines and travel agents, [X].
231. In particular, the Parties submitted that Sabre's two merchandising modules (which the Parties submitted are generally sold together) are closely tied into its core PSS and cannot be offered for use with core PSSs from other providers, meaning that the Parties' only competitive interaction would be with regard to customers that already use Sabre's core PSS. In this context, the Parties submitted that they are not close competitors because where a Sabre core PSS customer has issued an RFP for a merchandising module, [X]. Sabre's merchandising product also depends on ancillaries and fares filed with ATPCO, which are static once they have been filed, while Farelogix's product can accept both ATPCO fares and real-time dynamic fares determined by airlines.
232. The Parties further submitted that airlines have significant countervailing buyer power and have switched non-core PSS suppliers frequently, and that in any event they would continue to be constrained by large global players as well as a number of other vendors such as ITA/Google, Datalex and Amadeus.

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<sup>68</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

### *Shares of supply*

233. On the basis of share of supply estimates provided by the Parties, airlines using Farelogix's merchandising module accounted for [10-20]% of passengers boarded in 2017 (excluding in-house supply by airlines), and Sabre's merchandising solutions accounted for [5-10]%. With respect to airlines using Sabre's core PSS, the Parties' combined shares of supply are [50-60]% with an increment of [10-20]% from Farelogix.
234. The CMA considers that share of supply estimates may not accurately reflect competition between the Parties in this case as they are inherently backwards looking and therefore may not capture the competitive interactions between the Parties in the context of a dynamic and evolving industry. In this regard, the CMA notes that both Parties had plans to continue developing their non-core PSS offerings absent the Merger (see Counterfactual section above).
235. In order to assess the likelihood of the Merger resulting in unilateral effects in the supply of non-core PSS merchandising modules, the CMA has considered:
- (a) The significance of the Parties' competitive constraint on one another; and
  - (b) Constraints from alternative suppliers and in-house solutions.

### *Significance of the Parties' competitive constraint on one another*

236. The CMA has examined the following evidence relating to the Parties' competitive constraint on one another:
- (a) Evidence from the Parties' internal documents; and
  - (b) Third party views on closeness of competition.
237. While the Parties provided Farelogix's bidding data for RFPs for merchandising modules, the CMA has only placed limited weight on this evidence in assessing the Parties' competitive constraint on each other. This is because the data will not capture instances where airlines using Sabre's core PSS and merchandising module considered switching to a third-party provider but decided to stay with Sabre without ever issuing an RFP.

### *Internal documents*

238. The CMA found that the Parties' internal documents, while mixed in places, generally show a significant degree of competitive interaction between the Parties. In particular:
- (a) Sabre's internal documents indicate that, while it considers [X] to be its closest competitor, it views Farelogix as a significant competitor in both merchandising and in the supply of non-core PSS services generally, in particular in the context of its own NDC strategy. The CMA found that Sabre described Farelogix as [X] in its internal documents.<sup>69</sup> The CMA also found that Sabre considers Farelogix to be a leader in non-core PSS merchandising modules [X].<sup>70</sup>
  - (b) Sabre's internal documents also indicate that it considered Farelogix to be a threat specifically to its PSS business because [X]. For example, a document titled [X].<sup>71</sup>
  - (c) Farelogix's internal documents generally discuss the competitive conditions for all of its non-core PSS modules together. The internal documents show that Farelogix considers other suppliers of non-core PSS modules ([X]) to be closer competitors to it than Sabre (including in merchandising). Nonetheless, Farelogix's internal documents show that it views Sabre as one of a relatively limited number of credible competitors in this space, particularly in the context of future developments in non-core PSS modules and end-to-end NDC solutions. In this context, one internal document refers to Sabre as a [X].<sup>72</sup> [X].<sup>73</sup>
239. In addition, and as set out in the Background section above, the airline indirect distribution ecosystem is evolving significantly, with NDC itself being a first step towards further industry changes in the coming years, including the development of end-to-end solutions comprising Offer and Order Management Systems as well as ONE Order.
240. In this context, the CMA considers that both Parties have capabilities that make them particularly significant competitive forces within the market as it is expected to evolve towards the development of NDC end-to-end solutions

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<sup>69</sup> See eg Exhibit 2 to [X] deposition, pages 29 and 62, Exhibit 4 to [X] deposition, page 5 and Exhibit 3 to [X] deposition, page 12.

<sup>70</sup> Annex 4c.1 to the Merger Notice, page 5.

<sup>71</sup> [X] (SABR 000369430), page 3.

<sup>72</sup> Annex 45 to the Farelogix Response to the Section 109 Request dated 26 March 2019, page 3.

<sup>73</sup> Exhibit 9 to [X] deposition, page 8.

encompassing elements that currently form part of PSS and distribution offerings. With regard to Farelogix:

- (a) As noted above, Sabre's internal documents assess Farelogix as a significant competitor in the context of its own NDC strategy, which is based on moving towards end-to-end solutions;
- (b) A strong NDC-enabled merchandising solution would be a key component of any end-to-end solution, and as evidenced above, Farelogix is well placed in this regard; and
- (c) Several Sabre internal documents suggest that Farelogix was one of the key drivers in Sabre's decision to pursue its own end-to-end NDC strategy, which includes next generation retailing capabilities overlapping with Farelogix's merchandising module. Presentations prepared by Sabre in this context show that [REDACTED].<sup>74</sup> The CMA notes that there are also references to technological innovation being needed [REDACTED]. The CMA considers that [REDACTED]. The references to Farelogix in Sabre's internal documents noted above indicate that [REDACTED].

241. The available evidence on Farelogix's future plans indicate that it will also be well-placed to compete for future business as the market evolves. For example:

- (a) [REDACTED];<sup>75</sup> and
- (b) Several internal Farelogix documents [REDACTED] set out Farelogix's ambition to develop features and modules that [REDACTED].<sup>76</sup> While the CMA understands that these plans have thus far not been implemented, the CMA believes that Farelogix's internal documents show that it is continuously seeking opportunities to compete closely with existing [REDACTED] including Sabre through innovation and product development.

242. As set out in the Counterfactual section above, the CMA considers that Farelogix would have expanded further and achieved greater scale through internal efforts and/or external investment absent the Merger.

243. Similarly, with regard to Sabre, its internal documents indicate that while it needed to introduce NDC enablement to its retailing solutions, it is well-placed

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<sup>74</sup> See eg Exhibit 2 to [REDACTED] deposition, Exhibit 3 to [REDACTED] deposition and Exhibit 5 to [REDACTED] deposition.

<sup>75</sup> Annex 30 to the Merger Notice.

<sup>76</sup> Annex 49 to the Farelogix Response to the Section 109 Request dated 26 March 2019, Attachment K3 to the Merger Notice, Attachment K5 to the Merger Notice and Annex 52 to the Farelogix Response to the Section 109 Request dated 26 March 2019.

to compete strongly in the supply of non-core PSS merchandising modules including as part of NDC end-to-end solutions for the following reasons:

- (a) Sabre had clear plans and committed investment to build an [X] solution which would allow airlines to provide offers, including ancillaries, to travellers based on information known about them; and
- (b) Sabre, as one of only two GDSs that also provide core and non-core PSS services, with established relationships to several hundred airlines, would be well positioned to attract customers to its end-to-end offering, particularly given that the third-party evidence suggests that airlines value established relationships and can be hesitant about granting too many third parties access to their IT system. The CMA therefore considers that Sabre's existing strength and its ability to offer a broad range of products in both airline IT and distribution would put it in a strong position in competing for NDC end-to-end solutions.

#### *Third party views*

- 244. Almost all responding airlines and suppliers of airline IT services told the CMA that the Parties compete closely (or at least moderately) in the supply of non-core PSS merchandising modules.
- 245. Furthermore, several airlines commented on Farelogix's strength in merchandising in particular, describing Farelogix's product as being the best in the industry and highlighting the innovation brought to the industry through the solution. Some airlines noted in this context that Farelogix's merchandising tool gives them better control over their content, as it allows them to create non-static offers (including ancillaries). One airline submitted in this context that Farelogix's merchandising solution gave it more flexibility with its Direct Connects, which in turn allowed it to offer better products and services to its customers. Another airline submitted that it viewed Farelogix's merchandising solution as a way of enabling distribution of ancillary content through indirect channels (including through the GDSs). The CMA considers that these comments further support the conclusion that Farelogix's merchandising solution provides an important competitive constraint and leave Farelogix well placed to compete for future business in the context of a dynamic market moving towards an NDC-enabled end-to-end solution.

### *Constraints from alternative suppliers*

246. Unilateral effects are more likely where customers have little choice of alternative suppliers.<sup>77</sup> The CMA considered whether the Parties would be effectively constrained by other suppliers of non-core PSS merchandising modules suppliers.

### *Internal documents*

247. As noted at paragraph 238 above, the Parties' internal documents indicate that they refer to a wider range of non-core PSS merchandising competitors, including in particular [X]. However, as set out further in the competitive assessment for supply of services that facilitate the indirect distribution of airline content below, these alternatives might, due to their smaller size relative to Farelogix, provide only a limited constraint on Sabre, in particular with regard to the possibility of competing for end-to-end NDC solutions. With regard to [X] in particular, Sabre's internal documents show that it views [X] as a less significant competitor than [X] and Farelogix with regard to its NDC development generally. One Sabre presentation sets out [X].<sup>78</sup>
248. With regard to Amadeus, which both Farelogix and Sabre view as a significant competitor, the CMA understands that its merchandising product is not PSS-agnostic, meaning that competition from Amadeus would not protect airlines using Sabre's core PSS, for whom rivalry between Sabre and Farelogix is likely to be most important. Furthermore, one airline suggested that it would not consider switching its non-core PSS modules to Amadeus due to a perceived '*conflict of interest*' with Amadeus' GDS business.

### *Bidding analysis*

249. The bidding analysis provided by the Parties shows that out of the [X] opportunities for which Farelogix has bid globally since December 2014, it won [X], losing [X] opportunities to [X], and [X] to [X]. While the CMA considers that only limited weight can be placed on this data (for the reasons explained above), it nevertheless shows that Farelogix has a strong track record in winning business where it bids, with other suppliers tending to have limited success, in practice, in winning opportunities against Farelogix.

