

INITIAL PHASE 2 SUBMISSION

SABRE CORPORATION / FARELOGIX INC.

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1. EXECUTIVE SUMMARY

Introduction

1.1 As explained in this Initial Submission, the Transaction will not result in the creation of a relevant merger situation in the UK and will not, and may not be expected to, result in a substantial lessening of competition in the UK. This is because there is no respect in which the Parties currently compete with each other to a substantial extent, nor is there any reasonable basis for concluding that they may be expected to do so in the foreseeable future. In this regard, it is important to note that:

- (i) the Parties do not compete with each other to any significant degree in relation to the indirect distribution of airline content, where they provide different and distinct services (Farelogix's FLX OC and NDC API and Sabre's GDS);
- (ii) the Parties compete only to a marginal extent in respect of other airline IT solutions, namely in respect of non-core PSS merchandising modules, where their combined market share is modest and the available bidding data confirms that the Parties' products do not compete closely;
- (iii) the Parties do not compete in respect of NDC end-to-end solutions, which Farelogix does not provide, is not capable of providing, and will not be able to provide within any foreseeable time period;
- (iv) Farelogix does not have any UK turnover and does not supply anything to customers located in the UK; and
- (v) Farelogix does not have any customer or commercial relationships with travel agents, including UK travel agents.

Overview of the Parties' products

1.2 **Sabre Corporation ("Sabre")** provides systems and IT solutions supporting airlines and travel agents. One is Sabre's Global Distribution System ("**GDS**"), which provides a comprehensive service to airlines and travel agents that allows travellers to shop, book, and cope with the many ticket related contingencies which can arise during a trip. The GDS does not just allow airlines to sell and service tickets through travel agencies. It also provides a one stop shop for travel agents to book and manage all aspects of a trip for their client, including hotels, car rentals, tours, rail travel, and cruises.

1.3 The GDS provides an invaluable service to travel agents. For airline bookings, the GDS creates an offer and delivers it to the travel agency site, allowing not only for the issuance of airline tickets, but also for any post-ticketing management of the itinerary, including any changes to the ticket throughout the traveller's journey. It enables 425,000 travel agents to access, compare, and book content from 400 airlines, 225,000 hotels, 40 car rental companies, as well as rail, cruise, and tour operators. Sabre has thousands of employees who maintain the system, and support the airline and travel agency customers, so that Sabre can push 85,000 transactions through its platform every second. The GDS can

also manage associated critical operations including travel agents' back-office accounting and reporting, quality assurance, duty of care management (ensuring that travel agents can mitigate risk to their travellers, including managing emergency situations), corporate policy compliance and reservation management in the event of a travel disruption.

- 1.4 Sabre also provides dozens of IT solutions that support airline functions outside of the GDS and airline ticketing to travel agents, including an airline passenger service system (“**PSS**”). A PSS is a set of software systems (“**modules**”) sold to an airline, comprising three “core” modules: a central reservation system (which controls the sale of seats), an airline inventory system (which provides information on available seats), and a departure control system (which is used to check-in passengers). There are also other so-called “non-core” modules which can be “plugged in”, including airline personnel scheduling, and airline revenue management. Some non-core PSS modules can be sold separately, including by third parties, for use with any core PSSs; these modules are referred to as “PSS-agnostic”. Other modules are fully integrated with the core PSS and cannot be replaced with modules from other suppliers, so are thus “PSS-dependent”.
- 1.5 **Farelogix** is not a GDS. It is a very small airline IT software developer with approximately 250 employees. Early in its existence Farelogix developed a software interface for airlines to facilitate a direct connection made by a single airline (or group of airlines under common ownership, such as Lufthansa Group) to a single travel agent to book tickets (a “Direct Connect”). This software, an application programming interface (“**API**”), became Farelogix’s Open Connect, or FLX OC, product. Farelogix’s API uses IATA’s New Distribution Capability (“**NDC**”) standard.
- 1.6 An airline can provide the FLX OC API to a single travel agent and permit that agent to book tickets directly with the airline. Because this version of a one-to-one connection does not go through a GDS, it is referred to as “GDS by-pass”. An airline can also use FLX OC to connect to a GDS (which is sometimes referred to as “GDS pass through”) or to connect to an airline’s direct-to-consumer “airline.com” website. Farelogix does not determine which of these channels of distribution is used by an airline: the NDC API is the same in all cases from Farelogix’s perspective. Many other airline IT companies provide such capability, and many airlines self-supply this functionality.
- 1.7 Initially, Farelogix believed that airlines would use its FLX OC product to bypass the GDSs. However, because of the limited utility of a one-to-one connection to travel agents, Farelogix has learned that future growth of FLX OC will largely come via GDS pass-through solutions which work with existing GDS platforms rather than disintermediating them. This is so because a one-to-one connection between an airline and a travel agent does not provide the multitude of services demanded by travel agents on behalf of their customers.
- 1.8 Farelogix provided its proprietary schemas to IATA, a coalition of airlines, to develop the XML protocols that would ultimately become NDC.¹ In 2015, IATA first published the schemas as an open source NDC standard. As open source, the schemas were publicly available and other companies and industry participants have since taken those initial schemas and evolved them past Farelogix’s original input. The NDC standard has

¹ These schemas were donated to ATPCO and subsequently IATA in 2012 to form the starting point for the NDC standard.

evolved through a further 18 major iterations since Farelogix's original donation of its schema (and underlying IP), through contributions of many industry participants. Indeed, the adoption of the open NDC standard has spurred numerous new IT solution developers to enter this space and there are now 174 companies that have been certified by IATA as NDC IT providers.² Notably, Farelogix is still using a 2017 version of the NDC standard while Amadeus, Datalex, JR Technologies, TPConnects and other competitors have all moved on to updated NDC schemas.

- 1.9 Separately, Farelogix has also developed innovative NDC-enabled merchandising software. This allows rich content, such as graphics, pictures etc., to be pushed by the airline through to the traveller to make the shopping experience more rewarding which, in turn, allows the airline to sell more ancillaries to travellers.
- 1.10 By any measure, Farelogix remains a very small player globally. And Farelogix has no customers and no revenue at all in the UK. Despite being in existence for over 20 years, Farelogix had only [redacted] in global revenues in 2018, out of a \$5 billion airline IT market. Of Farelogix's revenues, FLX OC accounts for only [redacted]. Airline adoption of Direct Connect IT solutions from all suppliers (not just Farelogix) has remained marginal, not exceeding 4% of bookings globally over the last decade and is currently 3%. FLX OC is used in a negligible [redacted]% share of airline booking sales globally.³

Deal rationale

- 1.11 Sabre wants to lead the sector's current wave of innovation. At the same time the NDC standard began gaining traction with airlines, Sean Menke took over as Chief Executive Officer of Sabre. Sean Menke is a former airline executive with a vision for the industry. Airlines believe that it is important to their success and profitability to transform the way travellers receive and view offers, not only for seats on a plane but for all of the ancillaries that go with air travel—such as Wi-Fi, lounge access, extra luggage, extra leg room, or meals.
- 1.12 Sabre wants to lead innovation in end-to-end solutions in retailing, distribution, and fulfilment. It wants to help airlines and travel agents make sure a traveller buys a seat on a plane, as well as ancillaries the airline is offering with that seat, and fulfil those orders through any contingency to the end of the journey. The acquisition of Farelogix will allow Sabre to accelerate these plans.
- 1.13 Sabre has committed to airlines that it will maintain Farelogix's FLX OC technology and ensure that it can continue to be used as airlines choose.⁴ But the FLX OC technology (and how it may be used by the airlines) is not the key reason for the Transaction. In fact,

² See <https://www.iata.org/whatwedo/airline-distribution/ndc/Pages/registry.aspx>, accessed 16 September 2019.

³ In the interests of convenience, the Parties' shares of supply in this submission have been calculated based on the total number of bookings. For the reasons explained in paragraph 3.30 below, this approach fails to make any allowance in the denominator for the fact that any one booking may involve the use of multiple services/providers, creating a double-counting (or multiple-counting) issue and materially overstating the Parties' shares.

⁴ [redacted]

at the outset of the deal negotiations, [redacted].⁵ Rather the value of the Transaction lies in Farelogix's strength in merchandising which will [redacted] in Sabre's current capabilities, and accelerate Sabre's development of NDC solutions. Sabre's valuation of Farelogix is consistent with this deal rationale. Its valuation methodology and materials evidence a pro-competitive acquisition of a complementary company. There is no suggestion that the deal's value to Sabre is predicated upon "killing" Farelogix because of a supposed threat it poses to the GDS.⁶

- 1.14 This acquisition, and the innovative technology that Sabre and Farelogix together can deliver, will permit Sabre to achieve its goal of creating a roadmap for an end-to-end NDC retailing, distribution and fulfilment platform in a meaningful timeframe to compete with market leader, Amadeus, and many other competitors in this space. Sabre's travel agency customers have gone out of their way to welcome the acquisition for this reason, as the Phase 1 Decision also records.⁷ Upon hearing the news of the acquisition, one Sabre employee recalls that the president of a global travel agency's US operations interrupted a meeting between his staff and Sabre to say "*he was thrilled with our news re Farelogix and agreed that was a game changer ... they are very pleased.*"⁸

Jurisdiction

- 1.15 Farelogix has no revenues in the UK, as the Phase 1 Decision recognises.⁹
- 1.16 The Phase 1 Decision considers that jurisdiction may arise on the basis of a putative 25% share of services to facilitate the indirect distribution of airline content to a single UK customer, British Airways. [redacted]. Even more fundamentally, it is clear from the legislation and the CMA's own guidance that the share of supply test may only be satisfied by reference to an appropriate, reasonable set of services. There is no rational basis on which to distinguish, for these purposes, between British Airways and any of the large number of other airlines that provide flights to and from the UK. As such, the CMA's approach is arbitrary and artificial.
- 1.17 Similarly, the supply of indirect distribution services to travel agents in the UK for flights to certain destinations (such as Kazakhstan and Puerto Rico) cannot create a valid basis for establishing jurisdiction. First, Farelogix supplies IT services to airlines, not indirect distribution services to travel agents, and thus Farelogix makes zero supplies to UK travel agents. Secondly, the CMA's approach in selecting specific destinations—not even

⁵ [redacted].

