

ME/6806/19

ANTICIPATED ACQUISITION BY SABRE OF FARELOGIX**Amadeus' response to the Provisional Findings****1. Introduction**

1.1 This paper is the response of Amadeus to the CMA's provisional findings published on 7 February 2020 (the *PFs*) in respect of the anticipated acquisition by Sabre Corporation (*Sabre*) of Farelogix Inc. (*Farelogix*) (the *Transaction*). It addresses four key areas:

- (a) the characterisation of market dynamics in the industry, and specifically the uncritical approach taken in the PFs to evidence from airlines (**section 2**);
- (b) the degree of constraint of direct distribution over indirect distribution (**section 3**);
- (c) GDS technology and NDC development, and specifically the underrepresentation of Amadeus' role as a technology champion and innovator (**section 4**); and
- (d) the references to content parity provisions, and specifically the procedural flaws and material errors of assessment in this regard (**section 5**).

2. Market dynamics in the industry

2.1 The role played by Amadeus (and, at least in principle, other GDSs) is fundamentally pro-competitive. Amadeus plays a pivotal role in the industry as the facilitators of neutral indirect distribution, thus facilitating competition on the merits. It is profoundly disappointing to see that this important role, and its value to consumers, is simply absent from the PFs.

2.2 Amadeus has previously expressed concerns that too much of the CMA's narrative regarding the industry in *inter alia* the Reference Decision and Issues Statement has been taken "*on trust*" from airlines and without due regard to the views of passengers and other market participants. This, regrettably, also seems to be the case in the PFs. This is particularly disappointing given that the CMA should be focused on outcomes produced for consumers and not the interests of select industry voices. Three examples are instructive:

- (a) **Airline evidence.** The PFs provisionally conclude that it is "*appropriate to put more weight on evidence from airlines than from travel agents*".¹ This is an unjustifiable and irrational proposition. The reasoning provided in support of it does not stand up to scrutiny.
 - (i) The PFs state that the CMA "*recognise*" that airlines "*have business interests they wish to protect*" and have given "*appropriate consideration to all representations we have received*".² However, in

¹ PFs, para. 11.17.

² PFs, para. 11.17.

weighing evidence, the PFs do not appear to seriously take into account as a relevant consideration the clear strategic incentive of large airlines to undermine neutral indirect distribution, avoid price comparison and seek to disintermediate the airline ticket distribution industry; thereby, reducing the degree of unbiased comparison and thus competition between airlines to the detriment of the consumer.

- (ii) Instead, remarkably, the PFs state that TAs have a “*direct financial interest*” in the GDS model that “*requires us to consider [their evidence and opinions] in context*”.³ The inference appears to be that airlines do not. This is unjustified and irrational. Airlines plainly do have a direct financial interest in the GDS model. This is evident in *inter alia*: (A) the level of booking fees they negotiate with the GDSs; (B) the price differentials they impose through their surcharge on GDS bookings; (C) the way in which GDSs have increased (price) competition between locally dominant airlines and other – particularly smaller – carriers; and (D) the fact that all distribution channels have costs for the airline.⁴ To suggest that only TA views must be considered with the extra “*context*” of having a direct financial interest in the GDS model in mind is flawed and highly concerning as to the approach taken by the CMA to the weighing of evidence in this inquiry.
- (iii) The PFs state that “[w]hile airlines have to have regard to travel agent needs, we consider that it is airline decision making and preferences which primarily drive the competitive process that leads to the development, quality and price of these solution”.⁵ Amadeus disagrees. Both airlines and travel agents drive the competitive process from their respective sides of the two-sided platform. The PFs acknowledge that the parties operate in a two-sided market, and there is no evidence in the PFs that would support preferring one side of the two-sided market over the other. Moreover, to the extent that the CMA’s contention that airlines primarily drive the competitive process could have some element of truth, it would be driven by the fact that a small number of airlines are able to exercise their market power over GDSs (and other industry participants) in a way that is not possible in the more competitive TA market.⁶ As a policy matter, this would be a flawed reason to prefer the evidence of airlines over that of TAs.
- (iv) The PFs state that “[w]e have carefully considered evidence on travel agents’ demand for different distribution solutions. However, we have put less weight on travel agents’ overall views on the Merger, as they are customers of Sabre but not Farelogix, and they are not purchasers

³ PFs, para. 11.17(d).

⁴ For example, airline.com carries not only IT and services costs but an obvious marketing acquisition cost for the airline in terms of advertising as well as payments made to search engines and metasearch sites

⁵ PFs, para. 11.17(a).

⁶ As previously explained in Σ . This shows fierce competition between GDSs and other suppliers of air ticket distribution services for TAs / online TAs business. There is no reason why TAs’ views should not be as relevant as airlines’ views to this inquiry

*of merchandising solutions which means they are less important drivers of the competitive process in both markets than airlines”.*⁷ The implication of this statement appears to be that TAs’ “overall views” on the merger are less relevant than airlines’ simply because TAs are not active in one of the two markets in which an SLC has been identified. This is illogical and an obviously irrelevant consideration. It is also factually incorrect. Although TAs do not pay Farelogix for its services, the TA must still choose to use a Farelogix-designed direct connect for the airline to be able to use a Farelogix API/direct connect. Indeed, the whole purpose of the Farelogix API is to connect an airline to a travel agent. TAs are therefore just as important to Farelogix as they are to GDSs.

