

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,	:
	:
<i>Plaintiff,</i>	:
	:
v.	: Civil Action No.: 1:19-cv-01548-LPS
	:
SABRE CORPORATION,	:
SABRE GLBL INC.,	:
FARELOGIX, INC., and	:
SANDLER CAPITAL PARTNERS V, L.P.,	:
	:
<i>Defendants.</i>	:

DEFENDANTS’ PROPOSED FINDINGS OF FACT

REDACTED PUBLIC VERSION

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I. Background

A. Air Travel Distribution

1. Airlines sell their content through two distribution channels—the direct and indirect channels:¹ In the direct channel, airlines sell content directly to consumers through their own websites (also referred to as “airline.com”), call centers, airline ticket counters, or mobile apps. (1700:3-8 (Tackett).) The direct channel accounts for about 60% of airline bookings today. (See 1430:15-1431:17 (Murphy); 91:18-20 (Garner); 1640:14-16 (Wiggins); [REDACTED] [REDACTED] 1700:21-1701:1 (Tackett).)

2. In the indirect channel, airlines sell content through an intermediary, such as a travel agency. (1700:9-20 (Tackett).) The indirect channel accounts for about 40% of airline bookings today. (1430:15-1431:17 (Murphy); Murphy Demonstrative at 7.) The vast majority of indirect channel sales—95% by passenger volume—are made through a global distribution system (“GDS”). (See Murphy Demonstrative at 7.) The remaining 5% are sales directly between an airline and a travel agency or corporation (“direct connections”). (1430:22-1431:14 (Murphy).)

3. Travel agencies include travel management companies (“TMCs”) and online travel agencies (“OTAs”): TMCs such as Carlson Wagonlit Travel (“CWT”) and BCD Travel (“BCD”) manage business travel for corporations and do not primarily operate through a consumer-facing website. (1178:10-12 (Ekert); 1211:15-23 (Stratford).) OTAs such as Expedia and Priceline primarily operate through consumer-facing websites and primarily target leisure customers. (1282:23-1283:1 (Kunz-Cho).)

¹ “Content” refers to the products and services that airlines sell—i.e., not only tickets, but also other “ancillaries” such as upgraded seats, bag fees, or priority boarding. (1215:12-20, 1218:12-21 (Stratford); 1641:16-1642:7 (Wiggins); 276:17-277:2 (Carter).)

4. Airline ticket sales also may be characterized based on whether the passenger is traveling for business or leisure. (*See, e.g.*, 705:14-22 (Menke); 1282:23-1283:1 (Kunz-Cho).) Business travelers tend to purchase more expensive tickets with more complicated itineraries, and may be subject to employer-specific travel policies. (*See* 1704:11-25 (Tackett).) For these reasons, business travelers often rely on TMCs to purchase tickets on their behalf. (1183:4-1185:13 (Ekert).) Leisure travelers tend to have less-complicated itineraries and are more price conscious. (*See* 1184:13-22 (Ekert).) Thus, leisure travelers typically purchase tickets through an airline's website, a metasearch engine, or an OTA. (*See* 1184:13-22 (Ekert); 1439:1-6 (Murphy).)

1. The Direct Channel

5. Generally, airlines prefer that travelers search and pay for fares and ancillaries on the airline's website, and multiple third party airlines testified that they attempt to shift bookings from indirect channels to their direct channels, including their own websites. (*See* [REDACTED] [REDACTED] 1165:18-25 (Lobl); 1702:23-1703:3 (Tackett).) Airlines prefer that customers search and pay for fares and ancillaries on their websites because—unlike when a traveler uses an aggregated search tool—an airline's website displays only that airline's content (*see, e.g.*, 1171:16-1172:2 (Lobl); DX287 at 1),² airlines can better control the retail experience on their own websites (DX287 at 1), and airlines' costs are typically lower when using their own websites ([REDACTED]).

6. The significant growth of airline websites over the last 20 years has led to substantial share shift from the indirect channel to the direct channel. (*See* Murphy

² Searching for airfare on the airline's website can thus diminish price transparency and airlines' incentive to compete on price. (*See* 1192:23-1193:9 (Ekert); 1242:23-1243:6 (Stratford).)

