

RESPONSE TO ISSUES STATEMENT

**Case No. ME.6806.19
SABRE CORPORATION / FARELOGIX INC.**

SLAUGHTER AND MAY

MACFARLANES

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1. EXECUTIVE SUMMARY

- 1.1 The CMA's Issues Statement dated 17 October 2019 outlines the main issues that the CMA is considering in relation to the potential acquisition of Farelogix Inc. ("**Farelogix**") by Sabre Corporation ("**Sabre**") (the "**Transaction**") and whether it may be expected to result in a substantial lessening of competition ("**SLC**") in the UK.
- 1.2 As explained in this Response to the Issues Statement, building on the Parties' Phase 2 Initial Submission dated 19 September 2019 (the "**Parties' Initial Submission**"), and, in particular, significant new evidence and data analysis conducted by the Parties, 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 an SLC in the UK. 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.

Jurisdiction

- 1.3 Asserting jurisdiction on the basis of an alleged 25% share of services to facilitate the indirect distribution of airline content to a single UK airline, British Airways ("**BA**") (as summarised in the Issues Statement at paragraph 38), is neither an "appropriate" nor a "reasonable" basis for jurisdiction, in the sense of the Enterprise Act 2002 and the CMA's Guidance on Jurisdiction and Procedure, as set out in detail in the Parties' Initial Submission. BA is not a customer of Farelogix. Additional transaction data obtained by Farelogix since the Initial Submission further demonstrates that the CMA does not have jurisdiction over the Transaction. Indeed, the numbers of [X] under Farelogix's arrangements with [X] were negligibly small each year between 2015 and 2018, and [X].¹ Any increment attributable to the use of Farelogix's technology *vis-à-vis* [X] indirect supply shares between 2015 and 2018 would be almost non-existent in each year: at most, [X] (over [X]) were distributed each year between 2015 and 2018 through Sabre, Travelport and Amadeus). This infinitesimal increment demonstrates that this description of services is a wholly wrong and inappropriate basis for the jurisdictional analysis of the Transaction.
- 1.4 Similarly, asserting 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 (as summarised in the Issues Statement at paragraph 38) is neither "appropriate" nor "reasonable". Farelogix does not have travel agent customers, and does not seek to compete for the business of travel agents. Moreover, additional data looking at this set of destinations over a longer timeframe shows that the increment which the CMA has artificially sought to identify is almost non-existent, and in many cases the Parties' combined share falls below 25% (even applying the CMA's methodology). This further underlines the arbitrary and unreasonable nature of the CMA's approach. For instance, UK travel agents [X]. Further, recent T2RL data shows that the proportion of indirect bookings through the indirect channel made through

¹ The Parties are providing this data in the spirit of openness and in order to enable the CMA to examine the data in its full context, to illustrate this inappropriate and unreasonable basis for jurisdiction, without prejudice to the fact that the Parties do not accept that, under section 23 of the Act, the CMA is entitled to look back through data over several years to pick numbers from years other than the most recent in order to find that the 25% share of supply threshold is met.

GDSs was higher in 2017 than in other years, meaning that there is a likelihood that the share of supply test would fail in at least some of the destinations highlighted by the CMA when focusing on years besides 2017 when calculating market size. This is quite apart from the fact that the destination for which a booking is made is of no relevance to the competitive assessment of the Transaction.

- 1.5 Finally, even if it is accepted that the frame of reference adopted in the Phase 1 Decision and reiterated in the Issues Statement for the supply of services to facilitate the indirect booking of airline content is correct (which the Parties do not accept), the manner in which the Phase 1 Decision has calculated each of the Party's shares of supply is fundamentally flawed. In any one booking there may be multiple instances of provision of services to facilitate indirect distribution (for example, a single booking may involve ATPCO and a GDS, or an NDC API and a GDS). The shares of supply have been calculated on the basis of a denominator that reflects only the number of bookings made, as opposed to the total number of instances of service provision in respect of such bookings. It is wholly arbitrary and artificial to count indirect distribution services provided by Farelogix and not include these other instances of service provision. If the denominator was calculated properly with regard to the total number of indirect services provided, then the instances of service provision considered by the CMA in the numerator, and in particular those offered by Farelogix, represent an even smaller percentage and the Parties' combined shares do not exceed 25% in any of the frames of reference identified by the CMA in its Phase 1 Decision.

Counterfactual

- 1.6 The Phase 1 Decision mischaracterises the prevailing competitive conditions, both by overestimating the Parties' current and future development capabilities, and by neglecting the innovative potential of an ever-increasing number of competitors.
- 1.7 As the Parties have previously outlined in the Parties' Initial Submission, absent the Transaction [REDACTED].
- 1.8 Firstly, [REDACTED], as demonstrated by Sabre's recent internal documents. Further, [REDACTED].
- 1.9 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]
- 1.10 Finally, [REDACTED], their respective competitors are driving forward innovation (and thereby further increasing customer expectations) in both merchandising and indirect distribution. The industry is rapidly evolving and multiple players including Amadeus, Atriiis Technologies, Google/ITA, IBS, NDC Exchange, PROS, Travelport and Travelsky/OpenJaw already have numerous innovations and developments in place (both within and outside NDC) to further develop their solutions over the coming months and years, leaving the Parties [REDACTED].

Non-core PSS merchandising modules

- 1.11 There are no meaningful competitive interactions between Sabre's Dynamic Retailer product and Farelogix's merchandising module, FLX M, and there is no realistic prospect of an SLC in relation to the provision of merchandising modules.

- 1.12 Firstly, the Transaction only gives rise to a negligible increment, as demonstrated by the updated shares of supply provided to the CMA which show that Dynamic Retailer accounted for just [X]% (by PB) globally when excluding in-house solutions in 2018, giving the Parties a combined share of only [X]. Sabre's Dynamic Retailer merchandising module has been [X].
- 1.13 Secondly, there is no meaningful competition between the Parties' merchandising modules:
- (i) Dynamic Retailer and FLX M are very different products with limited overlap in functionality. In particular, Dynamic Retailer only works with a Sabre core PSS (whereas FLX M is PSS agnostic) and is generally viewed as a [X] product to FLX M. The different nature of these products and [X].
 - (ii) The Parties rarely find themselves in a situation where they compete against each other in relation to a merchandising opportunity:
 - (a) Dynamic Retailer can only be used with Sabre's core PSS. Sabre therefore cannot compete at all for opportunities with airlines using a non-Sabre core PSS - representing [X]% of the market globally (and [X]% of the UK market) - because it cannot service these airlines.
 - (b) Since it has no core PSS capabilities, Farelogix has nothing to offer to an airline which wants to procure its merchandising solution in conjunction with a core PSS ("**Broad Opportunities**").
 - (c) As noted below, Sabre's Dynamic Retailer is [X] if an airline wants to procure a merchandising solution separately from its core PSS - i.e. "mix and match" in order to assemble a best of breed solution ("**Narrow Opportunities**").
 - (iii) The above is consistent with the Parties' respective bidding data which demonstrates the lack of competitive interactions between the Parties. In particular:
 - (a) Sabre's bidding dataset records [X] unique airlines in total, of which [X] ([X]) also appear in the Farelogix dataset.
 - (b) Within this (already modest) pool, Farelogix does not pose a significant competitive constraint in Broad Opportunities, where [X] is the primary competitor to Sabre. Indeed, Sabre's [X].
 - (c) By contrast, Sabre acts as a limited competitive constraint in Narrow Opportunities (for the merchandising module only) [X].
 - (d) Finally, due to the differences in their respective product offerings, [X].
- 1.14 Thirdly, the Parties face significant constraints from a number of other, well-placed competitors, including Amadeus, Datalex, Google/ITA, JR Technologies, OpenJaw and PROS. The Parties do not have unique capabilities which make them better placed to

secure future merchandising opportunities, and many other competitors are as well-placed, if not better placed, than Farelogix (and, even more so, Sabre) in this space. [X].

Services to facilitate indirect distribution of airline content

- 1.15 The CMA is considering whether there is a single product market for services that facilitate the indirect distribution of airline content (the frame of reference considered during the Phase 1 investigation). As set out in the Parties' Initial Submission,² GDS services and NDC API provision are not substitutes on the demand side and the conditions of competition affecting each of them are dramatically different. As such, the Parties do not accept this characterisation of the relevant product market.
- 1.16 The CMA defines Direct Connect to include all non-GDS forms of distributing content within the indirect channel, but specifically excludes the direct channel i.e. airline.com. In doing so the CMA implies that Direct Connect is in some way a distinct product from NDC APIs more generally. This is incorrect and ignores the fundamental characteristics of the APIs provided to airlines by Farelogix and other IT providers. These APIs are the same product regardless of the way they are deployed. Supply-side substitutability between these channels in terms of the use of NDC APIs is absolute and it is entirely artificial and arbitrary for the CMA to exclude the direct channel from the relevant product market when the products of Farelogix and its competitors do not, and cannot, make such a distinction.
- 1.17 Furthermore, even on the CMA's approach there is a negligible competitive overlap between the Parties in indirect distribution. The share attributable to Direct Connect providers overall is negligible (estimated to only be 3%) and Farelogix has a share of supply of below [X]% on any metric (and [X]% with respect to UK-based airlines). The Issues Statement and the Phase 1 Decision give inadequate weight to the fact that Farelogix's share in the market defined by the CMA is negligible and has been so for a long period of time. The CMA cannot simply ignore these market shares. Industry expert, Atmosphere Research Group ("**Atmosphere**"), predicts that this will not change over any foreseeable time period.³ Atmosphere concludes that Direct Connect links will not exceed 3-4% of bookings over the next five years. As previously explained, travel agencies do not regard Direct Connect links as a substitute for the essential business tools provided by the GDS.⁴ Atmosphere notes also that airlines will want to deploy NDC-enabled content through all channels, of which the GDS will be the most important indirect channel (via GDS pass-through). This is the only way in which IATA Leaderboard⁵ airlines will meet their stated goals of 20% NDC by 2020.

² Parties' Initial Submission, para. 5.1 *et seq.*

³ Atmosphere Research Group, Expert Statement, dated [31] October 2019 ("Atmosphere Research Report"), enclosed at Annex 1, para. 6 ("*Atmosphere considers GDS pass-through will be essential for airlines to meet their highly ambitious target of selling 20% of NDC enabled content by 2020*").

⁴ Parties' Initial Submission, para. 5.2 *et seq.*

⁵ IATA has invited airlines with strong aspirations to grow their NDC volumes rapidly to join a group called the "Leaderboard". These airlines each have an individual goal that will consist of having at least 20% of their sales powered by an NDC API (see further, <https://www.iata.org/whatwedo/airline-distribution/ndc/Pages/default.aspx>).

- 1.18 Moreover, there are a large number of other options for airlines seeking the functionality which FLX OC provides. Firstly, airlines have the option of building their own in-house technology solutions and many have done so. Secondly, Farelogix is by no means unique and competes against many other suppliers such as [X]. Farelogix's latest bidding data demonstrates that Farelogix won only [X]% of the FLX OC opportunities that it bid for between 2015 and 2019. The same bidding data also demonstrates that it has lost recent bids to [X] and airline self-supply.
- 1.19 It is also clear from a review of the Parties' internal documents and the associated data that Farelogix's NDC API and Direct Connect more generally are not used as leverage in airline negotiations with Sabre to any significant degree. Rather, the airlines' competitive leverage overwhelmingly comes from the other GDSs and from [X].
- 1.20 Furthermore, the evidence shows that there is no realistic prospect of Farelogix disintermediating GDSs to any significant degree and that disintermediation is not a viable strategy. Both the market data and Farelogix's internal documents show that FLX OC has only been able to achieve [X] (with close to [X] share on any plausible basis) and that Farelogix's [X].
- 1.21 Industry participants have also come to recognise that NDC APIs of the sort built by Farelogix work better in connection with GDSs (GDS "pass-through" solutions), rather than by "by-passing" the GDS. These pass-through solutions are where 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.
- 1.22 Finally, Farelogix is not a key innovator or disruptor in the market, and the CMA's investigation to date has placed undue weight upon this theory, largely based on a small number of references taken out of context from out-of-date internal documents. To the extent that Farelogix ever was a key innovator or disruptor, this is no longer the case. Farelogix [X]. Farelogix is no longer at the forefront of NDC development and faces a number of equally strong competitors, as is clear from an analysis of the Parties' internal documents, the views of industry experts,⁶ and IATA statistics regarding NDC certifications. There are now over 60 Level 3 and 4 IATA certified IT providers and aggregators. Whatever its position may have been in the past, Farelogix is now being overtaken by multiple other players on certain aspects of its product offering. For instance, Farelogix is still using a 2017 version of the NDC schema while Amadeus, Datalex, JR Technologies and TPConnects have all moved on to updated versions.
- 1.23 As previously submitted,⁷ the Transaction is firmly pro-competitive and ultimately beneficial for travellers. Travel agents, whose interests are most likely to align with the consumers whose welfare the CMA ought to protect, are clear in their feedback that NDC APIs and Direct Connect are not an effective substitute for GDSs. To the extent that any airline may express support for Direct Connect, the CMA must be alert to the possibility

⁶ Atmosphere Research Report, enclosed at Annex 1, para. 72-78.

⁷ Parties' Initial Submission, para. 5.40(ii) and (iii).

that this is because incumbent airlines would benefit from a reduction in transparent, comparison shopping.

No “killer acquisition” theory of harm

- 1.24 Finally, this Transaction is not on any conceivable basis a “killer acquisition.” There is no credible evidence to support such a theory of harm. The Transaction poses no harm to potential competition or innovation competition. Market participants recognise that Direct Connect is not a viable alternative to GDSs, and that Farelogix is primarily a complement as an IT solutions provider and not a potential substitute to the GDSs. Farelogix’s inability to be an effective substitute to the GDSs is further confirmed by Farelogix’s [§<] and the Parties’ internal documents ([§<]). Farelogix is only one of many providers who have built an NDC API to facilitate Direct Connect, and other competitors are innovating and developing their offerings much faster than Farelogix.
- 1.25 Further, Sabre has publicly committed to continue to offer and support Farelogix NDC APIs and Direct Connect capabilities for airlines who wish to use them to connect to Sabre, other GDSs, other distribution partners, or directly to travel agents; and to continue to offer and support FLX M on a PSS-agnostic basis so airlines will have access to all of its features and capabilities regardless of whether the airline is a Sabre PSS customer.

Conclusion

- 1.26 The Transaction does not result in the creation of a relevant merger situation as the share of supply test is not met, and the approach to jurisdiction as summarised in the Issues Statement is wrong in law, arbitrary and irrational.
- 1.27 Without prejudice to the Parties’ submissions on jurisdiction, the Transaction is pro-competitive and will benefit consumers and the wider industry. The Transaction does not give rise to any unilateral effects concerns in either non-core PSS merchandising modules or in services to facilitate the indirect distribution of airline content. Nor does the Transaction raise any concerns on any type of “killer acquisition” theory of harm. The Transaction therefore will not give rise to an SLC.

2. JURISDICTION

Introduction

- 2.1 The Parties' Initial Submission details how the CMA's approach to jurisdiction and the application of the share of supply test in this case is wrong in law, arbitrary and irrational.
- 2.2 As set out in the Parties' Initial Submission at paragraphs 3.2 *et seq.*, a relevant merger situation, as defined in section 23 of the Enterprise Act 2002 (the "**Act**") only exists if the share of supply test is satisfied in respect of the supply of services and the condition in section 23(4) of the Act "*prevails or prevails to a greater extent*".⁸ Section 23(8) of the Act states that "*[t]he 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 word "*appropriate*", Parliament must have meant appropriate — having regard to the policy and objects of the Act — and not arbitrary.
- 2.3 Further, as previously described in the Parties' Initial Submission at paragraph 3.9 *et seq.*, the Phase 1 Decision⁹ collapses 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 an SLC in the UK, on the other. The Phase 1 Decision proceeds on the basis that, because there may be an alleged SLC, jurisdiction can be established. There is no basis under the Act for taking this approach,¹⁰ and indeed taking such an approach goes against the intention of Parliament. The Act strikes 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, by ensuring that there are sufficient "*connecting factors... 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.*"¹¹
- 2.4 This Response does not repeat in detail the Parties' previous arguments, as outlined in the Parties' Initial Submission, but contains further, new data that was not available at the time of the Phase 1 Decision or the Parties' Initial Submission to support the Parties' arguments. In particular, this submission demonstrates that:
- (i) The Phase 1 Decision's assertion of jurisdiction on the basis 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 airline, BA, is arbitrary and inappropriate, as further demonstrated by additional data which shows that the [X]. These numbers are also miniscule when compared to indirect bookings overall for BA (not exceeding a share of [X]%) — as a result, Farelogix's

⁸ S. 23(2A)(a) of the Act.

⁹ As demonstrated by the reasoning at para. 95 of the Phase 1 Decision.

¹⁰ *Akzo Nobel v Competition Commission* [2014] EWCA Civ 482 at [22], by reference to s. 86 of the 2002 Act.

¹¹ *Akzo Nobel v Competition Commission* [2014] EWCA Civ 482 at [26], by reference to s. 86 of the 2002 Act.

increment in terms of its indirect supply to BA in each year is almost non-existent. This underlines the arbitrary and unreasonable nature of the CMA's approach.

- (ii) The Phase 1 Decision's finding 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 in 2017 is arbitrary and unreasonable, particularly as when bookings for this set of destinations are looked at over a longer timeframe, the increment is almost non-existent and in many cases the combined shares fall below 25% (even applying the CMA's flawed approach to the calculations which have no rational basis given none of the services at issue are procured on a route-by-route basis).
- (iii) Even if it is accepted that the frame of reference adopted in the Phase 1 Decision for the supply of services to facilitate the indirect booking of airline tickets is correct, which the Parties do not accept, the manner in which the Phase 1 Decision has calculated each of the Party's shares of supply is flawed because the shares of supply have been calculated on the basis of a denominator that reflects only the number of bookings made, as opposed to the total number of instances of facilitation services provision in respect of such bookings (of which there are multiple, contrary to the denominator employed by the CMA). Once this error is corrected, the Parties' combined shares do not exceed 25% in any of the frames of reference identified by the CMA in its Phase 1 Decision.

Supply of services to British Airways

- 2.5 The suggestion 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 airline, BA, is wrong in law for the reasons set out in the Parties' Initial Submission at paragraphs 3.14 *et seq.*, and as summarised below.
- 2.6 Firstly, BA is not a customer of Farelogix, and [§<] does not create a customer relationship for the reasons outlined in the Parties' Initial Submission at paragraph 3.15. [§>].
- 2.7 Secondly, the CMA is not entitled to define the supply of services in this case by reference to a single customer — this is an entirely arbitrary and inappropriate definition. Section 23(8) of the Act requires that the criteria to be applied when determining the frame of reference for the supply of services are “*appropriate*”, and the CMA's Guidance recognises that the CMA must act “*reasonably*” in this respect.¹² It is clearly neither appropriate nor reasonable for the CMA to define the supply of services in this case by reference to a single customer. This has no meaningful relationship to how competition takes place because suppliers compete to supply all airlines with services that facilitate the indirect distribution of airline content. It is irrelevant for the definition of the supply of services that BA represents a substantial portion of UK bookings, or that its procurement decisions, as the UK flag carrier, may have a material impact on UK consumers.¹³ These observations do not bear on what constitutes an appropriate, reasonable set of services for the purposes of the Act. Put another way, if the CMA were considering a merger

¹² CMA2 Mergers: Guidance on the CMA's Jurisdiction and Procedure, para. 4.56.