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<sup>77</sup> *Merger Assessment Guidelines*, paragraph 5.4.12.

<sup>78</sup> Exhibit 2 to [X] deposition, page 21.

### *Third party views*

250. With regard to third parties, as set out above, views on the impact of the Merger on the supply of non-core PSS merchandising modules were mixed. However, several third parties specifically expressed doubts about the ability of alternative suppliers to constrain the Parties post-Merger, highlighting Farelogix's important overall role in competition for non-core PSS merchandising modules. For example:
- (a) One competitor referred to Farelogix as an '*important advocate of innovation and airline retailing*' and noted that if Sabre were to decide not to pursue further innovation, smaller providers would not be '*strong enough to close this gap, at least not short-term*';
  - (b) One airline submitted that it sees Farelogix as an '*essential part of competition*' in merchandising; and
  - (c) One airline submitted with regard to Farelogix's merchandising product that '*there's not a single product on the market that comes close to the capabilities of [Farelogix's merchandising module]*'.
251. While some airlines did not have concerns regarding the impact of the Merger on non-core PSS solutions and considered that there would be sufficient other providers left to constrain the merged entity, others expressed concerns regarding the impact of the Merger if Sabre were to stop making Farelogix's merchandising solution available on a PSS-agnostic basis post-Merger or were to stifle Farelogix's capabilities more generally. Several airlines which expressed concerns with regard to Farelogix's merchandising product highlighted Farelogix's leadership in innovation in this context.

### *Barriers to entry and expansion*

252. As set out further below, the CMA considers (consistent with the position set out in [X]'s internal documents) that barriers to entry and expansion into the supply of non-core PSS modules (including merchandising modules) are high, and therefore favour established players such as Farelogix.

### *Constraints from in-house non-core PSS merchandising solutions.*

253. The CMA has considered whether airline in-house supply of non-core PSS merchandising solutions could provide an effective constraint on the Parties post-Merger. In this respect, the CMA found that the Parties' internal documents do not refer to in-house solutions when discussing the competitive landscape with regard to non-core PSS modules.



254. Several airlines told the CMA that building non-core PSS modules in-house would be complex and require large amounts of resources and investment. Some third parties also submitted that building in-house solutions was only an option for large airlines. For instance:

(a) One airline submitted that *'It [in-house solution] has a fairly limited impact. On occasions it can be done but given the complexity of developing in-house and of migration the threat is limited and could only be used where credible. It has been used on limited occasions to help restrain price increases'*;

(b) Another airline submitted that *'not all airlines will have this option'*;

(c) One service provider submitted that *'this [in-house solution] is not typically considered, as only very largest airlines have interest/resources to develop modules in-house'*.

255. As such, even if some airlines were to use the threat of in-house development to constrain the Parties post-Merger, this would not protect other airlines who are smaller or less developed technically.

#### *Conclusion on horizontal unilateral effects*

256. For the reasons described above, the CMA believes that the Merger raises significant competition concerns in the supply of non-core PSS merchandising modules.

257. Farelogix has developed a best-in-class merchandising product and established relationships with several Sabre core PSS customers.

258. Sabre, while a more limited presence within this space at present, is one of only two GDSs that also provide core and non-core PSS services, and also has the significant commercial advantage of holding well-established relationships with several hundred airlines.

259. The available evidence in relation to how the market operates at present shows a material level of competitive interaction between the Parties. This is reflected in the considerable focus that Sabre places on Farelogix in its internal documents, viewing the company as a significant competitor in both merchandising and the supply of non-core PSS services more generally. For its part, Farelogix's internal documents consistently highlight Sabre as one of a limited number of credible competitors in this space.

260. The CMA notes, however, that looking only at a 'snapshot' of the market structure at present does not fully capture the nature of the constraint that the Parties exert on each other when taking account of the expected future evolution of non-core PSS services. In particular, while the Parties' existing market position is moderate, both Parties hold capabilities that make them particularly significant competitive forces within the market as it is expected to evolve towards the development of NDC end-to-end solutions encompassing elements that currently form part of PSS and distribution offerings.
261. More specifically, Farelogix's best-in-class merchandising product and the distribution capabilities described elsewhere in this decision leave it particularly well-placed to compete for future business as the market evolves towards NDC end-to-end solutions. The available evidence shows, in this regard, that the threat posed by Farelogix was one of the key drivers in Sabre's decision to develop its own NDC end-to-end strategy.
262. Sabre's own capabilities, including its core and non-core PSS offerings and extensive well-established relationships with airlines, also leave it particularly well-placed to compete for business as the market evolves.
263. The CMA considers that there would be insufficient competition from other suppliers to constrain the merged entity. While both Parties view Amadeus as a significant competitor, the fact that its product is not PSS-agnostic limits the extent to which it is able to constrain the Parties in relation to the customers for which they primarily compete at present. The available evidence indicates that the constraints exercised by other suppliers of non-core PSS services are limited, particularly when due weight is given to the capabilities that they possess (in particular in relation to NDC end-to-end solutions) to compete for future business as the market evolves. Any constraint from in-house self-supply is also very limited.
264. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of non-core PSS merchandising modules.

***Horizontal unilateral effects in the supply of services that facilitate the indirect distribution of airline content***

265. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply services that facilitate the indirect distribution of airline content.

266. In making this assessment, the CMA believes that horizontal unilateral effects could lead to the following concerns:
- (a) Higher prices (including higher GDS fees);
  - (b) Slower NDC implementation and/or cessation of implementation of NDC innovations after an initial minimum integration;
  - (c) Reduction of innovation; and
  - (d) The imposition of disadvantageous contract terms (including full content agreements and parity clauses) affecting the airlines' ability to control how they distribute content to travel agents. This could reduce the ability of airlines to provide differentiated content to non-GDS aggregators, and consequently reduce the constraint imposed by these non-GDS aggregators on the GDSs.
267. In order to assess the likelihood of the Merger resulting in unilateral effects in the supply of services that facilitate the indirect distribution of airline content, the CMA, by reference to the Parties' internal documents as well as third party views, considered:
- (a) The significance of Farelogix as a constraint on Sabre;
  - (b) The significance of Sabre as a constraint on Farelogix; and
  - (c) Competitive constraints from alternative suppliers, in-house self-supply and the direct channel.
268. Based on global booking data, the Parties estimate that Sabre and Farelogix respectively have a [20-30]% and [0-5]% share of supply in services that facilitate the indirect distribution of airline content. As with the supply of non-core PSS merchandising modules, the CMA considers that shares of supply estimates are not an accurate reflection of competition between the Parties in this case as they are inherently backwards looking and therefore may not fully capture the competitive significance of (and competitive interactions between) the Parties within the context of a dynamic and evolving industry. The CMA also notes that the Parties' significance as drivers of innovation, which plays a particularly important role in this frame of reference, would not necessarily be fully captured by estimates of their existing shares of supply.

### *Significance of Farelogix as a constraint on Sabre*

269. The CMA has examined the significance of Farelogix as a constraint on Sabre by reference to internal documents and third-party evidence (as relevant) particularly in relation to:

- (a) The threat posed by Farelogix's Direct Connect solutions on Sabre's products;
- (b) Farelogix's influence on the development of Sabre's NDC strategy;
- (c) Farelogix's role in innovation; and
- (d) Farelogix's ability to continue imposing a significant constraint based on its current solutions and pipeline plans.

270. The Parties submitted that Farelogix was not a unique or particularly strong constraint on Sabre. The Parties submitted that there are fundamental differences between Farelogix's Direct Connect product and a GDS, that Farelogix is not and could not become a GDS, and that the industry trend towards GDS pass-through means that Farelogix and Sabre provide complementary rather than competing products, with the Merger being pro-competitive in this respect. The Parties submitted that travel agents also wanted the industry to move towards GDS pass-through.

271. The Parties further submitted that the Direct Connect channel has only had limited airline and industry take-up. In this context, the Parties submitted that Farelogix is a minimal threat to Sabre, because it is a small player [X<], which is without the necessary scale to compete effectively with Sabre [X<]. The Parties also submitted that Farelogix (or Direct Connect) is not used as negotiating leverage in Sabre's commercial negotiations with airlines, with the direct channel providing a stronger constraint.

#### *Threat posed by Farelogix*

- *Significance of Direct Connect channel now and in future*

272. Generally, as set out in the Frame of reference section, Sabre's internal documents indicate that it viewed Direct Connect technology providers, including Farelogix, as at least a partial disintermediation threat. The available evidence also shows that Farelogix expected that airlines would continue to sell content outside of the GDSs and that this would remain a material revenue source for Farelogix. For example:

- (a) [REDACTED];<sup>79</sup>
- (b) [REDACTED].<sup>80</sup> [REDACTED]; and
- (c) [REDACTED].<sup>81</sup>

273. Third party evidence on the growth of the Direct Connect channel was mixed with some airlines submitting that they did not think that it would gain traction in the next few years. However, as set out in the Frame of reference section, the majority of airlines indicated that they thought that the Direct Connect channel had the potential to become a stronger competitor to the GDSs in the next few years, while noting that it would not be able to fully disintermediate the GDSs. For example:

- (a) One airline submitted that *'Adoption will increase as cost-saving is very important to airline'*;
- (b) Another airline submitted that *'Agencies that are not confident that the GDSs will keep up to speed with change and innovation will likely want to work with airlines to establish direct-connects, either directly to the airline or through modern aggregators, such as Atriis or Travelfusion. These agencies may find themselves becoming more attractive to customers as they offer products and services that traditional agencies may not be able to offer (or bring to market as quickly.)'*;
- (c) Another airline submitted that *'The role of Direct Connect is crucial to enable airlines to distribute the future flexible and personalised airline content directly to agencies that are capable to handle those. It will enable airlines to provide close to the same content that they can currently provide on their direct channels'*;
- (d) Another airline submitted that *'Direct Connect is most likely a realistic option for large [travel management companies and online travel agencies]. Smaller Travel agencies are likely to rely on aggregators connected to NDC-based APIs for several years.'*

274. This view was echoed by the majority of airline IT services providers, which generally agreed that the Direct Connect channel would increase in importance, although their views on the strength of the channel were more mixed. For example, one airline IT services provider stated that Direct Connect *'will strongly compete with GDS distribution'*, while another provider

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<sup>79</sup> Exhibit 3 to [REDACTED] deposition, pages 5-6.