⁶ In fact, despite referencing recent expert reports on the digital economy (Phase 1 Decision, para. 94) (which generally identify valuation analysis as an important tool in assessing potential competition concerns in the digital sector, see, eg, "*Drawing attention to the evidential relevance of the transaction value relative to the market value and company turnover, and the importance of understanding the rationale for valuations which appear exceptionally high*" (Report of the Digital Competition Expert Panel, Unlocking digital competition (March 2019), p. 96)), the Phase 1 Decision makes no reference to the Parties' submissions on valuation. As the Parties explained in those submissions, the purchase price which Sabre is paying for Farelogix is consistent with Sabre paying "fair value" for the standalone value of the Farelogix business and anticipated, pro-competitive synergies.

⁷ Phase 1 Decision, para. 347

⁸ [redacted]

⁹ Phase 1 Decision, para. 88.

country pairs with the UK, such that the flights in question may originate in other countries outside the UK—is arbitrary and artificial: the conduit between airline and agent is the same regardless of destination. There is nothing to suggest that the negligible number of bookings for these destinations with airlines using Farelogix [REDACTED] are in any way a valid basis for establishing jurisdiction.

- 1.18 In any event, the approach in the Phase 1 Decision to computing shares of supply in respect of both British Airways and the destination countries in question was arithmetically flawed and, had it properly accounted for the full range of services involved with facilitating a booking, would have resulted in shares below the 25% threshold.

Counterfactual

- 1.19 Whilst the Parties agree that the counterfactual for the Transaction should be prevailing market conditions, the Phase 1 Decision mischaracterises the prevailing situation.

- 1.20 First, absent the Transaction, [REDACTED].

- 1.21 Secondly, Farelogix is a small player in the airline IT industry. Despite its involvement in the development of the NDC standard in the past, [REDACTED].

- 1.22 Thirdly, the evidence shows that, while Farelogix may have originally entertained unrealistic ambitions to disintermediate GDSs, over time it has become clear that this is not a viable strategy. Direct Connect volumes have been small and flat for years. The Phase 1 Decision relies upon selected documents that take a backward-looking view of Farelogix’s growth aspirations. But subsequent market realities have demonstrated that these aspirations were not realistic. A proper review of the evidence shows that [REDACTED] that there are a large number of other suppliers who can now provide the sort of functionality which FLX OC provides.

- 1.23 [REDACTED].

Figure 1.1

[REDACTED]

- 1.24 Fourthly, industry participants have come to recognise that NDC APIs of the sort built by Farelogix work better in tandem with GDSs (GDS “pass-through” solutions), rather than as a route to disintermediating the GDSs (GDS “by-pass”). These pass-through solutions are where any demand for FLX OC is moving as Farelogix’s largest airline customers are seeking to grow NDC volumes via GDS pass-through. FLX OC is therefore a complement to, not a substitute for, the Sabre GDS in the counterfactual.

Indirect distribution of airline content

- 1.25 The Parties do not compete in the indirect distribution channel. Farelogix provides airlines with certain technology that helps to facilitate a single airline connection to, for example, a travel agency. A single airline conduit cannot compete with a GDS’s comparison

shopping and itinerary building capabilities, with hundreds of airlines and thousands of hotels alongside car rental, rail, cruise, and tour operate content available.

- 1.26 Travel agents need the GDS to service their customers' broader needs, in particular: (a) mid- and back-office processing and support; (b) comprehensive reservation management; (c) 24-hour travel agency support; (d) automation, scripting and other agency support functionality; and (e) duty of care and reporting. Farelogix provides software solutions to airlines. It has no relationship with travel agents, and cannot provide these additional services for which agencies depend upon the GDS.
- 1.27 By any measure Farelogix is not a significant competitive constraint on Sabre. Farelogix's IT solution is used in a connection in a negligible [X]% share of indirect distribution bookings globally. The combined entity's share would remain less than 25%, facing fierce competition from market leader Amadeus, as well as Travelport, local GDSs, a wide range of other airline IT suppliers, and distribution *via* airlines' own websites.
- 1.28 Farelogix's potential for future growth is extremely limited. At one time, Farelogix hoped it would develop into an alternative channel to the GDSs. But as its CEO has admitted, the potential for Direct Connects by-passing the GDS is in reality extremely limited. [X] Further, for travel agents to "plug in" a Direct Connect to an airline by making use of Farelogix's API requires extensive work on their part. [X]. For this reason, the majority of bookings via the Farelogix API are by online travel agents ("OTAs") and aggregators who are leisure-focussed operators and very different from the business-focussed travel agents that constitute the core user base for the GDSs.
- 1.29 Most importantly, travel agents need the content breadth, comparison shopping functionality, and customer-servicing features of the GDS. They want NDC-enabled offers directly from airlines to *pass through* the GDS rather than by-pass the GDS. In the future, NDC enabled world, Farelogix is only one of many IT providers using the IATA-based NDC standard to create these solutions.

Supply of non-core PSS merchandising modules

- 1.30 Sabre and Farelogix supplied merchandising solutions to airlines accounting for just [X]% and [X]%, respectively, of passengers boarded in 2017 (excluding in-house solutions) and neither has any UK merchandising customers. They face strong competition from other suppliers. The Parties are also not close competitors. Sabre's merchandising modules need to be procured [X].

Conclusion

- 1.31 Sabre has significant scale and expertise in distribution and fulfilment. [X]. Farelogix has NDC retailing capabilities. But it lacks the ability and resources to achieve competitive scale. Combining Farelogix's merchandising and NDC expertise with Sabre's global distribution scale will enable the combined entity to distribute NDC content at scale globally, allowing Sabre to better serve the industry (airlines, travel agents, and travellers)

and to close the gap on market leaders Amadeus and Travelport, both of whom have NDC-integrated solutions already.

- 1.32 The acquisition is pro-competitive and will benefit consumers and the wider industry. The CMA does not have jurisdiction over the Transaction, and the Transaction will in any event not give rise to a substantial lessening of competition.

2. BACKGROUND TO THE PARTIES' ACTIVITIES

2.1 The distribution of airline content consists of a number of different stages and has evolved to meet the differing demands of travellers and travel agents. Whilst there are different routes to market with differing characteristics, there are a number of fundamental features that are inherent in all airline ticket bookings.

2.2 These features are delivered by a number of independent functions that integrate to form an airline's IT booking system. Each of the below functionalities is essential to deliver content to end customers:

- (i) **Offer creation and management:** in today's world of airline retailing, this involves various PSS modules (both core and non-core) which are procured and operated by the airline. Historically, however, offer creation was done by the GDS (not the airline), facilitated by ATPCO and EDIFACT messaging between the airline PSS and the GDS. In today's NDC environment, where the airline creates an individualised, custom offer, communication of the airline's offer to the distribution platform is required. In particular, this content must be communicated between the PSS and the ultimate point of sale (whether that is GDS, OTA, metasearch engine etc.), which is done through XML-based messaging, rather than the traditional EDIFACT standard.
- (ii) **Order management:** Processing (booking and ticketing) of orders/reservations made through any point of sale and communicated by the NDC API back to the airline PSS, including:
 - (a) Distribution to the travel agent point of sale: displaying and aggregating offers and orders in a format that is readily digestible by travel agents (or travellers) including the provision of a graphical user interface ("**GUI**"); and
 - (b) Fulfilment: the accompanying mid- and back-office support for travel agents such as quality control, policy compliance, corporate reporting, accounting etc. and services to meet customer's duty of care requirements (such as in the case of delays, cancellations, schedule changes, security incidents etc.).

Sabre's activities

2.3 In airline IT solutions, Sabre offers a wide range of core and non-core PSS modules through its SabreSonic Customer Sales & Service ("**SabreSonic CSS**") PSS which can be used by an airline to internally manage reservations, inventory and departure control. Sabre has its own data centres around the world for hosting its PSS services, and offers 24/7 servicing and global support to airlines.

2.4 Sabre's PSS customers can choose from a menu of 106 modules that provide different services and products and may elect not to purchase a particular SabreSonic module. In such circumstances, the customer can direct Sabre to connect a third-party tool to the remaining Sabre PSS suite.

- 2.5 In relation to offer creation and management, Sabre offers two PSS merchandising modules: SabreSonic CSS Dynamic Retailer, a rules engine that combines shopping, pricing, customer insight, schedule and market information to allow the creation of personalised offers; and SabreSonic CSS Ancillary Services, a narrower solution that enables airlines to remove items such as seats and bags from the base fare and charge incremental fees for these services. Both of these modules are PSS-dependent and, therefore, cannot be offered to airlines that do not use Sabre's core PSS.
- 2.6 In relation to order management solutions, Sabre operates a GDS known as Sabre Travel Network. Sabre also provides technological support for travel agents using its GDS services, which includes global 24/7 assistance. Sabre has its own data centres around the world to host its GDS services. Sabre Travel Network gives travel agents access to airlines' and other travel service providers' real-time pricing, inventory and availability information.
- 2.7 The GDS channel is distinguished by its reliability and support services. Sabre processes approximately 1.1 trillion messages and 700 billion transactions every year, relying on a vast network of 21 physical data centres and eight data clouds. Sabre's GDS is staffed with 972 customer support representatives processing 945,000 help tickets per year. Sabre gives travel agents access to more than 400 airlines.
- 2.8 The Sabre GDS uses the EDIFACT messaging standard and has some XML additional capabilities. However, currently Sabre's only live NDC product for airline content distribution is an NDC GDS pass-through product—using an NDC API built for United Airlines by Farelogix—which launched with United Airlines in April 2019.

Farelogix's activities

- 2.9 In airline IT solutions, Farelogix does not offer the full range of services that PSSs provide and, critically, its offering does not include the core central reservation system. Farelogix does offer four offer creation modules, which are all PSS-agnostic non-core modules. The only appreciable area of overlap between the Parties' activities relates to non-core PSS merchandising modules, where Farelogix's FLX Merchandise ("**FLX M**") product overlaps with Sabre's Dynamic Retailer.
- 2.10 FLX M is an NDC-compatible merchandising and rules engine that allows airlines to create ancillary product and service offers across multiple channels, including by supporting features such as (a) pricing rules, (b) seasonality, (c) corporate policies, (d) traveller IDs, (e) traveller loyalty or frequent flyer status, (f) any other flight/date related rules or restrictions (e.g. origin and destination, length of flight, segment, departure airport, cabin, fare type, travel period, sale period, days before departure) and (g) seat attributes.
- 2.11 In comparison to Sabre's Dynamic Retailer, FLX M is a superior non-core merchandising module which is PSS-agnostic. First, Sabre's Dynamic Retailer is not "PSS agnostic": it can only be used in conjunction with Sabre's core PSS, thus preventing Sabre from competing for standalone merchandising opportunities. Secondly, [§<].
- 2.12 By contrast, Farelogix has a very limited offering in distribution, in particular in comparison to that of Sabre.