¹³ See Parties' Initial Submission at para. 3.18, responding to the Phase 1 Decision at para. 110.

between two producers of socks, it could not claim jurisdiction by reference to sales made to an individual customer (even somebody who has a lot of socks), because this would not reflect, in any meaningful way, the overall market position and therefore would not constitute an appropriate or reasonable way to define the supply of services in that case. The CMA has no "*wider power to determine its statutory jurisdiction than is enjoyed by other administrative decision makers.*"¹⁴ This manufactured jurisdiction is one that falls outside the Act, and merits no judicial deference.

- 2.8 Thirdly, applying the share of supply test in this arbitrary and unreasonable manner is undesirable from a policy perspective because it renders the test unpredictable, 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*" (emphasis added).¹⁵
- 2.9 Nonetheless, even if it were correct that Farelogix supplies services to BA (which, for the reasons set out at paragraphs 3.16 – 3.22 in the Parties' Initial Submission, the Parties do not accept), it is clear that any increment is effectively non-existent, which highlights the arbitrary and unreasonable nature of asserting jurisdiction on this basis.
- 2.10 Following further investigation and data analysis, Farelogix has now been able to identify and further investigate the transaction-level data for [X] between 2015 and 2018. Between 2015 and 2018, [X] were negligibly small each year, [X].¹⁶ Farelogix's transaction-level data has identified only [X] worldwide in 2015, [X] in 2016, [X] in 2017 and [X] in 2018.¹⁷ These numbers are too small for Farelogix to justify tracking any payments which may technically be due to it under the agreement (although no such payments are currently made), but Farelogix estimates that, were Farelogix to demand payment for these "services", any such payments would amount to only [X] in 2018.
- 2.11 Moreover, these numbers are miniscule when compared to BA's overall indirect bookings. As can be seen from Table 2.1 below, the increment attributable to the use of Farelogix's technology *vis-à-vis* BA's indirect supply shares in 2018 is almost non-existent: [X]. It can also be seen from Table 2.1 below that this exceptionally small increment is not an outlier or an anomaly. Further, even the data below overstate Farelogix's share as the total purported market size for indirect distribution of airline content to BA does not include

¹⁴ *Société Coopérative de Production SeaFrance SA v the Competition and Markets Authority* [2015] UKSC 75, para. 31.

¹⁵ House of Commons Standing Committee B, Tuesday 30 April 2002, Hansard Record at Column 329 (emphasis added).

¹⁶ The Parties are providing this data to enable the CMA to examine the data in its full context, to illustrate this inappropriate and unreasonable basis for jurisdiction, without prejudice to the fact that the Parties do not accept that, under section 23 of the Act, the CMA is entitled to look back through data over several years to pick numbers from years other than the most recent in order to find that the 25% share of supply threshold is met.

¹⁷ [X] In any case, even if one were to include these bookings ([X]) in the estimates presented in Table 2.1, Farelogix's shares would remain trivial.

any other technology providers (or BA’s in-house provision of an NDC API to facilitate indirect distribution of airline content) that may be involved.

Table 2.1
Shares of supply of services to BA for indirect distribution of airline content

| Vendor | Bookings | | | | Shares (%) | | | |
|------------------------|----------|------|------|------|------------|------|------|------|
| | 2015 | 2016 | 2017 | 2018 | 2015 | 2016 | 2017 | 2018 |
| Sabre | [X] | [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| Farelogix | [X] | [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| Travelport | [X] | [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| Amadeus | [X] | [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| Total GDS + FLX | [X] | [X] | [X] | [X] | [X] | [X] | [X] | [X] |

Source: Farelogix data and MIDT data

Note: Total = Sabre + Amadeus + Travelport + Farelogix

2.12 While the Parties recognise that no set increment is required under the Act (where the share of supply test is applied to an appropriate reasonable set of services), the entirely *de minimis* nature of Farelogix’s supply within the CMA’s frame of reference underlines the arbitrary and inappropriate basis on which jurisdiction is being asserted, and how unreasonable it is to apply the share of supply test to supply of services to BA alone in the case of this Transaction.

Supply of services to UK travel agents

2.13 The approach to the application of the share of supply test to UK travel agents is also wrong in law, arbitrary and irrational for the reasons set out in the Parties’ Initial Submission at paragraphs 3.23 *et seq.*, and as summarised below.

2.14 Firstly, there is no “supply” of distribution services by Farelogix to travel agents because Farelogix’s customers are airlines and it is the airlines that have the customer relationship with the travel agents. Farelogix does occasionally provide certain limited ancillary technical support services on behalf of airlines for travel agents, but this does not amount to a supply of “indirect distribution services” to travel agents as it is limited to technical support and does not involve the provision of services to distribute airline content, and is therefore not relevant for the purposes of a share of supply calculation made on this basis.

2.15 Secondly, the focus in the Phase 1 Decision on flights to seven specific destinations bears no meaningful relation to how the service is provided or how competition takes place. Airlines and travel agents do not procure IT solutions, and GDS providers do not price their services on a destination-by-destination basis. There is therefore no meaningful

sense in which this can be a relevant services description or that competition between providers occurs in this way.

- 2.16 Thirdly, the share of supply calculations are very fragile and sensitive to small alterations in the methodology (as demonstrated by carrying out the same analysis using 2018 data, rather than 2017 data, which results in two of the destinations (Ireland and Hungary), which account for most of the relevant volume of bookings, falling below 25% even on the CMA's own methodology). This makes clear that the calculations cannot be considered as a reliable or meaningful basis on which to assert jurisdiction.
- 2.17 Finally, the approach to computing shares of supply for the 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 made by a travel agent may involve the use of multiple services/providers, creating a double-counting (or multiple-counting) issue (e.g. a booking made via a Farelogix 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).
- 2.18 The following two sub-sections focus on new, additional data and analysis that support the Parties' arguments, namely:
- (i) For flights to the seven destinations identified by the CMA in the Phase 1 Decision and referred to in the Issues Statement, when bookings for this set of destination countries are considered over the period 2015-2018, [redacted];
 - (ii) T2RL data shows that the proportion of indirect bookings through the indirect channel made through GDSs was higher in 2017 than in other years, meaning that the share of supply test would fail in at least some of the seven destinations in other years, and this also does not take into account increasing direct channel (airline.com) bookings; and
 - (iii) The CMA would have to treat as part of the share of supply every indirect distribution facilitation transaction. The CMA's calculations do not take into account in the denominator the multiple points at which services may be provided to facilitate a single booking, including EDIFACT services and non-NDC API provision. Applying two alternative conservative assumptions, that every indirect booking consists of two supply events or that only every GDS booking consists of two supply events, it is demonstrated that the Parties' share of supply will be no greater than half the size suggested in the Phase 1 Decision on either basis.

Share of supply test fails prior to 2017 even on the CMA's methodology for most of the seven destination countries

- 2.19 The fluctuating and negligible number of bookings for the seven destinations selected by the CMA — [redacted] — emphasise the improper nature of destinations as a relevant services description, which does not in any way provide a valid basis for establishing jurisdiction.

2.20 Firstly, as seen in Table 2.2 below, there is [redacted], and even positive increments are mostly [redacted].¹⁸ For instance, UK travel agents [redacted]. Similarly, [redacted].¹⁹ These trivial increments emphasise that the Phase 1 Decision’s approach to jurisdiction is arbitrary and unreasonable.

Table 2.2
Bookings of UK travel agents using Farelogix’s technology by the CMA’s destination countries (2015-18)

| Destination country | Bookings | | | |
|---------------------|------------|------------|------------|------------|
| | 2015 | 2016 | 2017 | 2018 |
| ISRAEL | [redacted] | [redacted] | [redacted] | [redacted] |
| IRELAND | [redacted] | [redacted] | [redacted] | [redacted] |
| HUNGARY | [redacted] | [redacted] | [redacted] | [redacted] |
| SWEDEN | [redacted] | [redacted] | [redacted] | [redacted] |
| LUXEMBOURG | [redacted] | [redacted] | [redacted] | [redacted] |
| PUERTO RICO | [redacted] | [redacted] | [redacted] | [redacted] |
| KAZAKHSTAN | [redacted] | [redacted] | [redacted] | [redacted] |

Source: Farelogix internal booking data

2.21 Secondly, while data on GDS bookings by destination before 2018 is not available,²⁰ and therefore shares cannot be estimated, the T2RL data submitted to the CMA in Sabre’s response to the CMA’s Section 109 Notice received on 3 September 2019 shows that the proportion of bookings in the indirect channel made through GDSs was higher in 2017 ([redacted]%) than in other years (this share was otherwise below [redacted]% since 2013).²¹ This, combined with the non-existent or minuscule Farelogix increment described in Table 2.2, implies a likelihood that the share of supply test would fail in at least some of the destinations highlighted by the CMA when focusing on years besides 2017. While

¹⁸ In the Phase 1 Decision, the CMA uses the Parties’ 2018 data, but a denominator based on 2017 data.

¹⁹ The Parties also note that the somewhat abrupt increase in bookings to the seven destinations in 2018 cannot be considered as evidence of an underlying global growth of Farelogix. Instead this is the simple consequences of two factors. Firstly, [redacted], whereas global bookings have remained essentially constant since 2016 – as reported in Sabre’s response to Question 43 of the CMA Section 109 Notice dated 3 September 2019. Secondly, [redacted]. Of these, for example, [redacted] were to Israel and [redacted] to Hungary. The increase in bookings to Ireland is instead due to bookings on Lufthansa’s flights.

²⁰ As reported in Sabre’s response to Question 43 of the CMA’s Section 109 Notice dated 3 September 2019, MIDT archives contain Origin & Destination data on bookings processed by the three global GDS providers only from August 2017 onwards.

²¹ [redacted]% in 2013, [redacted]% in 2014, [redacted]% in 2015, [redacted]% in 2016.

focussing this analysis on the bookings made through indirect channels to follow the approach of the CMA, Sabre notes that the share of the direct channel (airline.com) has increased over time.

- 2.22 Thirdly, none of the other 224 destinations for which reliable data is available satisfies the share of supply test in 2018.²² The fact that only a handful out of 224 destinations are identified as having shares above 25% even on the CMA's methodology illustrates the gerrymandered nature of this approach.
- 2.23 This further underlines the arbitrariness and unreasonableness of the attempt to claim jurisdiction in the Phase 1 Decision by reference to this limited sub-set of destinations.

The CMA's calculation of the denominator for the Parties' shares of supply is fundamentally flawed as it fails to take into account the fact that there are multiple instances of service provision in respect of each booking

- 2.24 Finally, the Parties consider that the manner in which the Phase 1 Decision has calculated each of the Party's shares of supply is flawed. If the (arbitrary) frame of reference employed in the Phase 1 Decision for the purposes of asserting jurisdiction — namely, services to facilitate indirect distribution of airline content to these specific destinations — is applied, it must logically include all services matching that description, rather than just the services provided by the Parties. For the sake of internal consistency, the CMA is therefore obliged to take account of both: (i) the full range of enterprises providing such services; and (ii) the fact that any individual booking is likely to involve multiple instances of the provision of such services, by various different service providers.
- 2.25 In relation to any given booking outside the direct channel, there are multiple points at which services may be provided to facilitate such a booking. These are not limited to the provision of GDS services (e.g. by Sabre) and NDC API (e.g. by Farelogix) but cover a wide range of other services, including the following:

- (i) EDIFACT services: as explained further at paragraph 2.30 below *et seq.* below, all airline bookings require a communications protocol in order to power the connectivity to transfer booking information (including to communicate any voluntary or involuntary changes to the booking after the fact) between the airline's host system and the GDS, OTA, travel agent or other recipient in question. Despite the emergence of NDC, the overwhelming majority of airline

²² The Parties note that the CMA's suggested methodology cannot be reasonably applied to Greece. According to the present methodology, the Parties would have a combined share of ~[<] when focusing on UK POS bookings on flights to Greek airports. [<]. The methodology currently adopted by the CMA to derive shares of supply in this cut assumes that Amadeus, Travelport, and Sabre would collectively account, on average, for [<] of the total bookings of an airline. In reality, in 2018, more than [<] of the two Greek airlines' bookings were processed using Farelogix's API alone. This is almost [<] times the proportion of bookings processed using Farelogix's API for its key customers, [<]. As a result, according to the present methodology, the share of other distribution service providers – i.e. other DC providers, Tour Operators, and local GDSs – amounts to a nonsensical negative [<]%. The Parties are unable to provide an alternative estimate of the total market size in terms of bookings on flights involving Greek airports, underlining the arbitrary and unreasonable nature of the CMA's frame of reference. They note that the average share of other distribution service providers is instead [<]%.

bookings are still dependent on EDIFACT services (such that it is impossible for an EDIFACT ticket to be sold without them) provided by IATA.

- (ii) Non-NDC API provision: as the NDC messaging standard has only been adopted relatively recently, there are many circumstances in which the connection between an airline's PSS and a downstream distributor relies on a non-NDC API (often a pre-NDC API), that may have been developed by the airline itself or supplied by another technology provider. Where this is the case, the ability to make an airline booking will be dependent on both the provision of the non-NDC API and the supply of EDIFACT services.
- (iii) NDC Exchange: ATPCO has recently launched its NDC Exchange product, which essentially enables airlines to deliver NDC content to multiple downstream users by connecting their existing APIs (whether NDC or non-NDC) to NDC Exchange. ATPCO describes NDC Exchange as "*a cloud-based, infinitely scalable solution with real-time message translation – regardless of API, schema or version*", with the benefit that "*products get to market faster when you don't have to develop and maintain multiple APIs or wait for your tech partners' release schedule*", "*development and maintenance costs, including labor, hardware, and IT vendor expenses are substantially reduced*", and as a one-stop shop where "*everything is in one place: fares, routes, seats, booking, ticketing, baggage, ancillaries, and now Routehappy rich content*".²³
- (iv) Downstream Technology Providers: for non-GDS airline bookings made through any form of API, there will typically be a downstream technology provider such as an online travel agency ("**OTA**") (e.g. Expedia) or other aggregators providing "GDS" services (e.g. Travelfusion, Duffel, Expedia's web service or Expedia's Egencia corporate travel platform). Certain providers, such as metasearch engines, carry out a further layer of aggregation allowing travellers to compare prices across multiple aggregated sources.²⁴
- (v) Other IT Providers: where a downstream technology provider (such as an OTA, non-GDS aggregator, etc.) operates through a website or other technology platform, there will be various aspects of its technological offering that it may have provided itself but equally may have procured from one or more other IT providers. For example, the graphical user interface ("**GUI**"), search functionality and aggregation technology – all of which seek to replicate the corresponding features of a GDS offering (albeit often to a far more limited extent, including in terms of the range of underlying content) – may all be created through services provided by an external IT provider, rather than by the enterprise operating through the website or platform in question.

2.26 As the providers in each of the categories referred to in parts (i) to (v) above provide services that facilitate the indirect distribution of airline content, the CMA is obliged to take

²³ See further <https://www.atpco.net/ndc-exchange> (accessed on 30/10/2019).

²⁴ For example, we understand that InterRES, in addition to providing NDC APIs to airlines also offers travel agents a product called Mercado that aggregates content from a number of third-party sources including GDSs, OTAs and direct connects (both NDC enabled and otherwise).

proper account of them in calculating the Parties' shares of supply of services for the purposes of section 23 of the Act. It is arbitrary and artificial to include services provided by the Parties and not to include other indirect distribution services. Any calculation that is based on a denominator reflecting only the number of airline bookings – rather than the total number of instances of service provision in respect of such bookings – is therefore clearly incorrect and will result in a significant overstatement of the shares of supply in question.

- 2.27 For example, in GDS pass-through, if an airline made bookings through the Sabre GDS, and for all such bookings the airline connected to the Sabre GDS via an NDC API enabled by Farelogix, then the approach adopted in the Phase 1 Decision would mean that each of Sabre and Farelogix would have a share of supply of 100%, and the Parties' combined share of supply would be 200%. Similarly, any booking through the Sabre GDS uses fare data distributed from ATPCO and the same booking can also make use of EDIFACT messaging services, meaning that each of these bookings through the Sabre GDS is using at least two other services, whereas under the current approach in the Phase 1 Decision Sabre would have a share of supply of 100% of that booking. That is clearly an unreasonable and irrational outcome.
- 2.28 While it may be challenging in practice to identify the precise number of services provided in relation to all indirect airline bookings, it should be apparent that, in the overwhelming majority of cases, there will be at least two (if not three or more) distinct services. For this reason, the Parties consider that — even on the most conservative basis — the size of each of the frames of reference that must be adopted for the purposes of section 23 of the Act will be at least twice that which was applied in the Phase 1 Decision.
- 2.29 Even without including the other categories of services referred to in paragraph 2.26 above, the justification for a total volume of services within the frame of reference that is at least twice the total number of airline bookings can be demonstrated simply by considering the role of EDIFACT services and the extent of ATPCO's presence.
- 2.30 Like NDC, EDIFACT is a standardised message protocol provided by IATA. Unlike NDC, which is a relatively new standard and is not currently being used to process any significant booking volumes, EDIFACT has been the default messaging system for airlines for a number of decades and continues to account for the overwhelming majority of airline ticket sales.
- 2.31 Airlines file their fares with ATPCO, typically using a web GUI provided by ATPCO, and ATPCO then distributes the fares at defined intervals to so called "*system subscribers*" via FTP in a proprietary ATPCO data format. Such "*system subscribers*" include (but are by no means limited to) GDSs. A GDS such as Sabre receives the ATPCO fares at defined intervals and uses this information to update its fare offerings.
- 2.32 In contrast to Farelogix, whose only customers are airlines, ATPCO lists both airlines (427 of them) and content distributors on its customer list and markets subscriptions for its distribution products claiming that they "*collect our flagship pricing data direct from airlines and distribute it to you in the formats you want*" including "*everything you need for pricing*

*displays in GDSs, offer management systems, booking engines, metasearch sites, advertising, TMCs, OTAs and other channels”.*²⁵

- 2.33 There can be no doubt that ATPCO provides services to travel agents and other downstream distributors, as is evident from the customer page of its website, which specifically references travel agencies, OTAs, metasearch engines and TMCs and calls out customers including STA Travel, Skyscanner, Expedia, Dnata, CTM, BCD, Amex Global, Carlson Wagonlit and Concur.²⁶
- 2.34 Whilst many players in the airline industry aim to move away from EDIFACT, and are doing so for distribution through the direct channel, EDIFACT remains the ubiquitous messaging language, including alongside NDC APIs, for the indirect channel.²⁷ In that context, it is important to note that EDIFACT continues to predominate to a significant extent, with over [X]% of GDS transactions involving ATPCO. Nonetheless, ATPCO has itself responded to the changing market dynamics and IATA’s push for broader NDC implementation by creating its NDC Exchange to connect airlines to travel outlets.
- 2.35 Whilst EDIFACT may be an older and more rudimentary means of facilitating the distribution of airline content than an NDC API (or other more modern XML based APIs), it nonetheless remains essential to the overwhelming majority of airline bookings. Further, in its own words, ATPCO’s fare “*data is the bedrock of the industry*”.²⁸ It follows that there is no tenable basis upon which ATPCO or EDIFACT services, could be excluded from any frame of reference for services that facilitate the indirect distribution of airline content.
- 2.36 Accordingly, taking proper account of the points raised above and applying two alternative (conservative) assumptions to the total number of bookings so as to resolve the inconsistencies between the CMA’s frame of reference and its calculations of share of supply, it becomes apparent that the Parties’ share of supply will be no greater than half the size suggested in the Phase 1 Decision on either basis. The two alternative assumptions are as follows, with the results set out in Tables 2.3 and 2.4 below:
- (i) Every indirect booking consists of two supply events; or
 - (ii) Only every GDS booking consist of two supply events.²⁹

²⁵ See further <https://www.atpco.net/airfare-data> (accessed on 30/10/2019).