- (v) The PFs not only fundamentally misunderstand the nature of a two-sided market like GDSs but they also fail to appreciate that TAs compete against airlines on the downstream market. For example, the European Commission concluded specifically in Case COMP/M.6163 – *Axa / Permira / Opodo / Go Voyages / edreams* [2011] that online travel agents and airline.com are direct competitors in the downstream retail market. By dismissing the relevance of TAs’ evidence and preferring that of their main competitors (the large airlines’ direct channels), the PFs discriminate in favour of one competitor set over another without objective justification.

Finally, even in weighing the airline evidence, the PFs seem to have taken views mainly from large airlines, all of which have a clear element of market power over passengers in their home markets. Smaller airlines, which are key to the extent of competition between airlines, do not seem to have been consulted to the same extent by the CMA. Had the CMA done so more fully then it would see that the small airlines are supporters of GDS-based distribution because it allows them to compete with large airlines on the merits via neutral display: see, for example, the official position of the European Regional Airlines Association (ERA), who do not appear from the PFs to have been consulted in this inquiry. In prioritising the self-interested views of large airlines, the CMA has failed to balance the evidence from all airline stakeholders in an appropriate manner.

- (b) **Airline market power.** The PFs appear to dismiss – almost summarily - the importance of countervailing buyer power of large airlines on market dynamics in the industry.⁸ This speaks to a consistent underestimation of large airline market power by the CMA in its review, which suggests a possible further failure of due inquiry and/or to take account of relevant considerations:
 - (i) As previously explained, content from large airlines is a “must have” for a GDS. This content is essential for it to be able to offer credible distribution to TAs – who also view the content in this way, as evidenced by responses to the CMA’s online questionnaire in this inquiry (“*In our*

⁷ PFs, para. 11.17(c).

⁸ PFs, paras 12.42-12.54.

online questionnaire we also asked respondents to rank the most important features when it comes to making a booking. Three out of the four respondents indicated availability of content was most important [...]”⁹). Such content is therefore not substitutable and without it the levels of participation from TAs would decrease and GDSs would have no viable business model.

- (ii) This means that the balance of bargaining power in the airline ticket distribution industry lies with large airlines, and the evidence shows that they leverage their position in negotiations with GDSs: see, for example, “14 of 24 responding airlines which have renegotiated their contracts with a GDS in the past three years told us they have used *airline.com* as a lever in negotiations”¹⁰; and “ten airlines also listed other levers (not specified in the question), two of these were regarding moving content out of the GDS and using a private channel”.¹¹ This is confirmed by the \times as well as the evidence of large airlines’ ability to impose *inter alia* surcharges on bookings which often exceed the GDS booking fee.
- (c) **Neutral display.**¹² An important facet of the industry is that GDS are regulated by the GDS Code of Conduct. This means they are subject to a neutral display obligation. Neutral display guarantees neutral price comparison, which is a critical service provided by GDSs in the industry to the benefit of travel agents (*TAs*), smaller airlines and ultimately consumers. Without GDSs, the only winners would be large airlines, Google and metasearch sites. Neutral display also increases airlines’ market power over GDSs since it deprives GDSs (unlike metasearch sites and Google) of one obvious bargaining point, namely the ranking of an airlines’ flights. Yet strikingly there is no material reference to the GDS Code of Conduct (or its ongoing review) in over 250 pages of analysis. The fundamentally pro-competitive role of GDS is left unacknowledged.

2.3 Amadeus provides further examples of the inaccuracies in airline evidence taken from hearing summaries as **Annex I** – many of which are also relevant to the remainder of this response.

3. Degree of constraint

3.1 Amadeus agrees with the following provisional conclusions in the PFs:

- (a) the direct and indirect channel should be assessed in the same product market;¹³
- (b) GDSs face competition from other channels, including direct connect and *airline.com*;¹⁴ and

⁹ PFs, para. 10.125.

¹⁰ PFs, para. 6.51(a).

¹¹ PFs, Appendix E, para. 152.

¹² CRS Code of Conduct, Regulation 80/2009.

¹³ PFs, para. 6.55.

¹⁴ PFs, paras 6.30-6.56. See, also, para. 7.6(a).