<sup>80</sup> Annex 15 to the Merger Notice.

<sup>81</sup> Exhibit 11 to [REDACTED] deposition, page 3.

noted that it would be a ‘*second level competitor*’ due to the GDSs’ market power. Some airline IT service providers also considered that the relevance of Direct Connect would vary depending on airline and travel agent size.

275. Furthermore, as noted in the Frame of reference section, the CMA considers that travel agent use and preferences in relation to NDC and Direct Connect are relevant to the growth and constraint provided by the Direct Connect channel. In this context, although travel agents’ views on the future role of Direct Connect were more mixed, with the majority submitting that pure one-to-one connections to airlines would likely have very limited applications in future, some of them noted that they expected the role of Direct Connect to increase, in particular through non-GDS aggregators such as Travelfusion. In this context, some travel agents submitted that the role of GDS by-pass would likely also vary by travel agent type (eg based on the percentage of tickets sold with one or two suppliers, technological capabilities etc.). Several responses also noted that GDS by-pass connections were likely to lead to aggregators playing a growing role in the ecosystem.

- *Ability of Direct Connect suppliers to constrain GDSs*

276. The CMA considers that contrary to the Parties’ submissions, Farelogix does not have to become a GDS or threaten to fully disintermediate the GDSs in order to exert significant competitive pressure on Sabre. This is reflected in the Parties’ internal documents, which indicate that airlines use the threat of switching some of their volumes to Direct Connects in negotiations with GDSs. For example:

(a) [redacted];<sup>82</sup>

(b) [redacted];<sup>83</sup> and

(c) [redacted].<sup>84</sup>

277. Consistent with the evidence described above, one airline submitted that it often ‘*refer[s] to the possibility of switch[ing] to other suppliers and channels (Direct Connect) if the negotiated conditions are not satisfactory*’ in its negotiations with GDSs. While the majority of airlines submitted that they did not use this threat in their negotiations with GDSs, some noted that the reason for this was the GDSs’ existing market power and the existence of full content agreements, which prevented them from credibly making this threat.

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<sup>82</sup> Annex 4c.9 to the Merger Notice, page 3 and Exhibit 7 to [redacted] deposition, page 7.

<sup>83</sup> Exhibit 5 to [redacted] deposition, page 1.

<sup>84</sup> [redacted] deposition, pages 48-49.

The CMA therefore considers that this evidence, by itself, should not preclude that Farelogix represents a significant constraint.

- *Farelogix's constraint*

278. Farelogix, despite its relatively small size, is frequently mentioned in Sabre's internal documents alongside [X]. In particular, Sabre's internal documents [X]<sup>85</sup> [X].<sup>86</sup> Contrary to the Parties' submissions, Sabre's internal documents also specifically refer to Farelogix's SPRK tool as a competitive threat to its GDS, [X].<sup>87</sup> As set out at paragraph 206(a) above, the available evidence indicates that SPRK has the ability to aggregate content from different airlines, subject to [X]. In this context, Farelogix's internal documents show that it understood the threat it was posing to Sabre, [X].<sup>88</sup>
279. The available evidence also suggests that, although Sabre is working on developing GDS pass-through solutions with airlines, it nevertheless still perceives Farelogix as a threat. [X].<sup>89</sup>
280. Although some third parties considered that Farelogix's ability to compete with the GDSs was limited due to its size and current scale, several airlines and competitors told the CMA that Farelogix has created significant competitive pressure on the GDSs by facilitating alternative distribution options. For example:
- (a) One airline noted that Farelogix is '*the only sustainable non-GDS competitor*';
  - (b) Another airline submitted that Farelogix '*is best in breadth provider of content distribution with multiple agreements and connections with agencies, [online travel agents], Corporates*';
  - (c) Another airline submitted that '*Farelogix started increasing competitive pressure on GDSs by offering a cheaper and more efficient alternative to the distribution of content through the outdated EDIFACT standard. The same airline also told the CMA that 'Farelogix is the only "world class" provider of NDC. There are currently no real alternatives to Farelogix*'; and

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<sup>85</sup> Annex H.8 to the Merger Notice, page 15.

<sup>86</sup> Exhibit 2 to [X] deposition, page 29.

<sup>87</sup> Annex 4c.17 to the Merger Notice, page 8 and Exhibit 8 to [X] deposition, page 8.

<sup>88</sup> Exhibit 17 to [X] deposition, page 2.

<sup>89</sup> Exhibit 28 to [X] deposition, page 1.

(d) One airline IT service provider submitted that Farelogix was ‘*the only established alternative to Amadeus and Sabre*’ and that as a result of the Merger ‘*GDS negotiations will be back to where they were 10 years ago, with the GDS vendors imposing monopolistic market power onto the airlines (and agents).*’

281. With regard to travel agents, the evidence was also mixed with half considering that the Parties competed closely or moderately, and half considering that they competed weakly or not at all.

*Farelogix’s influence on the development of Sabre’s NDC strategy*

282. The Parties submitted that Sabre developed its NDC strategy [REDACTED]. The Parties further submitted that in developing its NDC strategy, it was responding to the needs of its airline customers, [REDACTED], and competitive pressure from [REDACTED]. The Parties submitted that Farelogix was not a significant influence on the development of Sabre’s NDC strategy.

283. The CMA found that, although competitive pressure from Farelogix was not the only reason Sabre developed its NDC strategy, it was a material driver in the development and adoption of Sabre's Beyond NDC strategy ([REDACTED]).<sup>90</sup> An analysis of Sabre’s NDC strategy documents showed that Farelogix is extensively discussed in Sabre’s NDC strategy documents. For example:

(a) [REDACTED];<sup>91</sup> and

(b) [REDACTED].<sup>92</sup>

284. The CMA also found that Sabre saw Farelogix as a particular competitive threat in the context of developing NDC capabilities because Farelogix had established customer connections with several Sabre core PSS customers, including [REDACTED]. For example:

(a) [REDACTED];<sup>93</sup>

(b) [REDACTED];<sup>94</sup> and

(c) [REDACTED].<sup>95</sup>

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<sup>90</sup> See Exhibit 3 to [REDACTED] deposition, pages 42 and 77 and Exhibit 5 to [REDACTED] deposition, page 12.

<sup>91</sup> Exhibit 2 to [REDACTED] deposition, pages 6 and 62.

<sup>92</sup> Exhibit 5 to [REDACTED] deposition, page 41.

<sup>93</sup> [REDACTED] (SABR 000369430), page 3 and Exhibit 3 to [REDACTED] deposition, page 42.

<sup>94</sup> Exhibit 6 to [REDACTED] deposition, page 2.

<sup>95</sup> Exhibit 5 to [REDACTED] deposition, page 1.



285. In this context, the CMA considers that notwithstanding the Parties' submissions [§<], the internal documents show that competitive pressure exercised by Farelogix was one of the key reasons that Sabre developed this strategy in the first instance.

*Farelogix as an innovator*

286. The Parties' internal documents further show that Farelogix drove innovation in the supply of services that facilitate the indirect distribution of airline content (including tickets and ancillaries), as well as the industry more generally, and was considered by the Parties as a leader, innovator and disruptor in this respect. As noted above, some of Sabre's NDC strategy documents [§<].<sup>96</sup> The CMA found that Farelogix's internal documents also show that it viewed itself as an innovator and disruptor in the market, with its disruptive capabilities highlighted in several internal presentations.<sup>97</sup> [§<].<sup>98</sup>

287. Farelogix's position as an industry innovator is also echoed in Sabre's press release announcing the Merger, which sets out that '*Sabre Corporation (NASDAQ: SABR) today announced that it has entered into an agreement to acquire Farelogix, a recognized innovator in the travel industry*'.<sup>99</sup>

288. Third parties also confirmed that Farelogix plays an industry-leading role in innovation, both with regards to the indirect distribution of airline content and with regard to NDC more generally. For example:

(a) One airline submitted that '*Together with airlines, Farelogix has defined indirect distribution and created an entirely new distribution channel that did not exist at all before*';

(b) Another airline submitted that '*Without Farelogix, I believe NDC would not be as far along as it is today*';

(c) Another airline submitted that Farelogix is '*Disruptor and innovator in the industry*';

(d) Another airline submitted that '*Farelogix have played a leading role in the definition of the NDC standard*' and added that it had '*been consistently outspoken in challenging the GDS position in airline*

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<sup>96</sup> Exhibit 2 to [§<] deposition, page 6.

<sup>97</sup> See eg Annex 52 to the Farelogix Response to the Section 109 Request dated 26 March 2019, page 76 and Annex 4(c)(2) to the Merger Notice, page 12.

<sup>98</sup> Attachment K.2 to the Merger Notice, page 27.

<sup>99</sup> <https://www.sabre.com/insights/releases/sabre-enters-agreement-to-acquire-farelogix-expanding-its-airline-technology-portfolio-and-accelerating-its-strategy-to-deliver-next-generation-retailing-distribution-and-fulfillment-capabilities/> (accessed on 16 August 2019)

*distribution, which led many airlines to evolve their distribution strategies'; and*

- (e) Another airline IT services provider described Farelogix as a 'frontrunner for NDC and direct open connect as a cost-effective alternative to legacy GDS providers.'

289. While some third parties also referred to other competitors as innovators, Farelogix was mentioned most often by airlines and airline IT services providers as one of the providers leading in innovating and developing services. In addition, the majority of airlines and airline IT services providers that considered Farelogix to be leading in innovation ranked it first, ahead of all other airline IT services providers. As noted in the Counterfactual section, while some airlines expressed concerns to the CMA that Farelogix's ability to grow and therefore keep innovating would be limited in future, these statements were often caveated and noted that Farelogix could address any scalability issues through further investment and/or new equity partners. In this context, the CMA also considers that Farelogix could have further expanded and achieved greater scale through internal efforts and/or external investment in the counterfactual.