²⁶ See further <https://www.atpco.net/customers> (accessed on 30/10/2019).

²⁷ It is anticipated that NDC will ultimately replace EDIFACT in the indirect channel as well but this requires further development of the NDC Schemas to ensure complete functionality can be achieved via NDC messaging protocols.

²⁸ See further <https://www.atpco.net/airline-global-distribution-system> (accessed on 30/10/2019).

²⁹ Excluding regional GDSs, based on T2RL data 2018. Sabre notes that [X]% of GDS transactions involve ATPCO so this assumption is likely to be conservative.

Table 2.3
Shares of supply for each of CMA's seven destinations assuming every indirect booking consists of two supply events

| Destination Country | Sabre share | Farelogix share | Combined share | Total Indirect Bookings |
|----------------------------|--------------------|------------------------|-----------------------|--------------------------------|
| PUERTO RICO | [X] | [X] | [X] | [X] |
| LUXEMBOURG | [X] | [X] | [X] | [X] |
| KAZAKHSTAN | [X] | [X] | [X] | [X] |
| SWEDEN | [X] | [X] | [X] | [X] |
| ISRAEL | [X] | [X] | [X] | [X] |
| HUNGARY | [X] | [X] | [X] | [X] |
| IRELAND | [X] | [X] | [X] | [X] |

Sources: Farelogix and Sabre internal data.

Table 2.4
Shares of supply for each of CMA's seven destinations assuming every GDS booking consists of two supply events

| Destination Country | Sabre share | Farelogix share | Combined share | Total Indirect Bookings |
|----------------------------|--------------------|------------------------|-----------------------|--------------------------------|
| PUERTO RICO | [X] | [X] | [X] | [X] |
| LUXEMBOURG | [X] | [X] | [X] | [X] |
| KAZAKHSTAN | [X] | [X] | [X] | [X] |
| SWEDEN | [X] | [X] | [X] | [X] |
| ISRAEL | [X] | [X] | [X] | [X] |
| HUNGARY | [X] | [X] | [X] | [X] |
| IRELAND | [X] | [X] | [X] | [X] |

Sources: Farelogix and Sabre internal data.

2.37 Accordingly, the share of supply test cannot be satisfied as the Parties' combined share of supply would be no greater than [X] suggested in the Phase 1 Decision and in each case would be less than 25%.³⁰

³⁰ This applies equally to either of the frames of reference upon which the CMA seeks to assert jurisdiction in the Phase 1 Decision.

3. COUNTERFACTUAL

3.1 The CMA states that, in making its assessment, it shall decide upon the appropriate counterfactual situation based on the facts available and the extent to which events or circumstances and their consequences are foreseeable.³¹ The Parties have provided strong evidence that the prevailing situation, absent the Transaction, is [X].

Sabre faces considerable difficulties in developing its NDC and merchandising capabilities

3.2 As outlined in the Parties' Initial Submission at paragraphs 4.5 and 5.10-5.18, absent the Transaction [X].

3.3 As outlined in the Parties' Initial Submission at paragraphs 5.10 – 5.18 and 5.42, [X]:

- (i) [X]. For example, an internal update deck dated April 2018 explains that [X]³² [X]³³
- (ii) [X] [X]³⁴ are continuing to engage in their own development efforts (see paragraph 3.13 below)— [X].

3.4 [X]:

- (i) [X],³⁵ [X].³⁶
- (ii) [X]. Sabre estimates that it would take [X], to organically develop a PSS-agnostic merchandising module comparable to the industry-leading solutions and which is ready for commercial retailing. [X].
- (iii) 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, [X]. The Phase 1 Decision finds that Sabre would continue “to pursue growth strategies”³⁷, and that Sabre

³¹ Issues Statement, para. 42.

³² Exhibit 6 to the [X] deposition transcript dated 9 May 2019, provided at Attachment C.75 to the Merger Notice, p.3.

³³ Exhibit 5 to the [X] deposition transcript dated 9 May 2019, provided at Attachment C.73 to the Merger Notice, p.12.

³⁴ Atmosphere Research Report, enclosed at Annex 1, notes: Sabre's [X] (para. 90, 103-4).

³⁵ Letter from Sabre to the DOJ dated 17 June 2019, provided at Attachment B.118 to the Merger Notice.

³⁶ Atmosphere Research Report, enclosed at Annex 1, details the infrastructure challenges faced by Sabre and it notes that [X] (para. 106)

³⁷ Phase 1 Decision, para. 159.

“foresees the launch of a basic NDC API within the foreseeable future”;³⁸ however, the Phase 1 Decision fails to take account of the fact that, [REDACTED] “[REDACTED]”.³⁹

(iv) With regard to NDC, [REDACTED].⁴⁰ [REDACTED].⁴¹ [REDACTED].

Farelogix is facing [REDACTED]

3.5 As explained in greater detail in Annex 2 and in the [REDACTED] [REDACTED]

3.6 [REDACTED]

(i) [REDACTED]

(a) [REDACTED].⁴³

(b) [REDACTED]⁴⁴ [REDACTED]⁴⁵ [REDACTED]⁴⁶

(c) [REDACTED]⁴⁷

(ii) [REDACTED].

(a) [REDACTED].⁴⁸ [REDACTED].⁴⁹ [REDACTED].⁵⁰

³⁸ Phase 1 Decision, para. 152.

³⁹ [REDACTED].

⁴⁰ See generally [REDACTED] (provided at Attachment B.119 to the Merger Notice).

⁴¹ For example, [REDACTED]

⁴² Letter from Farelogix to the DOJ dated 24 April 2019, provided at Annex 5 of the Merger Notice.

⁴³ Attachment B.14 to the Merger Notice.

⁴⁴ Attachment B.8 to the Merger Notice.

⁴⁵ [REDACTED]

⁴⁶ [REDACTED]

⁴⁷ [REDACTED].

⁴⁸ See, e.g. [REDACTED] (Attachment B.95 to the Merger Notice); and [REDACTED] (Attachment B.16 to the Merger Notice, p. 3; Attachment B.60 to the Merger Notice, p. 2).

⁴⁹ Attachment B.60 to the Merger Notice, p. 2.

⁵⁰ [REDACTED].

(b) [REDACTED]⁵¹[REDACTED] ⁵² [REDACTED]

(c) [REDACTED]⁵³

3.7 [REDACTED]

(i) [REDACTED] ⁵⁴

(ii) [REDACTED].⁵⁵

(iii) [REDACTED] ⁵⁶

3.8 [REDACTED]

3.9 [REDACTED].

3.10 [REDACTED]. As explained further in Annex 4, Farelogix [REDACTED]:

(i) [REDACTED]⁵⁸

(ii) [REDACTED]

(iii) [REDACTED]⁵⁹

3.11 [REDACTED]

3.12 [REDACTED]

⁵¹ Attachment B.54 to the Merger Notice, p. 2; Attachment B.59 to the Merger Notice, p. 2; Attachment B.60 to the Merger Notice, p. 2; Attachment B.61 to the Merger Notice, p. 2.

⁵² Attachment B.54 to the Merger Notice, pp. 1-2

⁵³ Attachment B.20 to the Merger Notice. See also Attachments B.13 and B.21 to the Merger Notice.

⁵⁴ Merger Notice, para. 18.17.

⁵⁵ [REDACTED].

⁵⁶ [REDACTED].

⁵⁷ Attachment B.112 to the Merger Notice: letter from Farelogix to the DOJ dated 6 June 2019.

⁵⁸ See Sandler's response to Question 13 of the CMA's Section 109 Notice dated 12 September 2019 and Sandler's response to the CMA's information request dated 14 October 2019.

⁵⁹ See Sandler's response to the CMA's information request dated 14 October 2019.

⁶⁰ See Sandler's response to Question 13 of the CMA's Section 109 Notice dated 12 September 2019 and Sandler's response to the CMA's information request dated 14 October 2019.

The Parties' competitors are actively innovating in both merchandising and indirect distribution

3.13 Whilst the Parties [REDACTED], their competitors are driving forward innovation (and thereby increasing customer expectations) in both merchandising and indirect distribution.⁶¹ This industry is rapidly evolving, and the evidence shows that players such as Amadeus, APTCO, Atrii Technologies, Google/ITA, IBS, NDC Exchange, PROS, Travelport and Travelsky/OpenJaw already have numerous initiatives in place (both within and outside of NDC) to advance their solutions in the coming months and years. For example:

(i) Amadeus reported on 23 October 2018 that: *"Looking to 2019 and beyond...we will be looking to enhance servicing capabilities for agencies in order to enable true industrialization of NDC, including gaining the ability to change tickets, add ancillaries after booking, handling various different payment options, etc."*⁶²

(ii)

[REDACTED]

(iii)

⁶¹ See Atmosphere Research Report, enclosed at Annex 1, which notes that Amadeus in particular has been "*much quicker to adapt to meet the airlines' evolving requirements and expectations*" and has already attained IATA NDC Level 4 certification, ahead of Sabre. Similarly, Travelport issued its first NDC-compliant booking through a travel agency in October 2018, and Sabre continues to face competition from the ATPCO-SITA NDC Exchange, which more than 70 other airlines have committed to join (para. 104-6).

⁶² Amadeus blog post titled, "How Amadeus is leading the way in the future of travel", available at <http://www.amadeus.com/nablog/2018/10/amadeus-leading-way-future-business-travel-americas/business-travel> (accessed on 28/10/2019).

⁶³ See further <https://www.atpco.net/ndc-exchange> (accessed on 30/10/2019).

⁶⁴ <https://skift.com/2018/08/24/air-canada-begins-using-a-new-way-to-distribute-fares-to-partners/> (accessed on 1.11.19)

⁶⁵ See further <https://www.sita.aero/pressroom/news-releases/southwest-airlines-joins-ndc-exchange> (accessed on 30/10/2019).

⁶⁶ Farelogix site visit presentation, p. 10.

⁶⁷ Skift article titled, "Southwest Joins NDC Exchange for More Efficient Airline Booking", available at <https://skift.com/2019/07/17/southwest-joins-ndc-exchange-for-more-efficient-airline-booking/> (accessed on 20/10/2019).

(iv) On 22 May 2019, TravelSky and Tata Consultancy Services (TCS) announced

(v) Atriiis Technologies and travel agency group Lufthansa City Center (LCC) announced a pilot operation of a new NDC , “LUCY”, on 21 October 2019 for Singapore Airlines content. The multi-provider platform integrates and consolidates data of traditional GDS providers such as Amadeus, Sabre and Travelport through cutting-edge technology.⁶⁹

3.14 Annex 5 provides examples of ongoing and upcoming initiatives by the Parties’ competitors in both merchandising and indirect distribution. As shown in the Annex, several players are actively innovating in these areas. Amadeus increased its R&D spend to USD 896.4 million in 2018, and Travelport invested over USD 1.5 billion in technology over the past five years.⁷⁰ Even smaller competitors in many instances sit within large corporate technology companies such as PROS/Vayant, Google/ITA, HP (DXC) and SAP and benefit from their investment and technological prowess. Absent the Transaction, therefore, the Parties submit that other players will be significantly better placed to compete for future business.

Conclusion

3.15 The CMA thus mischaracterises the prevailing competitive conditions in the Issues Statement (paragraph 40 *et seq.*) both by overestimating the Parties’ current and future development capabilities, and by neglecting the innovative potential of an ever-increasing number of competitors.

⁶⁸ Quick Passenger Retailing System article titled, “TCS Develops Inter-System Adaptor for TravelSky’s QUICK Passenger Retailing System under partnership for Digital Transformation & Globalization”, available at <https://www.quickprs.com/news.pdf> (accessed on 28/10/2019).

⁶⁹ See further <https://www.lucytravel.com.au/about-lucy> (accessed on 30/10/2019).

⁷⁰ For Amadeus, see further <https://corporate.amadeus.com/documents/en/resources/corporate-information/corporate-documents/global-reports/2018/amadeus-global-report-2018.pdf> (accessed on 30/10/2019); For Travelport, see further <http://app.quotemedia.com/data/downloadFiling?webmasterId=101533&ref=12729399&type=PDF&symbol=TVPT&companyName=Travelport+Worldwide+Limited&formType=10-K&dateFiled=2019-02-22&cik=0001424755> (accessed on 30/10/2019).

4. NON-CORE PSS MERCHANDISING MODULES

Market definition

- 4.1 The Parties agree that the appropriate market definition is the supply of non-core PSS merchandising modules on a worldwide basis. Care is required, however, in distinguishing between the different elements of the merchandising offer: Farelogix has no presence or expertise in providing “fulfilment” and so any overlap is restricted only to services which assist with the generation and pricing of airline ancillaries and not other elements of the merchandising and retailing “stack”.

The Parties are not close competitors in merchandising

- 4.2 Sabre has two merchandising modules, Ancillary Services and Dynamic Retailer. The former is more focussed on fulfilment aspects where Farelogix is not present and, for technical reasons, Sabre’s core PSS customers cannot procure the Ancillary Services functionality from other suppliers and nor can Ancillary Services be used alongside any core PSS other than Sabre’s. This is because there is an interconnection between the retailing component of creating an ancillary and the fulfilment component of the ancillary (i.e. ticketing and check-in) which are handled by the core PSS. Given the way this integration works within Ancillary Services, there is no potential for separate competition in respect of Ancillary Services outside of the core PSS award. Sabre core PSS customers cannot use FLX M to replace the fulfilment functionality provided by Sabre’s Ancillary Services, and customers of FLX M using another core PSS cannot procure Ancillary Services.
- 4.3 The question of whether the Parties compete in the supply of merchandising modules therefore only arises in relation to Sabre’s Dynamic Retailer product and Farelogix’s FLX M, and it is clear that there is no meaningful competition between these products. The lack of significant competitive interaction between Dynamic Retailer and FLX M is evident from the (i) negligible increment in share of supply; (ii) [X] (and by extension the limited overlap in functionality of the Parties’ relevant products); and (iii) absence of competition in bidding opportunities.

Shares of supply demonstrate minimal overlap

- 4.4 Dynamic Retailer is not “PSS agnostic”: it can only be used in conjunction with Sabre’s core PSS. Competition with FLX M can therefore only occur in respect of the [X] number of airlines that subscribe to Sabre’s core PSS—Sabre’s core PSS share is [X]% by PBs globally ([X]% in the UK). This means that Sabre cannot compete in [X] %+ of the market for merchandising modules globally, and [X]. Sabre’s share of supply in merchandising is therefore [X], and the increment brought about by the Transaction to Farelogix’s already modest share of [X] % by PBs globally is negligible:
- (i) Dynamic Retailer accounted for just [X] % by PBs globally (and [X] % in the UK) when excluding in-house solutions in 2018. The Parties therefore have a combined share of only [X] %. Annex 6 provides the Parties’ and their competitors’ shares of supply in merchandising, and sets out the calculation

methodology. Please note that these are updated shares compared to those referred to in the Parties' Initial Submission, reflecting newly available data.⁷¹

- (ii) [redacted]⁷²
- (iii) If one focusses on the UK, there is no overlap at all—[redacted], and the market leader is Amadeus with a [redacted]% share.

4.5 Sabre notes that the merchandising market shares submitted at Phase 1, which showed Sabre as being a [redacted] in merchandising, were nevertheless still overly conservative because they categorised an airline as a Sabre merchandising customer if that airline made use of *any* products or services falling under Sabre's "retail platform" suite. If one instead (correctly) focusses only on Dynamic Retailer (the only constituent product which could conceivably compete with FLX M) the shares are much lower—[redacted]% by PBs globally when excluding in-house solutions in 2018.

The Parties' products differ significantly in terms of functionality

4.6 Significant functionality differences between FLX M and Dynamic Retailer limit the extent to which the products can compete. As the CMA acknowledges in the Issues Statement, Farelogix's merchandising product is "best-in-class".⁷³ [redacted]⁷⁴ [redacted]⁷⁵ [redacted]⁷⁶[redacted]⁷⁷ [redacted]

4.7 [redacted]

- (i) [redacted]
- (ii) [redacted]
- (iii) [redacted]
- (iv) [redacted]
- (v) [redacted]
- (vi) [redacted]
- (vii) [redacted]

⁷¹ See Sabre's response to the CMA's requests for information dated 22 and 25 October 2019.

⁷² [redacted]

⁷³ Issues Statement, para. 52(b)(i).

⁷⁴ [redacted]

⁷⁵ *Ibid.*

⁷⁶ [redacted]

⁷⁷ [redacted].

(viii) [REDACTED].⁷⁸

4.8 [REDACTED]⁷⁹

4.9 Sabre's Dynamic Retailer product is [REDACTED], which is NDC-compatible and capable of creating offers across multiple channels. As explained in paragraph 3.4(i)-(ii) above, Sabre estimates that it would take [REDACTED], to organically develop a PSS-agnostic merchandising module comparable to the industry-leading solutions. [REDACTED]. This is consistent with Farelogix's internal documents from early 2018 which explain that, [REDACTED].⁸⁰

Bidding data confirms minimal competitive interaction

4.10 The Parties' bidding data also provides powerful evidence of the absence of any meaningful competitive interaction between them in merchandising.

4.11 For the purposes of analysing the Parties' bidding data, airlines can usefully be grouped into three categories depending on the circumstances in which they are making their procurement decision. As shown below, there is no substantial loss of competition in any category:

(i) Firstly, there are airlines that use a core PSS other than Sabre's (accounting for over [REDACTED]% of global PBs in 2017). Because Dynamic Retailer is not "PSS agnostic", Sabre cannot compete directly for such customers. It can only provide them with merchandising if it convinces them to also switch their core PSS. These airlines account for the vast majority of airline opportunities competed for by Farelogix—approximately [REDACTED]%.
By contrast, [REDACTED].

(ii) Secondly, there are airlines that choose to procure merchandising solutions alongside their core PSS. Farelogix cannot effectively compete for these airlines because it has no core PSS offering. Airlines in this category (which account for [REDACTED]% of Sabre opportunities) generally choose between core PSS suppliers, [REDACTED] is by far the most likely rival to bid for and win such opportunities (competing for [REDACTED]% of all opportunities and winning [REDACTED] of those that have been concluded).
By contrast, [REDACTED].

(iii) Thirdly, there are airlines that choose to "mix and match" merchandising providers to produce a "best in breed" solution. [REDACTED]⁸¹ Airlines who look to procure merchandising separately from their core PSS are likely to be driven by a desire to pair their preferred core PSS with the optimal merchandising solution, and are therefore unlikely to be interested in Dynamic Retailer.

⁷⁸ See, e.g., Sabre document 4(c)-3, provided at Attachment N.3 to of the Merger Notice: [REDACTED]

⁷⁹ [REDACTED].

⁸⁰ Farelogix 4(c)(4) submissions provided to the CMA at Attachment N-24 of the Merger Notice and Annex 15.06 to Tranche 1 of Farelogix's response to the CMA Section 109 Notice dated 10 September 2019, [REDACTED]

⁸¹ [REDACTED].

