

ME.6806.19 – Sabre / Farelogix

Response to Remedies Notice

1. Introduction

- 1.1 In response to the CMA's Notice of Possible Remedies, Sabre Corporation and Farelogix Inc. (the "**Parties**") propose a comprehensive remedy package which addresses each of the CMA's provisional substantial lessening of competition ("**SLC**") findings and maintains important customer benefits. These include broader customer choice, better customer service and reduced prices resulting from the combined entity's enhanced ability to constrain the current market leader, Amadeus.
- 1.2 For the avoidance of doubt, the Parties consider that the Provisional Findings ("**PFs**") contain important errors that demonstrate that the CMA lacks jurisdiction in this matter and that the SLC findings are erroneous. The Parties are making a separate submission in response to the PFs. The CMA ought to consider the Parties representations on these points before deciding whether there is (i) a relevant merger situation or (ii) an SLC that requires a remedy. These representations are also relevant when assessing the appropriateness and proportionality of any proposed remedy.

2. Remedy proposal

- 2.1 The Parties' proposed remedy package consists of a comprehensive set of behavioural commitments. As the CMA has recognised in its recent literature on digital markets and platforms, behavioural remedies (including, in particular, commitments relating to interoperability) can be effective and pragmatic tools in protecting competition in technology markets.¹
- 2.2 The proposed remedy package includes:

- (i) Continuing to make FLX Merchandise agnostic for use with any core PSS

Sabre undertakes to continue to offer and support FLX M on a PSS agnostic basis. This guarantees that all current and future FLX M customers have the ability to access the full features and capabilities of FLX M regardless of whether they are Sabre core PSS customers.

- (ii) Retaining current pricing, service levels and investment for FLX OC

Sabre will make Farelogix's NDC APIs and FLX OC available at the same or lower prices to those today, and provide at least the current level of support (or more) for these capabilities for a period of time to be mutually agreed upon.

¹ See, e.g. the CMA's interim report '[Online platforms and digital advertising](#)' (18 December 2019) and '[The CMA's Digital Market Strategy](#)' (July 2019).

Sabre will also offer all current Sabre GDS customers and all current FLX OC customers the opportunity to extend their existing contracts on the same terms for a period of at least three years past the current termination date.

Sabre will continue to invest in the development of Farelogix's NDC API and FLX OC capabilities at levels no less than current levels for a period of time to be mutually agreed upon.

(iii) Continuing to make FLX OC agnostic to any form of distribution or provider

Sabre will continue to offer and support Farelogix NDC APIs and FLX OC capabilities to any third parties and all outlets that wish to use them to connect to Sabre, other GDSs, other distribution partners, or directly to TAs on an agnostic basis for a period of time to be mutually agreed upon. Sabre will also continue to offer Farelogix's NDC APIs and FLX OC capabilities to airlines and other third parties for both GDS bypass and GDS pass through for a period of time to be mutually agreed upon.

- 2.3 The Parties also propose the appointment of a monitoring trustee to address any concerns that they might be incentivised to breach these commitments.

3. Effectiveness

- 3.1 As will be outlined in Sabre's response to the PFs, there is no reasonable basis for finding an SLC in respect of merchandising or distribution solutions. However, even taking into account the concerns identified by the CMA, the proposed remedy package would remove any SLC.

- 3.2 First, as regards merchandising solutions, Sabre's commitment to maintain the interoperability of FLX M will ensure that all current and future FLX M customers will be able to access the full features and capabilities of the product regardless of whether they are Sabre core PSS customers. As regards innovation, the combined entity would be in a position to develop even more rapidly by combining Sabre's global infrastructure and core PSS experience with Farelogix's market-ready product.

- 3.3 Second, as regards distribution solutions, Sabre's GDS and Farelogix's NDC API product will both remain available on the market and therefore, to the extent that the CMA considers their functionalities substitutable, customers will still be able to choose as between one or the other. Indeed, there will be even more choice for customers as the Transaction will result in a more effective third option—use of the NDC API in conjunction with Sabre's GDS on a pass-through basis. The remedy will also preserve, if not increase, innovation by ensuring that Sabre continues to invest FLX OC at no less than current levels.