Demonstrative at 26.) For example, in 2005, direct distribution accounted for approximately 50% of bookings by U.S. passenger volume. (*Id.*) And in 2018, direct distribution accounted for 58.8% of bookings by U.S. passenger volume. (*Id.* at 7.)

7. Airline websites continue to drive market share shift from the indirect channel to the direct channel. (*See* Murphy Demonstrative at 26.) As Derek Adair, Delta Airlines' Managing Director of Revenue Management Development, explained, Delta.com now accounts for "roughly 50 percent of [Delta's] distribution, [and] that volume has gone away directly from GDSs." (1726:2-15; *see also* DX 287 at 1 [REDACTED] [REDACTED].) Chris Wilding, the Senior Vice President for the Air Line of Business for Sabre, similarly testified that Sabre "continue[s] to see [] a point of share shift from the GDS channel to the dot com." (864:14-17 (Wilding); *see also* 1563:15-19 (Murphy) ("[T]ravel suppliers are trying to move more consumer traffic to their proprietary websites that would be Airline.com; is that right? A. Yes.").)

8. Airlines have several tools to encourage travelers to search for and book tickets through the direct channel rather than the indirect channel: Airlines can make lower price fares available only on their websites. (*See, e.g.*, [REDACTED]; 1624:7-13 (Shirk); 1435:6-11 (Murphy) (discussing airlines' use of "web fares" in GDS negotiations).) Airlines can also provide an "advantageous retail experience" on their own website. (*See* DX 287, at 1.)

9. And an increasingly significant method for airlines to drive bookings to their websites—particularly from OTAs—is through metasearch engines such as Kayak and Google Flights. (*See* 1701:2-8, 1711:18-1712:11 (Tackett).) This is because metasearch engines attract price-sensitive leisure travelers who are typically searching for the lowest fare regardless of

airline, and airlines can require the metasearch engine to send the traveler to the airline's website rather than an OTA to book the ticket. (*See* 1701:12-1702:22 (Tackett); 281:2-13 (Carter).)

2. The Indirect Channel

10. Unlike in the direct channel, in the indirect channel, airline content is sold through an intermediary, such as a travel agency. (*See* 1122:1-10 (Larson).)

11. Travel agencies—both OTAs and TMCs—provide their customers with many valuable services, including access to and the ability to book content from thousands of travel suppliers, including hundreds of airlines. (1179:17-19, 1189:10-12 (Ekert); 1240:21-24 (Stratford).) This access to content from many travel suppliers allows travel agencies to provide their customers with comparison shopping and fare transparency, which travel agencies consider to be one of their most significant value propositions. (*See* 1243:12-13 (Stratford) (“[O]ur customers want us to shop and compare.”)) Comparison shopping and fare transparency are so important to travelers that, as CWT President and CEO, Kurt Ekert, testified, “transparency and choice is paramount to everything we do.” (1182:7-8 (Ekert).)

12. Travel agencies—particularly TMCs—provide many other services to their clients: TMCs also offer reporting services to help corporate clients manage and optimize their corporate travel programs. (1183:7-20 (Ekert); 1211:24-1212:9 (Stratford).) Additionally, TMCs must service bookings after they are ticketed, including by changing and canceling reservations. (1182:9-20 (Ekert); 1244:2-10 (Stratford).) These services are critical as “the average air ticket . . . is changed three to four times for a corporate traveler.” (1182:9-11 (Ekert).) Furthermore, TMCs assist corporate clients in meeting their duty of care obligations, which enable corporations to track the location of their corporate travelers all around the world, particularly in the event of a natural or man-made disaster. (1182:21-24 (Ekert); 1244:11-18 (Stratford).)

B. The Products and Services at Issue—Sabre’s GDS and FLX OC

1. Sabre’s GDS Is a Two-Sided Transaction Platform That Contracts With and Provides Critical Services to Both Airlines and Travel Agencies

13. Travel agencies rely on the GDSs to provide the services detailed above to their clients. (1186:24-1187:7 (Ekert); 1245:2-1247:10 (Stratford).)