- (c) GDS are two-sided platforms, setting booking fees and incentives to balance the demands of the two sides.¹⁵

3.2 The PFs nevertheless contain several material errors of assessment that individually and collectively lead to an underestimation of the degree of constraint exercised by direct distribution on GDS within the same product market (“*the degree of constraint from airline.com on the indirect channel is likely limited by [...]*”¹⁶):

- (a) **Growth and constraint of direct distribution.** The PFs claim that direct distribution “*remains relatively stable over time*”.¹⁷ This is a fundamental error of fact. The growth of direct distribution has not stabilised in the EU or in the UK. ✗.
- (b) Hypothetically, even if the PF’s claims were true based on historic data, the CMA would appear to be relying on a static rather than dynamic assessment. The evidence indicates that a critical aspect of airlines’ distribution strategy in the future will be to push direct distribution and attempt to disintermediate the industry. See, for example:
- (i) airline evidence provided to the CMA: “*For Lufthansa Group airline future distribution include adoption of NDC, airlines gaining greater control and are able to distribute their content more efficiently, with the potential EBIT uplift of 20%. That potential value could be created by shifting away from the GDS, and ancillaries could contribute to profit uplift [...]*”¹⁸
- (ii) recent capital markets presentations by Lufthansa and IAG ✗.¹⁹ ✗ IAG states that it is “*Accelerating deployment of unique content via Digital channels*” – and states by way of explanation: “*Digital distribution channels = Direct + NDC*” (slide 34). Similarly, Lufthansa refers to “*“Multi-channel” distribution – “GDS Distribution”*” and “*Direct Distribution*” (section 1, slide 13). It notes the growth of direct distribution as a share of the airline ticket distribution industry (section 3, slide 15) and lists “*Direct Customer Access*” as one of the “*strategic initiatives*” that will “*continuously increase [our] revenues*” (section 3, slide 19). See, also, “*Innovative product, pricing and distribution strategy significantly contribute to future revenue growth*” (section 3, slide 20).
- (c) To adopt such a static approach to the growth of direct distribution would be inconsistent with the dynamic basis on which the CMA has analysed the merger

¹⁵ PFs, para. 7.6(c).

¹⁶ PFs, para. 6.54.

¹⁷ PFs, paras 6.47, 6.54 and 8.98(c).

¹⁸ PFs, Appendix F, para. 14.

¹⁹ Lufthansa Group, <https://investor-relations.lufthansagroup.com/fileadmin/downloads/en/chartsspeeches/capital-markets-day-2019/capital-markets-day-2019-presentations.pdf>, 24 June 2019; and IAG, https://www.iairgroup.com/~media/Files/I/IAG/documents/CMD%202019%20Final_PRINT.pdf, 8 November 2019.

elsewhere in the PFs²⁰, including – for example – in relation to the increasing competitive constraint from Farelogix.

- (d) **Constraint of direct distribution on indirect channel.** The PFs claim that direct distribution and indirect distribution compete imperfectly for certain passenger groups (“*suppliers in the indirect channel (GDSs and to a lesser degree GDS bypass) service a mix of corporate and leisure passengers through OTAs, TMCs and other B&M travel agents, while airline.com primarily serves passengers that do not require services of a travel agent such as some leisure travellers*”²¹). This finding would appear to contradict the conclusion of the European Commission in Case COMP/M.6163 – *Axa / Permira / Opodo / Go Voyages / edreams* [2011] (see above). It is also wrong.
- (e) First, the key point is whether there is a constraining effect of the channel as a whole. The only relevant question should be whether: a GDS could price discriminate certain bookings when negotiating booking fees with the airline; and, if not, whether the price negotiated for all booking is influenced by the threat of switching *some* of those bookings to other channels. The quantitative evidence is clear that Amadeus does not price discriminate and that ✗
- (i) **Structure of booking fees.** ✗.
- (ii) **Level of booking fees.** As previously explained, the GDS booking fee is related to ✗²².
- (iii) **Level of surcharges.** As previously explained, large airlines who impose surcharges do so on all GDS bookings irrespective of the type of passenger involved. The clear implication is that airlines are seeking to, and consider that they can, shift all types of bookings to the direct channel by this distortion mechanism. Moreover, as previously explained in Amadeus’ response to the Issues Statement, the evidence shows that they have been successful in this regard. ✗.
- (f) Second, the qualitative evidence provided by the CMA is demonstrably inadequate. Beyond a handful of documents, the PFs seem to mainly justify their conclusion on the following basis: “*TMCs and corporate customers generally told us they either do not use airline.com or do so to a very limited extent*”:²³
- (i) The statement is clearly insufficient – read the other way around, most TMCs and corporate customers are using airline.com at least some of the time. Moreover, the PFs appear to ignore specific evidence to the contrary, even from airlines themselves: Lufthansa specifically states that “*its use of a third party enables business travel bookings directly on Lufthansa.com*” and that “*its connection with the third party tool will*

²⁰ PFs, para. 11.13.

²¹ PFs, para. 6.54.

²² ✗.

²³ PFs, para. 6.52(b).

lead to a big uptake in Lufthansa's ability to connect travel management companies"²⁴.