4. Relevant customer benefits

- 4.1 In determining the appropriate course of action, the CMA may, in particular, "*have regard to the effect of any action on any relevant customer benefits*" (section 36(4) Enterprise Act 2002). Relevant customer benefits that will be lost as a result of a particular remedy

“*may be considered to be a relevant cost of the remedy*” (paragraph 3.10 of the Merger Remedies Guidance). The proposed behavioural remedy package would resolve any SLC and maintain all relevant customer benefits. By contrast, prohibition would result in the loss of all relevant customer benefits. The relevant customer benefits are considered below.

The Transaction will make competition more robust in NDC retailing and will drive broader adoption and delivery of NDC content.

4.2 Although the CMA posits that, absent the Transaction, Sabre would have in any case developed a credible PSS-agnostic and NDC-compatible merchandising solution, its analysis is internally inconsistent and not supported by its own evidence.² The CMA fails to prove that Sabre would have had the ability to innovate more rapidly than other suppliers, as it would need to do in a dynamic market, to establish a credible merchandising solution. Further, even if achievable, a credible self-built merchandising solution would only come to fruition after [REDACTED], so the benefits for customers would not accrue within a reasonable period.

4.3 By combining Sabre’s global infrastructure with Farelogix’s market-ready FLX M product, the Transaction will allow the combined company to immediately offer a scalable PSS-agnostic merchandising engine that can generate NDC-enabled intelligent offers. As explained further in the Parties’ response to the Working Paper on Efficiencies, by combining Sabre’s global infrastructure with Farelogix’s market-ready product, the Transaction will allow the combined company to better compete with Amadeus and Google/ITA, among other competitors, in this space.³

Sabre will, by acquiring a PSS-agnostic merchandising solution, be able to offer a compelling solution to the significant majority of airlines that currently use Amadeus’s core PSS and will be able to better serve those airlines that prefer to procure their merchandising solution alongside their core PSS.

4.4 The CMA notes that it sees little evidence of the Transaction making Sabre a stronger competitor to Amadeus in the short-term. It refers to Sabre’s submissions to the DOJ that, *inter alia*, [REDACTED].⁴

4.5 However, [REDACTED], the combined company could (and would have the incentive to) make improvements to the interoperability of FLX M and Sabre’s core PSS in the short-term. For example, the combined entity could [REDACTED].⁵

² Provisional Findings, paras. 11.24 *et seq.*

³ Response to Working Paper on Efficiencies, para. 2.1.

⁴ Provisional Findings, para. 12.27.

⁵ Response to Working Paper on Efficiencies, para. 2.2.

The Transaction will accelerate the delivery of NDC content through the GDS, increasing competition amongst Sabre, Amadeus and Travelport, as well as promoting price transparency, and inter-brand competition among airlines

- 4.6 The CMA posits that the Transaction would likely reduce GDSs' incentives to invest in GDS pass-through, and hence reduce travel agents' ability to comparison shop NDC content.⁶ However, there is no economic incentive for Sabre to limit investment in or uptake of GDS pass-through. The evidence clearly demonstrates that Sabre intends to continue to use the FLX OC product, and the proposed remedy package would in any case ensure that it remains available and interoperable for both GDS bypass and GDS pass-through and that Sabre continues to invest. [§].
- 4.7 As explained in the Parties' response to the Working Paper on Efficiencies, [§]. Following the Transaction, however, Sabre would be [§] and end-travellers would therefore benefit from increased competition between GDSs, improved price transparency and therefore increased inter-brand competition among airlines.⁷

5. Conclusion

- 5.1 Prohibition is not the only comprehensively effective solution to address the SLCs provisionally found by the CMA. The Parties' remedy proposal described above removes the SLCs whilst preserving the relevant customer benefits.
- 5.2 Even if the CMA found prohibition to be the only comprehensively effective solution, this option would not be a proportionate or "*reasonable and practicable*" (under section 36(3) Enterprise Act 2002) solution given that prohibition will (depending on the outcome of the US litigation) prevent the merger from being implemented anywhere in the world, when the CMA's concern is of course focused on a small part of the world, namely the Transaction's effects on UK customers. In addition, as demonstrated above, the relevant customer benefits identified are significant in scale and nature, and the CMA should take into account the relevant customer benefits that would be lost as a result of a remedy in assessing its proportionality.
- 5.3 All relevant customer benefits would be lost if the Transaction were to be prohibited. Prohibition would therefore be a disproportionate remedy even if there were to be no alternative remedy option.

⁶ Provisional Findings, para. 12.39.

⁷ Response to Working Paper on Efficiencies, para. 2.3.