14. A GDS is a transaction platform that connects a large number of travel suppliers, such as airlines, hotels, railroads and car rental companies, to a large number of travel agencies. (266:4-13 (Carter); 442:22-24 (Davidson); 1187:1-7 (Ekert).) Sabre’s GDS connects more than 400,000 travel agencies (*see* 206:9-10 (Radcliffe)) to more than 400 airlines (PX 253 at 15) and “thousands of car companies or hotel companies” (442:19-25 (Davidson); *see also* 705:18-22 (Menke) (discussing Sabre’s GDS customers)).

15. GDSs are complex undertakings that require immense technological capacity and commercial agreements with customers on each side of the platform. (266:2-13 (Carter).) As an example of the technological capacity necessary for a GDS, Sabre’s GDS processes more than 80 billion shopping requests each year, with each request generating over 100 itineraries for a traveler to choose from. (PX 5 at 171-72.)

16. Three companies—Sabre, Amadeus and Travelport—operate GDSs within the United States today. (*See* 1250:7-12 (Stratford); 727:8-9 (Menke).)

17. Sabre’s GDS provides critical services to travel agencies both before and after a ticket is booked. (*See* 718:20-719:16 (Menke).) The GDS provides the aggregation and normalization of content that are the foundation of a travel agency’s ability to provide comparison shopping and fare transparency. (1187:12-1189:9 (Ekert); 1242:3-1243:24 (Stratford).) For TMCs, the GDSs also enable duty of care and integration with mid-office and back-office systems, which is critical to the services they provide. (1194:8-14 (Ekert); *see also*

1245:13-1246:5 (Stratford) (“The mid back offices rely on the GDS and the data that we derive out of the GDS. So if that was not there and you return say to 1978, we would not be able to provide the value and the service that [] we provide today.”).)

18. Services that Sabre’s GDS provides to travel agencies before a ticket is booked include: (1) aggregating and normalizing schedule, pricing and availability data from travel suppliers, with sub-second response times; (2) automating rules set by corporate travel policies; (3) transmitting orders to airlines and receiving ticketing information in response; and (4) enabling interlining (that is, travel on multiple airlines under a single ticket). (See 1186:24-1187:7, 1188:12-1189:9, 1190:8-14 (Ekert).) As Ms. Stratford explained, the normalization and aggregation capabilities of the GDS are the “number one value proposition” provided by the GDS because “customers want us to shop and compare.” (1243:7-13 (Stratford).) And it is critical for all travel agencies that GDSs can provide these normalization and aggregation functions in sub-second response times. (See 1299:1-4 (Kunz-Cho) (“In the e-commerce space, speed is very essential to drive conversions” and “[w]ithout efficient speed, we lose conversion and we measure speeds in sub-seconds, which makes a difference.”).)

19. Services that Sabre’s GDS provides to travel agencies after a ticket is booked include: (1) modifying and servicing bookings; (2) integrating with mid- and back-office systems (which travel agents use to, among other things, automate quality control of tickets and invoice customers); (3) assisting with duty of care; and (4) global, 24-hour support services. (See 1188:2-11 (Ekert) (“[O]ur ability to do servicing especially with changes is contingent on the GDS being there. Our ability to provide duty of care is contingent on the GDS. Our billing systems, our recording capabilities largely trigger off of the central record that is provided by the GDS.”).)

20. All of these services that Sabre's GDS provides are critical to the success of its travel agency customers. (*See* 1187:1-7 (Ekert) (“[W]e simply could not deliver our value proposition to our clients without the GDSs being part of our ecosystem. They’re fundamental to our mission.”); 1261:24-1262:5 (Stratford) (“[I]t’s the part of booking and issuing a ticket is the easy part. If that was our value proposition, we wouldn’t be in business today. So anybody [could] go on a website and do that. So the complexity is really about, again, shopping, providing transparency, reporting, duty of care, being able to measure that.”).)