- (ii) The statement is also somewhat irrelevant – the key question is not whether TAs use airline.com but rather whether the airlines negotiate reductions in booking fees by threatening to switch bookings away from TAs to the direct channel. The PFs fail to appreciate that TAs *compete* with airline.com and that the European Commission has reached a clear conclusion on this point. By focusing solely on whether TAs use the services of their competitor and exaggerating the significance of this point, the PFs betray their misplaced approach.
- (g) Third and in any event, the quantitative evidence suggests that direct distribution and indirect distribution do compete across passenger groups. Amadeus notes, for example, that there has been a strong growth of business class fares purchased through airline.com in recent years. ✗.
- (h) **Competition between direct distribution and TAs.** The PFs claim that *"suppliers in the indirect channel compete for travel agents while airline.com competes for passengers downstream directly"*.²⁵ This completely ignores the fact that demand is driven, ultimately, by consumers, as in all markets. The reality is that direct and indirect distribution are merely two different channels that can be used by a passenger to buy the same airline ticket. As stated above, the European Commission has specifically concluded that the direct and indirect channel compete for passengers in the downstream retail market.
- (i) **Role of call centres.** The PFs claim that the growth of airline.com *"has been principally at the expense of other direct channels (e.g. call centres) rather than GDSs"*.²⁶ The PFs claim appears to be based on global T2RL figures on the breakdown of passengers boarded per distribution channel which shows that the share of airline.com grew by ✗ while the share of call centres declined by ✗. As far as Amadeus can ascertain, the PFs provisional conclusion is flawed as it fails to take into account that the global market increased substantially over the period analysed. The total number of boarded passengers based on T2RL data increased by ✗ of which airline.com captured a disproportionate share ✗. All channels except airline.com and host direct captured a much lower share of the growth of the market than expected given their 2015 market shares. In any event, the PFs are wrong to claim that direct distribution remains relatively stable over time – see paragraph 3.2(a) above ✗.

4. GDS technology and NDC development

- 4.1 The PFs continue to make material errors of assessment in relation to GDS technology and NDC development that appear to have persisted throughout this inquiry and certainly since the Reference Decision and Issues Statement. Despite the many representations it has made on this point, and the invitation extended twice to the CMA to see its technology in operation (which was declined), Amadeus' role as a technology

²⁴ Summary of hearing with Lufthansa held on 10 October 2019, p. 1.

²⁵ PFs, para. 6.54.

²⁶ PFs, paras 6.51, 6.54 and 11.61.

champion and innovator continues to be underrepresented: importantly, not all GDS are the same.

So-called GDS 'legacy' technology

4.2 The PFs incorrectly claim that “*GDSs distribute content using legacy technology which is decades old and has substantial limitations in its ability to handle rich digital content*”.²⁷ The PFs further note that: “*The EDIFACT standard is decades old and was created to handle high transaction volumes while requiring only limited bandwidth. EDIFACT has substantial limitations in its ability to handle rich digital content and has not kept pace with the technology or product offerings of airlines.*”²⁸ As outlined in detail in Amadeus’ previous submissions,²⁹ these references to GDS legacy technology are highly misleading:

- (a) First, the PFs appear to confuse technology and standards. This difference was explained at length at Amadeus’ hearing on 18 October 2019 and is also addressed in detail in the third party T2RL report (*Technology – innovation and standardisation in the airline industry*) submitted by Amadeus on 6 December 2019. Amadeus continues to use the EDIFACT standard (set and endorsed by IATA) but it has made enormous investments in the technology used to implement it. The EDIFACT standard was considered pioneering when it was first introduced and is highly optimised thanks to decades of investment in response to the evolving requirements of airlines (and other stakeholders). The EDIFACT standard continues to evolve and still delivers huge value to the industry and is unlikely to disappear in the foreseeable future. Whilst this remains the case, airline IT providers will go on supporting it, but that does not necessarily mean the EDIFACT standard is supported using old technology. It should also be noted that many airlines are only interested in using the EDIFACT standard and have no current plans to use NDC.
- (b) Second, the PFs wrongly conclude that “*limitations of the messaging technology used by GDSs means that most airlines currently have limited ability to distribute dynamic, personalised offers (including ancillary products) in the indirect channel using GDSs, despite growing demand to do so.*”³⁰ This reflects an incomplete understanding of the differences between technology, standards and airline content, as well as the function of a GDS. While certain large airlines have claimed that “*GDSs have been slow in innovating and developing technology (based on the EDIFACT standard, with one describing it ‘outdated’)*”³¹, the fact that airlines distribute fewer ancillary services via GDSs is not primarily a consequence of the technological limitations of the EDIFACT standard or, still less, of Amadeus’ technology. Whilst it is true that XML can improve distribution of rich content, the reason why Amadeus’ GDS currently has fewer ancillary services than airlines’ own websites is because the airlines

²⁷ Summary of the PFs, para. 21.

²⁸ PFs, para. 3.51.

²⁹ Amadeus’ Response to the Reference Decision, section 3; and Amadeus’ Response to the Issues Statement, section 4.

³⁰ PFs, para. 3.53.

³¹ PFs, para. 10.94.

have declined to provide that content for incorporation within the Amadeus GDS. For example:

- (i) ✕.
- (ii) ✕.

