

Anticipated Acquisition by Sabre Holdings Corporation of Farelogix Inc.

American Airlines: Comments on the Notice of Possible Remedies

1. Overview

- 1.1 This submission relates to the acquisition by Sabre Corporation (“**Sabre**”) of Farelogix Inc. (“**Farelogix**” and, together with Sabre, the “**Parties**”) (the “**Merger**”), and sets out American Airlines’ (“**American**”) comments in response to the CMA’s notice of possible remedies issued on 7 February 2020 (the “**Notice**”). Unless otherwise stated, in this submission American adopts the defined terms used in the Notice.
- 1.2 In summary, American considers that the only effective remedy in addressing the substantial lessening of competition (“**SLC**”) identified by the CMA in its provisional findings report (and consequently any resulting adverse effects) is prohibition of the Merger. American agrees with the CMA’s provisional views that the other remedial options set out in the Notice are unlikely, each on its own or in combination, to constitute an effective remedy in addressing the SLCs provisionally identified. American has not identified any practical alternative remedies.
- 1.3 On the basis that American considers that there is only one effective remedy in addressing the SLCs provisionally identified by the CMA (namely, prohibition of the Merger), American has not commented on the cost of remedies, proportionality or relevant customer benefits.
- 1.4 Information in this submission that is confidential to American is [REDACTED]. This information is not in the public domain and its disclosure may harm American’s legitimate business interests. Accordingly, American requests that this information be excised from any non-confidential version of this submission that the CMA may publish.

2. Prohibition

- 2.1 In its provisional findings report, the CMA has provisionally identified SLCs in the supply of (i) merchandising solutions and (ii) distribution solutions to airlines on a worldwide basis, including the UK.
- 2.2 In view of the global nature of supply and given that prohibition of the Merger would prevent an SLC from arising in any relevant market, American agrees with the CMA’s provisional view that prohibition would represent a comprehensive solution to all aspects of the SLCs provisionally identified (and consequently any resulting adverse effects) and that the risks in terms of the effectiveness of prohibition as a remedy are very low.
- 2.3 In particular, as testified by Cory Garner, Vice President, Sales and Distribution Strategy at American, in the US trial regarding the Merger, American’s “*biggest concern is the fact on Day One of this transaction, we would be losing the disruptor in the market*” (see the transcript extract set out at paragraph 5.3 below; emphasis added). In American’s view, the only way this concern can be addressed in a comprehensive manner is prohibition of the Merger, given that there is no supplier comparable to Farelogix in terms of scale and proven reliability as concerns NDC API and related services that are central to the role of Farelogix in providing distribution solutions to airlines on a worldwide basis.

3. Partial divestiture

- 3.1 American agrees with the CMA's initial view that the part of the Parties' business that takes place in the UK does not appear to be separable from the rest of their operations. Therefore, a divestment of any UK-based operations is unlikely to be effective in addressing the CMA's provisional competition concerns for the reasons outlined in the Notice, particularly given that competition in the relevant markets is global, as are the Parties' operations and software development.
- 3.2 American also agrees that carving out one or more business units from either Party to form the basis of a divestiture package is unlikely to be feasible or effective for the reasons outlined in the Notice. Most of Sabre and all of Farelogix is involved in the markets in which the CMA has found an SLC. As noted by the CMA, any partial divestiture of Sabre may risk breaking the synergies between its business units and Sabre is as yet unproven as an NDC API supplier. American notes that a partial divestiture could result in inefficiencies to the detriment of Sabre's customers, including American, and agrees with the CMA that synergies are important to future competition, particularly given the likelihood that Sabre with its greater resources and distribution track-record will be able to develop as a competing NDC API supplier to Farelogix.

4. Divestiture or licensing of software or IP

- 4.1 American agrees that the divestiture or licensing of software or IP is unlikely to represent an effective approach to remedy, mitigate or prevent the SLCs provisionally identified by the CMA for the reasons outlined in the Notice. American agrees that the divestment of a business, including IP rights, where necessary, is likely to be more effective than licensing IP alone, but in this case divestment is not a feasible remedy for the reasons explained above.
- 4.2 American was asked [REDACTED].¹ American explained to [REDACTED]. This is an illustration of the significant difficulties inherent in designing and implementing a divestiture or licence of software or IP (including identifying a suitable purchaser) in this case.

5. Behavioural remedies

- 5.1 American agrees that the behavioural undertakings offered by Sabre to the CMA in lieu of a Phase 2 reference would also be ineffective in remedying, mitigating or preventing the SLCs provisionally identified by the CMA for the reasons outlined in the Notice. American agrees that behavioural remedies are highly unlikely to have an effective impact on the SLCs that the CMA has provisionally identified and/or any resulting adverse effects for the reasons outlined in the Notice.
- 5.2 Such remedies are higher risk and more complex than a divestiture remedy. In addition, American would be concerned that designing a behavioural remedy that would be effective indefinitely would be likely to create substantial distortion risks that are avoided by divestment or prohibition.

¹ [REDACTED].

5.3 American sets out below an extract from the transcript of the proceedings in the US trial regarding the Merger in which Cory Garner testified in relation to potential behavioural remedies:

Q. Has Sabre made any promises to American in connection with its proposed acquisition of Farelogix?

A. Yes.

Q. What are those promises?

A. That Sabre has promised to extend any existing contract that American has with Sabre or Farelogix for up to three years.

Q. Do those promises address your concerns with the GDS acquisition of Farelogix?

A. No, because our concerns go well beyond the contracts. Our biggest concern is the fact on Day One of this transaction, we would be losing the disruptor in the market.

6. Conclusion

6.1 For the reasons set out above and in the Notice, American considers that the only effective remedy in addressing the SLCs provisionally identified by the CMA (and consequently any resulting adverse effects) is prohibition of the Merger. American agrees with the CMA's provisional views that the other remedial options set out in the Notice are unlikely, each on its own or in combination, to constitute an effective remedy in addressing the SLCs provisionally identified. American has not identified any practical alternative remedies.

6.2 Prohibition of the Merger will ensure that Farelogix continues its disruptor role in providing distribution solutions to airlines. Prohibition will also ensure that Sabre continues to be incentivised to innovate both with its existing distribution services and to be a competitor to Farelogix as concerns NDC API and related NDC distribution services.

* * *