- 4.12 Whether an airline procures its merchandising solution alongside its core PSS or mixes and matches is partly a function of size. Larger airlines have the incentive and IT sophistication to mix and match their core and non-core PSS modules. These airlines will want a best of breed solution. Smaller airlines are less likely to be willing to incur the fixed costs of mixing and matching and may lack the technical wherewithal to support this approach. These airlines are more likely to default to the merchandising solution that is offered by their core PSS provider.
- 4.13 Figure 4.1 below provides a visual representation of the three categories of airline customers described in paragraph 4.11 above and the very limited competitive overlap between the Parties in relation to each category. [X]

Figure 4.1
[X]

Source: Based on the Sabre and Farelogix's bidding data.

As shown in Figure 4.1, Farelogix recorded [X] FLX M opportunities for the period 2014-2019, and Sabre recorded [X] Broad Opportunities (opportunities which included the core PSS as well as Dynamic Retailer) and [X] Narrow Opportunities (opportunities for Dynamic Retailer on a more standalone basis) for the period since 2016. Only a very limited number of overlapping opportunities have been identified: [X] Broad Opportunities and [X] Sabre Narrow Opportunities were identified in Farelogix's merchandising dataset (making up [X] of Sabre opportunities; and [X] of Farelogix opportunities overall). The Parties' opportunity datasets and the methodology used to match up their entries are described in Annex 8.

- 4.14 The following paragraphs provide further in-depth analysis of the Parties' merchandising bidding data to show that (i) Farelogix is not a significant competitive constraint on Sabre for Broad Opportunities; (ii) Sabre is not a significant competitive constraint on Farelogix owing to its inability to win Narrow Opportunities; and (iii) the Parties' customers are highly differentiated by size.

Analysis of Sabre's bidding data

- 4.15 A close analysis of Sabre's bidding data demonstrates that Farelogix is not a significant competitive constraint on Sabre—the Parties typically bid for different types of merchandising opportunity. Integrating instances of Farelogix's bids and wins into Sabre's datasets for the [X] matched opportunities allows the following conclusions to be drawn.
- 4.16 Sabre's opportunities data shows that, in [X] of cases during the last three years, Sabre offered Dynamic Retailer as part of a Broad Opportunity for the core PSS. As above, [X] of Sabre's [X] opportunities were Broad opportunities where airlines procured core PSS and merchandising together. Because Farelogix has no core PSS offering it cannot compete for airlines with a strong preference to procure merchandising modules alongside their core PSS.
- 4.17 The remaining [X] opportunities relate to Narrow Opportunities (a merchandising solution to be combined with an existing Sabre core PSS). The bidding data confirms that,

because Dynamic Retailer is not PSS agnostic, Sabre can only compete for Narrow Opportunities for merchandising arranged by existing Sabre core PSS customers.⁸²

- 4.18 According to Sabre's market intelligence, [X] is Sabre's primary competitor in respect of Broad Opportunities with [X]. This remains the case if one "updates" Sabre's market intelligence to reflect actual information from Farelogix on which tenders they bid for. This matching exercise introduced Farelogix as a bidder in [X] more instances⁸³, only [X].
- 4.19 Table 4.1 below lists bidders and winners of the [X] Broad Opportunities recorded by Sabre having made the update described above.⁸⁴
- 4.20 According to Sabre's market intelligence, [X] participated [X] of all Broad Opportunities and won [X] closed Broad Opportunities ([X] opportunities are still ongoing), overall winning [X] out of its [X] bids ([X]). By contrast, Sabre won [X] of the closed Broad Opportunities. This is consistent with Amadeus providing the leading PSS as well as effective merchandising solutions.
- 4.21 By comparison, Farelogix [X] for Broad Opportunities.⁸⁵ As one would expect, other competing bidders in Broad Opportunities included the [X].⁸⁶ While Farelogix [X]
- 4.22 Sabre's bidding data [X]

⁸² [X]

⁸³ Farelogix was added as a bidder for [X].

⁸⁴ Generally, airlines in tenders or negotiations do not refer to other competitor(s) as they are generally subject to non-disclosure agreements. This information is therefore based on market intelligence and may be imperfect. Nonetheless, it provides a good indication of the competitors Sabre has faced.

⁸⁵ [X]

⁸⁶ Farelogix (and other specialised merchandising providers) participated rarely in Broad Opportunities because it could only bid where an airline was also open to offers for standalone components. Even then, Farelogix was generally at a disadvantage as it is not able to offer a broader portfolio (i.e. FLX M alongside a core PSS).

Table 4.1
Bidders and winners for Sabre's Broad merchandising opportunities, 2016-2019

| Bidder | Bidding frequencies | | Winning frequencies | | |
|-------------------|---------------------|------------------------|---------------------|-------------|-----------------------------------|
| | # of opportunities | % of all opportunities | # of wins | % of wins | % of wins (excl. unknown winners) |
| [X] | [X] | [X] | [X] | [X] | [X] |
| Sabre | [X] | [X] | [X] | [X] | [X] |
| [X] ⁸⁷ | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] |
| Total * | [X] | 100% | [X] | 100% | 100% |

Source: CRA analysis of Sabre's opportunities dataset and Farelogix's bidding data.

Note: There are overall [X] Broad Opportunities, from which [X] are closed and [X] are still ongoing. As tenders include more than one competitor, the total does not equal the sum of the above bidding frequencies.

4.23 Turning to Narrow Opportunities (summarised in Table 4.2 below), Sabre recorded [X] Narrow Opportunities for merchandising in the last three years, of which [X] are closed.⁸⁸ Sabre won [X].⁸⁹

4.24 The [X] Narrow Opportunities Sabre won were with [X]:

- (i) [X] [X]

⁸⁷ [X].

⁸⁸ One more opportunity on [X] airline is still ongoing and was recorded in [X].

⁸⁹ To ensure consistency with Farelogix's own data for [X] matched opportunities, Farelogix was added as a bidder in [X] more instances ([X]) and as a winner in [X]

⁹⁰ [X]

(ii) [redacted]

- 4.25 Farelogix competed for a [redacted]. This is consistent with the proposition that FLX M represents a sophisticated option that is attractive for airlines seeking to mix and match their merchandising requirements (although it is clear that FLX M is one of several such options). Further, it remains the case that Sabre’s Dynamic Retailer performs poorly in competing for such opportunities: [redacted]. In addition, Sabre regularly faced [redacted] ([redacted]) and [redacted].
- 4.26 Sabre’s market intelligence data [redacted]

Table 4.2
Bidders and winners of Sabre’s Narrow merchandising opportunities, 2016-2019

| Bidder | Bidding frequencies | | Winning frequencies | | |
|----------------|---------------------|------------------------|---------------------|-------------|-----------------------------------|
| | # of opportunities | % of all opportunities | # of wins | % of wins | % of wins (excl. unknown winners) |
| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| Total * | [redacted] | 100% | [redacted] | 100% | 100% |

Source: CRA analysis of Sabre’s opportunities dataset and Farelogix’s bidding data. There are overall [redacted] Narrow Opportunities, from which [redacted] are closed and [redacted] is still ongoing.

Note: *As tenders include more than one competitor, the total does not equal the sum of the above bidding frequencies.

Analysis of Farelogix’s bidding data

- 4.27 Farelogix’s merchandising opportunity data consists of [redacted] opportunities that took place from 2014 to 2019 and included its FLX M product. Around [redacted] of these opportunities are closed (i.e. have been concluded with a final winner determined).
- 4.28 Most Farelogix wins relate to airlines [redacted]. Table 4.3 below shows that [redacted] of the FLX M opportunities are with airlines that run Sabre’s core PSS.⁹¹ Amadeus is a core PSS

⁹¹ Farelogix could not separate the contract value of FLX M from the value of other Farelogix products and the results are therefore presented only in terms of opportunity counts.

According to Table 4.3, out of [redacted] opportunities won by Farelogix, [redacted] relate to airlines using Sabre’s core PSS.

provider for around half (48%) of all opportunities and airlines accounting for 11% of the opportunities run in-house PSSs. Dynamic Retailer cannot be used by these airlines because it is not PSS agnostic.

4.29 [X].

Table 4.3
Number of FLX M opportunities by airlines' core PSS suppliers

| Supplier of core PSS | All tenders | | | Tenders won by Farelogix | | |
|----------------------|---------------|---------------|---|----------------------------------|---------------|---|
| | # of all opp. | % of all opp. | % of all opp. (excl. unknown suppliers) | # of opp. with core PSS supplied | % of all opp. | % of all opp. (excl. unknown suppliers) |
| [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| Total | [X] | 100% | 100% | [X] | 100% | 100% |

Source: CRA analysis of Farelogix's opportunities dataset and Sabre's bidding data.

4.30 Farelogix's bidding data implies that [X].⁹² Having matched the opportunities data across the two Parties and updated Farelogix's market intelligence on rival bidders to account for the actual bidding behaviour of Sabre, Sabre was identified as a bidder in [X] out of [X] opportunities ([X] of all opportunities, [X] of opportunities with at least one known bidder). This is comparable to the bidding frequencies of [X] and [X]. Table 4.4 below shows that [X] were the most frequent other bidders and bid for [X] out of [X] opportunities with at least one known bidder.

4.31 Given that Farelogix identified Sabre as a bidder [X] it seems likely that these other providers were present in additional tenders without Farelogix's knowledge. As such, the

⁹² As a result of data matching, [X]. Sabre was added as a bidder for [X]. Sabre was added as a winner to [X].

data is consistent with these standalone IT providers being a stronger constraint on Farelogix than Sabre.

- 4.32 [X]. Using the unmatched bidding data and relying on Farelogix’s bidding data alone, Farelogix believes that there are [X] opportunities where Farelogix bid against only one other known competitor (i.e. head-to-head), and in most cases these were [X]
- 4.33 [X]. Generally, the Parties note that competitors’ bids are likely to be underestimated as currently bidder information for third-party bidders is unknown for just under [X] of the opportunities. In other words, it is likely that (i) the third parties identified in the data may have won additional bids; and (ii) there are also a number of other third parties who pose a competitive threat that are not identified in the data.

Table 4.4
Bidders competing with Farelogix for opportunities including FLX M, 2014-2019

| Bidder | All opportunities | | | Head-to-head opportunities | |
|--------|-------------------------|------------------------|--|----------------------------|-------------------------------------|
| | # opportunities bid for | % of all opportunities | % of 29 opportunities with at least one known rival bidder | # opportunities bid for | % of all head-to-head opportunities |
| [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] | [X] | [X] |

| Bidder | All opportunities | | | Head-to-head opportunities | |
|----------------------|-------------------------|------------------------|--|----------------------------|-------------------------------------|
| | # opportunities bid for | % of all opportunities | % of 29 opportunities with at least one known rival bidder | # opportunities bid for | % of all head-to-head opportunities |
| Total opportunities* | [X] | 100% | 100% | [X] | 100% |

Source: CRA analysis of Farelogix's opportunities dataset and Sabre's bidding data.

Notes: * As more than one competitor may bid for an opportunity, the total number of opportunities does not equal the sum of the above entries.

4.34 [X]. As shown in Table 4.5 below, Farelogix won around [X] of all [X] closed opportunities. While standalone Farelogix data analysis showed that [X], the matched instances illustrate that [X]⁹³ [X]

4.35 However, other competitors were identified as winning [X], and other competitors' wins are also likely underestimated as they include only Sabre's and Farelogix's view on their own wins and no winner information is available on [X] closed opportunities with unknown winners (as well as the winners in respect of any other opportunities there may have been that the Parties were not aware of). Accordingly, either (i) those competitors identified by Farelogix have won a significant number of additional opportunities; (ii) there are a significant number of additional third parties capable of competing with Farelogix at least as effectively as Sabre; or (iii) both.

Table 4.5
Winners of opportunities including FLX M, 2014-2019

| Winner | # of wins | % of wins | % of wins (excl. unknown winners) |
|--------|-----------|-----------|-----------------------------------|
| [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] |

⁹³ See para. 4.24(ii) above.

⁹⁴ See para. 4.22 above.

| Winner | # of wins | % of wins | % of wins (excl. unknown winners) |
|--------------|------------|-------------|-----------------------------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| Total | 41 | 100% | 100% |

Source: CRA analysis of Farelogix’s opportunities dataset.

4.36 In summary, these findings are consistent with the Parties’ submission that [REDACTED].

The Parties’ customers are differentiated by size

4.37 As explained at paragraph 4.12 above, larger airlines are more likely to have the ability and incentive to build sophisticated solutions mixing-and-matching third-party providers with their core PSS. The Parties’ bidding data also [REDACTED].

4.38 Sabre mainly offers Dynamic Retailer to [REDACTED]. Figure 4.2 shows the distribution of airline sizes for opportunities involving Dynamic Retailer.⁹⁵ Sabre participated [REDACTED].

Figure 4.2

[REDACTED]

[REDACTED]

Source: CRA analysis.

Note: Green lines at the bottom of the graph show the actual PB of each involved airline.

4.39 Farelogix also participates in opportunities of [REDACTED]. Figure 4.3 below shows the distribution of airline sizes for Farelogix opportunities including FLX M.⁹⁶ Farelogix participated in [REDACTED] merchandising opportunities involving airlines with a size of [REDACTED]. The figure illustrates that amongst total [REDACTED] airlines won, [REDACTED]. Figure 4.3 further shows that [REDACTED] of Farelogix’s win airlines had PBs between [REDACTED], another [REDACTED] and the biggest win was for an airline with PBs of [REDACTED].

Figure 4.3

[REDACTED]

Source: CRA analysis.

4.40 Figure 4.4 below contrasts the distribution of the size of airlines won by each of Sabre and Farelogix. [REDACTED].

⁹⁵ Each airline from the opportunities dataset has been counted only once. If more than one merchandising opportunity arose from a given airline, the airline was allocated to “Airlines won by Sabre” whenever at least one of the airline’s opportunities was won by Sabre.

⁹⁶ Similarly to Sabre’s analysis, for Farelogix each airline from the opportunities dataset has been counted only once. If more than one merchandising opportunity arose from a given airline, the airline was allocated to “Airlines won by FLX” whenever at least one of the airline’s opportunities was won by Farelogix.

Figure 4.4
[X]

Source: CRA analysis

Conclusion on bidding analysis

- 4.41 The above analysis confirms that the overlap between Sabre and Farelogix in merchandising opportunities is extremely limited. Both Parties' bidding datasets record [X] unique airlines in total, of which [X] appear in both. Within this (already modest) pool, there is further differentiation—Farelogix cannot compete for Broad Opportunities, whilst Sabre is not a meaningful constraint for Narrow Opportunities, and the Parties generally compete for customers at opposite ends of the size spectrum. This supports the Parties' position that their products are favoured by very different types of airlines and therefore the degree of any overlap or competitive constraint is extremely weak.

The Parties are not uniquely well-placed to win future merchandising opportunities

- 4.42 The Parties consider that the CMA's investigation to date has erred in finding that the Parties are "*particularly significant competitive forces*" despite, the fact that their "*existing market position is moderate*".⁹⁷ This approach treats the Parties inconsistently as compared to their competitors, and does not take appropriate account of the bidding analysis above, which makes it clear that the Parties face significant constraint from a number of other players, including Amadeus, Datalex, Google/ITA, JR Technologies, OpenJaw and PROS.
- 4.43 The CMA alleges that the Parties' advantage comes from:⁹⁸
- (i) Farelogix's best-in-class merchandising product and distribution capabilities; meaning it is particularly well-placed to compete for future business as the market evolves towards NDC-based solutions; and
 - (ii) Sabre's core and non-core PSS offerings and extensive well-established relationships with airlines which the CMA contends makes it particularly well-placed to compete for business as the market evolves.
- 4.44 However, as previously submitted,⁹⁹ the Parties are not unique in respect of (i) or (ii) above, and in any case, these factors do not provide any significant advantage in securing future merchandising opportunities.
- (i) FLX M is not unique in being NDC compatible. Other players (including Amadeus, OpenJaw, PROS, Google/ITA and Datalex) also offer NDC-enabled merchandising products. Amadeus' merchandising product, Anytime Merchandising, is particularly advanced and was granted IATA level 4 certification

⁹⁷ Issues Statement, para. 52(b).

⁹⁸ Issues Statement, para. 52(b).

⁹⁹ See Parties' Initial Submission, para. 4.3 *et seq.*

in April 2019. These competitors are as well-placed as Farelogix, if not better placed, including because they will be working with more recent versions of the NDC schemas and therefore be closer to the forefront of NDC evolution.¹⁰⁰ Further, the CMA should not discount the significance of other advances, outside of NDC, that many of the Parties' competitors are making to improve the competitiveness of their products. For example, Amadeus reported in October 2019 that it was investing in machine learning to support its merchandising and other solutions.¹⁰¹ Further examples of competitor innovations are set out in Annex 5.

- (ii) Provision of core PSS systems gives no inherent advantage in terms of merchandising innovation. Despite Sabre's long history in the industry, [redacted] 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.

4.45 The Parties submit that, contrary to the CMA's view, other suppliers are significantly better placed to compete for future merchandising business. As explained in paragraphs 3.4(i)-(ii) above, [redacted]. Meanwhile, many of the Parties' competitors are engaging in their own development efforts. For example:

- (i) On 7 March 2019, Amadeus and the Lufthansa Group announced a renewal of their longstanding technology partnership, and an expansion to further areas of collaboration, including in merchandising.¹⁰²
- (ii) On 17 March 2018, OpenJaw reported that it was actively innovating around NDC. It has launched an NDC Centre of Excellence in its head office in Dublin, where it has built a core team of NDC experts, to develop NDC innovations from servicing to selling, including personalised offers powered by the OpenJaw t-Data platform.¹⁰³
- (iii) On 26 August 2019, PROS announced that it had acquired Traveleer SAS, a "digital innovator" for the travel industry.¹⁰⁴ The rationale for the transaction was to strengthen its digital merchandising offerings.¹⁰⁵ PROS was reported as saying that: "*The technology offered by Traveleer, coupled with PROS best-in-*

¹⁰⁰ Para. 1.22 above.

¹⁰¹ See further <https://amadeus.com/en/insights/blog/machine-learning-airlines>, (accessed on 24/10/2019).

¹⁰² See further <https://amadeus.com/en/insights/press-release/lufthansa-group-amadeus-agree-to-renew-technology-partnership> (accessed on 30/10/2019).

¹⁰³ See further <https://www.openjawtech.com/openjaw-announces-new-customers-new-platforms-new-partnerships-new-hires-annual-global-travel-summit-madrid/> (accessed on 30/10/2019).

¹⁰⁴ See further <https://ir.pros.com/news-and-events/press-releases/press-release-details/2019/PROS-Drives-Digital-Transformation-Shift-in-Airline-Industry-with-Acquisition-of-Traveleer-SAS/default.aspx> (accessed on 30/10/2019).

¹⁰⁵ See further <https://kambr.media/travel-tech/why-pros-acquired-traveleer> (accessed on 30/10/2019).

*class Shopping and Merchandising, are critical for airlines to transform the overall retail experience for their customers.”*¹⁰⁶ With Traveleer, PROS further extended its comprehensive portfolio to enable airlines to transform the traveller’s digital experience across all retail channels: airline.com, mobile and NDC platform.¹⁰⁷

- 4.46 Further examples can be found in Annex 5. As explained above,¹⁰⁸ the Parties’ merchandising competitors [§<] as Sabre, and are often also larger than Farelogix. Amadeus, for example, has thousands of employees, a multinational footprint, significant capital and the experience required to continue developing its NDC merchandising capabilities at great speed. Several other players also sit within large corporate technology companies, such as PROS/Vayant, Google/ITA, HP (DXC) and SAP, and benefit from their investment and technological prowess.