2.13 In the area of order management Farelogix is only active in respect of its FLX OC and FLX NDC API products (and to a limited degree SPRK as noted below). The primary functions of each of these products (which are typically provided together) are set out below:

- (i) FLX OC integrates with an airline's PSS to enable and prepare offers created by an airline's PSS (or other offer management technology) to be transmitted to third parties;
- (ii) FLX NDC API is a programming interface built on the IATA NDC standard that allows airlines to transmit dynamic, real-time offers (including ancillary services) to travellers through any channel, allowing airlines to offer the same services in the indirect channel as they offer on airline.com; and
- (iii) SPRK is a user interface layer for travel agents to make bookings via a particular airline's instance of FLX OC. Essentially, SPRK calls up content from the airline's NDC API to display on the interface. SPRK does not aggregate content in order to permit full comparison shopping by airlines and cannot replicate the functionality of a GDS.

2.14 Farelogix markets FLX OC and its NDC API to airlines, not travel agents. It is airlines, and only airlines, that commission Farelogix to build an NDC API connection to their PSS to allow them to transmit offers to downstream consumers of such content.

2.15 As a result, Farelogix's FLX OC and NDC API IT solutions are deployed by its airline customers. It is for those customers to determine to whom it grants access to its content, be it an airline's own website,¹⁰ OTAs, GDSs, non-GDS aggregators or direct to travel agents. Farelogix does not have any travel agency customers—it is the airlines who deal with travel agents, not Farelogix. As such, there is no operational distinction from Farelogix's perspective as between GDS bypass and GDS pass-through: in either case, Farelogix's IT is identical and can be deployed in any or all channels depending only on the preference of Farelogix's airline customers.

2.16 There are also multiple limitations on Farelogix's activities and there are many areas where it is not active, and would not be expected to be active absent the merger, in particular:

- (i) Farelogix's offer creation capabilities are limited to a small subset of non-core PSS modules;
- (ii) In contrast to a GDS or other aggregator, Farelogix does not have its own user interface that enables comparison shopping etc. or any commercial relationships with agents;¹¹ and

¹⁰ [redacted].

¹¹ Whilst airlines can provide travel agents with access to the output of the FLX NDC API via an airline branded web portal called SPRK, this does not aggregate content from multiple airlines and is primarily equivalent to an airlines own website in terms of user experience rather than being comparable to a GDS or other content aggregator.

- (iii) Farelogix has no ability to offer the mid- and back-office support and duty of care required by many travel agents in respect of fulfilment (e.g. allowing integration with travel agents' accounting and reporting functions, and ensuring travel agents can track and mitigate risk for travellers in emergency situations). This is only possible for GDSs or other substantial competitors whose scale is far beyond Farelogix's possible future scale.

End-to-end NDC

- 2.17 Sabre [redacted]. Sabre's engineers do not have the [redacted] to build a new, NDC-enabled PSS-agnostic merchandising module while simultaneously working on Sabre's other [redacted] initiatives. Further, Sabre's NDC API project [redacted].
- 2.18 [redacted].
- 2.19 For the reasons set out above [redacted], Farelogix does not, and would not be able to, offer a true end-to-end solution absent the merger.

3. JURISDICTION

- 3.1 The CMA's duty to make a reference for a Phase 2 investigation arises only if (amongst other conditions), the CMA believes that it is or may be the case that a "relevant merger situation" will be created.
- 3.2 A "relevant merger situation" is defined in section 23 of the Enterprise Act 2002 (the "**Act**"). In this case, it is common ground that a "relevant merger situation" would exist only if the share of supply test were satisfied in respect of the supply of services.
- 3.3 Such a "relevant merger situation" arises if, as a result of the merger, the condition in section 23(4) of the Act "prevails or prevails to a greater extent".¹²
- 3.4 The condition in section 23(4) is (so far as relevant): "*that, in relation to the supply of services of any description, the supply of services of that description in the United Kingdom, or in a substantial part of the United Kingdom, is to the extent of at least one-quarter (a) supply by one and the same person...*"
- 3.5 In other words, the merging parties must overlap in the supply of services of the description and they must together account for a share of supply of 25% or more in the UK or a substantial part of the UK.
- 3.6 Section 23(8) of the Act states that "*The criteria for deciding when goods or services can be treated, for the purposes of this section, as goods or services of a separate description shall be such as in any particular case the decision-making authority considers appropriate in the circumstances of that case.*" By using the words "*appropriate*", Parliament must have meant appropriate, having regard to the policy and objects of the Act. It would plainly not be "*appropriate*" to describe goods or services in a particular way in order artificially to trigger jurisdiction because the CMA considered that there was a realistic prospect of the Transaction resulting in a substantial lessening of competition. Such an approach would wrongly collapse the distinction drawn by Parliament between jurisdiction and substance.
- 3.7 Section 23(5) provides that in calculating whether the 25% threshold has been satisfied, "*the decision-making authority shall apply such criterion (whether value, cost, price, quantity, capacity, number of workers employed or some other criterion, of whatever nature), or such combinations of criteria, as the decision-making authority considers appropriate.*"
- 3.8 The CMA's own CMA2 Mergers: Guidance on the CMA's Jurisdiction and Procedure ("**the Jurisdiction and Procedure Guidance**") discusses the share of supply test at paras 4.53 to 4.62. It provides:
- (i) There is no minimum increment: any overlap is sufficient, so long as the parties' overlap and together account for a share of supply of 25% or more;¹³

¹² S. 23(2A)(a) of the Act.

¹³ The Jurisdiction and Procedure Guidance, para. 4.54.

- (ii) *“The share of supply test is not an economic assessment” and might be applied to services of a description that does “not amount to a relevant economic market”;*¹⁴
- (iii) *“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. This will often mean that the share of supply used corresponds with a standard recognised by the industry in question, although this need not necessarily be the case.”;*¹⁵ and
- (iv) *“The CMA cannot apply the share of supply test unless the parties together supply or acquire the same category of goods and services (of any description). The test cannot capture mergers where the parties are solely active at different levels of the supply/procurement chain”.*¹⁶

Phase 1 Decision jurisdictional analysis

- 3.9 The Parties consider that, in the Phase 1 Decision, the CMA has collapsed two distinct tests which must be satisfied pursuant to section 33 of the Act, namely whether there is a relevant merger situation, on the one hand, and whether there is a realistic prospect of a substantial lessening of competition in the UK (“**SLC**”), on the other. The Phase 1 Decision proceeds on the basis that, because there may be a SLC, jurisdiction can be established.
- 3.10 This can be seen, for example, where it is asserted that, *“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 competition in the UK and, as a result, harm UK consumers, taking into account the commercial realities of how the Parties interact with one another.”*¹⁷ That approach is incorrect. The question of *“whether the Merger might restrict competition in the UK and, as a result, harm UK consumers”* reflects the SLC test; but the question posed by the share of supply test is very different. The share of supply test is not concerned with whether there is a restriction of competition that might harm UK consumers; it asks whether the parties overlap in the supply of services of any appropriate description in the UK and therefore focuses on whether there is an appropriate territorial connection between the Transaction and the UK. The CMA was therefore wrong to focus on the SLC test *“in relation to the assessment of jurisdiction”*.
- 3.11 The share of supply test and the SLC test are distinct requirements. Parliament could have afforded the CMA jurisdiction over any transaction, anywhere in the world, that gave rise to a prospect of an SLC. Instead, Parliament has legislated so as to strike a balance between the need to respect the principle of international comity and business certainty whilst also allowing for effective merger control in the UK. It does so by seeking to ensure there are sufficient: *“connecting factors between targets of regulatory action and the UK*

¹⁴ *Ibid.*, para. 4.56, first bullet.

¹⁵ *Ibid.*, para. 4.56, second bullet.

¹⁶ *Ibid.*, Para. 4.56, fourth bullet.

¹⁷ Phase 1 Decision para. 95.

*which make it appropriate, rather than exorbitant, for the particular jurisdiction in question to be exercised over them in relation to conduct outside the UK.”*¹⁸

- 3.12 Thus, even if a transaction may give rise to an SLC in the UK, it only falls within the jurisdiction of the CMA if the share of supply test is also met. The CMA has no statutory authority to “stretch” those jurisdictional limits or to collapse the jurisdictional question into the substantive one.

Grounds for jurisdiction

- 3.13 Further, the Parties disagree with the purported bases for asserting jurisdiction over the Transaction outlined in the Phase 1 Decision. In particular, while the CMA may have discretion to apply the share of supply test to services “of any description”, this discretion is not unfettered and does not permit the CMA to gerrymander any arbitrary set of services until it finds a share above 25%, regardless of how irrelevant that set of services may be to the commercial realities of how services are in fact supplied in the sector in question.

Supply of services to British Airways

- 3.14 The Phase 1 Decision finds that the share of supply test is or may be satisfied in respect of services that facilitate the indirect distribution of airline content to a single UK customer, British Airways. The Parties consider that this analysis is wrong as a matter of law.
- 3.15 First, British Airways is not a customer of Farelogix. As such, the Transaction gives rise to no increment in the share of supply of such services. British Airways has chosen to develop its own Direct Connect functionality in-house and does not use Farelogix to support this functionality. For its PSS system, British Airways uses Amadeus, and British Airways also uses Amadeus as the provider for both the core ancillary and shopping platforms within the GDS. The Phase 1 Decision finds that a customer relationship is created between Farelogix and British Airways by virtue of the [X]. The Parties disagree for the reasons summarised at paragraph 104 of the Phase 1 Decision. The CMA seeks to claim that British Airways has created a customer relationship with Farelogix, notwithstanding the fact that it has repeatedly elected not to purchase services from Farelogix when it had a free choice as to whether or not to do so.
- 3.16 Secondly, the CMA is not entitled to define the supply of services in this case by reference to a single customer. As noted above, section 23(8) of the Act requires that the criteria to be applied when determining the frame of reference for the supply of services be “appropriate”. Further, the CMA’s Guidance recognises that the CMA must act “*reasonably*”¹⁹ in this respect—a requirement that is imposed by the common law in any event and is accepted by the CMA in the Phase 1 Decision.
- 3.17 While the Parties accept that the description of the services need not correspond to a relevant market in an economic sense, it is clear from the statutory context that the

¹⁸ *Akzo Nobel v Competition Commission* [2014] EWCA Civ 482, by reference to s. 86 of the 2002 Act.

