

United States of America
v.
Sabre Corporation, Sabre GBL Inc.,
Farelogix, Inc., and Sandler Capital Partners V, L.P.



==== THE UNITED STATES ====

DEPARTMENT *of* JUSTICE

Services Do Not Need to Be Coextensive to Compete

Traditional GDS Distribution



NDC Distribution



Bypass Growth is a Threat to Sabre



Chris Boyle

Head of Corporate Development and M&A

Sabre

- Q.** And, again, we're not going to talk about the numbers, but if you can take a look on your copy under the Sabre base case. And **that projects that Farelogix will experience significant growth in NDC connect tickets between 2018 and 2020**; right?
- A.** Yes. Slower growth than they'd projected but growth, yes.
- Q.** And, again, don't tell me the numbers, but **growth that involves nearly doubling their sales for bypass tickets**; right?
- A.** **Nearly doubling the number of tickets they would process, yes.**

Source: Trial Tr. (Boyle) at 539:12-23 (1/28/20)

PX011 at 10

Passthrough Substitutes Sabre's Booking Services with Farelogix's



Jim Davidson
President & CEO



- Q.** And you wrote to her that a single GDS integration of an airline's NDC API can generate millions of booking transactions for Farelogix. Yes?
- A.** Yes
- Q.** And the airline can also expand its reach by taking that single NDC API and plugging into it a GDS; is that right?
- A.** Yes.

Source: Trial Tr. (Davidson) at 369:14-370:2 (1/28/20)

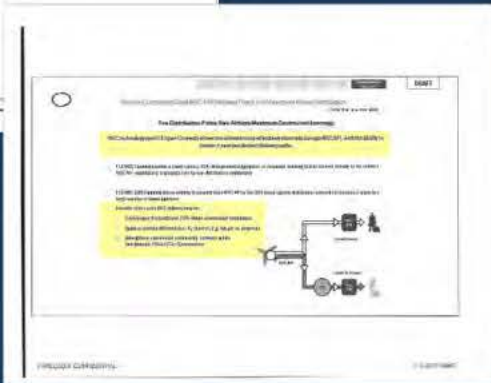


For FLX, a GDS integration of an airline's NDC API [REDACTED] as it is a single connection that will generate millions of booking transactions. This is why this delivery method is so important to FLX.

Bypass and Passthrough Deleverage the GDS Relationship

NDC technology (via FLX Open Connect) allows the airline to cost-effectively maintain a single NDC API, with the ability to deliver it over two distinct delivery paths

- **Benefits of two path NDC delivery include:**
 - **Deleverages the traditional GDS-Airline commercial relationship**
 - **Enables content differentiation by channel, e.g. leisure vs. corporate**
 - **Strengthens commercial relationship between airline and strategic TMCs/OTAs/Corporations**



Competition from GDS Passthrough Reduces GDS Booking Fees



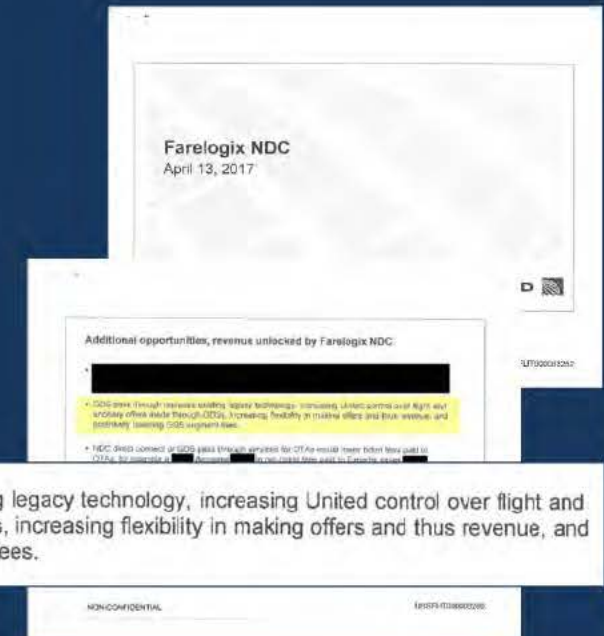
Tye Radcliffe
Director of Distribution



Q. Why did you tell United's leadership that GDS passthroughs would potentially lower GDS segment fees?

A. We felt that in the long run, as we move to NDC . . . [a]nd as we start to take the heavy lifting from the GDS, . . . **we feel like we're taking on more of the burden and thus we should not have to pay the GDSs quite as much because they won't have to have as many systems and applications.**

Source: Trial Tr. (Radcliffe) at 191:3-19 (1/27/20)



- GDS pass through replaces existing legacy technology, increasing United control over flight and ancillary offers made through GDSs, increasing flexibility in making offers and thus revenue, and potentially lowering GDS segment fees.

Section 7 Protects Competition, Not Competitors

“Taken as a whole, the legislative history [of the Clayton Act] illuminates congressional concern with *the protection of competition, not competitors*, and its desire to restrain mergers only to the extent that such combinations may tend to lessen competition.”

Brown Shoe Co. v. United States, 370 U.S. 294, 320 (1962)



The Clayton Act Prohibits Anticompetitive Acquisitions

“No person engaged in commerce or in any activity affecting commerce shall acquire . . . the assets of another person engaged also in commerce or in any activity affecting commerce, where in *any line of commerce* or in *any activity* affecting commerce in any section of the country, the effect of such acquisition *may be substantially to lessen competition*, or to tend to create a monopoly.”

15 U.S.C. § 18



Merger Analysis is Forward-Looking

“To prevail on a Section 7 claim, the government must show a ‘reasonable probability’ that the merger will result in anticompetitive effects.”

United States v. Energy Sols., Inc., 265 F. Supp. 3d 415, 435-36 (D. Del. 2017)

“[M]aking predictions about the parties’ and consumers’ behavior is exactly what we are asked to do.”

Fed. Trade Comm’n v. Penn State Hershey Med. Ctr.,
838 F.3d 327, 344 (3d Cir. 2016)



Market Definition Is a Pragmatic Determination

“[T]he boundaries of the relevant market must be drawn with sufficient breadth to *include the competing products of each of the merging companies* and to *recognize competition where, in fact, competition exists.*”

Brown Shoe Co. v. United States, 370 U.S. 294, 326 (1962)

“Products in the same market *need not be identical, only reasonable substitutes*. . . . Most important, ‘complete interindustry competitive overlap need not be shown’ for the court to conclude that companies offer reasonably interchangeable products.”