21. Sabre's GDS also provides services to airlines, including distributing airline content and offering instant access to its vast network of travel agencies. (92:10-16 (Garner).) A key value Sabre's GDS provides to airlines is its commercial relationships with thousands of travel agencies. (145:1-8 (Garner) (agreeing that “[o]ne of the big benefits [of GDSs] is that the number of travel agencies that American is able to reach through them”); 202:8-23 (Radcliffe) (agreeing that GDS “relationships with travel agents provide value to United” and that “Farelogix doesn’t provide that value”).) Many of these agencies are TMCs, which serve higher-yielding customers that the airlines would not otherwise reach. (145:1-8 (Garner); 1184:10-22 (Ekert).) This tremendous reach and distribution capability allows airlines to distribute their products and services globally in seconds, without spending millions of dollars on marketing. (*See* 1241:10-22 (Stratford) (“[I]n no other industry can you start in a market . . . distribute your product globally in seconds and be able to sell that product globally in seconds, be distributed to every travel agency around the globe. . . . You’d have to put t[e]ns of millions of dollars into marketing, getting your brand out, doing all these things to market your product. Airlines are pretty fortunate to have that kind of distribution capability to be able to market their product.”).)

22. Sabre's contracts with the hundreds of thousands of travel agencies within its network typically require Sabre to pay travel agencies an incentive per segment. (*See* 865:7-11 (Wilding); 1203:19-1204:2, 1204:11-13 (Ekert); 1210:7-13 (Stratford); 1290:1-5 (Kunz-Cho).)³ Sabre's contracts with airlines typically require airlines to pay a single fee per segment (a "GDS fee") for all of the services that Sabre provides to airlines. (*See* 108:5-21 (Garner); 665:4-6 (Menke); 834:4-12 (Wilding).)⁴ In 2018, the average incentive per booking paid by Sabre in North America was [REDACTED] and the average GDS fee was [REDACTED] (*See* Murphy Demonstrative at 9.)

23. As a matter of law and economics, Sabre's GDS is known as a two-sided transaction platform. (*US Airways, Inc. v. Sabre Holdings Corp.*, 938 F.3d 43, 58 (2d Cir. 2019); 1422:24-1423:18 (Murphy).) As Dr. Murphy explained, "the value of the Sabre [GDS] . . . occurs on two sides, where on the one side," travel agents value Sabre's GDS "because it gives them access to a wide range of travel suppliers in a single spot. They can go to Sabre and book hotels or find hotels or flights or cars and put it altogether in a package that fits their needs. Because it's attractive to travel agencies and travel agencies want to use Sabre to do their side of the business, it's therefore attractive to airlines, because airlines after all want to sell their product and they want the customers." (1423:3-13 (Murphy); *see also* 1425:4-12 (Murphy) (the GDS "platform provides value to two sets of customers—the travel agencies and travelers on one side and the travel suppliers, including airlines, on the other").) DOJ's expert, Dr. Aviv Nevo,

³ Airlines also pay incentives to travel agencies. (1210:7-13 (Stratford).)

⁴ The exception to this typical arrangement is the "wholesale model," in which airlines pay travel agencies an incentive and the travel agencies pay Sabre a technology fee. (*See* 1290:1-5 (Kunz-Cho).)

testified that it “is not unreasonable to think that” Sabre’s GDS “is a two-sided market.”

(964:10-15 (Nevo).)

24. Because of the two-sided nature of Sabre’s GDS, the primary competitors for Sabre’s GDS “in the long run” are “the rival GDSs. In this case, Amadeus and Travelport.” (1433:5-13 (Murphy).) As Dr. Murphy explained, “[i]f [Sabre] do[es]n’t provide [the airline content that] customers want[], they’ll lose travel agencies to Amadeus and Travelport, and if they don’t provide what the airlines want and they don’t get the airline content, that will cause them to lose on the travel agency side as well.” (*Id.*; PX 251, at 5 (“Travel Network competes with several other regional and global travel marketplace providers, including other GDS”)). Chris Wilding similarly testified that “travel agencies, when they’re looking to a GDS, they want to make sure that the GDS can provide them with all the relevant content.” (860:7-9 (Wilding); *see also* 1186:2-8 (Ekert) (“So if, for example, Sabre was to lose content or enable content but on a noncompetitive basis to how another GDS provides that, then we have the ability to shift business away from them to another GDS.”)).

25. Indeed, testimony from current and former Sabre employees confirms that Sabre views the other GDSs as its principal competitors. For example, Sabre CEO Sean Menke testified that “the competitor[] really is Amadeus on the GDS platform.” (727:8-9 (Menke); *see also* 770:16-18 (Gilchrist) (“Q. Who was the competition for the GDS part of this [REDACTED] [REDACTED] A. Amadeus.”); 795:1-7 (Vilches) (“Now [Sabre is] not the number one GDS because it lost ground to Amadeus and Travelport with the travel agency market.”)).