¹⁹ The Jurisdiction and Procedure Guidance, para. 4.56.

services must be defined reasonably and objectively—rather than arbitrarily—and relate in some meaningful way to how competition operates and services are in fact supplied.

- 3.18 Calculating shares of supply by reference to a single airline customer does not relate in any meaningful way to how competition takes place because suppliers compete to supply all airlines with services that facilitate the indirect distribution of airline content. This is evidenced by the fact that in the substantive assessment (of whether there may be an SLC) the Phase 1 Decision does not discuss British Airways at all, but instead considers the position of airlines in general. The decision to focus on British Airways for the purposes of the jurisdiction analysis is therefore arbitrary, does not correspond to a relevant “*description*” of services and is wrong in law.
- 3.19 Further, from a policy perspective it is highly undesirable that the share of supply test should be applied in this arbitrary and unreasonable fashion. If shares of supply can be defined in this way, the application of the share of supply test is no longer predictable at all, creating high levels of business uncertainty and undermining the intention of Parliament. Notably, during a debate on proposed amendments to the Enterprise Act 2002, the then Under-Secretary of State for Trade and Industry (Miss Melanie Johnson) stated that “*the new merger regime is clearly centred on mergers that relate to activity in the UK. The share of supply threshold stipulates that the supply must be in the UK market or a substantial part, so it is UK centred [...] The Government has no desire for the competition authorities to investigate mergers that are not directly relevant to UK markets or activities.*”²⁰ (emphasis added).
- 3.20 Thirdly, an exhaustive analysis of Farelogix’s transaction-level data has identified [§<].²¹ While the Parties recognise that there is no minimum increment within the share of supply test, the Parties submit that it is unreasonable to trigger an in-depth review [§<].
- 3.21 The CMA seeks to defend its approach on the basis that (i) it has a wide discretion; (ii) British Airways represents a substantial portion of UK bookings; and (iii) British Airways’ procurement choices, as the UK flag carrier, are liable to have a material impact on UK consumers.²² These factors have nothing to do with the supply of the relevant services. They would be highly material if the CMA were seeking to investigate whether *British Airways* satisfied the share of supply test in relation to the provision of air passenger services. The difficulty—which the CMA entirely failed to address—is that there is no rational distinction between British Airways and any of the 400 other airline travel service provider customers of Sabre in respect of the supply of relevant services or competition for such supply²³ or between British Airways and the 19 other UK-based airlines²⁴ or between British Airways and the large number of other airlines that operate flights to or

²⁰ House of Commons Standing Committee B, Tuesday 30 April 2002, Hansard Record at Column 329 (emphasis added).

²¹ [§<]

²² Phase 1 Decision, para. 110.

²³ Merger Notice, Table 3.1, below para. 3.36.

²⁴ Merger Notice, Annex 25.

from the UK. As regards (ii) and (iii) in particular, it is noteworthy that British Airways procures its own Direct Connect functionality internally²⁵ and [§<].

- 3.22 In this case, the CMA's approach is arbitrary and entirely artificial. There is no rational basis to distinguish the supplies to British Airways—other than for the purpose of seeking to establish a basis for jurisdiction.

Supply of services to UK travel agents for flights to specified destinations

- 3.23 The Phase 1 Decision also finds that the share of supply test is or may be satisfied in the supply of services that facilitate the indirect distribution of airline content to travel agents in the UK for flights to seven specified destinations (not even country pairs with the UK such that the bookings in question may concern flights originating from locations outside the UK), namely: Hungary, Ireland, Israel, Kazakhstan, Luxembourg, Sweden, and Puerto Rico.

- 3.24 The Parties consider that the CMA has made an error of law in finding a supply of services by Farelogix to travel agents in the UK because “supply” requires a direct provision of the relevant services by the supplier to the customer. Legally, there is no “supply” of distribution services by Farelogix to travel agents because (unlike Sabre which operates a two-sided platform with both airlines and travel agents as customers) Farelogix's customers are airlines and it is the airlines that have the customer relationship with the travel agents, not Farelogix. In particular, Farelogix does not have any involvement the airline's decision regarding to which travel agents it chooses to expose its NDC API, nor do travel agents have the ability to choose which Direct Connect provider supplies the technology used in their connection with the airline. That procurement decision is made by the airline. There is similarly no flow of payments from travel agents to Farelogix. The fact that airlines may use the Farelogix product to attract travel agents is legally irrelevant: it simply shows that the customers that Farelogix supplies (airlines) make their purchasing decisions having regard to the end demand (from travel agents) for the airlines' services.

- 3.25 The existence of ancillary technical services contracts between Farelogix and travel agents and the fact that Farelogix offers travel agents some “support from Farelogix in setting up and addressing any ongoing technical issues with the Direct Connection”²⁶ is entirely consistent with the fact that Farelogix's supply of services that facilitate the indirect distribution of airline content is to airlines. It is the airline which makes the relevant procurement choice as regards the distribution service. The provision of technical support does not amount to a supply of “indirect distribution services” to travel agents and is therefore not relevant for the purposes of a share of supply calculation made on this basis.

- 3.26 If this approach were taken to its logical conclusion, the CMA would be able to investigate (and potentially make onerous orders against) companies whose mergers have no, or no proper, connection with the UK. For example, the supply with which the Act is concerned does not extend to supply by A of chips for smartphones to manufacturer B in Asia, where B sells finished goods to C in the UK. A is not supplying chips to end consumers in the UK, even though the commercial success of A's business depends crucially on end

²⁵ Phase 1 Decision, para. 51.

²⁶ Phase 1 Decision, para. 117(d).

customers buying the phones that incorporate A's chips. Such an extension would make the application of the UK merger control regime uncertain for businesses.

- 3.27 In addition, the focus in the Phase 1 Decision on flights to seven specific destinations is arbitrary and unreasonable and bears no relation to how competition takes place. The Phase 1 Decision does not identify how indirect distribution services relating to those destinations may be of a meaningfully different description to services provided in connection with any other destination. Travel agents do not procure IT solutions on a destination-by-destination basis and there is no sense in which competition between providers occurs in this way. This is evidenced by the fact that in the substantive assessment of whether there may be an SLC the Phase 1 Decision does not discuss these destinations (or indeed any destinations) at all, but instead considers the distribution of airline content in general globally.
- 3.28 Turning to the CMA's calculations in the Phase 1 Decision, the share of supply test on certain destinations (Ireland in particular) barely reaches 25%. Indeed, using 2018 data from T2RL (as opposed to the 2017 data used by the CMA), the test for flights to Ireland and Hungary fails – see Table 2.1 below.²⁷ This unsurprisingly proves that the CMA calculations are very fragile and sensitive to small alterations in the methodology and that they cannot be considered as a reliable basis for asserting jurisdiction. It should be noted in this regard that Ireland and Hungary account for over half of total bookings to the seven destinations identified by the CMA, and Ireland alone for 46%. The remaining countries are very marginal destinations (Israel, Kazakhstan, Luxembourg, Puerto Rico and Sweden). Flights to these remaining five destinations account for a total of just above half a million bookings in 2018—0.01% of the UK POS bookings processed through the global GDSs and FLX OC in the same year. In addition, the overlap is essentially non-existent: Farelogix processed only [redacted] bookings to Israel and a maximum of [redacted] (to Sweden) across these other destinations. Indeed, only [redacted] was made via Farelogix at a UK travel agent to travel to Kazakhstan. According to the CMA's logic, this [redacted] would itself be sufficient to trigger its jurisdiction over the entire Transaction. While the Parties recognise there is no *de minimis* threshold under the Act, the trivial nature of the overlaps reinforces the arbitrariness of the CMA's approach.

Table 2.1
Volume and share of Sabre and Farelogix UK POS bookings
by flight destination country (2018)

Destination Country	Sabre bookings	Farelogix bookings	Sabre share	Farelogix share	Combined share	Total indirect bookings	% of CMA countries bookings
PUERTO RICO	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	13,637	1.2%
LUXEMBOURG	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	66,033	5.6%
KAZAKHSTAN	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	32,984	2.8%

²⁷ These estimates follow from the same methodology explained by the CMA at paragraph 136 of the Phase 1 Decision. The differences result from using updated 2018 T2RL data. This changes the adjustment factor applied to account for other types of indirect distribution. This factor changes from [redacted] in the Phase 1 Decision to [redacted].

SWEDEN	[X]	[X]	[X]	[X]	[X]	305,647	25.8%
ISRAEL	[X]	[X]	[X]	[X]	[X]	133,128	11.2%
HUNGARY	[X]	[X]	[X]	[X]	[X]	83,868	7.1%
IRELAND	[X]	[X]	[X]	[X]	[X]	548,473	46.3%
TOTAL	[X]	[X]	[X]	[X]	[X]	1,183,770	100.0%

Source: CRA computations based on MIDT and T2RL 2018 data.

- 3.29 The CMA’s proposed approach is inconsistent with the intention of the statute which, as explained above, was for the merger regime to be UK-centred. On the CMA’s logic, and if all countries were to determine jurisdiction on this same approach, the Transaction would also be open to review by competition authorities in Hungary, Ireland, Israel, Kazakhstan, and Luxembourg as each of these countries would be able to argue the share of supply test was met on the basis of these flights. This would create a clearly-inefficient multiplicity of competition investigations which would have no relation to any actual competition concerns at issue.
- 3.30 Further to the above, the CMA’s approach to computing shares of supply for purposes of determining jurisdiction is arithmetically flawed because it includes in its numerator services which can be used in conjunction with one-another, without making any allowance in the denominator for the fact that any one booking may involve the use of multiple services/providers, creating a double-counting (or multiple-counting) issue. For example, a booking made via a FLX NDC API operating on a GDS pass-through basis with the Sabre GDS would be counted in the numerator twice, but in the denominator only once. Such challenges are to be expected when one erroneously seeks to apply the test to the activities of parties at different levels of the supply chain, but the basis of calculation remains flawed nonetheless. The Parties submit that properly accounting for this issue and accounting for the full range of services involved with facilitating a booking would result in shares which are below the 25% threshold, even on the CMA’s approach.
- 3.31 The CMA’s approach as regards the application of the share of supply test to UK travel agents is therefore wrong in law, arbitrary and irrational.