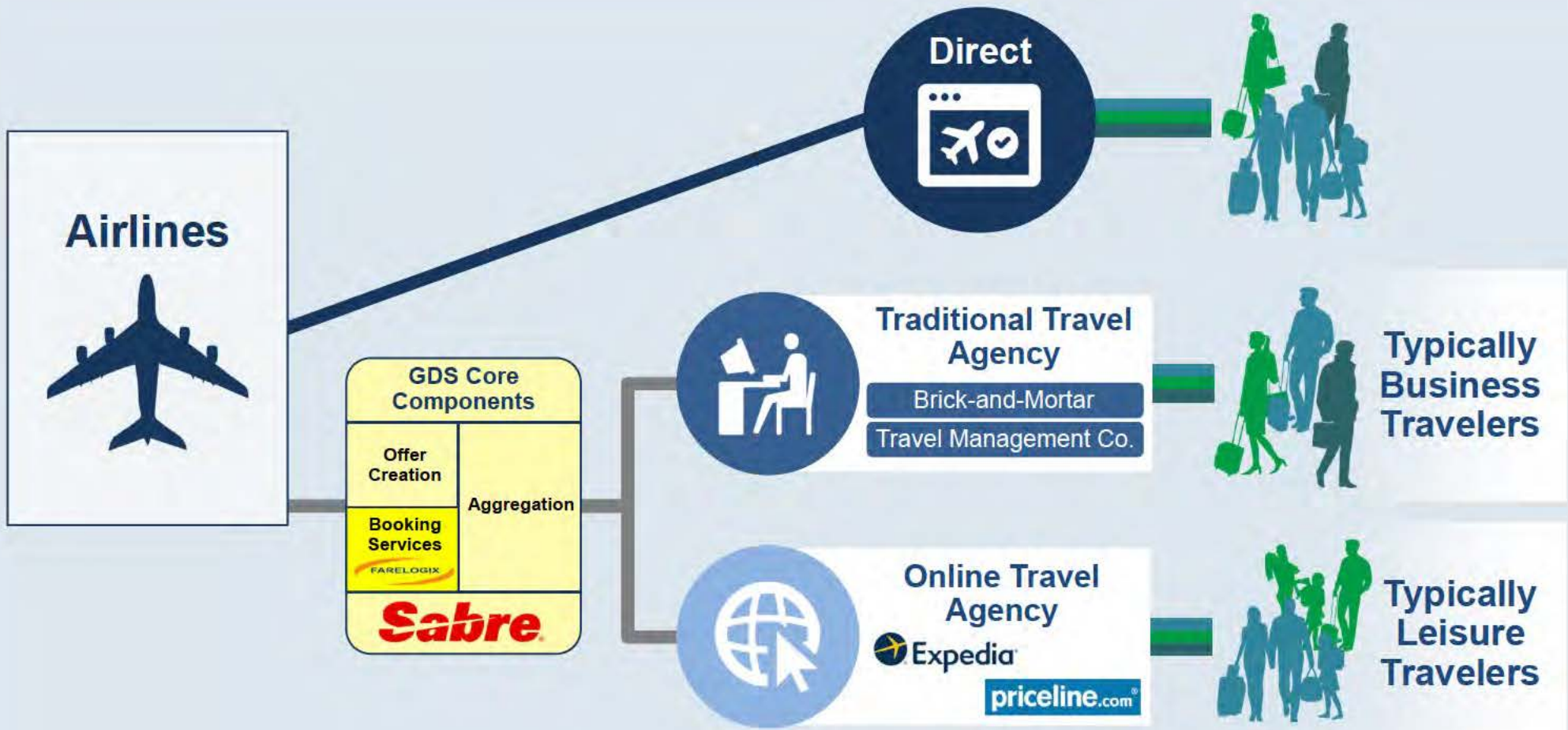
United States v. Energy Sols., Inc., 265 F. Supp. 3d 415, 436, 439 (D. Del. 2017)



Indirect Distribution of Airline Tickets



Indirect and Direct Distribution are Not Substitutes



Airlines Cannot Shift Indirect Bookings to Direct Channel



Jeffrey Lobl
Managing Director,
Distribution Strategy



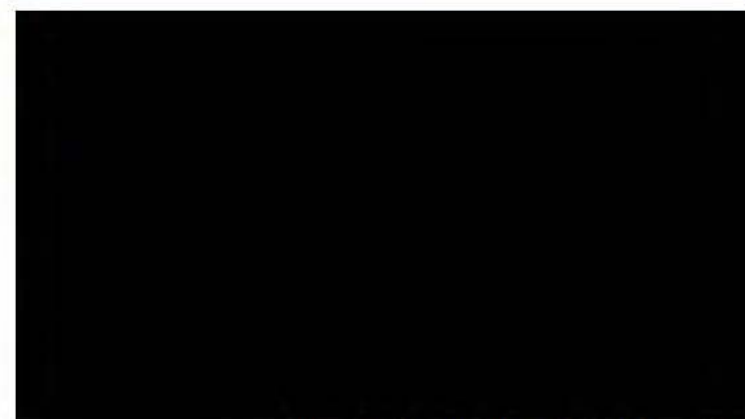
Q. And do you believe that Delta could convince all of the traditional agencies that it does business with to book through delta.com?

A. No.

Source: Trial Tr. (Lobl) at 1172:10-13 (1/31/20)



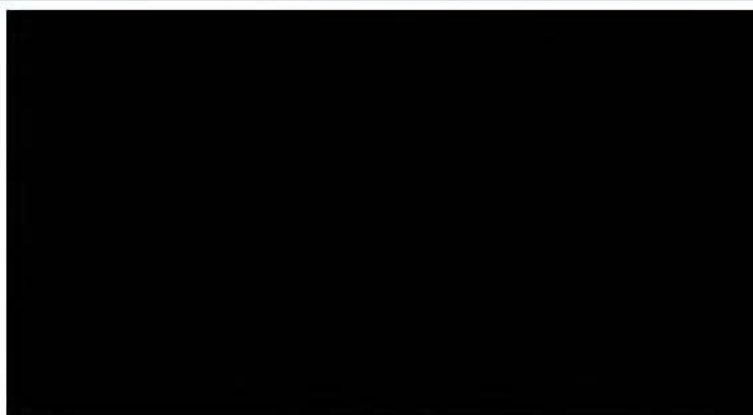
Tye Radcliffe
Director of
Distribution



Source: Trial Tr. (Radcliffe) at 348:14-19 (1/27/20)



Christina Larson
Managing Dir. Sales Analytics,
Distribution, and Planning



Source: Trial Tr. (Larson) at 1122:15-24 (1/30/20)



Shane Tackett
EVP,
Planning & Strategy



Q. Why does Alaska choose to distribute through OTAs?

A. . . . [W]e view the online travel agency distribution channel as **an important way of making sure our flights show up to customers in those areas that otherwise wouldn't know to come to AlaskaAir.com to purchase.**

Source: Trial Tr. (Tackett) at 1703:11-20 (2/4/20)

Farelogix's Open Connect is an Alternative Booking System



FARELOGIX
Jim Davidson
President &
CEO

















Q. Is Farelogix Open Connect an alternative distribution system?

A. It's an alternative – I wouldn't say it's a distribution system even though I said it there.
It's an alternative booking system.

Farelogix and Sabre Sell “Booking Management” Products



FLX Open Connect Booking Management Services and Orchestration

Functionality			Comments
Customizable point-of-sale	 FLX Open Connect	 DC/DX	Sabre has a better solution as airlines can customize themselves at no cost. FLX prefers to team with 3rd parties to offer front-end customization and integration.
Full content access across all channels	 FLX Open Connect	 DC/DX, Interact Interface, Web Services	FLX NDC API allows distribution of full content to airline kiosks, call centers, website, mobile. Can be implemented directly with agencies, OTAs, and corporate booking tools, or via any GDS.
Full services orchestration for offer and order management	 FLX Open Connect (orchestration engine)	 DC/DX, Dynamic Retailer	
Connectivity to and compatibility with most major PSS/airline host systems	 FLX Open Connect (connectivity protocols)	 SabreSonic suite in general	FLX Open Connect provides connection to all major PSS; Sabre has no offering
XML translator for EDIFACT, OTA, XML, or proprietary messaging standards	 FLX Open Connect (XML translator)	 SabreSonic suite in general	Sabre is capable of message handling and translation, but varies by product
Booking and ticketing management	 FLX Open Connect	 DC/DX, Res, Ticketing, Web Services	SabreSonic offers comprehensive booking and ticketing functionality, which can be exposed through multiple channels.
Settlement and reconciliation	 FLX Open Connect	 DC/DX, Res, Ticketing, Payment Solutions, Web Services	SabreSonic offers comprehensive booking and ticketing functionality, which can be exposed through multiple channels.