Conclusion

- 4.47 It is clear both from the Parties’ shares of supply and from the Parties’ bidding data that the competitive overlap in merchandising is extremely limited at best, and this is supported by the huge gulf in functionality between the Parties’ respective modules. There is no evidential basis for concluding that there is likely to be any material increase in the Parties’ competitive overlap going forward. The Transaction will not therefore result in an SLC with respect to merchandising.

¹⁰⁶ *Ibid.*

¹⁰⁷ See further <https://ir.pros.com/news-and-events/press-releases/press-release-details/2019/PROS-Drives-Digital-Transformation-Shift-in-Airline-Industry-with-Acquisition-of-Traveleer-SAS/default.aspx> (accessed on 30/10/2019).

¹⁰⁸ Para. 3.3.

5. SERVICES THAT FACILITATE THE INDIRECT DISTRIBUTION OF AIRLINE CONTENT

Relevant product market

5.1 As set out in the Parties' Initial Submission,¹⁰⁹ the Parties do not accept that there is a single product market for services that facilitate the indirect distribution of airline content.¹¹⁰ Rather, the Parties consider that the appropriate relevant product market must either be:

- (i) **GDS services**, such that the provision of APIs used for the indirect distribution of airline content falls within a different relevant product market; or
- (ii) to the extent that any wider relevant product market may exist, **all airline content distribution services** including the direct channel (i.e. airline.com) as well as the indirect channel.

5.2 The Parties agree that the relevant geographic market is worldwide.¹¹¹

GDS services

5.3 A GDS and a Direct Connect are fundamentally different products¹¹² which are, for all practical purposes, not substitutable with one another.¹¹³

5.4 Direct Connect is not a product. The CMA uses the term Direct Connect to describe the use of an API (which may or may not be NDC enabled) to connect an airline to non-GDS distributors in the indirect channel, i.e. travel agents, meta-search engines, OTAs, TMCs and other technology providers.¹¹⁴ As set out in more detail in paragraph 5.10 below, the product in question – the API – is identical regardless of the channel in which it is deployed. Accordingly, the product being supplied is not a Direct Connect but instead is an API that is provided to the airline, and which the airline made choose to deploy in a Direct Connect and/or otherwise.

¹⁰⁹ Parties' Initial Submission, para. 5.1 *et seq.*

¹¹⁰ Issues Statement, para. 44-45.

¹¹¹ Issues Statement, para. 44-45.

¹¹² As a starting point, it should be noted that a Direct Connect is not a product. The CMA uses the term Direct Connect to describe the use of an API (which may or may not be NDC enabled) to connect an airline to non-GDS distributors in the indirect channel, i.e. travel agents, meta-search engines, OTAs, TMCs and other technology providers.¹¹² As set out in more detail in paragraph 5.10, the product in question - the API - is identical regardless of the channel in which it is deployed. Accordingly, the product provided to the airline is not Direct Connect; it is an API, which the airline may then choose to deploy for a Direct Connect and/or otherwise.

¹¹³ Parties' Initial Submission, para. 5.2 *et seq.*

¹¹⁴ Issues Statement, para. 31

5.5 The functionality between a GDS and an API differs so fundamentally that they cannot properly be considered part of the same product market. In particular:

- (i) An API, when operated to achieve GDS “bypass”, allows the creation of one-to-one connections between a single airline and a single travel agent or other third-party. By contrast, the key selling point of a GDS is that it provides many-to-many connections, providing airlines with “reach” to access many customers worldwide, and providing travel agents with access to transparent comparison shopping and complex itineraries at scale. The GDS relies on creating this value (of reach for airlines and breadth for travel agents), whereas an API is incapable of providing it.
- (ii) GDSs contract with airlines and travel agents. API providers like Farelogix contract only with airlines.
- (iii) GDSs provide the mid- and back-office support which is essential for many travel agents to function, particularly with respect to managed corporate travellers. This functionality is typically not provided by an API provider.

5.6 Importantly, this lack of substitutability between GDSs and Direct Connect was reflected in the CMA’s Phase 1 market test.¹¹⁵ For example, the CMA acknowledged in its Phase 1 Decision that it had 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”;*¹¹⁶
- (ii) *“there is a clear preference for an aggregated solution, which is currently available from the GDSs”;*¹¹⁷
- (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)”;*¹¹⁸ and
- (iv) *“they [travel agents] have generally expressed an interest in consuming NDC content through their existing GDS.”*¹¹⁹

5.7 This emphasises the fundamental point that there are different and distinct relevant product markets for the provision of GDS services on the one hand and the provision of

¹¹⁵ Parties’ Initial Submission, para. 5.2.

¹¹⁶ Issues Letter, para. 123.

¹¹⁷ Issues Letter, para. 127.

¹¹⁸ Phase 1 Decision, para. 194-195.

¹¹⁹ Phase 1 Decision, para. 65.

an API solution on the other. In the former, Sabre's competitors include other GDS providers such as Amadeus, Travelport, as well as other aggregators like Travefusion and Duffel. In the latter, Farelogix competes in an entirely distinct market with the likes of OpenJaw, Datalex, TPConnects, ATPCO NDC Exchange and other third-party IT providers, as well as airlines' own in-house solutions.

- 5.8 As such, the strongest competitive constraints on each of the Parties are those intra-market constraints coming from each of the Parties' direct competitors and which will remain in effect post-merger. By contrast, any inter-market competitive constraints are marginal and far weaker by comparison.

Services that facilitate the distribution of airline content

- 5.9 In the alternative, if the CMA considers that the relevant product market should be wider than GDS services, then it is inappropriate to include Direct Connect within the same product market as GDSs without also including the direct channel (i.e. airline.com), as the direct channel is comparatively a much stronger competitive constraint. This is clear because of the supply-side substitutability between the channels, the feedback from the Phase 1 market test, and the data showing the constraint of the direct channel.
- 5.10 Firstly, as noted in paragraph 1.16 above, Farelogix's NDC API for an airline customer is identical regardless of the channels in which the airline may choose to deploy it. The NDC API can be used equally as easily by airlines to distribute content via airline.com as via Direct Connects or GDS pass-through. An API provider such as Farelogix is not required to make any changes to the API and the communications schemas, outputs etc. will be identical in each case. In that context, supply-side substitutability between the channels is absolute and it is artificial and arbitrary to exclude the direct channel from the relevant product market when the products of Farelogix and its competitors do not, and cannot, make such a distinction.
- 5.11 Secondly, the CMA's justification for concluding at Phase 1 that the appropriate frame of reference included Direct Connect but not the direct channel is not justified by the evidence, including the Phase 1 market test.¹²⁰
- 5.12 Thirdly, the data demonstrates that the direct channel exercises a much stronger constraint on GDSs than Direct Connect, and accounts for a much more significant portion of the overall distribution market, particularly in respect of leisure travel bookings ([§<]).

¹²⁰ Parties' Initial Submission, para. 5.6-5.9.

- 5.13 The fact that Farelogix sells [redacted] can be seen in Figure 5.1 below, which illustrates [redacted]. A similar picture arises when including further Farelogix customers for which a fare mapping was available ([redacted]) or when looking at historical data.¹²¹
- 5.14 While the majority of all airline tickets sold (irrespective of channel) are economy class, this majority is [redacted]. Conversely, there is a [redacted]. This is at least partly because business fares tend to be aimed at corporate travellers with more demanding fulfilment needs which cannot be met outside the GDS.
- 5.15 The set of bookings processed through FLX OC in 2018 is dominated (more than [redacted]%) by the lowest economy fares available. A further [redacted]% is taken by other economy class fares and only ~[redacted]% of bookings were for business or first-class reservations. On the contrary, only [redacted]% of bookings made through GDSs relate to the lowest economy fares available and more than [redacted]% of bookings are distributed between top economy fares, premium economy, and business and first class.

Figure 5.1

[redacted]

Source: MIDT data, Farelogix sales data.¹²²

- 5.16 Finally, the significance of the constraint from airline.com is demonstrated by the fact that the airlines which have exercised the threat to pull content out of the GDSs (e.g. [redacted]) have done so by withdrawing the fares that are typically sold through airline.com (low fares for leisure customers). Equally, the airlines which have traditionally not relied on the GDSs for distribution (e.g. Ryanair, easyJet and Jet2) have done so on the basis of a very strong airline.com (and without using Farelogix). Given that airline.com is demonstrably considered by airlines to be substitutable for the GDS, it is illogical to exclude this channel from the relevant product market whilst including APIs. Third-party market analysis projects “*disintermediation of leisure volumes to continue*” through airline.com.¹²³
- 5.17 Annex 11 assesses how three major airline groups (Air France/KLM, Lufthansa and IAG (BA/Iberia)) have been able to use surcharges to [redacted]. It combines contemporaneous documentary evidence with an econometric analysis of the impact of introducing GDS surcharges and Private Channels. Whenever surcharges were introduced, Sabre found [redacted]. Documentary evidence also shows that [redacted]. The econometric part of Annex 11 confirms that surcharging had [redacted]. The introduction of surcharges was associated with a [redacted], compared to airlines that did not introduce surcharges. The estimated [redacted]. [redacted].

¹²¹ Carriers rarely publish official mappings from fare codes to ticket classes. The Parties were not able to procure such a mapping for all of Farelogix’ customers and have therefore focused on those carriers in Sabre’s top 10 customer list by 2018 UK POS bookings for which a mapping was available: [redacted]. The Parties have reported only the Figures for Lufthansa in the interest of brevity. The Parties also note that the fares for Lufthansa relate specifically to LH and not the Lufthansa Group more generally due to the differences in fare classes between the different airlines within the Lufthansa Group making such an exercise challenge to complete robustly on a group wide basis.

¹²² About [redacted]% of Farelogix bookings for Lufthansa could not be assigned a specific fare-class type

¹²³ BAML Primer, enclosed at Annex 9, p. 1.

Overall, Sabre's contemporaneous internal analyses and subsequent econometric work support airlines being able to [X].

- 5.18 Even for network carriers which rely more heavily on the GDSs, [X].¹²⁴ This again suggests that airline.com is a far more relevant alternative than an API being used for Direct Connect.

Competitive assessment

- 5.19 In assessing whether the Transaction may be expected to result in a substantial lessening of competition in any purported market for services to facilitate the indirect distribution of airline content, the CMA will need to consider both loss of existing competition, including the closeness of competition between the Parties, and loss of potential competition, including the degree to which the Parties could be a competitive constraint on one another in the future as well as the potential for further entry and expansion by rivals.

- 5.20 This sub-section considers these issues in detail, including by reference to new evidence and data that was not available to the Parties at the time of the Parties' Initial Submission. The Parties discuss the following key topics:

- (i) There is negligible competitive overlap between the Parties in indirect distribution currently. In particular:
 - (a) the share attributable to Direct Connect (across all API providers – not just Farelogix) is minimal even on the CMA's proposed approach to market definition;
 - (b) Farelogix's share is negligible;
 - (c) Farelogix competes with many rivals in the provision of NDC APIs;
 - (d) GDS bypass through Direct Connect is not used by airlines as leverage in negotiations to any significant degree; and
- (ii) The Parties will not become more significant competitors in the future. In particular:
 - (a) There is no credible threat of Farelogix (or Direct Connect generally) disintermediating the GDSs;
 - (b) Travel agents and the majority of airlines are focused on GDS pass-through and its associated benefits for delivering aggregated NDC content to end-consumers;
 - (c) Farelogix is no longer a significant innovator or disruptor in the industry.

¹²⁴ E.g. Merger Notice, para. 3.99(i).

There is negligible competitive overlap between the Parties in indirect distribution

Direct Connect's share is minimal even on the CMA's proposed approach to market definition

- 5.21 Without prejudice to the Parties' submissions on the relevant product market, the share attributable to Direct Connect, across all providers (not just Farelogix), is minimal - estimated to be approximately 3% by T2RL¹²⁵, an independent airline industry research and consultancy company. This is consistent with the views of other industry experts.¹²⁶
- 5.22 As set out in the Parties' Initial Submission,¹²⁷ Direct Connect has not grown, and will not grow, to any significant extent because there are insurmountable technological, commercial and economic hurdles that prevent it from ever offering a practical alternative to a GDS:
- (i) Direct Connect requires one-to-one connections between individual airlines and individual travel agents. This is impractical and prohibitively expensive except for the very largest travel agents. From an airline perspective, Direct Connect represents, at most, a viable option only for a limited number of travel agents and mainly in markets in which the airline in question is dominant.¹²⁸ The CMA acknowledges in its Phase 1 Decision that "*the majority [of travel agents submitted that] pure one-to-one connections to airlines would likely have very limited applications in future*".¹²⁹
 - (ii) It is clear from the CMA's Phase 1 market investigation that travel agents also much prefer the GDS in terms of functionality, as it provides comparison shopping; mid- and back-office support; complex itineraries; and speed/ease of booking content.¹³⁰ This is supported by the Atmosphere Research Report, which identifies a long list of reasons travel agencies do not find a Direct Connect an attractive proposition and notes that this requires travel agencies to shoulder additional costs and technology complexity for little benefit.¹³¹ The comparison shopping element of GDSs is inherently pro-competitive, and facilitates greater price transparency and competition between airlines to the benefit of travel agents and end customers.

¹²⁵ Sabre's response to Question 12 of the CMA's Section 109 Request dated 3 September 2019 (Annex 12).

¹²⁶ Atmosphere Research Report, enclosed at Annex 1, para. 55.

¹²⁷ Parties' Initial Submission, para. 5.28 *et seq.*

¹²⁸ In this regard, the CMA's investigation to date fails to take account of the natural conclusion that incumbent airlines are unlikely to be focussed on consumer welfare, and may well favour Direct Connect because they would benefit from a reduction in comparison shopping and inter-airline competition. See Parties' Initial Submission, para. 5.40(iii).

¹²⁹ Phase 1 Decision, para. 275.

¹³⁰ See Phase 1 Decision, para. 53-54.

¹³¹ Atmosphere Research Report, enclosed at Annex 1, para. 40-52.

Farelogix's share is negligible

- 5.23 The data shows that Farelogix has a share of supply for services to facilitate indirect distribution of airline content of below [x<] % on any metric, and [x<] % with respect to UK-based airlines. This has been the case for many years.¹³² The data also shows that FLX OC has minimal penetration in terms of UK travel agents. UK travel agents represented only [x<] % of all FLX OC segments in 2018, the vast majority of which were made through [x<].¹³³
- 5.24 The CMA has given little or no weight to Farelogix's minimal market share as part of its investigation to date, on the basis that shares of supply are "*inherently backwards looking and therefore may not fully capture the competitive significance of the Parties within the context of a dynamic and evolving industry.*"¹³⁴ The Parties consider that there is no justification for brushing aside the historical share of supply data in this way. This is particularly so where, as here, the miniscule shares held by Farelogix (and Direct Connect more generally) have persisted for a long time. The Parties also note that, as explained at paragraph 5.76(vii) below, industry experts anticipate Direct Connect bookings remaining minimal for the foreseeable future. Indeed [x<].
- 5.25 As well as Farelogix's negligible share in overall terms, it also has very limited reach compared to Sabre and the other GDSs because the Farelogix technology can only be used by airlines to establish connections with downstream distributors on a one-to-one basis (and even once the connection is established the volume of bookings which pass through it are generally modest). The Figures below demonstrate the gulf in scale and network complexity between Sabre and Farelogix. Figures 5.2 and 5.3 provide an illustration of the relative size of Sabre and Farelogix in terms of global bookings; and a visualisation of how their bookings break down as between airlines (again on a global basis).¹³⁵ These display the small size of Farelogix both in terms of bookings overall and the density of its network.

Figure 5.2

[x<]

Notes: Covers all bookings (excluding ancillaries) for Farelogix and Sabre in 2018. Bubbles are scaled by bookings.

Figure 5.3

[x<]

Notes: Covers all bookings (excluding ancillaries) for Farelogix and Sabre in 2018. Bubbles are scaled by bookings. Farelogix had bookings with [x<] airlines.

¹³² Parties' Initial Submission, para. 5.19 *et seq.*

¹³³ Parties Initial Submission, Table 5.7.

¹³⁴ Phase 1 Decision, para. 268.

¹³⁵ When providing the split at the TA level the bubble charts below restrict attention to bookings made via airlines who are present on both Sabre and Farelogix.

Sabre had bookings with [redacted] airlines.
[redacted].

- 5.26 The contrast between Sabre and Farelogix is even starker if one looks at tickets sold at UK points of sale. Figures 5.4 and 5.5 below compare the overall volume of bookings processed by Farelogix and Sabre at UK POS and a breakdown of these bookings by airline.

Figure 5.4

[redacted]

Notes: Covers all bookings (excluding ancillaries) for Farelogix and Sabre with a UK POS in 2018.

Bubbles are scaled by bookings.

Figure 5.5

[REDACTED]

Notes: Covers all bookings (excluding ancillaries) for Farelogix and Sabre with a UK POS in 2018.

Bubbles are scaled by bookings.

Farelogix had bookings with [REDACTED] airlines.

Sabre had bookings with [REDACTED] airlines.

[REDACTED].

Farelogix competes with many rivals

5.27 Any theory of harm (whether static or dynamic) would need to show *both* that the use of an API for Direct Connect was an important constraint on Sabre *and* that Farelogix was a unique (or at least particularly strong) provider of such APIs. This argument fails at the first hurdle as Farelogix's FLX OC offering is not unique and Farelogix is only one of a large and growing number of providers of NDC API technology.

5.28 In this regard, the Parties' welcome the CMA's intention to consider evidence of competitive interactions when bidding for contracts.¹³⁶ An analysis of recent competitive interactions involving Farelogix clearly confirms that there are many other technology providers who supply competitive Direct Connect functionality, including NDC APIs, and that airlines themselves have the capability to build competitive solutions in-house. For this purpose, the Parties have undertaken an updated analysis of Farelogix's refreshed bidding data, full details of which are enclosed at Annex 10.

5.29 Farelogix's bidding data at Annex 10 demonstrates that, far from being a dominant provider of NDC APIs, Farelogix won only [REDACTED]% of the FLX OC opportunities that it bid for between 2015 and 2019. The data consists of [REDACTED] opportunities, of which [REDACTED] are understood to be closed. Of that [REDACTED], only [REDACTED] were won by Farelogix, as shown in Table 5.1 below.

Table 5.1
Winners of opportunities involving FLX OC, 2015-19

| Bidder | Number of wins | % of wins | % of wins excluding unknown winners |
|------------|----------------|------------|-------------------------------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

¹³⁶ Issues Statement, para. 55(a).

| | | | |
|--------------|-----|-------------|-------------|
| [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] |
| [X] | [X] | [X] | [X] |
| Total | [X] | 100% | 100% |

Source: CRA analysis of Farelogix's opportunity dataset.

5.30 The bidding data suggests that [X] exercise the strongest constraint on Farelogix relative to other suppliers. In-house solutions also play a significant role. Farelogix does not always have full (or any) visibility as to which other suppliers are bidding for an opportunity; however, of the closed opportunities with at least one known bidder, [X] were the most frequent other bidders. The data shows zero instances of Sabre competing with Farelogix to provide an NDC API.¹³⁷ In fact, the data does not record any instances of Sabre and Farelogix competing head-to-head for a distribution opportunity.