4. NO HORIZONTAL UNILATERAL EFFECTS IN THE SUPPLY OF NON-CORE PSS MERCHANDISING MODULES

Frame of reference

- 4.1 The Phase 1 Decision considers the appropriate frame of reference to be the supply of non-core PSS merchandising modules on a worldwide basis.

Counterfactual

- 4.2 The Phase 1 Decision characterises the prevailing market situation as one where the Parties would have been “particularly well-placed” to compete for future merchandising business.²⁸
- 4.3 In fact, as the different origins of Farelogix and Sabre show as outlined in Section 2, provision of core-PSS systems gives no inherent advantage to merchandising innovation. Despite Sabre’s far longer history in the industry, [X] and remains linked to its core-PSS rather than available as a best-of-breed product for adoption on a PSS-agnostic basis. Farelogix, by comparison, has no core-PSS experience, and is incapable of developing end-to-end NDC solutions. But this has not prevented it from being far more successful in merchandising than Sabre.
- 4.4 Airlines have the option, and often choose, to “mix-and-match” technology providers. Even if the market evolves towards end-to-end NDC, customers can and will continue to source from different providers if they believe it is in their interest to do so. Of Sabre’s [X] core-PSS airline customers, only [X] source all their non-core PSS modules from Sabre.²⁹ Similarly, Farelogix provides its non-core PSS modules to [X] airlines, but only [X] of these use the Farelogix modules exclusively alongside FLX OC. The remaining [X] have purchased full enterprise licenses to enable them to use Farelogix’s non-core PSS modules with other providers’ distribution technology.
- 4.5 Absent the Transaction, Sabre will continue to be at a disadvantage in terms of merchandising capability both in relation to its Ancillary Services and Dynamic Retailer products, and [X]. Sabre’s merchandising offer is PSS-dependent and therefore incapable of being sold separately for use with other core PSSs. [X]. Sabre estimates that it would take [X], to organically develop a PSS-agnostic merchandising module comparable to the industry-leading solutions. [X]). This is consistent with Farelogix’s internal documents from early 2018 which explain that [X].³⁰
- 4.6 The Parties submit that, contrary to the CMA’s view, other suppliers are significantly better placed to compete for future merchandising business. [X]. Meanwhile, many of the Parties’ competitors ([X]) are engaging in their own development efforts. Amadeus, for example, has thousands of employees, a multinational footprint, significant capital,

²⁸ Phase 1 Decision, para. 262.

²⁹ Defined as airlines who have purchased at least one of the Core-PSS modules (Core Reservation, Inventory, and Departure Control) from Sabre. The two airlines that purchase all of their non-Core PSS modules from Sabre are Afriqiyah Airways and Ravn Alaska.

³⁰ [X]

technological prowess, and the experience required to continue developing its NDC merchandising capabilities at great speed. Indeed, Amadeus Altea and Amadeus Navitaire are the dominant core PSSs, with a combined market share of 42% globally and 37% in the UK.³¹ The Parties also anticipate increasing competition from proven IT providers such as PROS, Datalex and Google/ITA.

Shares of supply and bidding data indicate minimal overlap and demonstrate the Parties are not close competitors

- 4.7 At paragraph 233 of the Phase 1 Decision, the CMA notes that Sabre and Farelogix’s merchandising solutions account for just [X]% and [X]% respectively of airlines by passengers boarded globally when excluding in-house solutions in 2017. If one focusses on the UK, there is no overlap at all: neither Party has a UK-based airline customer, and the market leader is Amadeus with 26% share. These shares indicate the lack of competition between the Parties in merchandising.
- 4.8 Shares of supply based only on Sabre core PSS customers cannot accurately present the competitive situation. First, these by definition ignore the [X] of the overall market in which Farelogix competes and Sabre is not present at all. Second, to the extent Sabre is perceived to have a competitive advantage by virtue of providing these airlines with its core PSS, this would imply that Farelogix would be a weak competitor. Farelogix does not have a core PSS and so the primary constraint on Sabre for those customers who wish to jointly procure a merchandising solution alongside its core PSS will be other core PSS providers such as Amadeus.
- 4.9 Furthermore, these shares ignore the differences in functionality between Sabre and Farelogix’s solutions which results in there being minimal competitive interaction between the Parties. For any airline seeking to build a “best in breed solution” combining a third-party merchandising solution with its core PSS, [X] and hence there will be minimal competition between the Parties. For airlines in the converse situation of wanting to combine procurement with their core PSS, the Parties do not compete at all.
- 4.10 [X]
- 4.11 The Parties’ bidding data is powerful evidence of the absence of any meaningful competitive interaction between them in merchandising. [X]. In fact, Sabre only participated in [X] of the [X] opportunities for which Farelogix has bid globally since 2014.³² In other words, once an airline chooses to procure merchandising separately from its PSS, Sabre Dynamic Retailer is effectively “out of the picture” and the competitive constraint for Farelogix comes from providers such as Amadeus, PROS/Vayant and Google/ITA.

³¹ These shares refer to the Core Reservation module in Sabre’s 2017 airline database.

³² All data points and statistics regarding Farelogix opportunities are based on the bidding data submitted to the CMA as Annex 52 to Merger Notice. Further opportunities data has been requested in the CMA’s S109 and the Parties will provide further analysis of these data once they have been prepared.

- 4.12 Despite acknowledging that this is a market in which shares of supply may not accurately reflect competitive interactions,³³ the Phase 1 Decision places “limited weight” on the Parties bidding data “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”.³⁴ This argument is unpersuasive and unwarranted as it is not reflective of commercial reality.
- 4.13 It is highly unlikely in practice that an airline would consider switching its PSS without commencing an RFP process or at least issuing an RFI. Further, if there were no RFP, the Parties will only be a constraint on one another if there is a genuine risk of one Party’s actual or potential customers switching to the other. Looking at actual switching patterns using bidding data is informative for determining who are the most credible alternatives for each Party’s customers and, as above, these data show minimal competitive interaction. At best, the Phase 1 Decision puts forward a reason why the bidding data doesn’t capture *everything*, not why it is uninformative. This explanation does not justify dispensing with systematic bidding data in favour of a highly selective assessment of internal documents and market feedback. In any event, even these other sources of evidence do not support the Phase 1 Decision’s conclusions.

The Parties do not compete closely in merchandising

- 4.14 The economic reality is that the Parties do not compete closely in merchandising and this is borne out by the CMA’s Phase 1 market test.
- 4.15 The Phase 1 Decision states that the views of third parties were “*mixed*” as to the impact of the Transaction on the supply of merchandising modules.³⁵ However, every comment referred to by the CMA in the Phase 1 Decision simply indicates that FLX M is a strong product and says nothing about whether the Parties compete closely with each other.³⁶ The Parties consider, therefore, that, rather than being “*mixed*”, the views of third parties unanimously suggest that no competition concerns relating to merchandising PSS arise from the Transaction.
- 4.16 In fact, the only concern raised by airlines relates to whether Sabre might stop making FLX M available on a PSS-agnostic basis.³⁷ This is implausible as it would run completely counter to the key deal rationale, which is acquiring a merchandising product that can compete for non-Sabre core PSS airlines. It also flies in the face of Sabre’s public commitment to continue to offer FLX M post acquisition. Furthermore, in its assessment of the (lack of) conglomerate concerns, the Phase 1 Decision agrees with the Parties’ assessment that they would have no ability to foreclose non-core PSS rivals by

³³ Phase 1 Decision, para 234.

³⁴ Phase 1 Decision, para 237.

³⁵ Phase 1 Decision, para. 250.

³⁶ The relevant extracts are: (i) “*important advocate of innovation and airline retailing*”; (ii) “[*Farelogix is an*] *essential part of competition in merchandising*”; and (iii) “*there’s not a single product on the market that comes close to the capabilities of [FLX Merchandise]*”, Phase 1 Decision, para. 250.

³⁷ Phase 1 Decision, para. 251.

downgrading FLX Merchandise's interoperability.³⁸ It is clear therefore that there is no basis for this concern.

The CMA underestimates competition from alternative suppliers

- 4.17 The Phase 1 Decision discounts alternative suppliers, due partly to their smaller size, particularly with regard to the possibility of competing for end-to-end NDC solutions.³⁹
- 4.18 The fact that other suppliers may not offer complete end-to-end NDC solutions does not make their individual merchandising products less competitive, and indeed as described in paragraph 2.16 *et seq.*, Farelogix does not itself offer an end-to-end solution and will not be able to do so in the future. As explained at paragraph 4.3 above, airlines routinely multi-source from a range of different providers and there is no requirement for a single firm to provide every aspect of that IT chain. Rather, airlines specifically *want* their NDC IT solutions to be modular so that they can “mix and match” the most attractive products in each category alongside their core PSS and distribution products. Therefore, the Phase 1 Decision is incorrect in discounting strong competitors such as Amadeus and PROS/Vayant on the basis that they offer only non-agnostic merchandising solutions. Indeed, this is inconsistent with the Phase 1 Decision's (incorrect) finding that Sabre's non-agnostic solution has a material competitive presence.
- 4.19 Bidding data shows that [§<]. The Phase 1 Decision itself acknowledges that “*some airlines ... considered that there would be sufficient other providers left to constrain the merged entity.*”⁴⁰ The CMA's characterisation of many of the competitors it dismisses as “smaller players” also ignores the reality that in many instances these competitors are larger than Farelogix, both in terms of the number of employees and turnover and are often supported by, or sit within a large corporate technology companies such as PROS/Vayant, Google (ITA), HP (DXC) and SAP.

³⁸ Phase 1 Decision, para. 391.

³⁹ Phase 1 Decision, para. 247.

⁴⁰ Phase 1 Decision, para. 251.

5. NO HORIZONTAL UNILATERAL EFFECTS IN THE SUPPLY OF SERVICES THAT FACILITATE THE INDIRECT DISTRIBUTION OF AIRLINE CONTENT

Frame of reference

No single frame of reference for services that facilitate the indirect distribution of airline content

5.1 The Parties disagree with the Phase 1 Decision's conclusion that there is a single frame of reference for services that facilitate the indirect distribution of airline content (including GDS and Direct Connect, but not including direct distribution).