#### *Farelogix's future plans*

290. The available evidence suggests that Farelogix would have continued to improve its distribution capabilities and impose a competitive constraint on Sabre. Farelogix's pipeline roadmap [§<] sets out Farelogix's plans to [§<].<sup>100</sup> The CMA has also taken into account the Parties' submissions that Farelogix has often developed additional features at an airline's request.
291. As set out in the Background section above, NDC is a first step towards further industry changes in the coming years, including the development of end-to-end NDC solutions replacing elements of an airline's PSS as well as its distribution technology, and IATA's ONE Order initiative. For the reasons explained above, the CMA considers that these ongoing industry developments are liable to have a significant impact on the way in which the services in relation to which the Parties compete are provided in future.
292. The available evidence indicates that certain of Farelogix's existing capabilities make it particularly well-placed to develop new and improved service offerings as the market develops over time. In particular:

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<sup>100</sup> Annex 30 to the Merger Notice, page 10.

- (a) As noted above, the Parties' internal documents and third parties indicate that Farelogix has a significant position with respect to both NDC-enabled merchandising and Direct Connect, two solutions which would be key to establishing end-to-end NDC solutions;
  - (b) As noted above, Sabre's internal documents show that it saw Farelogix as a particular competitive threat in the context of developing NDC capabilities because Farelogix [REDACTED];
  - (c) [REDACTED];<sup>101</sup>
  - (d) Several board presentations suggest that [REDACTED];<sup>102</sup> and
  - (e) In a presentation prepared by Farelogix in [REDACTED], Farelogix explained that NDC adoption by airlines would fuel the demand for offer management engines and that there was a strong link between offer management (ie PSS) and order delivery (ie distribution).<sup>103</sup>
293. The CMA considers that these broader capabilities are liable to make Farelogix a particularly significant competitive force within the markets in which it is active at present (given that other suppliers active in these markets either do not have capabilities to develop new solutions to compete with Sabre both with regard to indirect airline content distribution and airline IT and/or lack Farelogix's established position in the market). The CMA also considers, as discussed in the Counterfactual section above, that Farelogix would have expanded further and achieved greater scale through internal and/or external efforts absent the Merger.

#### *CMA's assessment*

294. On the basis of the evidence above, the CMA considers that there is a significant degree of competitive interaction between the Parties. The CMA also considers that Farelogix exercises a material competitive constraint on Sabre, in particular due to its ability to 'deleverage' the traditional commercial relationship between Sabre and its airline customers, which represents a considerable threat to Sabre because of the scope this offers for partial disintermediation. The CMA considers in particular that one of the reasons Sabre considered Farelogix as a competitive threat is that Farelogix has established customer relationships with several Sabre core PSS customer airlines. In addition, Farelogix is also a significant innovator in the industry, challenging the GDSs and their business model. The CMA considers in this

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<sup>101</sup> Annex 30 to the Merger Notice and Exhibit 3 to [REDACTED] deposition, page 5.

<sup>102</sup> Attachment K3 to the Merger Notice, pages 34-35 and Attachment K5 to the Merger Notice, page 37.

<sup>103</sup> Exhibit 9 to [REDACTED] deposition, page 69.

respect that Farelogix was a key driver in Sabre's decision to develop its own end-to-end NDC strategy and is well-placed to develop new solutions to compete with Sabre's PSS and GDS solutions and further drive innovation.

295. In this context, the CMA notes that while Farelogix's solutions may not match all of the functionality of a GDS, the CMA does not believe that this precludes Farelogix from representing a material constraint on Sabre. The CMA does not believe that it is necessary for customers (whether airlines or travel agents) to completely switch away from a GDS to an alternative solution for that solution to provide a relevant and material constraint. The evidence noted above indicates that Farelogix's solutions have the ability to shift volume away from GDSs including Sabre and that this has already led to improved outcomes for customers by stimulating innovation from previously sluggish GDSs. The CMA therefore believes that customers switching (or threatening to switch) some services and volumes away from GDSs is sufficient to conclude that Farelogix imposes a material constraint.

#### *Significance of Sabre as a constraint on Farelogix*

296. The CMA has examined the significance of Sabre as a constraint on Farelogix by reference to:
- (a) Existing market features;
  - (b) Internal documents; and
  - (c) Sabre's pipeline plans.

297. The Parties submitted that Sabre was a limited constraint on Farelogix principally because it did not compete with Farelogix's NDC API. The Parties also submitted that [X].

#### *Existing market features*

298. While both merging Parties provide services to facilitate indirect content distribution, Sabre provides a greater range of services to both airlines and travel agents than Farelogix. In particular, Sabre offers additional services to travel agents, such as mid- and back-office support. In addition, Sabre's GDS allows travel agents to book more complex itineraries (including complex interlining and/or multiple travel services providers) from a large selection of airlines.
299. As set out further in the Barriers to entry and expansion section below, barriers to entry into indirect airline content distribution are high. Sabre,

Amadeus and Travelport have an established presence in the industry and several third parties suggested that these suppliers have strong market power and form an oligopoly. Furthermore, airlines told the CMA that they are unable to switch away entirely from any of the three major GDSs (with one referring to them as an '*unavoidable gateway*') as they rely on all of them to distribute their content to travel agents. Several airlines also mentioned that they have been unsuccessful in their negotiations to remove parity clauses from their contracts with GDSs.

300. The CMA therefore considers that the existing market structure indicates that Sabre exercises a strong competitive constraint on Farelogix, notwithstanding its current lack of a fully developed NDC proposition.

*Internal documents*

301. Farelogix's internal documents show that it considers Sabre, [REDACTED], to be a close competitor in the supply of services that facilitate the indirect distribution of airline content. For example:

(a) [REDACTED];<sup>104</sup> and

(b) [REDACTED].<sup>105</sup>

*Sabre's future plans*

302. As set out in the Background section above, despite its initial reluctance, Sabre had started to implement an end-to-end NDC solution encompassing offer features and distribution of content (and which will eventually include fulfilment). In this context, Sabre's internal documents show that it sought to catch up and keep pace with other suppliers, [REDACTED]. The available evidence suggests that Sabre is still working on implementing its plans and progressing its Beyond NDC strategy.
303. In this context, the CMA considers that Sabre well-placed to compete strongly in the supply of services that facilitate the indirect distribution of airline content, including as part of NDC end-to-end solutions because of its established relationships to several hundred airlines through its GDS, which would provide it with a strong foothold from which to attract customers to its end-to-end offering. The CMA considers that Sabre's existing strength and its

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<sup>104</sup> Exhibit 8 to [REDACTED] deposition.

<sup>105</sup> Exhibit 9 to [REDACTED] deposition, page 8.

ability to offer a broad range of products in both airline IT and distribution would put it in a strong position in competing for NDC end-to-end solutions.

*The CMA's views*

304. On the basis of the evidence above, the CMA considers that Sabre exercises a material competitive constraint on Farelogix.

*Alternative constraints*

305. The Parties submitted that they face and will continue to face significant competitive pressure from highly sophisticated GDS competitors. The Parties also submitted that there are many other players active in the provision of NDC-enabled Direct Connect that compete with Farelogix, including Datalex, OpenJaw and TPConnects. Furthermore, the Parties submitted that airline self-supply could be a competitor to its NDC API distribution offering and that airlines have significant countervailing power.
306. The CMA considered whether the Parties will be constrained by other suppliers of services that facilitate the indirect distribution of airline content (including tickets and ancillaries), including GDSs and other technology providers, as well as the threat of in-house supply by airlines. The CMA also considered whether the Parties will be constrained by the direct channel.

*Constraint from other GDSs*

307. The CMA found that Sabre's internal documents show that it considers Amadeus and Travelport to be its closest competitors in indirect distribution. With regard to the development of NDC end-to-end solutions, Sabre's internal documents provide a more mixed picture. Sabre's internal documents show that while it monitored both Amadeus' and Travelport's NDC efforts, it more frequently benchmarked itself against [REDACTED].<sup>106</sup> Furthermore, while Sabre's internal documents set out that [REDACTED].<sup>107</sup>
308. As set out at paragraph 301 above, Farelogix's internal documents show that it considers [REDACTED] and Sabre to be its closest competitors. [REDACTED]. For example:

(a) [REDACTED];<sup>108</sup> and

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<sup>106</sup> Exhibit 5 to [REDACTED] deposition, page 41.

<sup>107</sup> Exhibit 2 to [REDACTED] deposition, page 29.

<sup>108</sup> Exhibit 8 to [REDACTED] deposition, page 1.

(b) [REDACTED].<sup>109</sup>

309. Third parties consistently told the CMA that Amadeus and Travelport compete closely with Sabre, mainly because they are also GDS services providers. Several third parties also confirmed that Amadeus currently has the best capabilities of the GDSs for NDC-enabled services, with one airline mentioning that it has a complete suite of NDC-enabled products that are already developed. Regarding Travelport, a substantial proportion of airlines also told the CMA that they expected Travelport to become a weaker competitor to the Parties in the next three to five years, with several noting that it is currently the weakest of the three GDSs and that its market share has been declining in recent years. A number of travel agents also told the CMA that they expected Travelport to weaken in the next three to five years.
310. Regarding future plans, Amadeus told the CMA that it is seeking to continuously improve its non-core PSS modules as well as its available NDC products in the next two to three years to be able to provide NDC at scale. Furthermore, Amadeus told the CMA that it is planning to invest in a simple, agile and open platform for airlines that can provide ‘*total offer optimization*’ and ‘*customer centric orders*’. Travelport told the CMA that [REDACTED]. Travelport also told the CMA that [REDACTED]. With regard to [REDACTED], Travelport submitted that [REDACTED].

#### *The CMA’s views*

311. On the basis of this evidence, the CMA considers that Amadeus would provide a significant constraint on the Parties post-Merger, while Travelport’s constraint would be more limited.