The refusal of airlines to provide certain content for incorporation within the Amadeus GDS also explains why “*only a limited number of airlines have distributed NDC content on these GDSs to date using GDS pass-through and/or implemented NDC API solutions supplied by the GDSs*”,³² even though the PFs indicates that amongst “*providers of NDI API solutions... Amadeus and Datalex were most often considered to be an alternative to Farelogix*.”³³

4.3 In addition to being misleading, the references to GDS legacy technology indicate sweeping generalisations that fail to adequately distinguish between Amadeus and other GDSs in relation to technology and innovation. That failure manifests itself despite clear evidence on file from third parties that speaks to the technologically advanced nature of Amadeus’ systems: see, for example:

- (a) “*Among GDSs, Amadeus is the most technological advanced in terms of innovation and capabilities compares to Sabre and Travelport*”.³⁴
- (b) “[*Amadeus*] *currently has a technological advantage on the other GDSs. It is also more willing to explore enhanced NDC capabilities and [confidential] – both of which could allow it develop NDC capabilities/functionality more quickly than the other GDSs*”.³⁵

4.4 As previously explained in depth, Amadeus GDS technology is best-in-class and should be acknowledged as such – it should not be tarred with the broad brush of the commonly repeated large airline myth and sweeping generalisation regarding outdated technology:

- (a) Amadeus invested 17.3% of its 2019 revenue (almost €1 billion) on research and development (**R&D**) and has consistently been ranked among the top-three largest R&D investors in the software & services sector in Europe.
- (b) Amadeus is the only player in the market that has migrated its whole GDS platform from an older, rigid processing technology to a new open systems technology.³⁶
- (c) Amadeus has evolved its GDS platform into the Amadeus Travel Platform which is equipped to handle NDC at scale and process the exponentially increasing number of transactions per second to allow for proper comparison

³² PFs, para. 7.19.

³³ PFs, para. 10.112 (d)

³⁴ PFs Appendices, para. 135.

³⁵ PFs Appendices, para. 107 (a).

³⁶ An open system creates new possibilities in respect of technological advances such as cloud, big data and artificial intelligence; allows Amadeus to implement new standards more effectively whilst maintaining legacy standards at the same time; and allows third party developers the opportunity to innovate applications for the system.

shopping. Investments by airlines in NDC to date have not been at the level that would support this, nor is it in their strategic interests to do so.

- 4.5 For further details, see section 4 of Amadeus’ response to the Reference Decision and section 5 of Amadeus’ response to the Issues Statement.

NDC development

- 4.6 Despite the detailed submissions provided by Amadeus to the CMA regarding NDC, Amadeus’ role as a technology champion and innovator in respect of NDC development also continues to be underrepresented in the provisional conclusions drawn in the PFs. Again, that failure manifests itself despite clear evidence on file from third parties that speaks to its importance in NDC:

(a) *“In summary, five providers among the ones that were most frequently mentioned by airlines and by the Parties as relevant suppliers of merchandising and distribution solutions currently offer NDC-compatible merchandising solutions that are in use by airlines (ie Farelogix, Amadeus, OpenJaw, Datalex and ITA).”*³⁷

(b) *“Amadeus has the best capabilities for NDC enabled services. They have a complete suite of products that are already developed [...] Can deliver the entire enterprise package.”*³⁸

- 4.7 The PFs continue to make misleading assertions about the level of commitment to NDC without adequately distinguishing Amadeus from other GDSs (see, for example: *“Each of Sabre, Amadeus and Travelport are working on developing the requisite capabilities to use the NDC standard in their businesses. This process appears to have much further to evolve in the future”*³⁹; and the *“GDSs appear to have been initially reluctant to facilitate the distribution of NDC content on their platforms”*⁴⁰). The result is that all GDS are treated as if they are the same in the PFs, when that is simply not the case. Amadeus reiterates that:

(a) Amadeus has achieved the highest certification currently available on the NDC standard both as an IT provider and as an aggregator: Level 4. Sabre and Travelport have not.

(b) Amadeus has been committed to NDC development for a long time. As previously explained,⁴¹ ∞. ⁴² ∞. Amadeus is working towards integrating new content sources, including NDC, in a way that enables continued comparison shopping from multiple sources and technology for content providers and travel sellers throughout the whole travel ecosystem. ∞.

³⁷ PFs, para. 8.33.

³⁸ PFs Appendices, para. 135(b).

³⁹ Summary of the PFs, para. 24.

⁴⁰ PFs, para. 7.17.

⁴¹ Amadeus’ Response to the Reference Decision, section 5; and Amadeus’ Response to the Issues Statement, section 4.

⁴² ∞.