26. Sabre’s GDS also competes with airlines’ direct distribution channels, including airline.com, which constitute the “most important short-term constraint” for Sabre’s GDS fees. (1433:14-25 (Murphy).) According to Dr. Murphy, airline.com is the “800-pound gorilla”

because that is the “[m]ost likely place [for customers] to turn” if “content wasn’t available to the travel agent.” (*Id.*) And while airline.com is “relevant to both TTA and OTA bookings . . . it’s especially important for OTA bookings” because “direct channel is a mouse click away. If you are an OTA, a mouse click away is Airline.com, and that clearly has been the alternative that has been relevant.” (1434:1-9 (Murphy).)

27. Because airline.com, including the use of airline.com through metasearch engines, competes for bookings with travel agencies, it poses a significant constraint on Sabre’s GDS fees: “The platform model of the GDS gives them a very strong demand for content. So in negotiations with airlines, of course, what is going to be on the table? The GDSs want access to content, the airlines know that. So that is going to be a major bargaining chip. And if you don’t have the content, the place that is going to have the content all the time is going to be airline.com because the airlines control that distribution channel. They’re going to put their content there whether you have it or not, and if there is anything about the GDSs that drives their behavior, they don’t want a content disadvantage. And because they’re in the platform business, as a platform provider, my customers want content, therefore I want content. . . . The fear that you would not have content that is available on airline.com or available to travelers in other ways is a major concern for GDSs which accounts for why it is a very big competitive constraint on the fees that GDSs charge.” (1437:11-1438:6 (Murphy).)

28. Business records produced by third-party airline witnesses and their testimony confirm that airlines view their direct channels as competing with travel agencies for bookings. For example, Derek Adair of Delta testified that “Delta.com now has internal channels roughly 50 percent of our distribution, [and] that volume has gone away directly from GDSs.” (1726:2-15 (Adair).) And an internal strategy document produced by [REDACTED] explains that “[REDACTED]

[REDACTED]
[REDACTED]” and “[REDACTED]
[REDACTED]” (Murphy Demonstrative at 11.) Cory Garner of American likewise

testified that “in the [OTA] example . . . we could take a bit more risk, revenue risk, because of the type of fare and the replaceability of the revenue.” (110:2-10 (Garner).)

29. Moreover, testimony from Chris Wilding, the Sabre employee responsible for GDS contract negotiations with airlines, similarly confirmed that “Airline.com is one of the primary competitors that we face as a GDS.” (860:21-22 (Wilding).)

30. The rise in direct channel bookings and corresponding decline in airlines’ GDS fees since 2002 demonstrate the significant impact that the direct channel has on GDS fees. (*See* Murphy Demonstrative at 26.) As Professor Murphy explained, “airline booking fees were going down really from the early 2000s rather substantially” as a result of “pressure from the direct channel.” (1434:24-1435:5 (Murphy).)

31. The intense competition Sabre faces from both airlines’ direct channels and the other GDSs is apparent from the decline in Sabre’s “net fee”—i.e., the difference between the GDS fee charged to airlines and incentives paid to travel agencies. (1435:20-1436:25 (Murphy).) Specifically, not only have GDS fees declined since 2000, but incentives have been increasing. (*Id.*; *see also* 1250:7-25 (Stratford) (testifying that GDSs compete for BCD’s bookings through incentives).) Thus, Sabre’s GDS “net fee was declining even faster [than the GDS fee] over this period of time.” (1436:20-25 (Murphy).)

2. FLX OC Is an NDC API Sold to Airlines,
Which Airlines Then Use in Any Channel They Choose

32. Farelogix is an IT provider for airlines that offers a range of products related to distributing and merchandising airline content. (263:20-21 (Carter); 1423:22-24 (Murphy); PX 25 at 8.)

33. FLX OC is a software package that implements a New Distribution Capability (“NDC”) application programming interface (“API”) that connects to an airline’s passenger service system (“PSS”). (264:3-5, 266:18-19 (Carter); 1333:21:24 (Reiz).) FLX OC is Farelogix’s only NDC API product, and Farelogix does not sell FLX OC without its NDC API component or the NDC API without FLX OC. (264:22-25 (Carter).)