5.2 As recognised by third parties in the CMA's Phase 1 market test,⁴¹ there are material differences between GDS services and Direct Connect services which means that, for all practical purposes, they are entirely non-substitutable. For example, the CMA acknowledges that it has received feedback that:

(i) *"due to high investment costs and loss of incentive payments, the Direct Connect Channel is likely not an alternative to the GDSs";*⁴²

(ii) *"there is a clear preference for an aggregated solution, which is currently available from GDSs";*⁴³

(iii) *"responses from travel agents indicate that due to functional differences, travel agents may have a preference for GDSs over Direct Connects. [...] the upfront investment costs required [for Direct Connect] would likely be 'prohibitive'. [...] Travel agents told the CMA that there are some functional features of the Direct Connect channel which compare less favourably to GDSs [...] (a comment also echoed by a few airlines)";*⁴⁴ and

(iv) *"they [travel agents] have generally expressed an interest in consuming NDC content through their existing GDS."*⁴⁵

5.3 The economic reality is that a Direct Connect is a fundamentally different product from the GDS. It is a one-to-one airline to travel agent connection rather than many-to-many connections, and does not offer comparison shopping, intelligence in itinerary creation or the same mid- and back-office support that the GDSs offer. These "fulfilment" services are critical to many travel agents, particularly travel management companies ("TMCs") which provide services for corporate travellers. Additionally, while a GDS is a two-sided platform, Direct Connect is not. As explained at paragraph 3.24 above, Direct Connect technology suppliers provide their service to airlines, and it is the airline which then

⁴¹ Phase 1 Decision, para 192.

⁴² Issues Letter, para. 123.

⁴³ Issues Letter, para. 127.

⁴⁴ Phase 1 Decision, paras. 194-195

⁴⁵ Phase 1 Decision, para. 65.

negotiates with the travel agents. Moreover, the connections can also be implemented in other channels, with GDSs, non-GDS aggregators, metasearch engines, OTAs or airline.com. “Direct Connect”, as used in the Phase 1 Decision, captures only the subset of these that both by-pass the GDS and sit outside the Direct Channel.⁴⁶

- 5.4 Even if offer results from a Direct Connect are aggregated, such as through Travelfusion, such aggregation still fails to meet the needs of travel agents as compared to a GDS; the lag-time between inputting a query and receiving results is significant compared to a GDS (it can be minutes rather than seconds), and, as stated above, vital fulfilment services are not available, so travel agents cannot integrate with their mid- and back-office systems, nor can they be assured of meeting their duty of care to corporate travellers.
- 5.5 Therefore, the Parties consider that GDS and Direct Connect services should constitute separate frames of reference.⁴⁷ The Parties note in this regard that the Phase 1 Decision finds a common frame of reference for GDS and Direct Connect without demonstrating in any way that the level of observed substitutability is sufficient to point to integrated markets. If the CMA had considered the economic framework properly, it would have concluded that GDS and Direct Connect are not substitutes for one another.

Frame of reference should include Direct Channel

- 5.6 Alternatively, if GDSs and Direct Connect form part of a single frame of reference, then the Parties consider that that frame of reference should also include the Direct Channel (in particular, airline.com) which is a stronger constraint on GDSs than Direct Connect.
- 5.7 The Phase 1 Decision seeks to differentiate the indirect channel from the Direct Channel on the basis that it “*reaches a different group of end-customers, ie those who use travel agents and may not want to book a ticket directly*”.⁴⁸ However, there is no bright line between end-customers who do and do not use travel agents. Increasingly, customers who might previously have booked through a traditional travel agent are instead booking online, often via a meta-search engine to find the cheapest flights, whether that be through an OTA or through airline.com. End-customers shopping online are likely to be largely agnostic as to whether they book through an OTA or airline.com, and may alternate seamlessly between them (probably based on price) each time they book travel and/or during the course of their search and purchase process.
- 5.8 Notably, the majority of ticket volumes which rely on Farelogix’s OC technology flow through OTAs and meta-search engines.⁴⁹ This means that the majority of end-travellers who book such tickets are likely to be cost-conscious, internet-literate shoppers for whom airline.com is *more* substitutable than a traditional travel agent. Indeed, for many of these consumers there is likely to be no discernible difference between using an OTA and using airline.com (via meta-search if relevant). Accordingly, if Sabre or Farelogix offered

⁴⁶ See e.g. Phase 1 Decision, para 48.

⁴⁷ The Parties note that GDS services was found to be the relevant market by the European Commission in Amadeus/Navitaire (Case M.7802) and Travelport/Worldspan (Case M.4523).

⁴⁸ Phase 1 Decision, para 209.

⁴⁹ See Merger Notice, para 3.21.

uncompetitive distribution services, then it would quickly lose volumes to travellers booking direct via airline.com.

- 5.9 The Phase 1 Decision sets a low threshold for reasoning that the very partial overlap between GDS services and Direct Connect is sufficient for both to fall within the same frame of reference, noting 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*”.⁵⁰ Applying the same standard, it is clear beyond doubt from the evidence above that airline.com also competes with GDS services “at least to some extent”.

Counterfactual

- 5.10 The Parties agree with the Phase 1 Decision’s proposition that the counterfactual for the Transaction should be the prevailing market conditions. However, that should take account of the following considerations.

Sabre

- 5.11 Sabre, already the smallest of the three major GDS providers in Europe, will exercise a much weaker constraint on Amadeus and Travelport absent the Transaction. In particular, absent the Transaction, [REDACTED]. The Phase 1 Decision finds that Sabre would continue “to pursue growth strategies”⁵¹, and that Sabre “foresees the launch of a basic NDC API within the foreseeable future”;⁵² however, the Phase 1 Decision fails to take account of the fact that, [REDACTED]. [REDACTED].⁵³

Farelogix

- 5.12 [REDACTED].
- 5.13 [REDACTED].
- 5.14 [REDACTED].
- 5.15 [REDACTED].
- 5.16 [REDACTED].
- 5.17 [REDACTED].

⁵⁰ Phase 1 Decision, para 189.

⁵¹ Phase 1 Decision, para. 159.

⁵² Phase 1 Decision, para. 152.

⁵³ [REDACTED]

5.18 [redacted].⁵⁴

Shares of supply

5.19 The Phase 1 Decision overlooks the shares of supply of both Parties for services to facilitate the *indirect* distribution of airline content, in particular the fact that, on any metric, Farelogix has a share of supply below 1%. Moreover, the Phase 1 Decision fails to take into account key constraints on the Parties including *direct* distribution channels.

5.20 In the interests of convenience, the Parties' shares of supply in the following section have been calculated based on the total number of bookings. For the reasons explained in paragraph 3.30 above, this approach fails to make any allowance in the denominator for the fact that any one booking may involve the use of multiple services/providers, creating a double-counting (or multiple-counting) issue and materially overstating the Parties' shares. Nonetheless, as the shares of the Parties – even when so overstated – are sufficiently small to demonstrate that no *prima facie* competition concern should arise, it is informative to provide them despite the deficiency in calculation and, on that basis, the shares of supply for supply of services to facilitate the indirect distribution of airline content are as follows:⁵⁵

⁵⁴ Phase 1 Decision, para. 289 cf para. 317 *et seq.*

⁵⁵ All market share computations follow the approach set out in the Merger Notice. Market size data for non-GDS indirect channels have been updated to use the 2018 T2RL figure.

Table 5.1
Shares of supply for services to facilitate the indirect
distribution of airline content (Global)

Vendor	Bookings (m)	Share of Supply	Revenues (\$m)	Share of Supply
Sabre	[X]	[X]	[X]	[X]
Farelogix	[X]	[X]	[X]	[X]
Amadeus	[X]	[X]	[X]	[X]
Travelport	[X]	[X]	[X]	[X]
Other GDS (Host Direct)	[X]	[X]	[X]	[X]
Tour Operator (Charter)	[X]	[X]	[X]	[X]
Direct Connect (excl. Farelogix)	[X]	[X]	[X]	[X]
Total	[X]	100.0%	[X]	100.0%

Source: [X]

Table 5.2
Shares of supply for services to facilitate the indirect
distribution of airline content (UK-based carriers)

Vendor	Bookings (m)	Share of Supply	Revenues (\$m)	Share of Supply
Sabre	[X]	[X]	[X]	[X]
Farelogix	[X]	[X]	[X]	[X]
Amadeus	[X]	[X]	[X]	[X]
Travelport	[X]	[X]	[X]	[X]
Other GDS (Host Direct)	[X]	[X]	[X]	[X]
Tour Operator (Charter)	[X]	[X]	[X]	[X]
Direct Connect (excl. Farelogix)	[X]	[X]	[X]	[X]
Total	[X]	100.0%	[X]	100.0%

Source: [X]

Table 5.3
Shares of supply for services to facilitate the indirect
distribution of airline content (UK POS)

Vendor	Bookings (m)	Share of Supply	Revenues (\$m)	Share of Supply
Sabre	[X]	[X]	[X]	[X]
Farelogix	[X]	[X]	[X]	[X]
Amadeus	[X]	[X]	[X]	[X]
Travelport	[X]	[X]	[X]	[X]
Other GDS (Host Direct)	[X]	[X]	[X]	[X]
Tour Operator (Charter)	[X]	[X]	[X]	[X]
Direct Connect (excl. Farelogix)	[X]	[X]	[X]	[X]
Total	[X]	100.0%	[X]	100.0%

Source: [X]

Table 5.4
Shares of supply for services to facilitate the indirect
distribution of airline content (Flights to/from/within UK)

Vendor	Bookings (m)	Share of Supply	Revenues (\$m)	Share of Supply
Sabre	[X]	[X]	[X]	[X]
Farelogix	[X]	[X]	[X]	[X]
Amadeus	[X]	[X]	[X]	[X]
Travelport	[X]	[X]	[X]	[X]
Other GDS (Host Direct)	[X]	[X]	[X]	[X]
Tour Operator (Charter)	[X]	[X]	[X]	[X]
Direct Connect (excl. Farelogix)	[X]	[X]	[X]	[X]
Total	[X]	100.0%	[X]	100.0%

Source: MIDT data, FLX data stack, Sabre internal NEF data, 2018 T2RL data

- 5.21 The competitive analysis in the Phase 1 Decision does not properly acknowledge or reflect the negligible market share held by Farelogix or the fact that its share has been at this level (and even declining) for a number of years. The Phase 1 Decision alleges that shares of supply are not conclusive because they are backwards looking, but fails to provide any evidence that Farelogix is likely to achieve any material increase in its negligible market share going forward.⁵⁶ In fact, given Farelogix's [X], there would need to be overwhelming evidence—of which there is none—to conclude that this tide is about to turn in the dramatic way suggested in the Phase 1 Decision.⁵⁷
- 5.22 Further, the Phase 1 Decision again applies a double standard in failing to give appropriate weight to the strong and increasing constraint from airline.com (despite stating as part of the findings on frame of reference that “*the CMA will take into account the constraint from the direct channel in its competitive assessment*”⁵⁸). As the CMA acknowledges, an estimated 42% of global airline tickets were sold through airline.com in 2017, up from 34% in 2012, and “*airlines almost uniformly told the CMA that they expected the direct channel to keep growing in the next three to five years*”.⁵⁹ The economic reality is therefore that airline.com is a hugely significant competitor for both Parties. [X] tickets booked using Farelogix's technology are distributed through OTAs and meta-search, for which airline.com is more substitutable (from an end-traveller's perspective) than a traditional travel agent, as explained at paragraph 5.8 above. For Sabre, the increasing number of end-travellers using airline.com in place of travel agents removes Sabre entirely from the supply chain. This makes airline.com a far more material disintermediation risk than FLX OC.