Professor Murphy Acknowledges the Booking Services Market



129. I offer no opinion on the contractual issues disputed by the parties. However, the economic analysis I presented above can help explain why the parties would incorporate such provisions in their agreement, namely that Sabre agreed to a lower booking fee for American in exchange for the enhanced volume of business it expected under the agreement. When they negotiated the Amended PCA, American threatened to self supply booking services and market direct connect as superior to Sabre, which created an incentive for Sabre to offer more attractive terms (the lowest booking fee of any major U.S. carrier) so that American would not do so.

Professor Murphy Admits a GDS and Farelogix Both Provide Booking Services



Professor
Kevin
Murphy
Defendants'
Expert

- Q.** And you can make a booking over either a GDS or a direct connect enabled by Farelogix?
- A.** It's not clear you would get the same bookings. That's the thing. **They both provide booking services. There's an overlap in the functionality, and I think that's – that's true.**

Overlap Between Competitors Need Not Be Complete

Merging firms can be horizontal competitors in the same market even though “[t]here may be some end uses for which [each of their products] *do not and could not compete*”

United States v. Cont'l Can Co., 378 U.S. 441, 457 (1964)



GDSs Exert Horizontal *and* Vertical Market Dominance



In my opinion, Global Distribution System (GDS) companies wield significant horizontal and vertical market power over the airline ticket market serviced by travel agencies. The GDSs have three primary customers—airlines, travel agencies, and third-party technology providers. Over time, the GDSs have intentionally crafted their relationships with their customers to build and solidify a market structure impenetrable to competition. This deliberate process was put in place as each commercial relationship came up for renewal.

The net effect of having a "tied-up marketplace" is harm to consumers. They find themselves having fewer airline product options and paying higher airline ticket prices than they otherwise would, given an open and competitive ticket distribution market. Additionally, the ticket distribution market suffers with a higher-than-necessary cost structure due to the GDSs blocking innovation and lower-cost distribution alternatives.

Two-Sided GDS Platforms Compete With One-Sided Alternatives



Professor
Kevin
Murphy
Defendants'
Expert

- Q.** So in your view, when airlines are operating through a direct connect, **airlines that are not themselves a two-sided platform are competing with GDSs which are two-sided platforms?**
- A.** I would think **that's right. You can have non-platforms complete [sic] against platforms.**
- * * *
- Q.** And that airlines direct connect is not a two-sided platform. So can we add the qualification in here that the **Sabre GDS is a two-sided transaction platform competing with some one-sided sellers?**
- A.** I – yeah, as long as we treat the one-sided sellers appropriately. **Yes. There is no reason a two-sided platform could not compete with a one-sided distribution alternative,**

Sabre Distinguishes a U.S. Point of Sale in the Ordinary Course



Sabre

Chris Wilding
SVP, Sales
Management,
Travel
Network

- Q.** Okay. And “regions” refers to U.S. point of sale for this airline?
- A.** Yeah. U.S. Caribbean, Virgin Islands. **A defined term in many of our contracts, regions for the large U.S. carriers.**
- Q.** And, again, **U.S. point of sale** refers to **bookings made by travel agencies physically located in the United States?**
- A.** Yes, that’s right. Located in the region.
- Q.** And so Sabre is offering this airline a different price for U.S. point of sale versus rest of world point of sale?
- A.** Yes, that is correct
- Q.** And, more generally, is it fair to say that Sabre’s GDS contracts often have different pricing for bookings made on an airline’s home country or region versus rest of world?
- A.** Generally, yes, that’s correct.
- Q.** And that is true for U.S. airlines, for example?
- A.** That is true for – I don’t know about all U.S. airlines but many of the U.S. airlines.

GDS Oligopoly Faces Limited Competition



FARELOGIX
Jim
Davidson
President &
CEO

- Q.** The first bullet point says, **the GDS oligopoly controls both airline internal systems and the airline's distribution structure.** That's what this presentation is telling the European Competition Authority?
- A.** Yes, that was our thoughts, yes.
- Q.** And you often refer to Travelport, Sabre and Amadeus as being an oligopoly?
- A.** I probably refer to that quite frequently.

Forward-Looking Market Shares Establish a Presumption of Harm

Online Travel Agency	
	Sabre Projections for 2020
Post-Merger HHI	
Level	4,465
Above 2,500	✓
Change in HHI	
Change	1,093
Above 200	✓

Traditional Travel Agency	
	Sabre Projections for 2020
Post-Merger HHI	
Level	4,085
Above 2,500	✓
Change in HHI	
Change	657
Above 200	✓

Farelogix's Size Understates its Competitive Significance



CORNERSTONE
RESEARCH

Aviv Nevo
Plaintiff's
Expert

Q. And you mentioned earlier, Professor Nevo, it is your opinion that market shares understate the competitive significance of Farelogix. Could you explain that further?

A. [t]he shares don't really represent the bargaining leverage that Farelogix brings to the table and allows airlines to use in the negotiations with Sabre. That leverage exists even with a very small share. **It is just a mere existence of that alternative [that] provides a threat,**

* * *

A. So before the merger, having the threat of an airline going to Farelogix potentially is a threat of potentially starting, if you want, a kind of a snowball effect that will eventually unravel [Sabre's] business model, the very profitable business model. So that is a threat that exists
Postmerger, that threat goes away.

Ordinary Course Documents Can Establish a *Prima Facie* Case


“ . . . [Evidence] such as *customer testimony*, *history of the market*, and [Defendants’] *internal documents* . . . independently suffices to establish a *prima facie* case”

Chi. Bridge & Iron Co. N.V. v. Fed. Trade Comm’n,
534 F.3d 410, 433 (5th Cir. 2008)



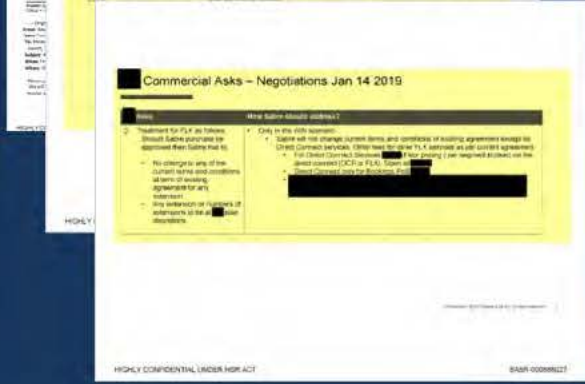
Sabre Analyzed Business Models with Bypass Threat in Mind

A new [REDACTED] option best meets the US marketplace needs

[REDACTED]	Pros	Key risks	Likelihood
[REDACTED]	[REDACTED]	[REDACTED]	 <hr/>  <hr/> 