5.31 [X]

5.32 In addition to [X], there are also inevitably a vast array of opportunities that are not included in Farelogix's bidding database because Farelogix was not invited to participate in the first place (consistent with Farelogix having a share of supply of all Direct Connect of <[X]%¹³⁸). For example:

- (i) The Parties understand from public sources that TPConnects lists 25 airlines as "Direct Connect" customers;¹³⁹
- (ii) OpenJaw's t-Retail Platform, a package which includes an NDC API, is used by at least six airlines which do not appear in Farelogix's bidding data;¹⁴⁰
- (iii) IATA's latest NDC Deployments Report from 2017¹⁴¹ identifies a number of airlines¹⁴² as having "*delivered NDC live transactions*" that do not appear in

¹³⁷ [X].

¹³⁸ Parties' Initial Submission, Table 5.1.

¹³⁹ See further <https://tpconnects.com/direct-connect/>, (accessed on 25/10/2019).

¹⁴⁰ See further <https://www.openjawtech.com/platforms/t-retail/>, (accessed on 25/10/2019).

¹⁴¹ See further <https://www.iata.org/whatwedo/airline-distribution/ndc/Documents/2017-ndc-deployment-year-end-report.pdf>, (accessed on 27/10/2019).

¹⁴² E.g. [X].

Farelogix's bidding data but have presumably implemented some form of NDC enabled connection to allow the distribution of NDC content.

- 5.33 In addition to companies to which Farelogix is currently losing bids, there has been well documented rapid entry and expansion by new providers in NDC which the Parties expect to continue going forward – see further paragraph 5.89 below.
- 5.34 Farelogix's internal documents and public statements by airlines support the conclusion that Farelogix faces strong competition from other airline IT companies which are well placed to deliver Direct Connects and NDC APIs, as well as in-house solutions. For example:
- (i) [REDACTED]¹⁴³[REDACTED]¹⁴⁴
 - (ii) [REDACTED] In the press release announcing the partnership Kati Andersson (SAS Vice President Digital Sales & Distribution) states, "*[W]e are pleased to announce the selection of Datalex as the SAS partner of choice in our journey towards NDC capability. Our objective is to deploy a full NDC platform certified to the latest IATA standards. This will allow us to make the right offer to the right customer at the right time, via the right channel, on the right platform.*"¹⁴⁶
 - (iii) [REDACTED]¹⁴⁷
 - (iv) [REDACTED]¹⁴⁸
- 5.35 In short, there is nothing about Farelogix which justifies its treatment as a unique constraint on Sabre. Therefore, while the Parties maintain their position that APIs being used for Direct Connect are not a material constraint on Sabre's GDS, to the extent the CMA finds Farelogix is able to exercise any constraint on Sabre's GDS through its NDC API product offering, then logically the CMA should make a similar finding with respect to the large number of alternative NDC API providers which have won NDC API opportunities against Farelogix as well as airline.com. There are multiple other suppliers who are capable of exerting an equivalent or stronger constraint on Sabre to Farelogix currently.

¹⁴³ [REDACTED]

¹⁴⁴ See press release titled, "JR Technologies and IAG Join Forces to Develop NDC Software" available at <https://www.jrtechnologies.com/companynews/pressreleases/iag/> (accessed on 17/10/2019).

¹⁴⁵ [REDACTED]

¹⁴⁶ See further <http://blog.datalex.com/news/scandinavian-airlines-and-datalex-partner-on-multi-year-digital-retailing-transformation-programme> (accessed on 16/10/2019).

¹⁴⁷ [REDACTED]

¹⁴⁸ [REDACTED]

Farelogix is not used as leverage in airline negotiations with Sabre to any significant degree

- 5.36 The Parties welcome the CMA's intention to consider evidence on the Parties' competitive interactions when negotiating with customers.¹⁴⁹ When this evidence is considered, it is clear that Farelogix (and Direct Connect) is not used as leverage in airline GDS negotiations.
- 5.37 For the reasons explained above and in previous submissions, using APIs to build out Direct Connect is only a viable option for a handful of large airlines and travel agents, and only for certain content. Consequently, Direct Connect is simply not *capable* of disintermediating the GDS to any meaningful extent. For that reason, the competitive pressure which Direct Connect provides in the context of negotiating the terms of a Sabre GDS contract is minimal, while the direct channel (including airline.com, call centres and ticket offices) is a far more relevant and significant competitive pressure:
- (i) As the CMA acknowledges,¹⁵⁰ the direct channel accounts for a huge share of air bookings (approximately 50%), is growing,¹⁵¹ and is expected to continue to grow in future. Notably, during the CMA's Phase 1 market investigation, "*airlines almost uniformly told the CMA that they expected the direct channel to keep growing in the next three to five years.*"¹⁵²
 - (ii) Airline.com has successfully disintermediated the GDSs at a rate of approximately 3.4% per year for the last ten years.¹⁵³ It has done so primarily (though not exclusively) by targeting leisure bookings – the very demographic that the Direct Connect channel also disproportionately services (mostly through OTAs). Direct Connect therefore offers far less effective disintermediation of precisely the fare classes that are already being disintermediated by airline.com.
 - (iii) In addition to the success of airline.com, the direct channel also includes airline operated call centres and ticket offices. In 2017, this represented 8% of total bookings (four times the volume represented by the Direct Connect channel).¹⁵⁴
 - (iv) Independent third-party analysis has noted that over recent years "*airline websites provided for the first time a real threat to the GDSs' dominance. This drove a sharp decline in GDS bookings through the course of the 2000s, as low*

¹⁴⁹ Issues Statement, para. 55(a).

¹⁵⁰ Parties' Initial Submission, para. 5.22.

¹⁵¹ Merger Notice, Annex 50.

¹⁵² Phase 1 Decision, para. 47.

¹⁵³ BAML Primer, enclosed at Annex 9, p. 29.

¹⁵⁴ See Merger Notice, Annex 50.

cost carriers in particular promoted their cheaper flights on ‘airline.com’ – largely eschewing the GDS channel.”¹⁵⁵

5.38 Alternative commercial models (unrelated to Direct Connect) have also been used by airlines to provide competitive pressure during GDS negotiations. In particular:

(i) [REDACTED]

(ii) [REDACTED]

5.39 There is therefore [REDACTED].¹⁵⁶ This is corroborated by the CMA’s Phase 1 market test, where a majority of airlines confirmed that the threat of Direct Connect is not relevant to Sabre’s GDS contract negotiations.¹⁵⁷

5.40 Instead, negotiations overwhelmingly revolve around [REDACTED], with competitive leverage coming primarily from [REDACTED]. This is reflected in [REDACTED]

5.41 The fact that Farelogix is not used by the airlines to exert competitive pressure on Sabre in its negotiations with airlines is borne out by the individual airline case studies and associated internal documents set out below. This includes analysis of Sabre’s internal documents which show that the primary competitive constraint on Sabre is from the other major GDSs (Amadeus and Travelport) and from airline.com.¹⁵⁸

IAG

5.42 [REDACTED] [REDACTED]:

[REDACTED]¹⁶⁰

5.43 [REDACTED]:

(i) [REDACTED].¹⁶¹

(ii) [REDACTED].¹⁶²

¹⁵⁵ BAML Primer, enclosed at Annex 9, p. 32.

¹⁵⁶ [REDACTED].

¹⁵⁷ Phase 1 Decision, para. 227.

¹⁵⁸ [REDACTED]

¹⁵⁹ The Private Channel was covered in the presentation at the Sabre site visit (see slide 25).

¹⁶⁰ [REDACTED]

¹⁶¹ [REDACTED]

¹⁶² [REDACTED]

- 5.44 Further, it is clear from IAG’s public comments that the growth of BA’s direct distribution via airline.com influenced the development of the Private Channel. Robert Boyle (at the time, Director of Strategy at IAG) speaking about IAG’s new distribution arrangements at a 2018 Capital Markets Day said: “*that’s really all about trying to get a shift across from legacy distribution to a modern distribution set up where we can do advance merchandising, dynamic pricing, seat selection, and offer a full range of ancillaries through the indirect channel mirroring what we can do through our own direct channels*” (emphasis added).¹⁶³
- 5.45 It should be emphasised that, overall, airline.com is far more significant for BA than Direct Connect. Data with respect to BA and Iberia shows clearly the importance of distribution via airline.com and the effects of IAG’s disintermediation strategy.¹⁶⁴ The proportion of bookings made on GDSs fell by approximately [redacted]% between 2017 when IAG introduced the Private Channel and 2018. This share shifted from GDS to the direct channel (including airline.com): [redacted]% of sales were made through the direct channel in 2018. Further detail on Sabre’s analysis of the effects of the imposition of GDS surcharges by IAG are set out at Annex 11 [redacted].
- 5.46 The Parties understand that BA provides its NDC API Direct Connect capability in-house – BA does not contract with Farelogix.¹⁶⁵

Air France/KLM

- 5.47 Like IAG, Air France / KLM have sought to shift to the Private Channel model. [redacted]. [redacted]
- 5.48 For example:
- (i) [redacted]¹⁶⁶[redacted]
 - (ii) [redacted].¹⁶⁸
 - (iii) [redacted]¹⁶⁹ [redacted].¹⁷⁰

¹⁶³ Thomson Reuters Edited Transcript of International Consolidated Airlines Group SA Capital Markets Day 2018, 2 November 2018 available at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NDE0NjgxYENoaWxkSUQ9LTf8VHlwZT0z&t=1&cb=636806312304541543>.

¹⁶⁴ See further Annex 12 which contains a summary of available data and statistics on each of the Top 25 airline customers, including bookings and revenues by global and UK POS.

¹⁶⁵ See para. 5.34(i) above.

¹⁶⁶ [redacted].

¹⁶⁷ *Ibid.*

¹⁶⁸ [redacted].

¹⁶⁹ [redacted].

¹⁷⁰ [redacted].

(iv) [REDACTED].¹⁷¹

5.49 [REDACTED].¹⁷²

5.50 Further detail on Sabre's analysis of the effects of the imposition of GDS surcharges by Air France/KLM are set out at Annex 11, [REDACTED].

5.51 Again, similar to IAG, airline.com is a far more important distribution channel for Air France/KLM than Direct Connect, and that Air France/KLM provides its Direct Connect NDC API capability in-house. Data on this airline shows that [REDACTED]% of bookings were made through the direct channel (including airline.com) in 2018, an increase of [REDACTED]% from 2017.¹⁷³

Lufthansa Group

5.52 As the CMA is aware, Lufthansa Group has been pursuing an aggressive GDS disintermediation strategy since 2015, when it first introduced the GDS surcharge. Although Lufthansa places equal emphasis publicly on airline.com and Direct Connect as the means of achieving its objective of disintermediating GDSs the reality is that, at best, Direct Connect plays a marginal role in the fulfilment of this strategy and airline.com is far more significant.

5.53 Lufthansa's uncompromising attitude to GDS disintermediation is set out in an email sent to Sabre's LHG account representative when the new GDS surcharge was introduced in 2015, [REDACTED]¹⁷⁴

5.54 The fact that Direct Connect generally and Farelogix in particular only plays a marginal role in the Lufthansa disintermediation strategy is apparent from the Parties' records and publicly available data on Lufthansa. The Parties' data shows bookings made via FLX OC in 2018 accounted for just [REDACTED]% of the overall Lufthansa total. In contrast, [REDACTED]% of overall bookings were made on other direct channels (including airline.com).¹⁷⁵ The main beneficiary of this intermediation strategy has been Lufthansa's airline.com, not the Farelogix Direct Connect, and the main losses have come from the GDSs.

5.55 Further detail on Sabre's analysis of the effects of the imposition of GDS surcharges by Lufthansa Group are set out at Annex 11, [REDACTED].

5.56 Further detail on [REDACTED].

¹⁷¹ [REDACTED].

¹⁷² [REDACTED]

¹⁷³ See further Annex 12.

¹⁷⁴ [REDACTED].

¹⁷⁵ See further Annex 12.

Turkish Airlines

5.57 [redacted].¹⁷⁶

5.58 [redacted]

5.59 Similar to the trend observed for IAG and Air France / KLM, since at least 2015 the direct channel (including airline.com) has driven the majority of Turkish Airlines bookings. It accounted for [redacted]% of bookings in 2018.¹⁷⁷

American Airlines

5.60 [redacted].

5.61 [redacted]:

[redacted]¹⁷⁸

5.62 [redacted]

5.63 [redacted].

5.64 Further, following the trend for other airlines, data prepared on American Airlines show that bookings made on Sabre accounted for [redacted]% of bookings in 2018 while [redacted]% of bookings were made through the direct channel (including airline.com) in 2018, an increase of [redacted]% from 2017. Bookings made via FLX OC accounted for just [redacted]% in 2018, a reduction of [redacted]% from 2017.

SAS

5.65 [redacted] [redacted]¹⁸² [redacted].

5.66 [redacted]

¹⁷⁶ [redacted].

¹⁷⁷ See further Annex 12.

¹⁷⁸ [redacted].

¹⁷⁹ [redacted].

¹⁸⁰ [redacted].

¹⁸¹ [redacted]

¹⁸² [redacted]

5.67 Data for this airline shows that the vast majority of bookings continue to be made on Amadeus's GDS ([x] % in 2018). Direct channel (including airline.com) accounted for [x] % of bookings in 2018.¹⁸³

Emirates

5.68 [x]¹⁸⁴ [x]¹⁸⁵[x].¹⁸⁶

5.69 Data for this airline show that the majority of bookings are made on GDSs; with [x] % of bookings arising through this channel as compared to [x] % on the direct channel (including airline.com) and [x] % on Farelogix.¹⁸⁷

Other airlines

5.70 In negotiations with other airlines, the other GDSs and airline.com are also the key competitive constraints on Sabre rather than Direct Connect. Data prepared for the top 25 airline customers (by flights to/from/within UK), including bookings and revenues by global POS,¹⁸⁸ show clearly that GDS and the direct channel (including airline.com) are the key distribution channels.¹⁸⁹ The proportion of bookings made on FLX OC in 2018 did not exceed [x] % for any single airline (the highest being [x]) of the top 25 list. As can be seen from Table 5.2 below, FLX OC was used to book tickets for just [x] airlines/airline groups within the top 25 airlines (by flights to/from/within UK) in 2018.¹⁹⁰ For those [x] airlines the proportion of bookings relative to other channels was in each case [x]

Table 5.2
Proportion of bookings made by the top 25 airlines (by flights to/from/within UK) on FLX OC relative to other channels (2018)

[x]

¹⁸³ See further Annex 12.

¹⁸⁴ [x].

¹⁸⁵ [x].

¹⁸⁶ [x].

¹⁸⁷ See further Annex 12.

¹⁸⁸ See further Annex 12.

¹⁸⁹ The Direct Channel field in Table 5.2 may also include a small proportion of bookings made through Tour Operators.

¹⁹⁰ In addition to the airlines within the top 25 airlines by flights to/from/within UK, the following airlines also used FLX OC to make bookings in 2018: [x].

The Parties will not become more significant competitors in future

There is no credible threat of Farelogix (or Direct Connect generally) disintermediating the GDS to any significant degree

- 5.71 The Parties consider that there is no credible threat of Farelogix, or any other API provider, disintermediating the GDS to any significant degree. This is evident from the fact that:
- (i) there is no evidence to support any claim that Direct Connect's share of bookings is likely to increase from its historically low and flat levels, whereas there are many reasons to believe that Direct Connect cannot grow beyond its current levels;
 - (ii) internal documents are consistent with the view that neither Sabre nor Farelogix considers any disintermediation threat to be credible; and
 - (iii) public statements from third parties also support the view that Direct Connect will not disintermediate the GDS.
- 5.72 Direct Connect shows no sign of growing to any material extent; and certainly not at the scale required for competition concerns to arise as a result of the Transaction. The share of global bookings being made through Direct Connect has stagnated for the last decade.¹⁹¹ The CMA, while identifying the fact that Direct Connect accounts for a tiny share of bookings currently, has not produced any evidence that Direct Connect may be approaching some form of "inflection point" whereby its trajectory may change upwards such that it would start to account for a material share of bookings.¹⁹²
- 5.73 In fact, there are many good reasons to believe that it is simply not possible for Direct Connect to grow beyond its current levels – most notably, the array of insurmountable technological, commercial and economic barriers summarised at paragraph 5.22 above. If Farelogix (or any other API provider) was ever going to materially disintermediate the GDSs, there is no reason why this would not already have happened, given that API technology and Direct Connect has been in the market for many years.
- 5.74 Therefore, while Farelogix [redacted].¹⁹³

Figure 5.6

[redacted]

[redacted]

Source: Farelogix revenues and forecasts.

¹⁹¹ See Annex 50 to the Merger Notice.

¹⁹² Issues Statement, para. 35.

¹⁹³ [redacted].

5.75 Further, Sabre’s internal documents confirm that, while there may in the past have been some speculation as to whether FLX OC might disintermediate the GDS, this is no longer considered remotely credible by *either* Party:

- (i) Documents dated around 2017 indicate that Sabre was exploring the potential competitive impact of Farelogix. [REDACTED]¹⁹⁴
- (ii) Documents also record views Sabre was hearing in the market at the time, consistent with the view that Farelogix was a niche technology. For example, [REDACTED].¹⁹⁵ Similarly, an internal Sabre email from August 2017 discusses a presentation by a market commentator which observed that NDC technology was unlikely to disintermediate the GDS: [REDACTED]. The presentation also notes that [REDACTED] The Sabre team reporting these comments agreed with them.¹⁹⁶
- (iii) Through its discussions with Farelogix in 2017 and 2018, Sabre heard first hand that Farelogix had also reached the view that its ability to displace the GDSs was limited. This is reflected in the contemporaneous documents, for instance, [REDACTED].¹⁹⁷ This lines up with Farelogix’s public statements at the time: in June 2017, Jim Davidson explained in an interview with Skift that despite the fact that “*in the early days we thought we could do it cheaper, better, faster than the GDSs, especially for the low-cost carriers,*” it was now clear that “*the idea that we’re going to open up this whole new network that goes around the existing GDSs and travel agencies is silly*”.¹⁹⁸
- (iv) Sabre internal documents continue to record that third-party market participants do not consider NDC to be a means of disintermediating the GDS: [REDACTED].¹⁹⁹ An internal Sabre email [REDACTED]²⁰⁰ [REDACTED].²⁰¹
- (v) Sabre’s later internal documents confirm that its view was increasingly that FLX OC was complementary to the GDS platform and Sabre’s strategy was focused on building NDC capability for its GDS in order to keep up primarily with its GDS

¹⁹⁴ [REDACTED].

¹⁹⁵ [REDACTED].

¹⁹⁶ [REDACTED]

¹⁹⁷ Sabre Document 4c-15, provided at Attachment N.5 to the Merger Notice, p.3

¹⁹⁸ Skift article titled, “Farelogix tries to profit from airline disruption turmoil”, available at <https://skift.com/2017/06/13/travel-tech-ceo-series-farelogix-tries-to-profit-from-airline-distribution-turmoil/> (accessed on 30/10/2019).

¹⁹⁹ [REDACTED].