#### *Constraint from non-GDS technology providers*

- *Internal documents*

312. Sabre’s internal documents indicate that other non-GDS suppliers of services that facilitate the indirect distribution of airline content provide only a limited constraint on Sabre, in particular with regard to the possibility of competing for end-to-end NDC solutions. For example, while Sabre sometimes refers to other competitors in its internal documents (eg [REDACTED].), these are typically mentioned less frequently and in less depth than Farelogix [REDACTED]. Sabre’s internal documents also show that it considered that [REDACTED] generally provided

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<sup>109</sup> Exhibit 7 to [REDACTED] deposition, page 3.

more limited solutions than Farelogix [REDACTED] and/or lacked customers for their products. For example, some NDC strategic documents state [REDACTED].<sup>110</sup>

313. Similarly, as set out at paragraphs 301 and 308 above, Farelogix considered that its closest competitors are the GDSs ([REDACTED]). Farelogix's internal documents also show that it did not perceive [REDACTED] as posing a significant threat to its business or its ability to compete in end-to-end NDC solutions. For example:

(a) [REDACTED];<sup>111</sup> and

(b) [REDACTED].<sup>112</sup>

314. Farelogix's internal documents also indicate that it has already developed capabilities in several aspects forming part of an overall end-to-end NDC solution, including NDC enabled merchandising, availability, shopping and pricing and dynamic schedule builder non-core PSS modules, its NDC API, as well as tools focusing on travel agent solutions and fulfilment more generally including SPRK, with functionality to perform [REDACTED]. Farelogix's internal documents indicate that its breadth of services placed it at a competitive advantage, [REDACTED].<sup>113</sup> [REDACTED].<sup>114</sup>

- *Bidding analysis*

315. The Parties made several submissions to the CMA and the US Department of Justice regarding the number of bids in which Farelogix participated since 2014 for its FLX Open Connect product. The CMA found that the Parties' submissions contained certain inconsistencies in terms of the number of opportunities Farelogix participated in and the identity of other providers, and therefore did not place much weight on this data. The data shows that Farelogix won at least [REDACTED] opportunities since 2014, losing against providers such as [REDACTED]. The CMA considers that this data indicates that while there are other competitors active in the supply of services that facilitate the indirect distribution of airline content, there appears to be no provider that consistently wins against Farelogix.

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<sup>110</sup> Exhibit 2 to [REDACTED] deposition, page 6.

<sup>111</sup> Exhibit 7 to [REDACTED] deposition, page 3.

<sup>112</sup> Exhibit 8 to [REDACTED] deposition, page 1.

<sup>113</sup> [REDACTED], page 23.

<sup>114</sup> Annex 55 to the Farelogix Response to the Section 109 Request dated 26 March 2019, page 21.



- *Third party views*

316. The CMA received mixed evidence from third parties on the ability of non-GDS suppliers of services that facilitate the indirect distribution of airline content to constrain the Parties post-Merger. The CMA has assessed the ability of each of these providers to constrain the Parties post-Merger, taking into account the dynamic features of the industry.

#### Datalex

317. Datalex is a technology provider that allows airlines to distribute content through any channel, including their own website and travel agents. Datalex also offers a commerce platform, which the CMA understands competes with non-core PSS merchandising and shopping modules. The CMA understands that historically Datalex [REDACTED]. Datalex told the CMA that [REDACTED]. Datalex submitted that [REDACTED].

318. As noted at paragraph 312 above, Sabre's internal documents [REDACTED].<sup>115</sup> [REDACTED]

319. Third parties generally told the CMA that Datalex competed with Farelogix, with some airlines mentioning that competition between the two providers was close and some submitting that Datalex had the potential to grow in the future. Third parties did not generally think that Datalex competed closely with Sabre.

320. While a small number of airlines thought that Datalex was among the leaders in innovation, they generally ranked it behind Farelogix in this respect. Several third parties, including one travel agent, also submitted that they thought that Datalex would become a weaker competitor to the Parties in the next three to five years. In addition, three airlines told the CMA that they had considered Datalex when developing their NDC APIs, but had ultimately chosen not to use it, with two mentioning that it compared negatively to Farelogix. Bidding information submitted by the Parties suggests that [REDACTED].

321. In light of the evidence above, in particular Datalex's relatively smaller size and limited market penetration, as well as the indications that it might be weakening, the CMA considers that Datalex would impose only a relatively moderate competitive constraint on the Parties in the supply of services that facilitate the indirect distribution of airline content post-Merger, including in the development of end-to-end NDC solutions.

#### OpenJaw

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<sup>115</sup> Exhibit 2 to [REDACTED] deposition, page 6.

322. OpenJaw is another technology provider that provides, amongst others, non-core PSS merchandising and shopping and pricing solutions, as well as NDC distribution through an NDC API. OpenJaw is owned by TravelSky, a Chinese GDS operating in China.
323. Bidding information submitted by the Parties suggests that [§]. The CMA also found that the Parties' internal documents only make sporadic references to OpenJaw.
324. While third parties told the CMA that OpenJaw competed with Farelogix, most did not consider it to be a close competitor to Sabre. Several airlines told the CMA that they considered OpenJaw to be weaker than Farelogix due to its smaller size, in particular in airline content distribution. One airline also told the CMA that it had investigated OpenJaw as an alternative to Farelogix but had not selected it because of security and privacy concerns as a result of it being owned by a Chinese company.
325. The CMA understands that OpenJaw [§].
326. In light of the evidence above, in particular OpenJaw's relatively limited market penetration in particular with regard to indirect distribution, as well as its smaller size relative to Farelogix, the CMA considers that OpenJaw would impose only a relatively moderate competitive constraint on the Parties in the supply of services that facilitate the indirect distribution of airline content post-Merger, including in the development of end-to-end NDC solutions.

#### TPConnects

327. The CMA understands that TPConnects is a non-GDS aggregator that also provides an offer and order management platform.
328. The Parties submitted that Oman Air chose TPConnects its NDC connection, although the CMA understands that [§]. The CMA also found that the Parties' internal documents make almost no reference to TPConnects.
329. Several airlines mentioned TPConnects as being among the leading providers in innovation although none ranked it as first. Several travel agents noted that they expected the company to grow in future.
330. Where third parties provided specific comments on TPConnects, they noted that it was a relatively small and very new provider that seemed to have established itself primarily in the Gulf region.
331. On the basis of this evidence, including in particular its small size relative to Farelogix and limited market penetration, the CMA believes that TPConnects

would likely only be a weak competitive constraint on the Parties in the supply of services that facilitate the indirect distribution of airline content post-Merger, including in the development of end-to-end NDC solutions.

### Travelfusion

332. Travelfusion is a non-GDS aggregator that connects to different airlines via their NDC APIs and then distributes this content in aggregated form to travel agents. The CMA understands that Travelfusion does not offer NDC retailing solutions (ie non-core PSS modules). Farelogix's internal documents make almost no reference to Travelfusion, while Sabre's internal documents sometimes mention it among other non-GDS aggregators without providing further details.
333. Third parties generally considered that Travelfusion competed more closely with Sabre than with Farelogix due to its focus on content aggregation. Several travel agents submitted that they had established connections to Travelfusion in order to access content from airlines and they expected the company to grow in future, although some noted that Travelfusion had historically focussed on providing content from low cost carriers that tend not to use the GDSs. Travelfusion was also mentioned most often after Farelogix as a leading provider in innovation, although it was ranked first less often than Farelogix.
334. The CMA understands that [§<].
335. On the basis of this evidence, including in particular its focus on content aggregation, the CMA believes that Travelfusion would likely only be a relatively moderate competitive constraint on the Parties in the supply of services that facilitate the indirect distribution of airline content post-Merger, including in the development of end-to-end NDC solutions

### JR Technologies

336. JR Technologies is a technology company providing full retailing platforms to airlines (which the CMA understands are platforms that allow airlines to create and distribute content, including using NDC). JR Technologies also operates an agency portal that allows direct distribution between airlines and travel agents. The CMA found that the Parties' internal documents only make sporadic references to JR Technologies. The bidding data [§<].
337. Third parties generally considered that JR Technologies was a small technology provider that did not yet have an established track record with airlines.

338. JR Technologies told the CMA [REDACTED]. JR Technologies also told the CMA with regard to future development plans that [REDACTED].
339. On the basis of this evidence, the CMA believes that JR Technologies would likely only be a weak competitive constraint on the Parties in the supply of services that facilitate the indirect distribution of airline content post-Merger, including in the development of end-to-end NDC solutions.

#### PROS

340. PROS is an IT solutions provider specialised in artificial intelligence solutions for digital commerce. As part of these solutions, PROS provides specific solutions for the airline industry including merchandising and shopping and pricing products.
341. [REDACTED]. Farelogix's internal documents show that it views PROS as a relevant competitor [REDACTED]. The CMA found that Sabre's internal documents only include sporadic references to PROS, [REDACTED].
342. PROS told the CMA that some of its products include NDC APIs [REDACTED]. PROS further submitted that [REDACTED]. PROS also told the CMA [REDACTED].
343. Third parties generally told the CMA that they viewed PROS as a competitor to the Parties with regard to certain non-core PSS modules but not with regard to indirect airline content distribution.
344. On the basis of this evidence, the CMA believes that PROS would likely only be a weak competitive constraint on the Parties in the supply of services that facilitate the indirect distribution of airline content post-Merger, including in the development of end-to-end NDC solutions.

#### Others

345. ITA/Google submitted that it has developed the capability to build NDC APIs [REDACTED]. SITA submitted that its NDC Exchange tool could translate certain non-NDC APIs into NDC but only in restricted cases and that an airline already needed to have developed its own NDC API to use SITA's services. The CMA considers that these providers would provide at most a weak competitive constraint on the Parties post-Merger.