The Parties do not compete closely

- 5.23 Further, Farelogix and Sabre are not close competitors for the following reasons:
- (i) **Demand side substitutability:** it is clear that airlines cannot substitute Farelogix's NDC API with a GDS. An airline contemplating relying on Farelogix's NDC API to provide a connection between its PSS and a GDS or other downstream technology provider cannot simply rely on the GDS to provide this connection and source this either from a third party provider (which might include the GDS provider) or via in-house supply.
 - (ii) **Supply side substitutability:** in addition to the current providers of NDC APIs, there are a number of other technology providers active in (and certified for) the provision of NDC technology and related software more generally who would be expected to have the necessary understanding and wherewithal to enter the market.

⁵⁶ Phase 2 Decision, para. 234.

⁵⁷ E.g. “*Both Parties possess capabilities that, as the industry evolves [...] leave them particularly well-placed (compared to other suppliers) to compete for future business.*” (Phase 1 Decision, para. 361)

⁵⁸ Phase 1 Decision, para. 210.

⁵⁹ Phase 1 Decision, para. 47.

- (iii) **Barriers to entry:** as set out in more detail in paragraphs 5.48 and 5.49, the barriers to entry are lowered substantially by the existence of an agreed NDC schema that allows new entrants to adopt the latest communications protocols “out of the box”.
- (iv) **Functionality:** FLX OC (and Direct Connect products more generally) cannot deliver the core functionality of a GDS (e.g. comparison shopping capability, fulfilment and mid- and back-office services) and suffer from severe scaling issues and set up costs on both the airline and travel agent side of the market. Indeed, growth of Direct Connect has stalled and represents a trivial share of indirect bookings, and a lower share still of bookings overall. Any prospect of FLX OC representing a disintermediation threat to GDSs has faded with the focus increasingly on “GDS pass-through solutions” which work with, rather than replace, GDS providers such as Sabre. In any event, Farelogix is just one of many capable IT providers who could build such solutions.

5.24 It follows that the Parties will more closely compete with those providers that offer competing products within their relevant product markets, than with those providers that sit outside the relevant product market.

Competitive constraint posed by Farelogix

- 5.25 Farelogix remains a weak competitive constraint as (i) Direct Connect's share is negligible and shows no sign of growing at the scale required for competition concerns to arise; (ii) [redacted]; and (iii) Farelogix's FLX OC IT offering is not unique.
- 5.26 Direct Connect as a channel has been in the market for over a decade, and has never gained significant market share. It has never accounted for more than 4% of global bookings (reaching its peak in 2015) and it has constantly fluctuated around 2-3% share since 2011 with no sign of this changing. Its current share is estimated to be approximately 3%.⁶⁰
- 5.27 If Direct Connect was ever going to materially disintermediate the GDSs, this would already have happened, but it has not. The Direct Connect channel's small and stagnant market share is in stark contrast to the growth of the Direct Channel and also the growth of alternative distribution models within the GDS channel. For example, the “wholesale” model has emerged onto the scene in a very short space of time and now accounts for [redacted]% of Sabre's bookings, demonstrating that when the industry does find an attractive and viable alternative model, the take-up is fast. Similarly, the “private channel” in its first full year of operation (2018) accounted for [redacted]% of British Airways' tickets booked through Sabre.

⁶⁰ 2018 T2RL data. Note that, as explained in Sabre's recent first tranche response to the CMA's Section 109 response, submitted on 10 September 2019, the T2RL data shows some significant fluctuations in the size of the Direct Connect segment from year to year which may reflect methodological changes rather than market developments. What is clear, however, is that the Direct Connect Segment has not grown materially since its introduction.

5.28 The reason Direct Connect has not grown is because there are insurmountable technological and economic hurdles that prevent it from ever offering a practical alternative to a GDS. In particular:

- (i) Direct Connect requires airlines to build one-to-one connections with individual travel agents. This is prohibitively expensive except for the very largest travel agents and will never be practical for the long tail of smaller travel agents. The CMA acknowledges that “*the majority [of travel agents submitted that] pure one-to-one connections to airlines would likely have very limited applications in future*”.⁶¹
- (ii) Unlike the GDSs, Direct Connect does not provide “one-stop” access to a huge number of travel agents and TSPs (including providers of non-air content such as hotels, rail and car rentals), and therefore does not allow for easy comparison shopping or complex itineraries. Direct Connect does not offer the essential mid- and back-office support necessary in order to distribute tickets for corporate travel. The Phase 1 Decision explicitly acknowledges the drawbacks and limitations of Direct Connect relative to a GDS in terms of both aggregation and fulfilment.⁶²

5.29 Crucially, Direct Connect cannot succeed without buy-in from travel agents. Although airlines make the decision to contract with Farelogix (or another Direct Connect provider), the airlines must also then be able to convince travel agents to establish Direct Connect connections. This is only ever going to be cost-effective for the very largest OTAs and TMCs, and these are precisely the travel agents which have the strongest bargaining position with airlines.

5.30 [redacted].⁶³

5.31 [redacted].

5.32 [redacted].⁶⁴

Figure 5.1
[redacted]

Source: [redacted].

⁶¹ Phase 1 Decision, para. 275.

⁶² Phase 1 Decision, para. 53-54.

⁶³ [redacted].

⁶⁴ [redacted].

5.33 [REDACTED].⁶⁵ [REDACTED].⁶⁶ This can be seen in Table 5.5, which presents Farelogix's projected shares of supply in terms of indirect bookings on yearly basis.

Table 5.5

[REDACTED]⁶⁷

Source: [REDACTED].⁶⁸

5.34 Importantly for the CMA's purposes, the data also shows that [REDACTED].

Table 5.6

FLX OC Segments by Travel Agent Country (2018)

[REDACTED]

Table 5.7

FLX OC 2018 Segments by UK Travel Agents

[REDACTED]

5.35 Furthermore, as confirmed by the submissions of a majority of airlines during the Phase 1 market test,⁶⁹ the threat of Direct Connect is not relevant to Sabre's GDS contract negotiations. By far the most significant aspect of GDS negotiations is content. The leverage that airlines use in negotiation is the threat of pulling some content out of the GDS and offering it exclusively on airline.com or through the airline's GDS private channel. This is leverage which is only going to strengthen as airline.com continues to grow and has absolutely nothing to do with Farelogix.

5.36 Notwithstanding this overwhelming market evidence, the Phase 1 Decision seeks to rely on a limited number of internal documents to suggest that Sabre views Farelogix as a significant threat. These documents do not support the conclusion which the Phase 1 Decision seeks to draw:

- (i) The Phase 1 Decision refers only to a small number of cherry-picked documents, primarily from 2017, which present an incomplete and out-of-date picture of the market. [REDACTED].⁷⁰ [REDACTED].⁷¹

⁶⁵ [REDACTED].

⁶⁶ [REDACTED]

⁶⁷ In the interests of convenience, the Parties' shares of supply in this table have been calculated based on the total number of bookings. For the reasons explained in paragraph 3.30 above, this approach fails to make any allowance in the denominator for the fact that any one booking may involve the use of multiple services/providers, creating a double-counting (or multiple-counting) issue and materially overstating the Parties' shares.

⁶⁸ [REDACTED]

⁶⁹ Phase 1 Decision, para. 227.

⁷⁰ [REDACTED]

⁷¹ [REDACTED]

(ii) [REDACTED].⁷²

[REDACTED].

(iii) Even in 2017, the documents cited by the Phase 1 Decision refer to over a dozen other competitors, including Travelport, OpenJaw, Datalex, PROS, Vayant, SITA, TP Connects and JR Technologies.⁷³

5.37 Similarly, the Phase 1 Decision selectively quotes from Sabre's public documents. The CMA notes that Sabre's 2018 Annual Report includes Direct Connect initiatives as a risk factor, while ignoring the fact that aggregators, meta-search engines, potential new entrants and airline.com are all also referred to as risk factors, yet none of these are included in the CMA's frame of reference or given appropriate weight in its substantive assessment.⁷⁴

5.38 Further, surprisingly, and despite referencing recent expert reports on the digital economy⁷⁵ (which generally identify valuation analysis as an important tool in assessing potential competition concerns in the digital sector⁷⁶), the Phase 1 Decision makes no reference to the Parties' submissions on valuation. As the Parties explained in those submissions, the purchase price which Sabre is paying for Farelogix is consistent with Sabre paying "fair value" for the standalone value of the business and anticipated, pro-competitive synergies with no evidence of a "market power premium" that could indicate potential competition concerns. Furthermore, if Farelogix's forecasts for FLX OC were taken at face value, a discounted cash flow analysis would imply that Farelogix was worth between [REDACTED].⁷⁷

5.39 This valuation evidence is probative of the Transaction involving the acquisition of a complementary company, not a "killer acquisition" of a nascent competitor. [REDACTED].⁷⁸

5.40 The Phase 1 Decision acknowledges that the feedback from the Phase 1 market test regarding Direct Connect and FLX OC was "mixed",⁷⁹ and quotes very selectively from a small number of airlines expressing some support for Direct Connect. Again, this market evidence does not support the conclusions which the CMA seeks to draw about the extent of the competitive constraint from Direct Connect in general and Farelogix in particular:

⁷² [REDACTED]

⁷³ Phase 1 Decision FN 86, p. 29.