²⁰⁰ [REDACTED]

²⁰¹ [REDACTED].

rivals and also with NDC providers in general. This is reflected in Sabre's most recent strategy reports – for example, [REDACTED]²⁰² [REDACTED]²⁰³ [REDACTED].²⁰⁴

5.76 The implausibility of significant disintermediation of the GDSs by Direct Connect is also confirmed by public statements from a number of industry participants. For example:

- (i) On 3 August 2017, The Beat reported statements by Frank Hull (Delta): *"We have really productive relationships with the GDSs, so our strategy is really to lean in to the GDSs, to equip the GDSs with the ability to provide the rich content so it flows through into the TMC channels as it does today. It's not really about going around that or creating a disincentive for that or anything like that. We want to work with the agencies and with corporate travel managers in the way they want to work with us and equip them with the information that helps them make a better choice. [...] [It is] probably not practical for most agencies and certainly not for most corporations to be developing their own direct connect."*²⁰⁵
- (ii) American Airlines vice president of sales and distribution strategy, Cory Garner, *"led the initial push to direct connect (cut out the GDSs) in 2010."*²⁰⁶ However, in 2018, he told Skift: *"Since 2012 we've heard from agencies that the GDSs are the architectural center of their businesses and that they rely on too many processes and systems to be able to abandon the GDSs, [...] We got the message and took on the hard work on our side and work with the GDSs to make next-retailing work in cooperation with them as best we can."*²⁰⁷
- (iii) In an article in The Beat published on 12 September 2019, Rose Stratford, EVP of Global Supplier Relations and Strategic Sourcing at BCD Travel said *"Going down the path of trying to chase every supplier will be too cumbersome and, quite frankly, not efficient for us [...] We do believe that using a third-party aggregator or a GDS is going to be key. At the end of the day, we still think the GDSs will be more scalable [than direct connectivity with airlines]."* BCD Travel confirmed in a statement (referenced in the same article) *"The technological landscape could change, but at the moment we think the GDSs will continue to serve as our primary content connectivity models in the future."*²⁰⁸

²⁰² [REDACTED]

²⁰³ [REDACTED].

²⁰⁴ [REDACTED].

²⁰⁵ The Beat article titled, "Delta To 'Lean In' To GDSs, Renews Full Content Deal With Travelport", available at <https://www.thebeat.travel/News/Delta-To-Lean-In-To-GDSs-Renews-Full-Content-Deal-With-Travelport> (accessed 30 October 2019)), provided at Annex 14.

²⁰⁶ BAML Primer, enclosed at Annex 9, p. 12.

²⁰⁷ Skift article titled, "American Airlines Feels Vindicated in Its Second Try at Direct Distribution", available at <https://skift.com/2018/10/04/american-airlines-feels-vindicated-in-its-second-try-at-direct-distribution/> (accessed 5 October 2019)).

²⁰⁸ The Beat article titled, "BCD Lands NDC Certification by Testing Direct Connection with BA" available at <https://www.thebeat.travel/News/BCD-Lands-NDC-Certification-By-Testing-Direct-Connection-With->

- (iv) Commenting on the fare discount introduced by Lufthansa for bookings made through direct or NDC-enabled channels in April 2018, Hans-Ingo Biel, Executive Director of German business travel association VDR stated that *“The direct access offered by Lufthansa is still unable to support the end-to-end needs of the business travel market.”*²⁰⁹
- (v) In an in-depth study on GDS written by The Beat, it is reported that *“fewer than half of the TMCs respondents planned to build their own direct connections to airlines to get NDC content.”*²¹⁰ In the same study, Pat McDonagh, CEO of TMC Clarity Travel Management is quoted as saying *“this [(GDSs)] is a technology that transacts billions of transactions a year, that gives us sub-second search returns, that queues things intelligently and is the very heartbeat of some of our businesses [...] There’s a reason why it’s hard to replicate some of those things.”*²¹¹
- (vi) In an article from The Beat, reporting on Delta Airlines’ plan to become IATA Level 3 certified, Jeff Lobl (Managing Director of Global Distribution Strategy) said that Delta would make its APIs available to *“all players in the chain”* but that, *“we are expecting that the overwhelming majority of our API consumption will be done by the GDSs.”*²¹²
- (vii) The Atmosphere Report concludes that *“direct connect links will show flat-to-minimal future growth, unlikely to exceed a range of three to four percent over the next five years (2024)”*, because the technology *“lacks the practicality, convenience, and control of other distribution options that agencies value.”*²¹³

5.77 Finally, the fact that there is no credible threat of Farelogix disintermediating Sabre is also borne out by an assessment of the economic evidence.²¹⁴ In particular, and as explained more fully in the discussion on the killer acquisition theory of harm at Section 6 below, if it were truly the case that Farelogix were expected to rapidly grow its share of supply or

[BA?utm_source=website&utm_medium=widget&utm_campaign=search](#) (accessed 31/10/2019), provided at Annex 14.

²⁰⁹ The Company Dime article titled “Lufthansa More than Doubles Direct Channel Discount on Some Fares”, dated 6 April 2018 available at <https://www.thecompanydime.com/lufthansa-direct-discount/> (accessed on 30 October 2019), provided at Annex 14.

²¹⁰ The Beat report titled, “GDS: Channel of Choice”, dated June 2019, available at <https://interactive.thebeat.travel/TMC-NDC-Adoption-Barometer/GDS-CHANNEL-OF-CHOICE-6207Q-7807TG.html> (accessed on 30 October 2019), provided at Annex 14.

²¹¹ *Ibid.*

²¹² The Beat article titled, “Delta Leans in to NDC, Preps GDS API Connections”, available at https://www.thebeat.travel/News/Delta-Leans-In-To-NDC-Preps-GDS-API-Connections?utm_source=website&utm_medium=widget&utm_campaign=search (accessed on 31/10/2019), provided at Annex 14.

²¹³ Atmosphere Research Report, enclosed at Annex 1, para. 55.

²¹⁴ See further Annex 13.

materially disintermediate the GDSs, the purchase price paid by Sabre ought to have been considerably higher.

GDS pass-through is what travel agents and most airlines want, and is hugely pro-competitive for end-consumers

5.78 The Issues Statement appears to focus primarily on the welfare of the airlines, rather than the welfare of final consumers. This is problematic as there is no reason to think that the welfare of airlines (and, in particular, large and potentially dominant airlines who are most well-suited to distribution via Direct Connect) bears any relationship with the welfare of consumers.

5.79 In fact the comparison shopping which the GDSs offer is crucial for allowing consumers to access good value fares. This is apparent from the respective demonstrations at the Sabre and Farelogix site visits, which showed that [REDACTED]:

Figure 5.7

[REDACTED]

[REDACTED]

Source: Farelogix site visit CMA handout.

Figure 5.8

[REDACTED]

[REDACTED]

Source: Sabre site visit technology demo screenshot.

5.80 Figure 5.9 and Figure 5.10 below also illustrate this point. On 29 October 2019, the respective teams at each of Sabre and Farelogix conducted a comparison shopping exercise examining the range of travel options and competitiveness of fares available on

SabreRed and SPRK for eight selected city pair routes and one multi-city (round the world) route.²¹⁵ The results demonstrate that [redacted]²¹⁶[redacted].²¹⁷ [redacted].²¹⁸

Figure 5.9

[redacted]

[redacted]

Source: Parties.

5.81 [redacted]²¹⁹ [redacted].

Table 5.10

[redacted]

| Route | SabreRed Display Price | Alternative Dates | Alternate Airports |
|------------|------------------------|-------------------|--------------------|
| [redacted] | [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] | [redacted] |

²¹⁵ See Annex 15 for a summary table reflecting the underlying fare data for all the selected city pair routes and the multi-city route. The flights for all the city pair routes were booked to depart on 14.01.2020 and return on 21.01.2020, which is a sufficient time in the future to avoid the data being unfairly skewed by late booking periods. The multi-city booking comprises of the following five cities: (i) London to Los Angeles – 14 January 2020; (ii) Los Angeles to Sydney – 21 January 2020; (iii) Sydney to Bangkok – 28 January 2020; (iv) Bangkok to Dubai – 4 February 2020; and (v) Dubai to London – 11 February 2020. There is no data for Lufthansa illustrated in the graph because it did not have any fare options for this route over this time period.

²¹⁶ For comparison purposes, the Parties have assumed that an average traveler will book an economy class fare to include baggage and basic amenities like seat selection and limited flexibility (i.e. permit booking changes or cancellations for a fee) and will prioritize a flight where the connection has no more than one stop (where appropriate). For Lufthansa's SPRK results, the Parties have displayed the fares for either the "economy - classic" (LDN – PAR route) or "economy - best buy" (all other city pair routes) because these illustrate the best available fare categories that include basic amenities such as baggage allowance, seat allocation and limited flexibility. Therefore, these are the fare categories most directly comparable with the fare content available in the Sabre GDS. In many instances, while Lufthansa's "economy - light" fare category may provide lower prices, this reflects just the basic seat price only and so is not an appropriate comparison.

²¹⁷ The Sabre GDS also provides the best available price for best available terms. See for e.g., the LDN – PAR route, where [redacted].

²¹⁸ See Annex 15 for a summary table reflecting the underlying fare data for this multi-city route. The booking comprises of the following five cities: (i) London to Los Angeles – 14 January 2020; (ii) Los Angeles to Sydney – 21 January 2020; (iii) Sydney to Bangkok – 28 January 2020; (iv) Bangkok to Dubai – 4 February 2020; and (v) Dubai to London – 11 February 2020. There is no data for Lufthansa illustrated in the graph because it did not have any fare options for this route over this time period.

²¹⁹ For example, for the LDN – PAR route, the Sabre GDS will also provide fare results for Eurostar train connections.

| | | | |
|------------|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

Source: Parties.

Note: *This is the best available fare for a non-stop flight. An even lower fare is available for an alternative flight involving a stopover.

5.82 The benefits of comparison shopping via the GDS are also underlined by the evidence from travel agents from the CMA’s Phase 1 market investigation (see paragraph 5.6 above) and by their public statements. For example, reacting to Lufthansa’s removal of Light Economy and Business Saver business class fares through GDSs in several European countries, Vince Chirico, SVP of global network and technology partners of Carlson Wagonlit Travel (CWT), one of the world’s largest travel agencies said:

“[w]e don’t believe [Lufthansa’s withdrawal of its lowest fares] is in the spirit of true NDC [...] We see this more as a channel-shift play and content being pulled out of the most efficient channel, which is the GDS, into a more cost-effective channel for Lufthansa and not necessarily having the customer in mind as they do this. [...] We’ve been very public though that, while not the sexy answer, our preferred channel will continue to be the GDSs. We see them as the only technology partners that can build a full end-to-end solution with response times that are acceptable for us and that we can plug into our back office in an efficient and scalable manner” (emphasis added).²²⁰ Similarly, travel agents have complained that they are “disappointed that LHG is restricting customer choice in this way but not surprised by the airline’s decision as it reflects a further move to reduce transparency in airfare shopping.”²²¹

Farelogix is no longer a key innovator/disruptor

5.83 Finally, the extent that Farelogix was ever a key innovator or disruptor, this is no longer the case. [REDACTED]. Further, there are now multiple other IT providers, including new entrants like ATPCO’s NDC Exchange, providing technology solutions that are more innovative and using more advanced versions of the NDC standard than Farelogix. It is clear that innovation in the industry is being driven by players other than the Parties, in particular Amadeus, and the Transaction is required to ensure that the Parties can keep up.

²²⁰ The Beat article titled, “CWT Reluctantly Taps Travelfusion for Lowest Lufthansa Fares”, available at <https://www.thebeat.travel/News/CWT-Reluctantly-Taps-Travelfusion-For-Lowest-Lufthansa-Fares> (accessed on 30/10/2019), provided at Annex 14.

²²¹ The Beat article titled, “Lufthansa Group to Pull Some Fare Types from GDSs?” available at https://www.thebeat.travel/News/Lufthansa-Group-To-Pull-Some-Fare-Types-From-GDSs?utm_source=website&utm_medium=widget&utm_campaign=search&oly_enc_id=5023B9646190A7Z (accessed on 30/10/2019), provided at Annex 14.

Farelogix's innovations are limited and historical

- 5.84 The Parties consider that the CMA's investigation to date has placed too much weight on claims that Farelogix is a key innovator or disruptor. These claims are largely based on a very small number of cherry-picked references in out-of-date internal documents. To the extent that Farelogix ever was a key innovator/disruptor, this is overstated and no longer the case.
- 5.85 Although Farelogix originally developed the XML protocols that became part of the NDC standard, these were donated to and published by IATA in 2015.²²² As an open source standard, the schemas are publicly available and other companies and industry participants have since taken those initial schemas and evolved them past Farelogix's original input.²²³ [X]. As previously submitted in the Parties' Initial Submission, the CMA's Phase 1 investigation did not appear to identify any current examples of Farelogix being considered a key innovator – references in third-party comments were generally “past tense”.²²⁴
- 5.86 Moreover, as explained at paragraph 3.5 *et seq.* above, Farelogix is [X].
- 5.87 [X].

Many other companies drive innovation

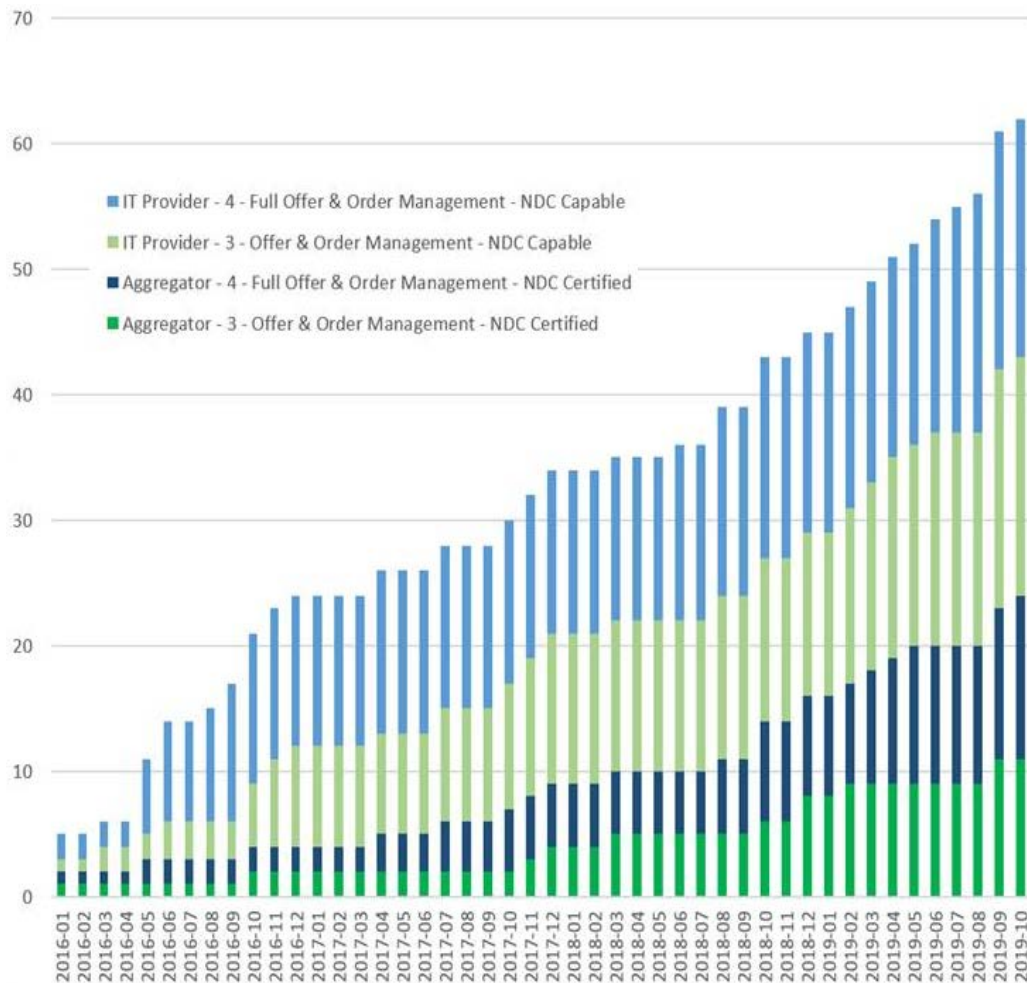
- 5.88 To the extent that Farelogix was ever an important innovator or disruptor in the industry, there are multiple other providers that have advanced ahead of Farelogix in maintaining themselves up-to-date on the latest NDC schemas. Notably, Farelogix is still using a 2017 version of the NDC schema compared to the updated version that competitors including Amadeus, Datalex, JR Technologies and TPConnects are using. Farelogix is therefore, clearly, not at the forefront of developing and defining the standard (nor is Sabre). Examples of other ongoing innovations by Farelogix's competitors are enclosed at Annex 5.
- 5.89 Moreover, since NDC is an open standard, the barriers to entry for new technology companies are low, and the numbers of providers achieving Level 3 or Level 4 IATA certification as NDC capable IT providers and aggregators is increasing rapidly every month, as demonstrated by Figure 5.11 below, from a mere handful at the start of 2016 to over 60 companies today. New entrants are [X]

²²² Parties' Initial Submission, para. 1.8.

²²³ See Atmosphere Research Report, enclosed at Annex 1, notes that while “*Farelogix technology meets their commercial needs and technological requirements, it is not materially different from the technologies used by its competitors [...] largely based on open standards and well-known third party vendors*” (para. 69).

²²⁴ Parties' Initial Submission, para. 5.43.

Figure 5.11
IATA NDC Certifications (Level 3 & 4 IT Providers and Aggregators only), 2016-Present



Source: Derived from IATA NDC Registry.²²⁵

5.90 Farelogix’s competitors are poised to drive forward innovation significantly in the coming months and years. In particular, 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. Similarly, many of Farelogix’s competitors, such as Amadeus, Google/ITA, SAP and PROS sit within huge, multinational, well-capitalised IT companies with significantly greater capacity for future investment should they choose to do so. [X]. Some examples of competitors’ ongoing innovations are enclosed at Annex 5, such as:

- (i) On 17 October 2019, Amadeus announced that Selling Platform Connect, its cloud-based booking platform, now allows travel sellers to shop, order, pay and service airline travel offers via NDC connectivity.²²⁶

²²⁵ Available at <https://www.iata.org/whatwedo/airline-distribution/ndc/Pages/registry.aspx>; (accessed on 24/10/19). Figure 5.11 was prepared based on the certification date recorded for each provider in the IATA database. Companies with expired certifications are not displayed in the results.

²²⁶ <https://buyingbusinessstravel.com/news/amadeus-continues-ndc-roll-out/>

(ii) As explained at paragraph 3.13(v) above, Atriis is developing a new NDC aggregator called “LUCY”, announcing a pilot for Singapore Airlines content on 21 October 2019.²²⁷

(iii) OpenJaw is pursuing NDC innovations through its new NDC Centre for Excellence (housing a core team of NDC specialists),²²⁸ and on 15 April 2019 announced a collaboration with All Nippon Airways to create an NDC platform, targeting a rollout before the end of 2019.²²⁹

5.91 From Sabre’s perspective, innovation is driven primarily by the needs of its airline customers and [§<]

5.92 Indeed, the CMA’s investigation has confirmed that Amadeus is a strong competitor, and as the Parties have previously submitted, Amadeus has publicly stated that its NDC-X program is a strategic priority.²³⁰

5.93 However, the Parties consider that the CMA’s investigation to date has given insufficient weight to the competitive constraint posed by Travelport (in particular in finding that Travelport is a weakening constraint²³¹). All available evidence points to the fact that Travelport is extremely capable and committed to NDC, and is developing its capabilities fast. Notably, at the 2019 IATA Business Travel Summit, Travelport demonstrated live NDC capabilities to shop, book, cancel and exchange content on its Smartpoint application. [§<] As is apparent from Table 5.3 below, Travelport has in fact led the race towards IATA certification.