Sabre Modeled Price Increases on a Farelogix-Powered Solution



PX392 at 4-5

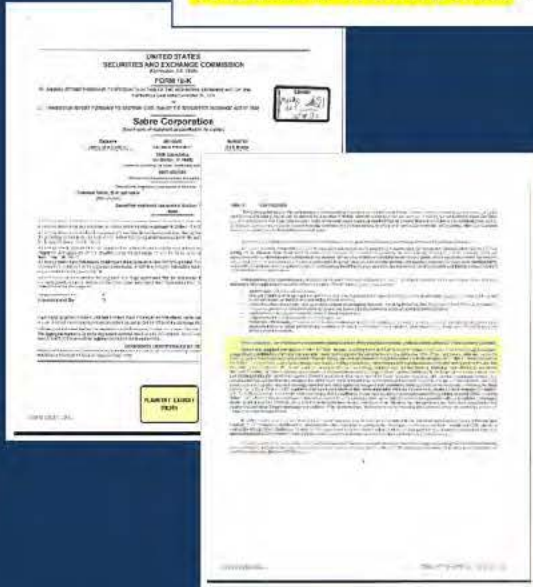
Commercial Asks – Negotiations Jan 14 2019	
Asks	How Sabre should address?
<p>1. Lower distribution costs and more flexibility in [redacted] to compete with LCCs</p>	<p>✓ Deploy a Sabre-powered direct connect solution to the agencies in [redacted] at economics that make Sabre whole (or better) from an earnings perspective. Here are the components of the offer we want to present:</p> <ul style="list-style-type: none"> • Term: [redacted] • Parity: [redacted] • Solutions: <ul style="list-style-type: none"> • [redacted] will renew Sabre PSS • [redacted] will use a Sabre-powered direct connect solution (could be Farelogix, which is [redacted] desire assuming the acquisition closes or DCP) • Pricing <ul style="list-style-type: none"> • GDS: [redacted] current GDS pricing • Direct Connect: Floor pricing [redacted] per segment booked via the direct connect (DCP or FLX). Open at [redacted]

Commercial Asks – Negotiations Jan 14 2019	
Asks	How Sabre should address?
<p>2. Treatment for FLX as follows: Should Sabre purchase be approved then Sabre has to:</p> <ul style="list-style-type: none"> • No change to any of the current terms and conditions at term of existing agreement for any extension. • Any extension or numbers of extensions to be at [redacted] sole discretions 	<ul style="list-style-type: none"> • Only in the WIN scenario: <ul style="list-style-type: none"> • Sabre will not change current terms and conditions of existing agreement except for Direct Connect services. Other fees for other FLX services as per current agreement. <ul style="list-style-type: none"> • For Direct Connect Services [redacted] Floor pricing) per segment booked via the direct connect (DCP or FLX). Open at [redacted] • Direct Connect only for Bookings PoS [redacted]

Sabre Told Investors that Bypass was a Risk

Travel suppliers' use of alternative distribution models, such as direct distribution models, could adversely affect our Travel Network business.

Some travel suppliers that provide content to Travel Network, including some of Travel Network's largest airline customers, have sought to increase usage of direct distribution channels. For example, these travel suppliers are trying to move more consumer traffic to their proprietary websites, and some travel suppliers have explored direct connect initiatives linking their internal reservations systems directly with travel agencies or TMCs, thereby bypassing the GDSs. This direct distribution trend enables them to apply pricing pressure on intermediaries and negotiate travel distribution arrangements that are less favorable to intermediaries. With travel suppliers' adoption of certain technology solutions over the last decade, including those offered by our Airline



Sabre Views Direct Connect as a Forward-Looking Risk

Risks center around:

- (1) New airline models and ability for the major carriers to shift share to direct connect



Airlines Can Leverage Farelogix to Lower GDS Fees



Cory Garner
VP, Sales &
Distribution Strategy
American Airlines

- Q.** Has having Farelogix as another option affected American's negotiations with Sabre?
- A.** Yes, it has.
- Q.** How so?
- A.** Farelogix has helped us avoid price increases from GDSs, and it has also helped us move technology forward in other parts of the market that have GDSs to work with us to try to improve their own technology.

Source: Trial Tr. (Garner) at 115:22-116:4 (1/27/20)



Tye Radcliffe
Director of
Distribution
UNITED

- Q.** So as a result of that leverage, has United been able to achieve anything in its negotiations with Sabre?
- A.** My opinion is that we are able to pay a lower price as a result, and have certain freedoms in the agreement that are made possible because of the existence of a bypass opportunity.
...
- Q.** Who provides you with that bypass opportunity?
- A.** Farelogix.

Source: Trial Tr. (Radcliffe) at 182:5-14 (1/27/20)

Sabre Knows Airlines Leverage NDC to Lower Costs



Chris Wilding
SVP, Sales Management,
Travel Network



Q. Okay. And then in the next sentence, you write: “All of them want to use [NDC] to drive down cost and use as leverage with GDSs and travel agencies.” Do you see that you wrote that?

A. Yes, I do.

Q. And “them” again refers to airlines?

A. Yes.

Source: Trial Tr. (Wilding) at 855:9-15 (1/30/20)

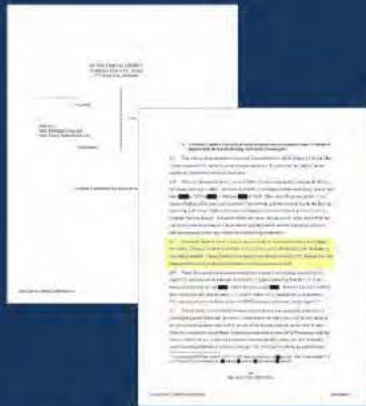


I think most are pursuing NDC to provide more target offers to either win customer business or generate more loyalty. All of them also want to use it **drive down cost and use as leverage with GDSs and travel agencies**

I think third party cost savings is the near term goal, better offers is longer term goal.

I haven't had any airline say to me that they would give up their NDC program if GDSs would just agree to the price they want. All of them really want us to implement their NDC solution. If it was just a bypass strategy this would also be more of a pure cost play

Professor Murphy Admits That Direct Connects Give Airlines Leverage



PX426 at 72



PX430 at 4837:6-16

169. Second, Professor Carlton's analysis ignores many of the forces that led to the booking-fee decline. Threats to withhold web-fares and to switch away from GDSs to other alternatives (including American's direct connect) were major forces leading to lower GDS booking fees, but these alternatives are not included in Professor Carlton's relevant market.



Professor
Kevin
Murphy
Defendants'
Expert

Well, I mean, think of it this way: **If I have the ability to make my own connection, that's a negotiating point for me. It says if I don't get a deal with you or if we don't get the terms I want, I can make my own direct connection.** Now maybe that's more costly than doing it through you, but the threat of doing that still has some value to me because it gives me an alternative. But ideally I would use that to put pressure on the other party and maybe ultimately give it up in the negotiations. I have that option, and I give up the option precisely because I got enough bargaining in the negotiations to make up for giving up the option.

Farelogix is a Disruptor



American Airlines

**Cory
Garner**

VP, Sales &
Distribution
Strategy

- Q.** Does Farelogix's five percent share of American's bookings through travel agencies accurately reflect the competitive significance of Farelogix to American?
- A.** No, they don't. Farelogix has been a disruptor from the beginning and we wouldn't be talking about NDC today if it weren't for Farelogix and their position as a disruptor.