- (c) The first version of NDC that is suitable for roll-out was only released in late July 2017 (v.17.2). As acknowledged by Tye Radcliffe, Director of Distribution of United Airlines, under cross-examination during the trial of *USA v. Sabre*, that version was “*the first iteration of the standard that the industry players really started to invest in*” as it was “*really the first one fit for its purpose*”.⁴³ Further, Jim Davidson, CEO of Farelogix, has stated that v.17.2 was really “*the genesis of opening up the industry*”, and that “*IATA declared that schema version as the one that was going to be scaleable and workable.*”⁴⁴ During a presentation on 4 February 2020, IATA noted that “*servicing functions*” were only introduced in v.17.2, and the IATA website states that v.17.2 “*completes the work of the newly restructured NDC Offers and Orders – leveraging the feedback we received from early deployments and pilots.*”⁴⁵
- (d) The primary causes of delay in relation to NDC development have been:
- (i) the failure of IATA to follow best practice in terms of an open approach to standard setting and involve stakeholders in the development of NDC other than a few large airlines; and
 - (ii) the lack of standardisation in the development of NDC, meaning too much divergence and custom interpretation of NDC in the industry. This has been referenced by many, including Rose Stratford, Executive Vice President of Global Supplier Relations at BCD Travel, who stated that “*the challenge with NDC is every airline going about it a different way*” because “*despite the fact it’s a standard, there is no standard...*”⁴⁶

4.8 Amadeus notes that the PFs quote Vice President (Industry Affairs), Mr. Svend Leirvaag, to support its assertions regarding lack of GDS commitment to NDC (“*An Amadeus representative said at an industry conference in 2015 that ‘NDC has derailed industry discussion’, ‘ill conceived’, and ‘has not contributed to the efficiency of the industry’*”).⁴⁷ This quote was initially cited in the Reference Decision. Having seen it, Amadeus took the time to explain the context for this quote in both its response to the Reference Decision and in its hearing. The fact that the quote is cited again in the PFs with almost none of that critical context – including *inter alia* a blogpost published by Mr. Leirvaag one week after the summit in which he clarified that “*if anyone was ever in doubt, we re-emphasise that since the NDC project got back on a collaborative track in 2014, Amadeus has been engaged in NDC-XML discussions, and is fully committed to supporting IATA in the delivery of a workable standard for all industry players*”⁴⁸ – is deeply disturbing. It is a glaring example of the PFs’ failure to engage seriously with Amadeus’ many submissions in relation to its technology and NDC development.

⁴³ Transcript of Case 1:19-cv-01548-LPS – *USA v. Sabre*, 27 January 2020. Similarly, Cory Garner, VP of Sales and Distribution at American Airlines, stated under cross examination that he was “*familiar*” with the fact that v.17.2 was the first commercially viable NDC standard.

⁴⁴ Transcript of Case 1:19-cv-01548-LPS – *USA v. Sabre*, 27 January 2020.

⁴⁵ <https://www.iata.org/en/programs/airline-distribution/ndc/schema-description/>.

⁴⁶ Transcript of Case 1:19-cv-01548-LPS – *USA v. Sabre*, 27 January 2020.

⁴⁷ PFs, para. 7.17

⁴⁸ <https://amadeus.com/en/insights/blog/towards-a-richer-content-future-at-wps>



4.9 For further details, see section 4 of Amadeus’ response to the Reference Decision and section 5 of Amadeus’ response to the Issues Statement.

5. Content parity provisions

5.1 The PFs contain a number of references to content parity provisions in agreements between GDSs and airlines.⁴⁹ These references, and the apparent provisional conclusions drawn, are wrong, unevidenced and demonstrate a failure of due process.

5.2 Procedurally, the CMA has failed to take account of relevant considerations in relation to its various assertions about content parity provisions. Amadeus has engaged proactively with the CMA throughout this process and has made it clear that it would be happy to provide information on any aspect relevant to the Transaction or the industry. The CMA has not asked Amadeus for any evidence or explanation in relation to these provisions. All observations on these provisions therefore proceed based on a manifestly inadequate evidence base and fail to take account of relevant evidenced. (It is notable in this respect that the CMA’s Issues Statement makes no reference to content parity provisions. For this reason, Amadeus could not have expected that these would form a material part of the CMA’s reasoning in the PFs.

5.3 Substantively, the PFs incorrectly appear to imply that the provisions “*may*” have contributed to “*muted*” GDS competition, stating *inter alia* that they “*may limit the scope for price competition*”⁵⁰ and “*may be barriers to entry and expansion for providers seeking to distribute airline content to travel agents via NDC APIs*”⁵¹. Amadeus can only assume that this commentary has been drawn from claims made by airlines in hearings – see, for example, comments from British Airways⁵² and American Airlines⁵³.

5.4 These airline claims are mere assertions. No facts, or evidence, or detailed analysis has been provided to support them in the PFs or in the publicly available versions of the Appendices. Had the CMA undertaken a proper analysis, it would see that these statements are incorrect and cannot support the hypothesis claimed: ✕.

5.5 There is also no basis for any assertion that Amadeus has tried to limit direct connect: to the contrary Amadeus offers a direct connect solution itself as part of its standard offering and there are many Amadeus PSS Airline customers that use it. Moreover, the fact that there are numerous IT providers that connect airline customers of Amadeus

⁴⁹ PFs, paras 47, 85, 119, 3.29, 7.6, 11.51 and 12.91. See, also, Appendices.