#### General third-party views

346. Some third parties provided general views on the ability of non-GDS suppliers of services that facilitate the indirect distribution of airline content. In this context, a few airline IT services providers thought that non-GDS suppliers

would be able to provide an effective constraint on the Parties post-Merger and that Farelogix did not have a *'unique innovative capability'*. However, several airlines expressed doubts whether these suppliers could replicate the constraint currently provided by Farelogix on the Parties post-Merger and/or expressed concerns that they might weaken. For example:

- (a) One airline submitted that *'We have not identified an alternative vendor that could provide NDC services to us in a manner that would work for us as well as Farelogix. Further, it would likely set our progress back by 4+ years'*;
  - (b) Another airline submitted that *'Whilst there are other NDC providers who can offer a similar aggregator/distribution proposition (including the retail experience), Farelogix has been at the forefront of campaigning for a direct airline solution and has proactively, compared to other NDC providers, advocated the industry and customer benefits that its end to end capability supports'*;
  - (c) Another airline submitted that *'Farelogix is the only supplier that has the expertise and background [Airline] needs. Airlines will again face GDSs' oligopoly'*; and
  - (d) Another airline submitted that *'Datalex, OpenJaw, TP Connects, JR Technologies and DXC will all become weaker because they are either niche players or do not have technology as good as Farelogix.'*
347. In addition, the CMA notes that while most travel agents considered that the Merger would allow for at-scale NDC distribution through Sabre's GDS, a large number of airlines raised concerns on the impact of the Merger generally. In particular:
- (a) Most airlines and service providers raised concerns that, post-Merger, the Parties would slow down NDC implementation and/or cease implementing NDC innovations after an initial minimum integration:
    - (i) One airline IT services provider submitted that *'in over 25 years I have never seen a GDS innovating. They never push to innovation, they always hold back to the smallest common denominator'*;
    - (ii) One airline submitted that *'For NDC, if Sabre slows down or stops Farelogix from continuing to make progress on NDC, we would likely be set back by four or more years while we attempt to procure and/or build a replacement solution'*; and

- (iii) Another airline submitted that *'In the event that Farelogix is acquired by Sabre, [Airline] considers that there is a material risk that: [...] there could be a degradation in the product offering (e.g. a slowdown in the pipeline roll out of new functionality [...])'*;
- (b) A few third parties raised further concerns that Sabre could shut down Farelogix's Direct Connect product. One airline submitted that *'there is a risk that Sabre shuts down Farelogix or uses its resources for other purposes than further advancing NDC technology (or is simply unsuccessful in integrating Farelogix). While such a scenario appears unlikely, it would negatively impact competition on content distribution if it materialized.'* An airline IT solutions provider told the CMA that it believed that *'one of the rationales for Sabre's purchase was to discontinue offering Farelogix's GDS bypass solutions'*;
- (c) While some airlines considered that the additional funding provided to Farelogix by Sabre could benefit innovation, several third parties raised concerns regarding the removal of Farelogix as an independent competitor on innovation generally:
  - (i) One airline submitted that *'Sabre's ownership of Farelogix would be likely to reduce innovation, as Sabre may favour its corporate interest (which is driven by its legacy distribution business) to the detriment to the market, as Sabre seeks to protect its position as gatekeeper to Travel agencies'*;
  - (ii) Another airline submitted that *'The acquisition by Sabre may impair Farelogix's incentives to experiment with technologies that negatively impact the Sabre business model'*; and
  - (iii) Another airline submitted that *'Sabre does not have a demonstrated track record of innovation for airline solutions. In fact, it could be easily argued that by funnelling significant revenue to agencies to buy business and restricting access to their agency subscribers, they have actively stifled innovation. There is a legitimate risk that the ability to quickly innovate that makes Farelogix such a successful vendor would diminished [sic] with the Sabre acquisition'*.

348. Furthermore, a number of airlines raised the concern that the Merger will increase Sabre's ability to impose disadvantageous contract terms on airlines (such as full content agreements or parity clauses, both of which limit airlines' ability to discriminate the content they distribute by channel), thereby affecting the airlines' ability to control how they distribute content to travel agents:

- (a) One airline told the CMA that *'The GDSs are still leveraging their market power to protect their current business model but also in order to impose barriers to entry in their future NDC aggregator position. Interestingly enough, the GDSs are trying to impose non-discrimination / parity provision in the NDC aggregator scheme which [Airline] is trying to challenge without success so far. If implemented in the new distribution world, the consequences of such provisions would be to see replicate the GDS model in NDC and to set barriers to entry for any new entrants or existing aggregator, thus annihilating the wealth of innovations and benefits brought by this new technology. The contractual practice implemented by players such as Amadeus or Sabre on such a concentrated given market can also be seen as a way to prevent other undertakings from entering the market. The acquisition of Farelogix clearly illustrates such strategy and the willingness of the GDS to maintain the distribution scheme as is by creating barriers to entry in the NDC world and taking over the only sustainable non-GDS competitor'*;
- (b) Another airline submitted that *'All competitors will become weaker if Sabre acquires Farelogix, due to the increased market power that Sabre will have as a result'*;
- (c) Another airline submitted that *'under Sabre ownership, Amadeus and Traveport [sic] likely will attempt to apply parity to any/all of [Airline]'s use of Farelogix. Previously, Farelogix as a technology provider was not subject to GDS parity and while [Airline] will argue that it should not apply even if the acquisition goes through, the other GDS are likely to take the opposite view'*; and
- (d) Another airline submitted that it *'has already seen other GDSs (including Traveport and Amadeus) suggest that the parity clauses in their respective service agreements would apply not only to the fare content [Airline] offers to other GDSs but also to its distribution via NDC (a position which [Airline] disputes). [Airline] would have strong objections to Sabre taking the position, post-acquisition'*. The same airline added that it *'anticipates that the acquisition of Farelogix will increase Sabre's market power and the strength of the incumbent GDSs. For example, technology solutions in respect of (i) internal system capability and interoperability and (ii) innovation in NDC (and associated technologies) are key gateways to achieving lower costs, greater efficiencies and improved customer offering in airline distribution. Farelogix is a leading disruptor and innovator in this space,*

*against a background of low investment and entrenchment of market power by GDSs'; and*

- (e) *One airline IT services provider submitted that 'if the most important vendor and enabler of direct connect solutions is now a GDS then, because of the anti-competitive incentive payments of GDS vendors to agents, potentially all our customers will consider using the Sabre GDS going forward. Agents are net-cash-receivers and solutions like ours is adding value because we can make available content that is not in the GDS today. And don't forget the airline side – GDS negotiations will be back to where they were 10 years ago, with the GDS vendors imposing monopolistic market power onto the airlines (and agents).'*

- *CMA's assessment*

349. On the basis of the evidence above, which suggests that none of the existing non-GDS suppliers are able to match Farelogix in size, breadth of offering, market penetration and/or innovation, the CMA believes that alternative non-GDS suppliers will not impose a sufficient competitive constraint, whether individually or in aggregate to prevent competition concerns arising.
350. In this respect the CMA also notes that one of the third-party concerns set out in paragraph 348 above refers specifically to the possible impact of the Merger on other aggregators.

*Constraint from in-house self-supply*

351. Although a few airlines have developed their own NDC APIs in-house and Farelogix [§<], the Parties' internal documents do not refer to the possibility of in-house supply when assessing the competitive conditions for indirect airline content distribution. In addition, airlines generally told the CMA that building a set of NDC capabilities from scratch would take several years, would be expensive and would require large resources, with some mentioning that while this might be a possibility for large global airlines, small and mid-sized carriers would not have the technological capabilities or scale to develop and operate these capabilities.
352. Therefore, the CMA believes that, even if some of the largest airlines were able to self-supply, this would not protect other airlines from the effects of the Merger and therefore would not be sufficient to effectively constraint the Parties.



### *Constraint from the direct channel*

353. As set out at paragraph 271 above, the Parties submitted that [X]. The CMA found that Sabre's internal documents include the direct channel as a relevant competitive constraint.
354. However, as set out in the Frame of reference section above, the available evidence indicates that indirect distribution reaches a different group of end-customers, ie those who use travel agents and may not want to book a ticket directly with the airline. With regards to travel agents, the CMA has also not received strong evidence to indicate that airline.com exerts a significant constraint on the indirect channel. The Parties also submitted at the Issues Meeting with the CMA that the direct channel mainly serves leisure travellers, while travel agents rarely use airlines' websites to book tickets.
355. On this basis, the CMA does not consider that the competitive pressure from the direct channel would be sufficient to effectively constrain the Parties post-Merger.

### ***Conclusion on horizontal unilateral effects***

356. For the reasons described above, the CMA believes that the Merger raises significant competition concerns in the supply of services that facilitate the indirect distribution of airline content.
357. Sabre is a well-established incumbent player with a significant market presence. Sabre, along with Amadeus and Travelport, is one of three major GDSs that currently hold a significant degree of market power. Airlines are heavily dependent on the GDSs to distribute their content to travel agents (with some airlines describing the GDSs as an oligopoly or '*unavoidable gateway*' that they unable to fully switch away from).
358. Farelogix, while a smaller player than the three major GDSs, has emerged, more recently, as a competitively significant force in the supply of services that facilitate the indirect distribution of airline content. The available evidence indicates that Farelogix is widely recognised as an important innovator and significant disruptive force within the industry.
359. The available evidence also shows a very significant degree of competitive interaction between the Parties. While Farelogix is smaller than Sabre and has a different service offering, its ability to 'deleverage' the traditional commercial relationship between Sabre and its airline customers represents a considerable threat to Sabre because of the scope this offers for partial disintermediation. The available evidence shows, in this regard, that the threat

posed by Farelogix was one of the key drivers in Sabre's decision to develop its own NDC end-to-end strategy. In general, Sabre places a strong focus on Farelogix in its internal documents ([redacted]), with evidence from third parties also consistently supporting the position that Farelogix has created significant competitive pressure on Sabre (as well as the other GDSs).

360. Notwithstanding the differences in their respective service offerings, Sabre is also an important competitive constraint on Farelogix. While Farelogix might be expected to target all three of the incumbent players, the available evidence relating to its commercial strategy clearly shows that it focusses particularly closely on Sabre [redacted].
361. The available evidence indicates that the Parties would, absent the Merger, continue to be very significant constraints on each other in future. Both Parties possess capabilities that, as the industry evolves (in particular towards end-to-end NDC solutions), leave them particularly well-placed (compared to other suppliers) to compete for future business. While the Parties have suggested that Farelogix [redacted].
362. The CMA considers that there will be insufficient competition from other suppliers to constrain the merged entity. While the available evidence supports the position that Amadeus is a strong competitor to both Parties, the constraint posed by Travelport, the other major GDS, appears to be far more limited. The available evidence also indicates that the constraints exercised by other non-GDS suppliers of services that facilitate indirect airline content distribution (such as Datalex, OpenJaw and TPConnects), in-house self-supply, and the airline.com direct channel are limited.
363. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of services that facilitate the indirect distribution of airline content.