Farelogix Offers Corporate Bundles Through NDC



Sue Carter
SVP, Marketing



Q. Turning to slide number 5, this case study relates to American Airlines and shows how American Airlines is offering corporate bundles through three different travel management companies; is that correct?

A. That's right.

Q. And these are examples of GDS bypass; is that true?

A. Yes.

Source: Trial Tr. (Carter) at 259:4-10 (1/27/20)

Case 3: Corporate Bundles through TMC's

AA Enables Corporate Bundles Through Three TMCs

- AA began distributing a corporate bundle via its NDC-compliant API to clients of three travel management companies. AmTrav, Marplay in Mexico and Brazil's Copastur
- Their proprietary booking tools are being used to sell special fares that include
 - preferred main cabin seating
 - no-fee for changes
 - changes and a checked bag
- When using the AA NDC bundle, choosing a preferred seat is part of the booking path rather than a separate, after-the-fact transaction.
- The bundle appears in fare displays like any other fare.



Sabre's Intent: Protection Against Bypass

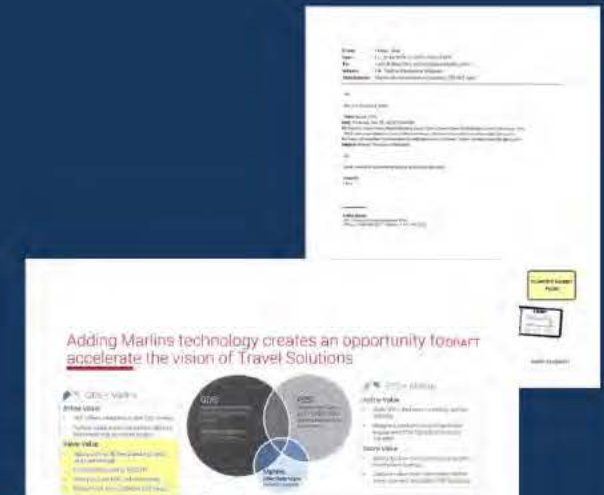


Sean Menke
President & CEO
Sabre

Q. But you sent the **chairman of the board** some materials that called out **mitigating the risk from potential GDS bypass as a benefit of the deal**, didn't you?

A. I did.

Source: Trial Tr. (Menke) at 741:4-7 (1/29/20)



Sabre Value

- Opportunity to define standards (tech and commercial)
- Immediate access to NDC API
- Ability to scale NDC volume quickly
- Mitigate risk from potential GDS bypass

PX220 at 4

Defendants Cannot Rebut Prima Facie Case

“In order to rebut the prima facie case, the [Defendants] must show either that the combination *would not have* anticompetitive effects or that the anticompetitive effects of the merger will be offset by *extraordinary* efficiencies resulting from the merger.”

Fed. Trade Comm'n v. Penn State Hershey Med. Ctr.,
838 F.3d 327, 347 (3d Cir. 2016)



Entry Would Not Be Timely, Likely, or Sufficient

- Entry must be:
 - **Timely**, *i.e.*, rapid enough to deter anticompetitive effects
 - **Likely**, *i.e.*, profitable and feasible
 - **Sufficient**, *i.e.*, impactful on pricing and have the scale to compete
- Defendants cannot meet this rigorous standard

United States v. Energy Sols., Inc., 265 F. Supp. 3d 415, 443 (D. Del. 2017)

Onerous Contract Terms Are Barriers to Entry

GDSs continue to leverage significant market power to preserve their market position and stifle innovation.

- The GDS oligopoly controls both airline internal systems and the airline's distribution structure.
- Onerous contracts with both travel agencies and airlines preserve the status quo.
 - GDS contracts demand parity/MFN/non-discrimination clauses and limit use of third parties (e.g. "convenience fee")
 - PSS contracts restrict connectivity and/or use of airline's own inventory data; 3rd party solutions cost-prohibitive or not allowed
 - OTA-GDS contracts require GDS approval to use third party software/solutions
- Even the world's largest and most powerful airlines cannot break the oligopoly power on their own.
 - Requires or risks extensive and expensive anti-trust litigation (e.g. AA, US, LHG)
 - Litigation filings revealed Sabre's strategy to "shut down Farelogix"
 - Attempts to constrain innovation by drawing false parallels between airline software vendors and GDS companies (LH-Sabre)
 - Airlines are incurring significant costs to have the freedom to compete for customers
 - Pay full 'rack rate' to the GDS to break full content agreements
 - Resort to cost recovery fees to offset higher GDS costs, enabling adoption of newer technology (e.g. LHG, IAG, AF)



Customers Cannot Easily Replace Farelogix



American Airlines

**Cory
Garner**

VP, Sales &
Distribution
Strategy

Q. Outside of Farelogix, who could American use for an NDC API?

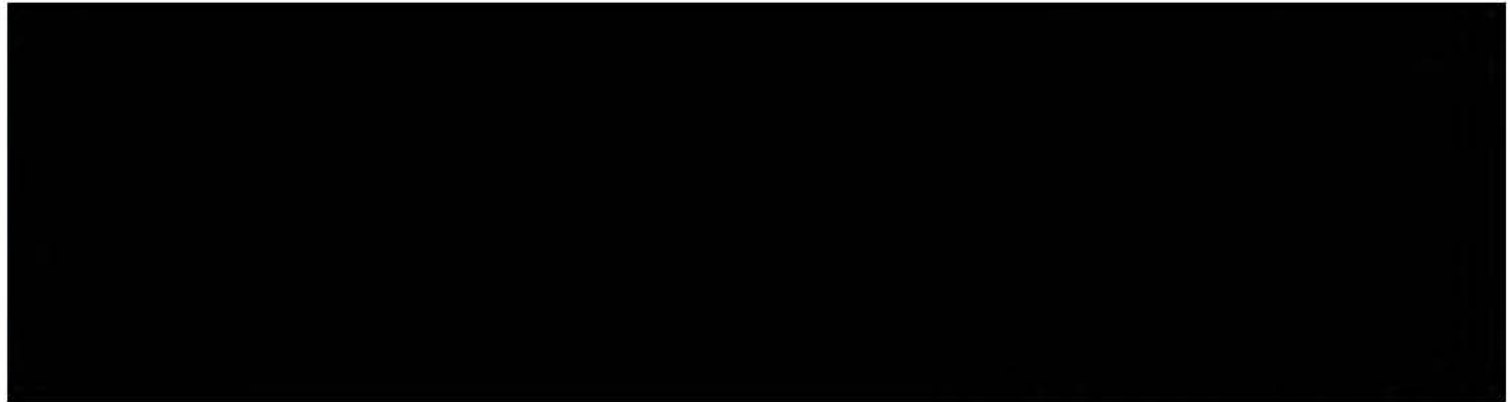
A. Nobody.

Source: Trial Tr. (Garner) at 120:10-12 (1/27/20)



UNITED

**Tye
Radcliffe**
Director of
Distribution



Source: Trial Tr. (Radcliffe) at 318:18-20 (1/27/20)

There is Only One Farelogix



Derek Adair

Managing Director, Revenue
Management Development



Q. Does Farelogix offer capabilities beyond basic NDC functionality?

A. Yes.

Q. Is this something that makes Farelogix appealing to Delta?

A. Yes.

Q. Are you aware of other third-party connectivity providers who also offer these additional capabilities?

A. I am not.

Source: Trial Tr. (Adair) at 1721:11-20 (2/4/20)



Christina Larson

Managing Dir. Sales Analytics,
Distribution, and Planning



Source: Trial Tr. (Larson) at 1129:1-11 (1/30/20)

Farelogix “is leading!”