**Table 5.3
GDS NDC Aggregator Certifications**

| | Feb 2018 | Sep 2018 | Aug 2019 |
|-------------------|-----------------|-----------------|-----------------|
| Travelport | Level 3 | Level 3 | Level 3 |
| Amadeus | Level 1 | Level 3 | Level 3 |
| Sabre | Level 1 | Level 1 | Level 3 |

Source: IATA NDC Registry.²³³

²²⁷ <http://www.eglobaltravelmedia.com.au/meet-lucy-singapore-airlines-new-distribution-capability-aggregator/>

²²⁸ <https://www.openjawtech.com/openjaw-announces-new-customers-new-platforms-new-partnerships-new-hires-annual-global-travel-summit-madrid/>

²²⁹ <https://www.ana.co.jp/group/en/pr/201904/20190415.html>

²³⁰ Initial Submission, para. 5.42.

²³¹ Issues Statement, para. 54(d).

²³² Examples of Travelport’s ongoing innovations are provided in Annex 5.

²³³ Available at <https://www.iata.org/whatwedo/airline-distribution/ndc/Pages/registry.aspx>; (accessed on 24/10/2019).

5.94 Further, Sabre’s internal documents [§<]. These discussions include the importance of Sabre offering NDC functionality. For example, an internal document records Sabre’s GDS contract renewal discussions with [§<]:

[§<]

5.95 Even if it were the case that Farelogix was a key innovator during the early days of NDC, it is clear that NDC is now “out of the bottle” and other players, especially airlines themselves, are driving innovation forward. All three of the major GDSs are fully committed to developing NDC capabilities, and Sabre is [§<]. Similar concerns to those expressed by Eton Travel about Sabre’s NDC position have been raised by other travel agents:

(i) [§<]²³⁵

(ii) [§<]

5.96 [§<]. The Transaction will accelerate Sabre’s NDC adoption, to the benefit of both sides of the market and, most importantly, final consumers as set out in further detail in Section 7 (Efficiencies).

Conclusion

5.97 There is no direct competition between the Parties: Farelogix’s product offering is an NDC API; Sabre does not currently offer one. Sabre’s product is a GDS; Farelogix is not a GDS. Even if the CMA’s flawed market definition is adopted, there is negligible competitive overlap between the Parties in indirect distribution currently. In particular, the Direct Connect channel has a minimal share and Farelogix’s share within this is negligible. Farelogix is not unique: there are multiple companies who provide NDC APIs and bidding analysis demonstrates that Farelogix competes with, and loses to, several other companies (but not Sabre). Moreover, the Parties will not become more significant competitors in the future. In particular, there is no credible threat of Farelogix disintermediating the GDS, and Farelogix is no longer a significant innovator or disruptor in the market, to the extent that it ever was. Concerns of any merger-specific substantial lessening of competition should therefore be dismissed.

²³⁴ [§<].

²³⁵ [§<].

²³⁶ [§<].

6. NO KILLER ACQUISITION THEORY OF HARM

- 6.1 For the reasons set out in Sections 4 and 5 above, no unilateral effects concerns arise in respect of non-core PSS merchandising modules or services that facilitate the indirect distribution of airline content. Therefore, the Parties consider that the Transaction does not give rise to an SLC. For completeness, however, and given the current policy debate surrounding “killer acquisitions” and some commentary speculating that the Transaction may be such a case, the Parties address this theory directly in this Section.
- 6.2 It is clear that this Transaction is not a “killer acquisition” and there is no credible evidence to support such a theory of harm. As the Parties explain further below, the Transaction poses no harm to potential competition or innovation competition. Market participants recognise that the Direct Connect channel is not a viable alternative to GDSs, and it is clear that Farelogix’s products can and are used more broadly, with Farelogix now seeing itself as a complementary provider and not a potential substitute to the GDSs. Farelogix’s inability to be a substitute to the GDSs is further confirmed by Farelogix’s [§<] and the Parties’ internal documents. Moreover, Farelogix is only one of many providers capable of building an NDC API to facilitate Direct Connect, and these competitors are innovating and developing their offerings much faster than Farelogix.
- 6.3 Further detail on the [§<], is provided at Annex 13.

No basis in any legal, economic or policy analysis for characterising the Transaction as a “killer acquisition”

“Killer acquisitions” are a current area of policy interest

- 6.4 The term “killer acquisition” has become more popular in academic and policy circles in recent years, and has been extended to apply to the tech sector as well as the pharmaceutical sector. The academic and policy arguments identify two possible forms of “killer acquisition”:²³⁷
- 6.5 Firstly, acquisitions that could be termed “true” killer acquisitions. These occur when a company acquires a target business with a product that will likely soon compete with the acquirer’s product and the acquirer intends to discontinue (i.e., “kill”) the target’s pipeline product in order to avoid cannibalizing the acquirer’s own product’s sales post-transaction.
- 6.6 Secondly, acquisitions that are termed “zombie acquisitions”. These occur where an acquirer acquires a target company that has an early stage product or service and the acquirer intends to continue the early stage product or service. The consequence is, however, the same as in any other acquisition of sole control, namely that the target will

²³⁷ See Cunningham, Colleen and Ederer, Florian and Ma, Song, “Killer Acquisitions” (2018), available at : https://www.gsb.stanford.edu/sites/gsb/files/io_09_18.pdf; David Perez de Lamo, “Preserving Innovation Competition in the Digital Era: “Killer Acquisitions” (July 2019), available at <https://www.competitionpolicyinternational.com/wp-content/uploads/2019/07/Europe-Column-July-Quadriptych-2019-3.pdf>, and Jacquelyn MacLenan, Dr. Tillman Kuhn, Thilo-Maximilian Wienke, “Innocent Until Proven Guilty – Five Things You Need to Know About Killer Acquisitions” (2019), available at <https://knect365.com/complaw-blog/article/1d971303-8cd7-445c-a782-4c8663dba362/innocent-until-proven-guilty-five-things-you-need-to-know-about-killer-acquisitions> (last accessed on 21 October 2019).

be controlled by the acquirer, and ceases to be an independent player, and possibly ceases to evolve into a major competitor that may tip the market or be a particular innovator in the space.

Even if “killer acquisitions” were a separate theory of harm, the Transaction does not constitute such a merger

- 6.7 The question of whether “killer acquisitions” are separate categories of transaction that should cause competition authorities to depart from traditional and well established methods of merger analysis (which the Parties consider would be misconceived) does not arise here since the Transaction is not on any conceivable basis capable of amounting to a killer acquisition:
- 6.8 Firstly, this transaction does not fit the killer acquisition “archetype”. Sabre already faces strong competition from other in-segment rivals (Amadeus and Travelport) and strong pressure from powerful airline customers.
- 6.9 Secondly, far from this being a situation like that alleged in cases such as *Facebook/Instagram* where “today’s complement could become tomorrow’s substitute”, Farelogix was already abandoning any aspiration to disintermediate the GDSs and evolving instead to a complementary business model. There is no realistic prospect that Farelogix would have evolved into a major competitor to Sabre, including due to its [X], as described further above at paragraphs 3.5 *et seq.* and in Annex 2. As explained at paragraph 5.75(iii) above, even Farelogix itself now acknowledges that it will not become a significant competitor to the GDSs, and insofar as it has made any such statements in the past these are no longer representative of Farelogix’s current position. This is also borne out by Sabre’s internal documents as described further above at paragraph 5.75 above.
- 6.10 Thirdly, as explained in Sections 3 and 7, Sabre is not entering into the Transaction in order to remove Farelogix as a competitor. Sabre needs Farelogix to accelerate its development of NDC distribution and non-core PSS merchandising capabilities and to be able to keep up with Sabre’s largest competitors in the market, Amadeus and Travelport.
- 6.11 Further, Sabre has publicly committed to continue to offer and support Farelogix NDC APIs and Direct Connect capabilities for airlines who wish to use them to connect to Sabre, other GDSs, other distribution partners, or directly to travel agents; and to continue to offer and support FLX M on a PSS-agnostic basis so airlines will have access to all of its features and capabilities regardless of whether the airline is a Sabre PSS customer. Such commitments have been made directly by Sabre’s CEO Sean Menke to 36 airlines. These commitments were offered to address any potential commercial concerns around the potential change of control of Farelogix and to ensure that Sabre maintains Farelogix’s current book of customers. The importance of reputation, and the importance of adhering to such commitments in negotiations between Sabre and airlines, means that there is a strong self-enforcing mechanism which ensures that Sabre does not have the incentive to deviate from these commitments.²³⁸

²³⁸ See e.g. EC Case COMP/M.5529 *Oracle / Sun Microsystems*, 21 January 2010, at para.182.

Even if a separate “killer acquisitions” theory of harm were to be applied to the Transaction, it fails

- 6.12 Even if it was considered that that such a separate theory of harm for “killer acquisitions” existed, it is clear that it fails when applied to the Transaction for two reasons: firstly, there is no harm to potential competition because the Direct Connect channel is not a viable alternative to the GDS and accordingly Farelogix will not develop into a competitor to the GDS; and secondly there is no harm to innovation competition, including because there are significant other competitors providing the same technology as Farelogix who can maintain sufficient competitive pressure in the market. Further, there is nothing in the valuation of the Transaction that suggests that it can be classified as a “killer acquisition”; Sabre’s acquisition cannot be interpreted as a “pre-emptive move” intended to remove a competitor and ultimately reduce competitive pressure on its GDS.
- 6.13 Firstly, there is no harm to potential competition. According to the CMA Merger Assessment Guidelines, unilateral effects may arise from the elimination of potential competition either when (i) the merger involves a potential entrant that could have increased competition, or (ii) the merger removes a firm which is not in the market, but which nevertheless imposes an existing constraint because of the threat that it would enter if existing firms in the market raised their prices.²³⁹ Neither is a risk here.
- (i) As outlined at paragraph 5.6, market participants (including Farelogix itself) recognise that the Direct Connect channel products (whether based on NDC or older technology) is not a viable alternative to GDSs due to its more limited scope of content (limited airlines, lack of capability to deliver information on car hire, hotels etc.) and the lack of mid- and back-office agency functionality as well as the complexity and high scaling costs associated with providing airlines with a network of one-to-one agency connections equivalent to that of the GDSs.
 - (ii) In particular, as outlined at paragraph 5.74 above, [REDACTED]. Farelogix is also [REDACTED].
 - (iii) This assessment is confirmed by an analysis of the Parties’ internal documents including Sabre’s valuation of Farelogix which shows that, to the extent there was ever a concern that FLX OC represented a disintermediation threat to GDSs, this has now passed, as described further above at paragraphs 5.71 *et seq.*
 - (iv) There are numerous other competitors in the market who provide similar, if not more advanced, solutions to Farelogix, as described further above at paragraph 5.27 *et seq.*
- 6.14 [REDACTED] is provided at Annex 13. One of the key issues considered in the CRA annex is the conclusions which may be drawn from Sabre’s valuation of Farelogix.²⁴⁰ [REDACTED]

²³⁹ CMA Merger Assessment Guidelines, para. 5.4.13.

²⁴⁰ On 7 October 2019, Andrea Gomes da Silva gave a speech at a Concurrences panel in Paris on the importance of valuation evidence. See further <https://app.parr-global.com/intelligence/view/prime-2917077> (accessed on 30/10/2019), provided at Annex 14.

6.15 Secondly, there is no harm to innovation competition. There is no possibility that the Transaction will lead to the removal of a competitor that could have innovated further in the market, or that Sabre will be incentivised to slow down or cease innovation following the acquisition:

- (i) Firstly, as outlined in paragraphs 5.88 *et seq.*, Farelogix is one of many providers capable of building an NDC API to be used for Direct Connect, and Farelogix's understanding is that it regularly competes head-to-head with at least eight providers in tenders, with many more having the technical capabilities to do so, in particular demonstrated by the number of IATA NDC certifications of IT providers and aggregators in Figure 5.11. Such providers are advancing their innovation and developments much faster than Farelogix. Annex 5 provides examples of ongoing and upcoming initiatives by the Parties' competitors in both merchandising and indirect distribution. As shown, several players are actively innovating in these spaces including Amadeus, PROS/Vayant, Google/ITA, HP (DXC) and SAP. Further detail of ongoing and upcoming innovations from competitors such as Amadeus and Atriiis Technologies are also detailed above at paragraph 3.13 above.
- (ii) Secondly, Sabre is only one of three major GDS providers, with Amadeus in particular having significantly larger operations in Europe. Accordingly, it would be perfectly rational for Sabre to seek to improve the capabilities of its products and broaden the services it is able to offer to its customers. As Farelogix's products are built around the NDC standard, Sabre would have every incentive to seek to strengthen its position in NDC as against its rivals as this would allow it to win business from those rival GDSs.
- (iii) Thirdly, as noted above, Sabre has committed to offer and support FLX OC and FLX M, which includes continuing innovation around these products.
- (iv) Finally, airlines have multiple other options besides the Direct Connect to put pressure on GDSs such as [redacted], as outlined above at paragraphs 5.36 *et seq.* above, meaning that Sabre does not have an incentive to remove Farelogix as one Direct Connect supplier, as this would not give any advantage in negotiations with airlines.

Conclusion

6.16 Overall, it is clear that the Transaction is not a "killer acquisition" and should not be viewed as such, as further outlined in Annex 13. The Transaction will not harm potential competition: there is no realistic prospect that Farelogix will grow into an effective competitive force in the market given the position of the Direct Connect channel and Farelogix's [redacted], and further, there are significant other competitors providing the same technology as Farelogix who can maintain sufficient competitive pressure in the market.²⁴¹ The Transaction will not harm innovation competition as Farelogix is only one of many players, and indeed not the most innovative or dynamic player in this space

²⁴¹ Thereby satisfying both the CMA Merger Assessment Guidelines and the European Commission Guidelines on the Assessment of Horizontal Mergers under the Council Regulation on the Control of Concentrations Between Undertakings (2004/C 31/03) at para. 60.

currently. Furthermore, Sabre has committed to continue to offer and support FLX OC and FLX M including continuing to innovate and develop these products, and airlines have multiple options besides the Direct Connect channel to put pressure on the GDS in negotiations.

7. EFFICIENCIES

7.1 The Parties expect the Transaction to give rise to significant and quantifiable efficiencies that will enhance competition by: ²⁴²

- (i) enabling the combined entity to compete more effectively with market leader, Amadeus, and many other competitors in this space; and
- (ii) accelerate the delivery of NDC content through the GDS which will allow airlines to offer wider and more bespoke options to end travellers whilst at the same time increasing comparison shopping and price competition for the benefit of those same end-travellers.

7.2 Farelogix has merchandising and NDC expertise but [REDACTED]. Sabre, on the other hand, has global scale and expertise in distribution but lacks a [REDACTED] and [REDACTED]. The Transaction will allow the combined company to pursue merchandising marketing opportunities with a scalable PSS-agnostic merchandising engine that can generate NDC-enabled intelligent offers. It will also accelerate Sabre's adoption of NDC, and will allow the combined company to deliver an integrated end-to-end solution across the airline industry.

7.3 [REDACTED].

7.4 Firstly, [REDACTED]. As explained at paragraph 3.3 above, [REDACTED].²⁴³

7.5 [REDACTED].

7.6 Secondly, [REDACTED] Additionally, the Transaction will allow Farelogix to take advantage of Sabre's global footprint, employees, and customer support system,²⁴⁵ [REDACTED]. Farelogix is a small company with approximately 230 employees, many of which are engineers. Sabre has over 9,000 employees, including approximately 900 customer service professionals. Having access to Sabre's robust global employee base and customer service operations will allow Farelogix to provide the 24-hour global support and services that airline customers demand.

7.7 Thirdly, as previously submitted,²⁴⁶ [REDACTED].

²⁴² According to the Merger Assessment Guidelines, "[e]fficiencies arising from the merger may enhance rivalry, with the result that the merger does not give rise to an SLC...The Act also enables efficiencies to be taken into account in the form of relevant customer benefits." paras. 5.7.3-5.7.4.

²⁴³ [REDACTED]

²⁴⁴ [REDACTED].

²⁴⁵ Jay Boehmer, *Interview: Farelogix CEO Jim Davidson*, THE BEAT ("We just thought that Sabre allowed us to check off a lot of those boxes around scale. They have feet on the street, boots on the ground—however you want to put it in all kinds of different countries, and they're aligned exactly where the airlines are, so we didn't have to open offices. That just made tremendous sense."), available at <https://www.thebeat.travel/Interviews/INTERVIEW-Farelogix-Jim-Davidson> (accessed on 30/10/2019), provided at Annex 14.

²⁴⁶ Merger Notice, para. 2.20.

- 7.8 The Transaction will therefore make competition more robust in NDC retailing and distribution:
- (i) The Transaction will allow Sabre to improve FLX M's functionality across core PSSs by providing key insights from its experience as a core PSS provider (e.g. in relation to ancillary fulfilment). By combining Sabre's global infrastructure with Farelogix's market-ready product, the Transaction will allow the combined company to compete better with Amadeus and Google/ITA, among other competitors, in this nascent space.
 - (ii) The Transaction will also accelerate the delivery of NDC content through the GDS, increasing competition among Sabre, Amadeus and Travelport, as well as allowing airlines to communicate a wider range of offers to travellers whilst at the same time also promoting price transparency, and inter-brand competition among airlines. Farelogix's existing NDC offering, expertise and engineering skills will allow Sabre to dramatically improve the NDC support of its GDS.
- 7.9 The delivery of NDC content through the GDS provides significant value for airlines, travel agents and end-travellers. Airlines will be able to deliver more content through the GDS and therefore a wider range of choice for their customers. The GDS platform offers the mid- and back-office support required by travel agencies and, importantly, enables comparison shopping. The side-by-side comparison of content, including across airlines' NDC and non-NDC content will, promote inter-brand competition between airlines and increases price transparency. As outlined in Section 5 of Annex 13, the welfare of airlines is likely to be a poor proxy for the welfare of ultimate end-travellers and the benefits of promoting comparison shopping via the GDS may create inter-airline competition inducing downward pressure on airlines fares, thereby enhancing the welfare of end-travellers (the ultimate focus of any merger assessment in an industry such as this one).
- 7.10 Overall, the Transaction is pro-competitive and gives rise to significant and quantifiable efficiencies, both through enabling the combined entity to compete more effectively with the market leader, Amadeus and deliver better products and services to airlines and travel agents while also increasing the welfare of end-travellers.

8. CONCLUSION

- 8.1 Sabre has significant scale and expertise in distribution and fulfilment. But it lacks competitive NDC-enabled retailing capabilities. 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 end-travellers) and to close the gap on market leader Amadeus, who has NDC-integrated solutions already.
- 8.2 The Transaction is pro-competitive and will benefit consumers and the wider industry. The Transaction does not result in the creation of a relevant merger situation, and, in any event, the Transaction does not give rise to any unilateral effects concerns in either non-core PSS merchandising modules or in services to facilitate the indirect distribution of airline content. Nor does the Transaction raise any concerns on any type of "killer acquisition" theory of harm. The Transaction therefore will not give rise to an SLC.
- 8.3 If, contrary to the case set out by the parties in this response, the CMA were to find both that it has jurisdiction and the Transaction is likely to lead to an SLC, it would not be "reasonable" within the terms of s. 41(2) of the Act for the CMA to prohibit the Transaction since the nexus between the Transaction and the UK is peripheral at best, the impact on UK consumers is very limited, and the Transaction is being subject to detailed scrutiny in the US, the jurisdiction with which it has by far the greatest connection. Nor would it be "practicable" given that prohibiting the Transaction could cause adverse effects on third parties and impose potential costs, for example on [3<].