⁵⁰ PFs, para. 11.55.

⁵¹ PFs, para. 119.

⁵² Summary of hearing with British Airways held on 2 October 2019, p. 1 and 2: “*airlines have a choice between signing a full content agreement, which does not enable innovation, or not signing the agreement and accepting a huge increase in cost in the hope that customers pick lower-cost distribution channels*”; and “*British Airways explained it decided to come out of [full content] agreements for several reasons, including that particularly strong clauses limiting what the airline could do with its direct connect capability*”.

⁵³ Summary of hearing with American Airlines held on 8 October 2019, p. 2: “*American Airlines said the GDSs’ were unwilling to engage on anything other than full content. American Airlines noted that the European Commission is investigating these full content arrangements*”.

using such IT providers or the Amadeus solution to intermediaries and other aggregators clearly show that there are no such limitations.⁵⁴

5.6 More importantly, there has been no serious attempt in the PFs to engage with the complex and multi-faceted issues arising from these provisions, or the positive effects flowing from them. For example, the TAs' critical dependence on airlines for content and the fact that GDSs are obliged by law to offer a neutral display are two separate justifications for GDS content parity yet none is even acknowledged in the PFs as even a possible issue. The issues raised in the consultation on a possible revision of the Code of Conduct (where for example there is strong support from smaller airlines for GDSs and also for a neutral display obligation from many airlines) are equally conspicuous by their absence. Amadeus finds this highly disappointing. In fact:

- (a) The provisions ensure that dynamic competition is on the merits rather than simply a function of exclusive access to essential content that is a pre-requisite for GDSs and other suppliers to compete or even survive.
- (b) The provisions are not a barrier to entry and expansion, and there is no evidence to suggest that this is the case. Airlines are free to work with any GDS or technology provider they choose and are free to distribute through any distribution channel of their choice. Indeed, the fact that Farelogix is described in the PFs as a "*material competitive threat to the GDSs*" is demonstrable proof of the many ways in which suppliers can enter – and succeed – in the airline ticket distribution industry.⁵⁵ The same applies to the many other competitors listed in the PFs including Datalex, OpenJaw, Travelfusion etc.
- (c) Amadeus' provisions do not "*limit an airlines' flexibility to differentiate content between GDSs and distribution channels*"⁵⁶. Content parity between Amadeus and airline.com is not a requirement in Amadeus' global distribution agreements with airlines. It is negotiated as an opt-in with airlines who are interested in it based on a full content agreement and the corresponding discounts they receive.

5.7 As the CMA is surely aware, the provisions are not *per se* anti-competitive. Any finding that they may be anti-competitive by effect requires significant economic analysis. For the reasons set out above, Amadeus submits that any proper analysis would show that they are not anti-competitive and indeed they are pro-competitive because *inter alia* they allow dynamic competition on the merits between airlines by giving all airlines access to effective distribution with a neutral display. By any measure, the few lines of assertion in the PFs do not meet any minimum standard for a

⁵⁴ For example, the Lufthansa Group airlines, British Airways, Air France KLM, Finnair, SAS and others. Indeed, Iberia has just announced that 20% of its indirect sales in Spain are done through NDC channels that use a direct connect supplied ✂ and that it has signed preferential partnerships with two companies (Lleego Travel Market and Grupo Iris) to provide access to its content. It has also announced additional content withdrawal from GDSs that will likely increase its share even further *vis-à-vis* GDSs. In addition, IAG also announced on 28 February 2020 that 20% of its indirect bookings are now made via NDC: https://www.iairgroup.com/~/-/media/Files/I/IAG/presentation-and-webcasts/en/iag/iag-2019/4Q19%20Results%20presentation_FINAL.pdf

⁵⁵ PFs, para. 11.57 and 11.65.

⁵⁶ PFs, para. 7.6(a) and (d).

competition analysis for content parity provisions. They are also irrelevant to the SLC findings in this inquiry. They should simply be removed from the final decision.

6. Conclusion

- 6.1 It is important for Amadeus that any decision taken by the CMA is done so on a correctly reasoned basis given its impact on the competitive dynamics of the industry. Amadeus is concerned that critical aspects of the PFs show a failure to take into account evidence that has been provided to the CMA, and a failure to evaluate the totality of the evidence critically, and contain multiple factual errors, as set out above.
- 6.2 Whilst it supports the provisional conclusions reached in respect of some elements of the PFs (especially the frame of reference used), Amadeus finds it disturbing to see the extent to which the airlines' narrative appears to have been taken "*on trust*". This has contributed to a range of procedural failures and material errors of assessment that, unless corrected or removed, would leave the final decision subjectable to successful legal challenge.