I would stay away from any specific numbers or airline names at this point. Only point we need to make is...we are leading! Thx. Jim

Boehmer: Through IATA's Leaderboard initiative, 21 airlines are committing to pushing at least 20 percent of their indirect channel volume through NDC-capable APIs by 2020. By my count, more than a third of them are confirmed as Farelogix customers.

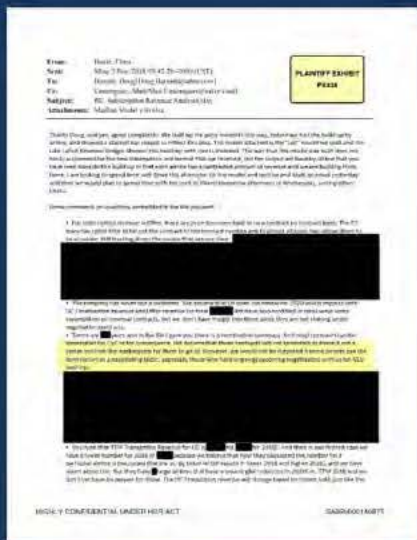
Davidson: Probably a little more than that.

Boehmer: OK. So, how many are Farelogix users?

Davidson: I don't have the list in front of me, but the majority of the volume is—and this is not bragging, it's just we've been doing this for 10 years—Lufthansa, Qantas, American, United, Emirates. ... Probably the far majority of transactions are coming from our airlines. The [Leaderboard] initiative is about adoption—real, commercial adoption. It's not just messing around with pilots any more. It's all about commercial adoption.

No Better Alternative to the GDSs than Farelogix

terminated for CoC or for convenience. We assume that those contracts will not terminate as there is not a better solution the marketplace for them to go to. However, we would not be surprised if some airlines use the termination as a negotiating tactic, especially those who have ongoing/upcoming negotiations with us for GDS business.



PX436 at 1

Other Farelogix Competitors?

Today: Farelogix Has More Than 20 Competitors

- 21 companies have Level 4 IATA certification in NDC for Full Offer and Order Management



Ordinary Course Documents Illustrate Market Reality

“Ordinary course of business documents *reveal the contours of competition* from the perspective of the parties, who . . . may be presumed to have ‘accurate perceptions of economic realities.’”

United States v. Aetna, Inc., 240 F. Supp. 3d 1, 21 (D.D.C. 2017)

“The court *credits those internal projections* over PFG’s current position. . . .”

Fed. Trade Comm’n v. Sysco Corp., 113 F. Supp. 3d 1, 76 (D.D.C. 2015)



NDC Exchange is Not an NDC API or a Farelogix Alternative



Cory Garner

VP, Sales & Distribution Strategy

American Airlines 

Q. Could American use the ATPCO NDC exchange instead of Farelogix?

A. No.

Q. Why not?

A. Because as I said before, it is not an airline API. It is an aggregation and a translation layer that assumes that an airline already has an API.

Source: Trial Tr. (Garner) at 123:15-21 (1/27/20)



Tom Gregorson

Chief Strategy Officer

atpco

Q. Does ATPCO offer NDC API services to airlines?

A. We do not.

Q. Does ATPCO offer NDC API Services to travel sellers?

A. We do not.

Q. So the airline creates the NDC API?

A. Or a third-party provider that they contract with them on their behalf.

Q. But certainly ATPCO does not create an API?

A. We do not create an API for the airline.

Source: Trial Tr. (Gregorson) at 1691:12-24 (2/4/20)

IATA Certification is Not an Important Metric to Customers



Cory Garner

VP, Sales & Distribution Strategy

American Airlines 

- Q.** Would you choose an NDC supplier based on IATA certification?
- A.** No.
- Q.** Why not?
- A.** We have to look a lot deeper than just the certification model. . . . And so there's a whole list of reasons why we would need to dig a lot deeper into that analysis.

Source: Trial Tr. (Garner) at 121:25-122:13 (1/27/20)