34. An NDC API is an API that communicates using the NDC schema to enable other technology systems or third parties—such as GDSs, travel agents, or an airline’s own public-facing website—to access an airline’s PSS. (265:7-12 (Carter); 1326:3-1327:6 (Reiz).) An NDC API is an example of an API that enables airlines to communicate offers and orders between the airline’s PSS and third parties. (1253:21-1254:3 (Stratford).)

35. The NDC schema was first launched by an association of airlines—the International Air Transport Association (“IATA”)—in 2015. (See 150:10-13 (Garner).) NDC is not patent protected; instead, the NDC schemas are open source, and are available on IATA’s website to any third party company to implement and use. (271:12-18 (Carter); 1327:2-6 (Reiz).) IATA updates the standard twice per year. (278:21-25 (Carter).)

36. NDC is a publicly available, XML-based messaging schema designed to facilitate electronic communication between airlines and third parties for the purpose of distributing airline content. (1324:14-1325:15 (Reiz).) As an XML-based schema, NDC differs from EDIFACT—

the schema principally used to distribute airline content in the indirect channel today—because it can accommodate varied and complex airline content, at the expense of each message being much larger. (PX 237 at 80-81; 444:23-445:14 (Davidson); 1324:25-1325:2 (Reiz).)

Additionally, XML is easier than EDIFACT for developers to program because “it’s not only machine readable but human readable.” (1324:25-1325:2 (Reiz).)

37. Like the NDC standard controlled by IATA, Farelogix holds no patents and has no trade secret protection covering FLX OC. (271:12-14 (Carter); 417:16-24 (Davidson).)

38. Unlike Sabre’s GDS, FLX OC is sold exclusively to airlines (264:3-9, 266:20-21 (Carter); 1321:24-1322:4 (Reiz)) and Farelogix has no travel agency network (202:24-203:12 (Radcliffe); 267:6-12, 273:7-11 (Carter)). Farelogix has no commercial relationships with travel agencies and does not sell any products to travel agencies. (266:20-267:5 (Carter).) The airlines that purchase FLX OC decide how to use it, Farelogix does not. (265:1-12 (Carter); 284:25-285:17 (Carter); 202:3-7 (Radcliffe).) Thus, for FLX OC to be useful to the airline, the airline must either use it in its direct channel or develop its own commercial relationship with the entity to which it connects the NDC API—whether that is a travel agency, a GDS, a non-GDS aggregator, or a corporation. (1441:18-1442:3 (Murphy); *see* 266:20-267:5 (Carter).)

Additionally, the airline must be able to create its own offers to send through the FLX OC NDC API; the NDC API only delivers offers, it does not create them. (385:20-386:14 (Davidson).)

39. As Professor Murphy explained, these characteristics render FLX OC a single-sided product, rather than a two-sided transaction platform like Sabre’s GDS: FLX OC is “an input to the airline that the airline can then use to connect to customers or connect to travel agents or whatever, but, fundamentally, Farelogix is not a platform. It doesn’t bring the set of customers to any airline or other travel supplier. It’s really an IT provider.” (1425:4-12

(Murphy); *see also* 1425:24-1426:3 (Murphy) (Farelogix “really sell[s] to the airline even if the airline ultimately participates in some two-sided transactions later down the road”).) Indeed, DOJ conceded “that Farelogix is competing in a one-sided market.” (1836:2-7 (Elmer).)

40. Accordingly, FLX OC is not a GDS. (202:8-13 (Radcliffe) 266:18-21 (Carter).) FLX OC does not offer the same services as a GDS. (202:8-13 (Radcliffe).) FLX OC “do[es]n’t have any car or hotel or cruise lines or anything else,” “do[es]n’t aggregate content,” and offers only “one airline per connection” (266:21-2671 (Carter)). FLX OC does not compete with Sabre’s GDS for GDS contracts with airlines. (*See, e.g.*, 770:19-21 (Gilchrist) (“Q. Was Farelogix a competitor for this particular piece of business [REDACTED] A. No.”).) FLX OC’s capability to issue tickets does not make it a GDS. (*See* 1334:17-21 (Reiz) (“We’re not in the same business.”).)