ME/6806/19

ANTICIPATED ACQUISITION BY SABRE OF FARELOGIX

Annex I – Amadeus’ comments on airline hearing summaries

Hearing summary quote	Amadeus comments
American Airlines (AA)	
<p><i>“American Airlines indicated that in 2012 and 2013 it had conversations with GDSs on moving from a full content deal onto something different. However, American Airlines said the GDSs’ were unwilling to engage on anything other than full content. American Airlines noted that the European Commission is investigating these full content arrangements.”</i></p>	<p>The statement is inaccurate – at least insofar as it relates to Amadeus.</p> <p>Content parity between Amadeus and airline.com is not a standard requirement in Amadeus’ global distribution agreements with airlines (GDA). Amadeus’ full content agreements (FCA) are ✗.</p> <p>✗,⁵⁷ ✗.</p>
<p><i>“American Airlines said that it is not privy to the specific contractual terms between GDSs and third parties, but understands technology relationships between third-parties, like JR Technology and OpenJaw, and the GDSs could limit the airline and NDC provider in rolling out NDC. American Airlines said that if a GDS decided to stop the relationship, then those data would not pass through the third-party technology provider to the airline as an NDC solution.”</i></p>	<p>The statement is inaccurate – at least insofar as it relates to Amadeus.</p> <p>Amadeus sources content from many different sources and does not restrict airlines’ ability to provide content to Amadeus through third party technology providers of their choice. ✗.</p>

57

See paragraph 5.4 in Amadeus’ response to the PFs.

Hearing summary quote	Amadeus comments
British Airways (BA)	
<p><i>“British Airways said it was under full content agreements with the GDSs until the end of October 2017. British Airways explained it decided to come out of those agreements for several reasons, including that there were particularly strong clauses limiting what the airline could do with its direct connect capability. British Airways said this was a major decision and part of the benefit was that it can incentivise the connection to agencies using NDC-enabled Direct Connect.”</i></p>	<p>The statement is inaccurate – at least insofar as it relates to Amadeus.</p> <p>✗.</p> <p>As previously explained, BA has now entered into a private channel agreement with Amadeus and has been withdrawing content from GDSs.⁵⁸</p>
<p><i>“British Airways said there are still parity obligations in the participation agreements. British Airways explained that it was not able to differentiate content between channels under full content agreements.”</i></p>	<p>The statement is inaccurate – at least insofar as it relates to Amadeus.</p> <p>✗.</p>
<p><i>“British Airways commented that airlines have a choice between signing a full content agreement, which does not enable innovation, or not signing the agreement and accepting a huge increase in cost in the hope that customers pick lower-cost distribution channels.”</i></p>	<p>The statement is inaccurate – at least insofar as it relates to Amadeus.</p> <p>Airlines have a “choice” to enter the FCA or GDA. The discounts offered under the FCA reflect the commercial value for Amadeus of having additional content it would not otherwise have under the GDA. Naturally, airlines are free to choose a GDA instead if they prefer. ✗.</p>

⁵⁸ For further detail, please see paragraph 2.10(a)(i) of Amadeus’ Response to the Issues Statement and paragraph 3.2(c)(i) of Amadeus’ Key Observations on the CMA Reference Decision.



Hearing summary quote	Amadeus comments
	The allegation by British Airways that FCAs do “ <i>not enable innovation</i> ” is false and completely unsubstantiated.
Lufthansa	
<p><i>“Lufthansa said there are hurdles to overcome to distribute NDC to business travellers. Lufthansa said either commercial ties between TMCs and GDSs or the lack of readiness of the GDSs to operate any solutions were slowing growth in sales through NDC down for this group of customers.”</i></p>	<p>The statement is inaccurate.</p> <p>✂.</p>
<p><i>“Lufthansa said that over the past four or five years GDSs are more receptive in adopting some NDC standard and letting content pass through GDS. Lufthansa said that the increased receptivity of GDSs to NDC is primarily because GDSs were missing out on volume vs. direct distribution channels. [...] Lufthansa said only a small proportion of the GDSs’ business is at risk of being replaced by other channels such as direct connect and direct channels. Lufthansa said this may explain why some GDSs have been slower than others to respond to the increased pressure.”</i></p>	<p>Whilst Amadeus agrees that increasing competition from direct channels has been reducing GDS volumes, the statement that a small proportion of the GDSs’ business is at risk of being replaced by other channels is inaccurate.</p> <p>As explained in <i>inter alia</i> Amadeus’ response to the Reference Decision at paragraph 4.4(a), there has been a significant and pronounced shift in the market towards direct distribution and away from the GDS for large airlines/airline groups. Indeed, Amadeus notes that Lufthansa in the same hearing with the CMA stated that it has grown direct sales from 30% to 51% since</p>



Hearing summary quote	Amadeus comments
	2015. ⁵⁹ That is not consistent with a “ <i>small proportion</i> ” of GDS business being at risk.

⁵⁹ This point is additionally made by Lufthansa in its own capital markets presentation (24 June 2019), slide 45: <https://investor-relations.lufthansagroup.com/fileadmin/downloads/en/charts-speeches/capital-markets-day-2019/capital-markets-day-2019-presentations.pdf>.