Tye Radcliffe

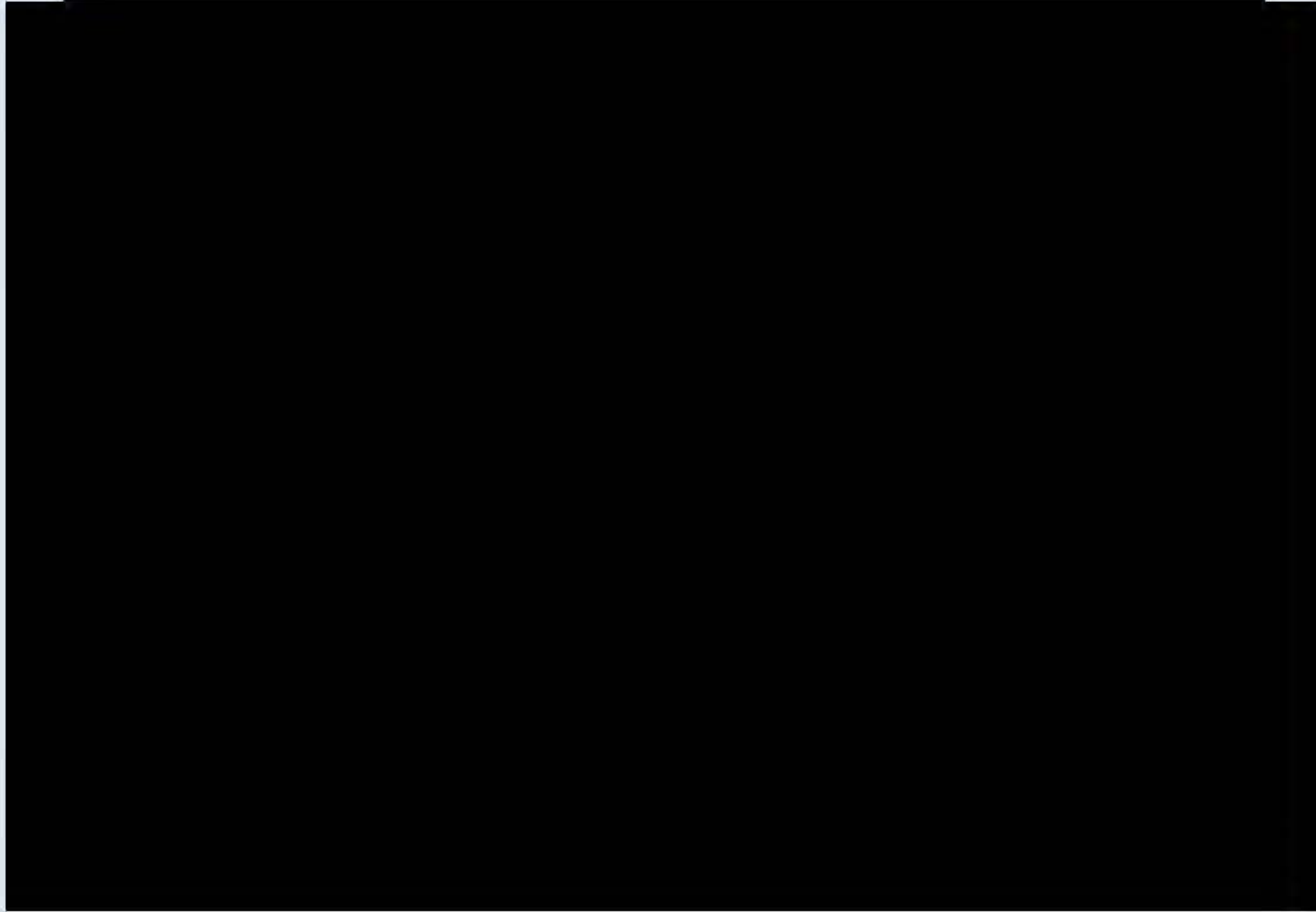
Director of Distribution

UNITED 

- Q.** Does [IATA] certifications reflect an IT provider's ability to meet United's needs?
- A.** No, ma'am.
- Q.** Why not?
- A.** It only signifies they were able to pass in a set of NDC messages that met the requirements of the schema. I could probably write that myself and submit it and get certified. It doesn't mean I have all those capabilities ready to go for an airline of my size.

Source: Trial Tr. (Radcliffe) at 230:7-15 (1/27/20)

Farelogix Win Rate is Better than Defendants Portray



Delta Self-Supplies Today, But Is Still Considering Farelogix for NDC



Jim Davidson
President & CEO



Source: Trial Tr. (Davidson) at 655:10-18 (1/28/20)



Derek Adair
Managing Director, Revenue
Management Development
▲ DELTA

- Q.** Is Delta considering using Farelogix as a vendor to help with connectivity to the indirect channel?
- A.** It's still to be decided
- Q.** Why is Delta considering using Farelogix in particular as a vendor for this?
- A.** In general, we've seen through other products that we have that they are an airline-centric entity. They think about how airlines want to solve problems and how retailers work in the industry, and they're a disruptor in the process of getting new products to the market, new methods of integrating product to the customer however they want to get it. So they're very inventive from our point of view.

Source: Trial Tr. (Adair) at 1720:8-1721:7 (2/4/20)

Self-Build is Not an Option



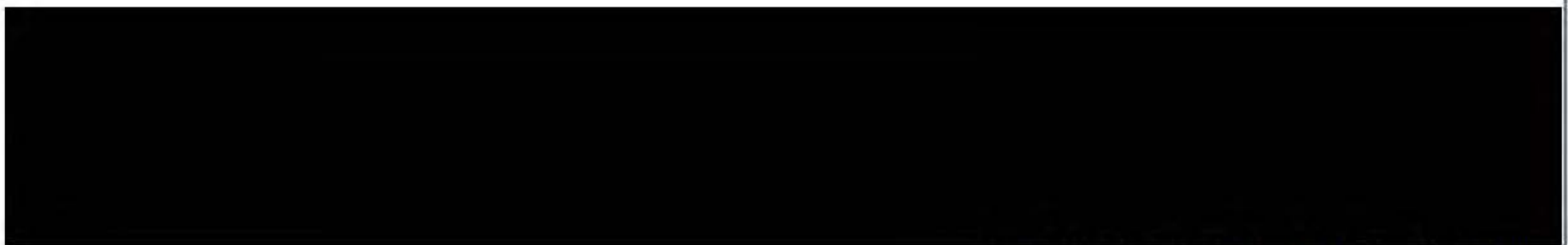
American Airlines
Cory Garner
VP, Sales & Distribution Strategy

A. To build a replacement for the Farelogix NDC connection that we have, it would have cost us something like \$40 million upfront and about \$25 million a year to operate. American just simply doesn't have a lot of \$40 million projects. That would be a really large consumption of resources.

Source: Trial Tr. (Garner) at 127:10-16 (1/27/20)



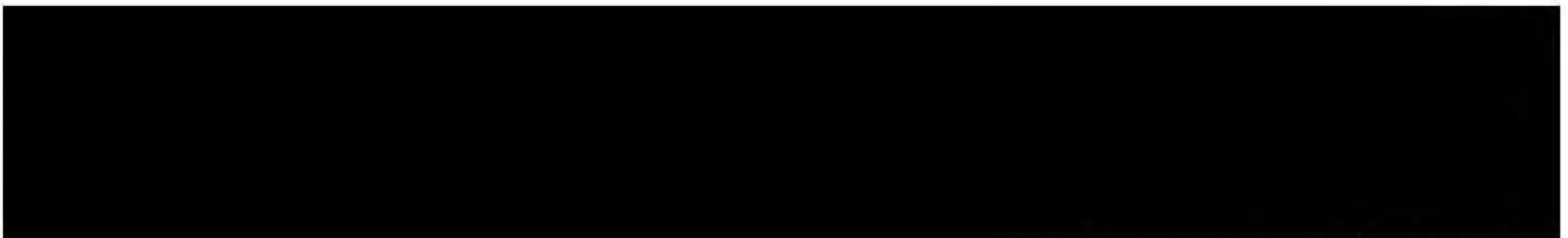
UNITED
Tye Radcliffe
Director of Distribution



Source: Trial Tr. (Radcliffe) at 311:14-23 (1/27/20)



HAWAIIAN AIRLINES
Christina Larson
Managing Dir. Sales Analytics, Distribution, and Planning



Source: Trial Tr. (Larson) at 1129:12-16 (1/30/20)

Alleged Efficiencies Cannot Rebut Anticompetitive Harm

- *Penn State Hershey* requires that efficiencies:
 - **Offset** anticompetitive concerns in the relevant market
 - Be **merger specific**, and not achievable by either company alone
 - Be **verifiable**, not speculative
 - Be shown in **real terms**
 - **Not arise** from anticompetitive **reductions** in output or service
- Defendants cannot meet this rigorous standard

Fed. Trade Comm'n v. Penn State Hershey Med. Ctr., 838 F.3d 327, 348-49 (3d Cir. 2016)

Farelogix Does Not Need Sabre to Grow



FARELOGIX
Jim Davidson
President &
CEO

- Q.** And you poured resources into Open Connect and NDC API over a number of years to help bring that NDC technology to the industry; that's true?
- A.** That is an accurate statement, yes.
- Q.** That is what you have been working for?
- A.** Yes.
- Q.** Right?
- A.** We have been working to have the NDC going through the GDSs as GDS passthrough. That was kind of our Holy Grail.
- Q.** And it has finally caught on even without the merger; right?
- A.** Well, it's we have implementations going and I think the industry has caught on.
- Q.** In fact, you have 26 implementations going?
- A.** That is right.

Sabre Does Not Need Farelogix to Invest in NDC



Sabre
Sean
Menke
President &
CEO

- Q.** And 2018, Sabre paid dividends [totaling] about \$154 million?
- A.** [That] sounds correct.
- Q.** And Sabre has continued paying dividends on a quarterly basis throughout 2019?
- A.** That is correct.
- Q.** Sabre has paid dividends each year you have been CEO; is that right?
- A.** Yes
- Q.** And Sabre has also repurchased shares of its common stock while you have been CEO?
- A.** That is correct.

Sabre's Promises Cannot Prevent Merger's Harm

- Defendants bear the burden of showing that:
 - A proposed remedy “will actually occur” and
 - The proposed remedy “would counteract any anticompetitive effects of the merger.”