41. FLX OC can be used in both direct and indirect distribution channels. (PX 25 at 8; 239:22-240:13 (Carter).) Farelogix’s airline customers decide themselves amongst multiple distribution options. (PX 81 at 3; PX 25 at 5; 267:6-10 (Carter) (“[W]e are a pipe that the airlines use to plug in wherever it wants to.”).)

42. One option airlines have for using FLX OC is the direct channel. This pathway involves the airline distributing directly to travel consumers, including through its own website or a mobile app. (PX 81 at FLX-000704047; 283:3-8 (Carter).) Two of Farelogix’s current customers use FLX OC for their own websites. (283:9-11 (Carter).) In addition, Derek Adair of Delta has explained that Delta is considering using FLX OC to “clean up” Delta’s website and mobile app. (1728:20-1729:3 (Adair) (“[W]hile everyone thinks about distributing product third party, there’s also a big challenge internally that systems have been built over 40 years and we have to clean that up.”).)

43. A second option is the NDC Connect pathway—also known as GDS bypass and direct connect—which connects the NDC API to a single TMC or OTA. (PX 81 at 3; 283:15-24 (Carter).)

44. A third option, the NDC Tech Connect pathway, is when an airline chooses to connect the NDC API to a non-GDS aggregator, which then exposes the content to travel agencies. (PX 81 at 3; 284:2-12 (Carter).)

45. Finally, a fourth option is the NDC GDS Connect pathway—also known as GDS passthrough or GDS integration—where the airline connects the NDC API to a GDS, which makes the content available to the GDS’s network of travel agency customers. (PX 81 at 3; 284:13-24 (Carter).)

46. FLX OC and the FLX NDC API are not unique. (*See infra* Part V.A.) In fact, the goal of an NDC API is to be *not* unique because an airline’s NDC API needs to be “vastly similar to other airline’s NDC APIs” in order “to be successful.” (207:8-11 (Radcliffe); 207:22-208:3 (Radcliffe) (It is “absolutely the goal” of United to have an NDC API that is similar to other airlines’ NDC APIs).) Today, there are many other technology companies and airline IT departments that can build, and have built, an API to the NDC standard. (*See infra* Part V.A.) Moreover, Farelogix has not won [REDACTED] of the NDC APIs for which it has submitted bids in connection with an RFP. [REDACTED] And in 2018 and 2019, Farelogix submitted [REDACTED] bids for FLX OC in response to RFPs, and won only [REDACTED] of those bids. (269:21-25 (Carter); 1471:23-1472:1 (Murphy); 639:4-640:5 (Davidson); [REDACTED]

[REDACTED]

47. Likewise, since 2015, Farelogix has won only [REDACTED] of the bids it submitted for NDC APIs, lost bids to OpenJaw, Datalex, Amadeus, and TPConnects, has lost business because

multiple full service carriers have built their own NDC APIs, has had existing FLX OC customers drop their FLX OC contracts in favor of building their own NDC APIs or choosing a different NDC API provider, and has witnessed multiple other IT companies, including SAP, JR Technologies, InteRes, Gateway, and IBS, enter the NDC API market. (*See infra* Part V.A.)

C. Other Products Provided by Sabre and Farelogix

48. A PSS is an airline's system for managing its operations, including inventory, departure control, check-in, and other functions. (450:7-13 (Davidson).) An airline's PSS is separated into "core" and "non-core" modules. (1441:7-15 (Murphy).) An airline's core PSS ordinarily includes three interrelated systems:

- an airline reservation system, which controls the sale of seats, scheduling, passenger name records, and the issuance of tickets;
- an airline inventory system, which provides information on available seats; and
- a departure control system, which is used to check-in passengers at the airport.

(*See* Murphy Demonstrative at 13; 450: 7-131 (Davidson).)

49. Non-core PSS modules interoperate with the core PSS to help airlines create and manage their offers. (*See* 239:8-18 (Carter); 429:7-20 (Davidson).) Non-core PSS modules have become more important to airlines as the share of airline revenue driven by ancillary products—e.g., upgraded seats and pre-paid bags and meals—has expanded. (*See* 1134:23-1135:1 (Larson); PX 212 at 10.) Non-core PSS modules can either be dependent on, and only work with, the core PSS ("PSS dependent") or they can be interoperable with any core PSS ("PSS agnostic"). (*See* 780:19-781:3 (Gilchrist).)