⁷⁴ Sabre Form 10K, February 2019, p. 5-6.

⁷⁵ Phase 1 Decision, para. 94.

⁷⁶ E.g. "Drawing attention to the evidential relevance of the transaction value relative to the market value and company turnover, and the importance of understanding the rationale for valuations which appear exceptionally high." (Report of the Digital Competition Expert Panel, Unlocking digital competition (March 2019), p. 96).

⁷⁷ [REDACTED].

⁷⁸ [REDACTED]

⁷⁹ Phase 1 Decision, para. 273.

- (i) The Phase 1 Decision states that “*the CMA found that airlines had mixed views on the extent to which GDS services and Direct Connect services compete with each other*”.⁸⁰ There is no suggestion that *any* airline thought Direct Connect could fully disintermediate the GDSs (and indeed a majority of airlines confirmed that Direct Connect “*would not be able to fully disintermediate the GDSs*”).⁸¹
- (ii) There is clear evidence from third party data⁸² that Direct Connect has not achieved significant penetration over the last decade and is currently in decline. As discussed at paragraph 5.19 above, it is completely implausible to suggest that after many years of stagnation, Direct Connect will suddenly explode dramatically in the next three to five years.
- (iii) Airlines expressing support for Direct Connect may do so for their own commercial (and in some cases anti-competitive) reasons. Large airlines may prefer Direct Connect because they would benefit from a reduction in comparison shopping, to the detriment of travel agents and the end-travellers which the CMA ought to protect. Indeed, the Phase 1 Decision notes that Direct Connect is most attractive for airlines with large market shares, but does not draw the natural conclusion that such incumbent airlines are unlikely to be focussed on consumer welfare.⁸³
- (iv) By comparison, the feedback of travel agents is likely to be better aligned with the welfare of ultimate travellers: travel agents have an incentive to promote inter-airline competition which will act to lower ticket prices and increase trip volumes.
- (v) To grow, Direct Connect needs buy-in from travel agents as well as airlines. As the CMA’s own market investigation confirms (see paragraph 5.2 above), travel agents almost always prefer to book through a GDS which provides comparison shopping, complex itineraries and mid- and back-office support. Travel agents have an incentive to support the distribution channel which keeps prices lowest, and as such, they better represent the interests of the end-travellers that the CMA ought to protect.
- (vi) IT providers are also sceptical as to the strength of Direct Connect, with the Phase 1 Decision noting that “*their views on the strength of the channel were more mixed*”.⁸⁴

5.41 In any event, FLX OC is far from the only product in the Direct Connect space. There are many other technology providers who offer Direct Connect functionality, including NDC

⁸⁰ Phase 1 Decision, para. 189.

⁸¹ Phase 1 Decision, para. 191.

⁸² The market share data referred to by the CMA comes from T2RL, an independent airline industry research and consultancy company.

⁸³ Phase 1 Decision, para 50 notes “*the Parties submitted to the US Department of Justice that Direct Connects may grow in European markets (in contrast to the US market) due to local market features including airlines having larger market shares*”.

⁸⁴ Phase 1 Decision, para. 274.

APIs. In particular, Farelogix has lost recent bids to Amadeus, Datalex, OpenJaw and airline self-supply. It should be noted in this regard that one obvious candidate airline for Direct Connect in the UK is British Airways; however, British Airways has already developed its own NDC API in-house, and so would have no need for FLX OC. The IATA website lists 40 firms with Level-3 or Level-4 accreditation from IATA which indicates that they must have demonstrated the ability to process bookings for an airline customer.⁸⁵

NDC

5.42 Contrary to the CMA's findings, Sabre's NDC strategy was not driven by Farelogix. Rather, it was driven by the need to meet the demands of airline customers, and the need to try to keep pace with Amadeus and Travelport and their GDS NDC integrations. For example, Amadeus has publicly stated that: "*The NDC-X program is a strategic priority for Amadeus. [...] We are dedicating the right resources and have appointed a strong leader with a proven track-record in the industry to drive its success*",⁸⁶ and Travelport has publicly stated that: "*Now our work on NDC itself, and our achievement as the first and still the only GDS operator to acquire IATA NDC Level 3 certification as an aggregator and distributor, further cements our position as the ideal marketing partner for airlines.*"⁸⁷ Sabre therefore has strong incentives, entirely unrelated to Farelogix, to facilitate the distribution of NDC content. Indeed, acceleration of NDC distribution was a key component of the deal rationale, as is clear from Sabre's press release announcing the deal: "*Sabre expects that upon close, the acquisition will allow the company to accelerate delivery of its end-to-end NDC-enabled retailing, distribution and fulfillment solutions.*"⁸⁸

5.43 In concluding that Farelogix is "*a key innovator in the industry*"⁸⁹, the CMA overplays historic statements about Farelogix's significance in a fast-moving field. The NDC landscape has undergone massive change within the last two years. In 2017, NDC was beginning to gain acceptance with airlines and Farelogix had been at the forefront of the initial development of the initial NDC standard in the preceding years. It is therefore not surprising that Sabre's contemporaneous internal documents from that time refer to Farelogix, and indeed third parties may still see Farelogix as an "innovator" because of

⁸⁵ In order to satisfy the NDC Level-3 standard, a provider needs to be able to demonstrate complete offer and order management capabilities including the usage of a number of identified standard schemas that fulfil the business requirements for shopping, which includes support for interline ancillary shopping, order management (booking and servicing) payment and ticketing, interline interactions and messages to fulfil airline profile requirements. This requires a minimum of five specific message capabilities (e.g. AirShoppinRQ.xsd etc.) to be demonstrated. The Parties consider that, in practice, it would not be possible for a provider to satisfy these standards without at least some sort of engagement and/or collaboration with an airline. Whilst such engagements or collaborations may initially be geared around testing systems, data, etc., such that they will not necessarily involve the development of a commercial product at the point in time when accreditation is first attained, it appears reasonable to expect such arrangements to arise when the airline in question intends to use the provider's development services going forward. See: <https://www.iata.org/whatwedo/airline-distribution/ndc/Documents/guide-ndc-certification-program.pdf>.

⁸⁶ <https://amadeus.com/en/insights/press-release/amadeus-creates-ndc-x-program-to-drive-industry-innovation> (accessed 2 September 2019)

⁸⁷ <https://www.travelport.com/blog/ndc-travelport-leading-way> (accessed 2 September 2019)

⁸⁸ <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 2 September 2019)

⁸⁹ Phase 1 Decision, para. 294.

its activities during the early years of NDC. However, even in 2017 there were other players active in NDC, and by 2019 Farelogix's no longer has any significant advantage over its rivals. This is reflected in the third party comments from the Phase 1 market test referred to in the Phase 1 Decision, which are generally "past tense" references to Farelogix's innovations (e.g. Farelogix "*played a leading role in the definition of the NDC standard*"⁹⁰).

- 5.44 Notably, Farelogix is still using a 2017 version of the NDC standard while Amadeus, Datalex, JR Technologies and TPConnects have all moved on to updated NDC schemas. [redacted]. When an industry promulgates a standard, it is precisely to lower barriers to entry, increase economies of scale and scope, and encourage new entrants and new products using that standard. IATA's efforts have been extremely successful in propagating the standard. There are currently 17 IATA certified Level 4 NDC IT Providers (including Farelogix), and 23 Level 3 NDC IT Providers (including Sabre).⁹¹ The newly-created NDC Exchange established by ATPCO and SITA also now offers airlines an efficient, easy-to-use NDC API translation technology which allows airlines and their partners to develop NDC solutions with lower technological costs.⁹²
- 5.45 In fact, [redacted]. The Phase 1 Decision acknowledges that in the CMA's market test third parties referred to other competitors as "*innovators*", and expressed concerns over whether Farelogix could continue to grow and innovate in future.⁹³
- 5.46 The Phase 1 Decision also hugely underplays the competitive strength of Travelport in NDC, arguing that: (i) [redacted]; and (ii) third parties have suggested that Travelport may be weakening. The evidence to the contrary demonstrates that Travelport remains committed to NDC and is developing its capabilities fast. At the 2019 IATA Business Travel Summit, Travelport demonstrated live NDC capabilities to shop, book, cancel and exchange content. This arguably places Travelport ahead of Amadeus as the market leader in NDC GDS distribution, and certainly places Travelport's roadmap [redacted].
- 5.47 Further, despite defining a global frame of reference, the CMA appears to completely disregard the competitive constraint the Parties face globally from regional GDS (or "Host Direct") providers. In particular, the Parties note that Travelsky processed nearly 650 million bookings in 2018 and is developing its own NDC solutions.⁹⁴

Barriers to entry

- 5.48 The barriers to entry for Direct Connect providers are low, and continue to lower as NDC develops. As explained at paragraph 5.43 above, NDC is an open standard which is used

⁹⁰ Phase 1 Decision, para. 288.

⁹¹ See <https://www.iata.org/whatwedo/airline-distribution/ndc/Pages/registry.aspx>, (accessed 16 September 2019).

⁹² <https://www.atpco.net/ndc-exchange> (accessed 2 September 2019)

⁹³ Phase 1 Decision, para. 289.

⁹⁴ https://www.travelskyir.com/html/about_biz.php.

by an ever-increasing number of companies. New entrants are emerging on an ongoing basis, and the development of NDC Exchange is expected to lower barriers further.⁹⁵

5.49 [REDACTED].⁹⁶ [REDACTED].

⁹⁵ See above at paragraph 4.31.

⁹⁶ [REDACTED].

6. EFFICIENCIES

- 6.1 The Transaction is expected to give rise to quantifiable, rivalry-enhancing efficiencies. In particular, Farelogix has merchandising and NDC expertise but struggles with scale. Sabre, on the other hand, has global scale and expertise in distribution but [X]. The Transaction will therefore accelerate the end-to-end NDC capabilities which airlines and travel agents are pressing for in merchandising, distribution, and fulfilment, and allow Sabre to compete with market leader, Amadeus, and many other competitors in this space. This will enhance comparison shopping and price competition for the benefit of end-travellers while also allowing Sabre to build a best in breed and PSS agnostic merchandising solution that will allow it to compete effectively. As a result, the Transaction will result in significant customer benefits both globally and in the UK and significantly enhance consumer welfare.