### ***Coordinated effects***

364. Coordinated effects may arise when firms operating in the same market recognise that they are mutually interdependent and that they can reach a more profitable outcome if they coordinate to limit their rivalry.<sup>116</sup> Coordination may take different forms. In many instances, it will involve firms keeping prices higher than they would otherwise have been in a more competitive market. However, coordination can in principle affect any aspect of competition, eg by limiting production or innovation. Coordination need not

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<sup>116</sup> [Merger Assessment Guidelines](#), paragraph 5.5.1.

involve all aspects over which firms compete.<sup>117</sup> A merger may raise competition concerns as a result of coordinated effects if it affects the market structure such that the conditions for sustaining coordinated effects are created or enhanced.

365. In this case, noting the dynamic nature of the industry and ongoing developments (including the move towards end-to-end NDC enablement), the CMA has assessed the scope for coordinated effects in relation to innovation impacting NDC-related services, including in the context of non-core PSS modules (including merchandising) and services to facilitate the indirect distribution of airline content. By developing NDC technology, each supplier individually would be better off (in order either to gain an advantage over its rivals or to avoid being at a disadvantage), but collectively they may prefer to avoid the investment and maintain an industry paradigm in which they collectively have market power over their customers.
366. To assess the likelihood of the Merger resulting in coordinated effects, the CMA has considered:<sup>118</sup>
- (a) Whether Sabre, Amadeus and Travelport could reach agreement and monitor the terms of coordination;
  - (b) Whether coordination is internally sustainable; and
  - (c) Whether coordination is externally sustainable.

#### *The Parties' submissions*

367. The Parties submitted that it was not credible that absent the presence of Farelogix as an independent entity, the major GDSs (Sabre, Amadeus and Travelport) might tacitly coordinate to reduce their innovation efforts. The Parties submitted that Farelogix is not a unique stimulus of innovation and that the needs of Sabre's customers, rather than Farelogix's activities, have been the main driver of Sabre's NDC development. The Parties submitted that the GDSs' decisions to develop NDC have been taken independently of each other and have not been taken within a short space of time. In this context, the Parties submitted that the GDS market features are not conducive to a coordinated reduction in innovation. Each GDS only accounts for a minority of the market, making a tacit agreement difficult to sustain. The Parties also submitted that the rival GDSs are far from being in identical symmetrical positions in respect of NDC and whilst Sabre's ability to close the gap on NDC

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<sup>117</sup> [Merger Assessment Guidelines](#), paragraph 5.5.2.

<sup>118</sup> [Merger Assessment Guidelines](#), paragraphs 5.5.4 and 5.5.9.

will be improved as a result of the Merger, this itself will not create a symmetrical position.

368. The Parties also submitted that the ability to coordinate would be precluded by the inability of firms to effectively monitor each other's R&D activity and the time lag involved with catching up with a defecting firm. The Parties submitted in this context that press releases are not an effective way to monitor R&D activity because i) press releases would not be regarded by others as necessarily a reliable and truthful account of technical progress in NDC, ii) press releases on NDC are largely seen as a way of communicating to the market that the GDSs are making good progress on NDC, and iii) it would not be sensible for a GDS to pace its efforts (and risk falling behind its competitors) on the basis of vague reports charting others' progress.
369. In addition, the Parties submitted that the development of NDC capabilities is a long term and costly R&D endeavour and that it is therefore not credible that one of the GDSs could 'punish' a competitor sufficiently swiftly following deviation by accelerating its own NDC development.
370. The Parties submitted that in any event, the collective failure of the GDSs to innovate would invite disruption from other existing suppliers (such as Datalex, OpenJaw, IBS Software, JR Technologies or TPConnects), and that therefore any tacit agreement would be inherently unstable. The Parties further submitted that if airlines were unsatisfied with the level or direction of innovation, they could work with one of these other existing suppliers or develop in-house solutions to pressure the major GDSs or divert demand away from GDS to the direct channel.

#### *Ability to reach and monitor agreement*

371. Sabre, Amadeus and Travelport are the three main GDSs and represent a significant proportion of the supply of indirect distribution services (between [80-90]% and [90-100]% on a global basis).<sup>119</sup> Sabre and Amadeus also are the only providers that supply both GDS and core and non-core PSS services. While the main GDSs each have different market shares, third parties consistently referred to them as the main GDSs. However, Travelport, according to the evidence, might be weakening and falling behind Amadeus and Sabre (see paragraphs 307 to 309 above). Therefore, the CMA considers that there are only a limited number of firms that would need to reach an understanding to reach a coordinated outcome.

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<sup>119</sup> Excluding passengers booked through local GDSs in Russia, Japan, and China (eg Travelsky, Axess, Infini, etc.)

372. The available evidence suggests that the market conditions might themselves be conducive for Amadeus, Sabre and Travelport to reach agreement on coordinated outcomes. Contracts between airlines and GDSs typically include restrictions on the airline's ability to differentiate their distribution of airline content by channel and/or GDS. In this context, Sabre submitted that [redacted]. Furthermore, airlines told the CMA that they are unable to entirely switch away from any of the three major GDSs (with one referring to them as an 'unavoidable gateway') as they rely on them to distribute their content to travel agents, with several also mentioning that they have been unsuccessful in their negotiations to remove various parity clauses from their contracts with GDSs.
373. The CMA considers that it may be reasonably easy for Sabre, Amadeus and Travelport to communicate to each other the extent to which they are supporting NDC. In this context, the CMA notes that they have used interviews and press statements in the past to give their views on the development of NDC (see extracts at paragraph 66 above), and that the pool of potential customers is relatively small and may therefore communicate with each other and/or Sabre, Amadeus and Travelport. The CMA also notes that while the development cycle for NDC is long, to date functionality has been rolled out in stages with public visibility, suggesting that it would be obvious if a supplier were making progress on NDC development. However, the CMA considers that while it may be reasonably easy to communicate with each other the general position on the NDC development, the press releases and public statements might not be sufficient for the GDSs to monitor the actual investment (and commitment to keep the status quo) and understand the technical progress of their rivals.
374. Since airlines are restricted both in their ability to switch away from the GDSs and in their ability to effectively discriminate with regard to the content they provide to each GDS, the CMA considers that it might be possible for Amadeus, Sabre and Travelport to reach a tacit agreement to preserve the current status quo in terms of how airline content is distributed through the GDSs (as detailed in paragraphs 37 to 43 above) and limit their innovation efforts to the detriment of airlines and their customers.

#### *Internal sustainability*

375. The CMA found that there are some indications that Sabre and Amadeus were becoming more similar in their NDC capabilities. The CMA considered whether this suggests that their incentives might be better aligned post-Merger, making a coordinated outcome more sustainable.

376. As set out in more detail above, both Sabre and Amadeus have developed and started implementing NDC end-to-end strategies and Sabre considered that [X].<sup>120</sup> In addition, the Parties submitted that the Merger would allow Sabre to [X].
377. However, the CMA found that each of Sabre, Travelport and Amadeus have reached different stages of development with regard to their NDC strategy, suggesting that their incentives to engage in coordination may differ, affecting their ability to reach a tacit agreement and sustain it internally. In particular, the available evidence suggests that:
- (a) Amadeus is ahead of both Sabre and Travelport in developing an NDC end-to-end solution; and
  - (b) Travelport might be weakening as against Amadeus and Sabre. In addition, unlike Sabre and Amadeus, Travelport does not have core PSS capabilities.
378. In addition, the Parties' internal documents show there is a time lag between developing and agreeing an NDC strategy (eg the budget allocation) and the actual launch and implementation of NDC enabled capabilities with carriers. The CMA considers that this could incentivise a particular GDS to deviate from the tacit agreement to limit coordination as its rivals are likely to be unable to sufficiently swiftly accelerate their development to catch up, and any punishment would therefore be insufficient in the short term. On this basis, the CMA therefore believes that coordination on innovation may not be internally sustainable.

#### *Conclusion on coordinated effects*

379. For the reasons set out above, the CMA does not believe that the Merger would affect market structure such that the conditions for sustaining coordinated effects are created or enhanced. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of coordinated effects in innovation in relation to NDC-related services.

#### **Conglomerate effects**

380. Conglomerate effects may arise in mergers of firms that are active in the supply of goods or services that do not form part of the same markets but which are nevertheless related in some way, either because their products are complements (so that a fall in the price of one good increases the customer's

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<sup>120</sup> Exhibit 5 to [X] deposition, page 41.

demand for another) or because there are economies of scale in purchasing them (so that customers buy them together).<sup>121</sup>

381. Most non-horizontal mergers are considered to be benign or even efficiency-enhancing (when they involve complementary products) and do not raise competition concerns. However, in certain circumstances, a conglomerate merger can result in the merged entity foreclosing rivals, including through a tying or bundling strategy.
382. The Parties submitted that no conglomerate concerns arise as a result of the Merger, as the Parties lack market power in at least one of the products / services which are being integrated and neither Party has a share approaching [30-40]% in any tenable product frame of reference. In particular, the Parties submitted that Sabre does not have market power in core PSS modules that it could leverage elsewhere in order to pursue a foreclosure strategy in respect of competitors in non-core PSS. The Parties submitted that Sabre's share of core PSS solutions is [10-20]% globally, that it faces significant competition from other core PSS providers and that airlines accounting for [80-90]% of global bookings would be unaffected by any putative bundling strategy.
383. In addition, the Parties submitted that a key rationale for the Merger is to enable Sabre [X].
384. In the present case, the CMA has considered whether the Parties could:
  - (a) make Sabre's core PSS incompatible (or less compatible) with other non-core PSS solutions (either targeting individual rivals or generally); and/or
  - (b) tie or bundle Farelogix's non-core PSS modules, currently offered to airlines on a PSS-agnostic basis, to Sabre's own core PSS either technically, by reducing their ability to interoperate with other PSS core modules, or commercially by offering discounts for joint purchasing.
385. Either strategy could disadvantage competing suppliers of non-core PSS modules by making it difficult or impossible for them to access a proportion of potential non-core PSS customers. The latter strategy could also disadvantage competing suppliers of core PSS systems. Given the high costs of developing and supporting both types of software this may in turn make these rivals less able to compete more widely.

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<sup>121</sup> [Merger Assessment Guidelines](#), paragraph 5.6.2.