United States v. Aetna, Inc., 240 F. Supp. 3d 1, 59 (D.D.C. 2017)

- Promises to maintain prices for a limited duration “cannot rebut a likelihood of anticompetitive effects” because Defendants “could accomplish what amounts to a price increase through other means.”

United States v. H&R Block, Inc., 833 F. Supp. 2d 36, 82 (D.D.C. 2011)

Sabre's Promises Will Not Remedy the Loss of Competition



Cory Garner
VP, Sales & Distribution
Strategy
American Airlines

Q. Do [Sabre's] 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.**

Source: Trial Tr. (Garner) at 131:13-18 (1/27/20)



Rocky Wiggins
SVP and Chief
Information Officer
spirit

Q. So it's your testimony that **you have no idea what Sabre plans to do with Farelogix?**

A. That is correct.

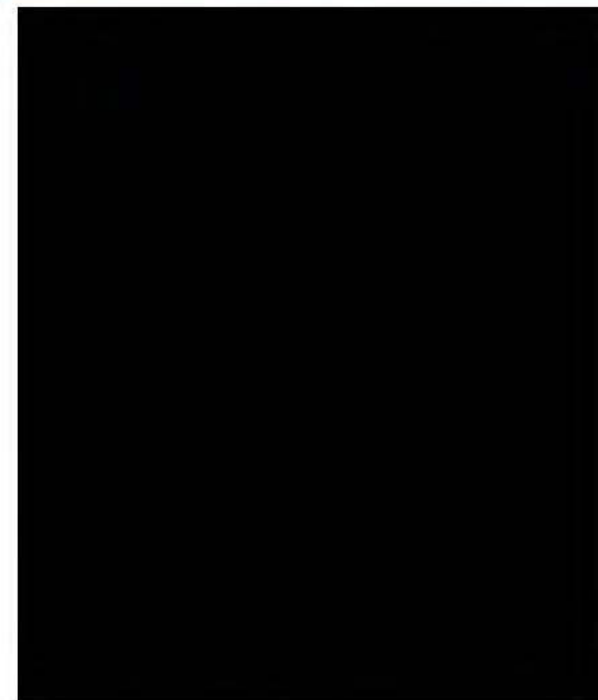
Q. So it's possible that it might not accelerate Sabre's capabilities in NDC?

A. It is possible.

Source: Trial Tr. (Wiggins) at 1658:20-25 (2/4/20)



Tye Radcliffe
Director
of Distribution
UNITED



Source: Trial Tr. (Radcliffe) at 333:12-18 (1/27/20)

Alaska Airlines Had “No Reaction” to Promises Email



Alaska

Shane
Tackett
EVP,
Planning &
Strategy

- Q.** Do you recognize this document?
- A.** I do recall receiving this e-mail, yes.
- Q.** What do you recognize it to be?
- A.** I recognize it to be an e-mail from Sabre, Sean Menke, in relation to the Farelogix acquisition. I presumed it was a form e-mail that went out to all Farelogix customers.
- Q.** Do you recall having any reaction to this e-mail?
- A.** I don't recall any specific reaction to it.
- Q.** Do you recall any general reaction to it?
- A.** I don't recall any reaction.

Defendants Cannot Rebut Prima Facie Case

““The more compelling the prima facie case, the *more evidence* the defendant must present to rebut it successfully.””

United States v. Anthem, Inc., 855 F.3d 345, 349-50 (D.C. Cir. 2017)



NDC Distribution Disintermediates the GDS

Traditional GDS Distribution



Travel Agents



NDC Distribution



Is Sabre Buying Farelogix to Kill Farelogix?

Hi, Dave – you'll possibly hear more from Sean/others etc. who met w/ folks at Phocuswright but intellectually I found the position that Philippe Chereque (Amex/GBT) articulated – kinda interesting to think about. He asked “are you buying FLX to a. kill them, b. as an IT play to airlines or c. are you actually going to facilitate GDS economics to be rethought – because we would not be in favor of c..”.

From: "Sean Wilby, Sabre" <Sean.Wilby@sabre.com>
Sent: Fri, 10 Nov 2018 11:12:11 (GMT-05:00)
To: "Dave, Sabre" <David.Sabre@sabre.com>
Subject: Travel around world options to FLX, Phocuswright

Hi, Dave – you'll possibly hear more from Sean/others etc. who met w/ folks at Phocuswright but intellectually I found the position that Philippe Chereque (Amex/GBT) articulated – kinda interesting to think about. He asked “are you buying FLX to a. kill them, b. as an IT play to airlines or c. are you actually going to facilitate GDS economics to be rethought – because we would not be in favor of c..”.

Also the great thinking of David (and others) – and not as great thinking as though the flight ops and travel that it will use what we are doing. There are many opportunities on the air and many more opportunities to generate and create it.

Really also mentioned that their opportunities. We have seen that. Will get a sense from them in that we will see it – hopefully the thinking is helping and we'll get the best of the air and not been necessary. I will see what we can do.

It does seem to be extremely easy – but for that we are not in that of making things better.

— Dave

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SABRE I/F 20241191

Sabre is Ready to Raise Prices on Direct Connect Post-Close



Greg Gilchrist
SVP, Airline Solutions

Sabre

- Q.** Well, the question here that Sabre was considering was **assuming the merger closed**, whether to offer the **Farelogix or the Sabre direct connect product**; right?
- A.** That was one of the considerations, yes.

Source: Trial Tr. (Gilchrist) at 756:6-9 (1/29/20)



Chris Wilding
SVP, Sales Management,
Travel Network

Sabre

- Q.** Okay. So Sabre is looking [holistically] at the **effect that the direct connect will have on its GDS booking** and on airline solutions business; is that fair?
- A.** Yes, I was looking [holistically] at the – at this option.

Source: Trial Tr. (Wilding) at 833:7-11 (1/30/20)



Greg Gilchrist
SVP, Airline Solutions

Sabre

- Q.** And then you got the context afterwards when you got a text from your colleague about the blowup [with this airline]. Right?
- A.** I had texted him back. I was about to get on a plane and fly to a country, and I said, let's talk tonight, and I didn't get a chance to speak with him that evening. And then the following day in the negotiations, I understood that **he was unhappy about the price that we had put on the table**.
- Q.** And that price was for the **Direct Connect product**; correct?
- A.** **Either the Direct Connect product or the Farelogix product**, yes.

Source: Trial Tr. (Gilchrist) at 759:15-760:1 (1/29/20)

Sabre Already Considering a “Big Time” Price Increase



Greg Gilchrist
SVP, Airline Solutions
Sabre

Q. Okay. That very last text from you to Mr. Rickey down there, you used a colorful phrase as you can see. What did you mean when you wrote that?

A. Well, I thought that Cory would be negative towards the deal and I was just presuming is what I thought Cory would think, that he would have a negative view of the world and put a narrative on that the bill is going up and **American is losing a lever against Sabre.**

Source: Trial Tr. (Gilchrist) at 764:13-20 (1/29/20)



08:52 AM | The FLX bill is going up big time
And that was their Trojan horse to fuck us

PDX004 (based on PX140)

United States of America
v.
Sabre Corporation, Sabre GBL Inc.,
Farelogix, Inc., and Sandler Capital Partners V, L.P.



==== THE UNITED STATES ====

DEPARTMENT *of* JUSTICE