386. The CMA's approach to assessing conglomerate theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.<sup>122</sup> However, in this case, the majority of the evidence relates to ability and it has not been necessary to reach conclusions on incentive or effect.

### *Ability*

387. The CMA received some evidence suggesting that the merged entity may have the ability to engage in the commercial or technical bundling/tying strategies outlined above. In particular:

(a) Sabre has already bundled/tied certain non-core PSS modules to its core solution. The Parties submitted that [X]. The Parties further submitted that [X]. This was confirmed by third parties, which submitted that core PSS providers offer discounts for airlines purchasing several products.

(b) A few third parties raised concerns regarding the possibility of restricted interoperability of the Parties' products with third party solutions as a result of the Merger. In addition, airlines generally told the CMA that switching core PSS suppliers would be expensive, risky, time-consuming and disruptive, indicating that a core PSS provider may be in a good position to persuade its existing customers to buy further products from it. As such, existing Sabre core PSS customers facing a bundling/tying strategy may be less willing or able to use alternative non-core PSS providers if the merged entity followed such a strategy.

388. However, the evidence available to the CMA indicates that the Parties would not ultimately have the ability to foreclose competitors from the supply of non-core PSS services as the proportion of customers the Parties could restrict access to is not sufficiently large to significantly harm rival non-core PSS suppliers. In particular, any foreclosure strategy based on leveraging Sabre's core PSS position could impact, at most, all current Sabre core PSS customers (who currently represent only around [10-20]% of global bookings) – and some of those already use either Sabre or Farelogix merchandising solutions. Even on this basis, at least [80-90]% of the market would remain contestable for other non-core PSS providers.

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<sup>122</sup> [Merger Assessment Guidelines](#), paragraph 5.6.6.



389. The CMA therefore does not believe that the Parties would have the ability to foreclose suppliers of non-core PSS modules. The CMA has therefore not considered the incentive of the Parties to pursue such a strategy or the effect that this could have on competition.
390. In light of the CMA's concerns with regard to the supply of merchandising modules, the CMA also considered whether the Parties could engage in any bundling or tying strategies which could foreclose competitors and harm competition in the supply of core PSS modules.
391. As set out at paragraphs 238 and 245 above, Farelogix's non-core PSS merchandising module is considered to be the best in the industry. Therefore, the CMA considers that Farelogix might have some degree of market power in non-core PSS merchandising modules. However, airlines generally told the CMA that switching non-core PSS modules is less complex than switching core PSS. The CMA therefore considers that an attempt by the Parties to reduce the interoperability of Farelogix's non-core PSS merchandising module with non-Sabre core PSSs would be more likely to cause airlines to switch non-core PSS merchandising providers, and few, if any, would instead switch to Sabre's core PSS. While this ability to switch is not sufficiently significant to prevent a realistic prospect of an SLC in the supply of merchandising modules, the CMA believes that this limited willingness to switch core PSS means that such a strategy would not be able to significantly harm Sabre's rival core PSS suppliers. The CMA considers that Farelogix's non-core PSS merchandising module would also become less attractive to new (or switching) customers as a result. Therefore, the CMA considers that the Merger would not lead to foreclosure of suppliers of core PSS modules.

#### *Conclusion on conglomerate effects*

392. For the reasons set out above, the CMA does not believe that the merged entity would have an ability to foreclose non-core PSS rivals through bundling/tying strategies or by downgrading interoperability. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects in relation to non-core PSS modules or core PSS modules.

#### ***Barriers to entry and expansion***

393. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA

considers whether such entry or expansion would be timely, likely and sufficient.<sup>123</sup>

394. The Parties submitted that barriers to entry into non-core PSS modules are relatively low and that these products can be developed by any IT company. The Parties further submitted that there are accepted industry standards for scheduling, shopping and pricing modules and the technological know-how required to create a merchandising module does not differ from what is needed to create other non-core PSS modules. The Parties submitted that there have been a number of recent entrants and IATA is continually certifying and adding IT providers to its registry as order management capable for PSS modules.
395. With regard to NDC Direct Connects, the Parties submitted that there are no specific or general technology barriers which must be overcome by companies in order to compete for the provision of NDC API connections. The Parties further submitted that the barriers to entry are particularly low because:
- (a) Adoption of NDC as a universal standard has made it easy for companies to enter, particularly companies which are established in other technology sectors as they can leverage their experience and expertise in other technology sectors to compete for airline customers.
  - (b) The newly-created NDC Exchange by ATPCO and SITA also allows airlines and their partners to develop NDC solutions with lower technological costs. The NDC Exchange provides a cost effective and easy-to-use NDC API translation technology.
396. The evidence received by the CMA indicates that while further developments of NDC enabled capabilities, including the ONE Order, are aimed at lowering barriers to entry and expansion over time, at this stage barriers to entry and expansion are high.
397. For example, although some of the Parties' internal documents acknowledge that new entrants could establish themselves over time, with ONE Order in particular aiming to remove complexity, several internal documents refer to the Parties operating in a market with high barriers to entry, including in the context of NDC development. For example:

- (a) [REDACTED];<sup>124</sup> and

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<sup>123</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

<sup>124</sup> Annex 4d.10 to the Merger Notice, page 29.

(b) [REDACTED].<sup>125</sup>

398. In this context, as set out in the Background and Frame of reference sections above, the full implementation of ONE Order is still speculative and likely many years away.
399. With regard to technical barriers to entry, several airline IT service providers considered that entering into non-core PSS services or indirect content distribution was a complex process requiring significant upfront investment in the beginning. For example, one airline IT service provider submitted that *'estimated cost varies by module, but we estimate 5+ years and \$50m+ to develop a product to compete broadly for non-core PSS services. Additional investment would be required to take the services to market.'* In addition, while the majority of airline IT service providers told the CMA that they considered technical barriers to be relatively low, these airline IT service providers did consider that there are significant commercial constraints to entering and expanding into i) non-core PSS or ii) NDC enabled distribution services.
400. In particular, these providers indicated that connecting to a core PSS is a significant obstacle as core PSS providers can deny connections. For example:
- (a) One IT service provider submitted that *'some of the large GDS/PSS providers who have a monopolistic position can place commercial restrictions on the ability of the new entrant to gain access to required data and APIs to develop new or alternative functionality.'*;
  - (b) Another submitted that *'our airline business model fails if our airline customers are unable to overcome misconduct by their PSS vendor, e.g. when they delay or refuse access (which they can technically do – airlines has [sic] to make a claim – takes years).'*
401. Lengthy contracts, which may last up to 10 years, were also referred to as an additional barrier to entering into i) non-core PSS or ii) NDC enabled distribution services.
402. As set out above, several airlines also referred to the existing market power of the GDSs (describing them as an *'oligopoly'*) and the CMA considers that this constitutes a separate barrier to expansion. This is further demonstrated by the fact that Farelogix has taken a long time to establish a significant competitive presence. Provision of bundled contracts was also referred to as

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<sup>125</sup> Exhibit 8 to [REDACTED] deposition, page 1.

an obstacle by several services providers. One service provider submitted that *'The 3-5 year bundled contracts with many airlines are a key obstacle to work with most larger airlines or members of an airline group that has a corporate contract with a legacy provider'*.

403. Furthermore, one third party also told the CMA that some airlines are hesitant to grant too many third parties access to their IT system, suggesting that there are additional barriers to expansion for providers that do not yet have established relationships with airlines and/or are unable to offer a broad range of products.
404. Finally, a few airlines told the CMA that while they have been supportive and would like to further facilitate new entry, in practice their power to do so on an individual basis is limited by high barriers to entry, including the entrenched position of GDSs.
405. For the reasons set out above, the CMA believes that entry or expansion would not be sufficient, timely and likely to prevent a realistic prospect of an SLC as a result of the Merger.

### **Efficiencies**

406. While mergers can harm competition, they can also give rise to efficiencies. Efficiencies arising from the merger may enhance rivalry, with the result that the merger does not give rise to an SLC. For example, a merger of two of the smaller firms in a market resulting in efficiency gains might allow the merged entity to compete more effectively with the larger firms. Efficiencies may also be taken into account in the form of relevant customer benefits.<sup>126</sup>
407. The Parties submitted that the Merger would generate efficiency benefits and synergies on the basis that it would:
- (a) [redacted]; and
  - (b) [redacted].
408. The Parties submitted that [redacted].
409. The CMA believes that it has not received sufficiently compelling evidence to indicate that any rivalry-enhancing efficiencies would be timely, likely or sufficient to prevent an SLC (having regard to the effects on rivalry of any such SLC).

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<sup>126</sup> [Merger Assessment Guidelines](#), paragraphs 5.7.1 to 5.7.4.

410. Furthermore, while there are benefits to [X], there is insufficient evidence that such benefits would exceed the potential anticompetitive effects of the Merger.
411. While Sabre has explained that [X], in terms of broader end-to-end NDC development (which, as discussed above, incorporates a number of factors, including NDC APIs) there is insufficient evidence to indicate that the Merger would have increased the timeliness or likelihood of Sabre's development.
412. In addition, as noted above, the CMA believes that Sabre would have invested in NDC in any event in the counterfactual.
413. The CMA also considers that there is insufficient evidence that some of the proposed synergies and benefits are Merger-specific and could not otherwise be achieved in the counterfactual.
414. For example, the CMA considers that the main benefits to Farelogix from the Merger are [X].

### **Conclusion on substantial lessening of competition**

415. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in relation to:
- (a) The supply of non-core PSS merchandising modules worldwide; and
  - (b) The supply of services that facilitate the indirect distribution of airline content worldwide.

### **Decision**

416. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.
417. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.<sup>127</sup> The Parties have until 23 August

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<sup>127</sup> Section 33(3)(b) of the Act.

2019<sup>128</sup> to offer an undertaking to the CMA.<sup>129</sup> The CMA will refer the Merger for a phase 2 investigation<sup>130</sup> if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides<sup>131</sup> by 2 September 2019 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

**Colin Raftery**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**16 August 2019**

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<sup>128</sup> Section 73A(1) of the Act.

<sup>129</sup> Section 73(2) of the Act.

<sup>130</sup> Sections 33(1) and 34ZA(2) of the Act.

<sup>131</sup> Section 73A(2) of the Act.