1. Sabre's PSS Offerings Are PSS Dependent

50. Sabre and Amadeus are the two largest suppliers of core PSS modules to airlines. (1363:2-13 (Reiz).) Some airlines, such as United and Delta, supply their own core PSS functionality. (*See* PX 500 at 1; PX 245 at 12).)

51. Sabre's main competitor for core PSS modules is Amadeus. (*See, e.g.*, 717:3-8 (Menke) (“[W]e also compete with Amadeus for what are called passenger service systems, sort of the heart of an airline.”); 770:13-15 (Gilchrist) (“Q. And who was the competition for the PSS part of this [REDACTED] A. Amadeus.”); 1631:23-25 (Shirk) (“Because our largest competitor in almost every situation, it was us and Amadeus [REDACTED] [REDACTED]”).)

52. Sabre provides non-core PSS modules that are PSS dependent and can, therefore, only be used with the core Sabre PSS. (780:19-781:3 (Gilchrist); 1632:4-9 (Shirk).)

2. Farelogix's Offer Engines Are PSS Agnostic

53. Farelogix does not offer a core PSS, but only provides non-core PSS modules. (*See* Murphy Demonstrative at 13.) Unlike Sabre's PSS modules, “the Farelogix solution is PSS agnostic, meaning it can attach to pretty much anybody's PSS system.” (780:23-781:3 (Gilchrist).)

54. One of Farelogix's non-core PSS modules, FLX M, is a merchandising and rules engine that allows airlines to create customized product and service offers, including bundles of ancillary products. (277:4-9 (Carter); 1337:23-1338:3 (Reiz).) Ancillary products supported by FLX M can run from the prosaic—a premium seat or meal, an airport lounge pass—to the exotic, such as one airline on which travelers can pay extra to allow their falcons to travel aboard as well. (276:17-277:2 (Carter); 1338:10-13 (Reiz).) FLX M is currently market leading (*see* 1710:16-24 (Tackett)) and can drive hundreds of millions of dollars in additional revenue to airlines that use the product. (*See* [REDACTED] PX 212 at 10; PX 001 at 1.) The airline can choose to use FLX M in the direct channel (*see, e.g.*, 1705:5-8 (Tackett)), and also in the indirect channel if the airline has a content distribution API (*see, e.g.*, [REDACTED])

FLX M is sold separately from FLX OC, although airlines can buy multiple Farelogix products together. (281:25-282:8 (Carter).)

55. Farelogix's other non-core PSS modules are FLX Shop & Price, FLX Schedule Builder, and FLX Availability Calculator. (PX 25 at 5; 239:8-18 (Carter); 429:7-20 (Davidson).) A customer can buy these products individually or as a package. (281:21-282:8 (Carter); 430:5-15 (Davidson).)

D. NDC-Based Transactions Are Expected to Grow Only Through the GDSs and Are Viewed By Airlines Primarily as a Revenue-Generating Opportunity

56. For the vast majority of airline tickets issued in the indirect channel today, airlines communicate with third parties in EDIFACT. (1030:23-1031:5 (Nevo).) Although EDIFACT can communicate fare information for large volumes of transactions quickly and reliably, it cannot communicate the type of rich content—such as pictures and videos—or dynamic offers that NDC enables. (PX 237 at 80; 444:23-445:3, 445:9-14 (Davidson).) NDC allows airlines to present more ancillary products in a more attractive way, including the potential to enable more personalized offers that bundle fare price with other products, which can increase airline revenue. (1648:17-1649:14 (Wiggins); 276:9-16 (Carter).)

57. Unlike EDIFACT-based transactions, NDC-based transactions require airlines to: (1) develop a commercial strategy as to what content to distribute using the NDC standard; (2) develop or purchase non-core PSS modules so the airline can generate NDC-based offers constructed by the airline; (3) develop or purchase an NDC API so the airline can communicate NDC-based offers to third parties; and (4) upgrade its PSS system to accommodate the increased load of generating individualized offers and responding to shopping requests. (See 560:18-562:5 (Boyle); DX 186.)

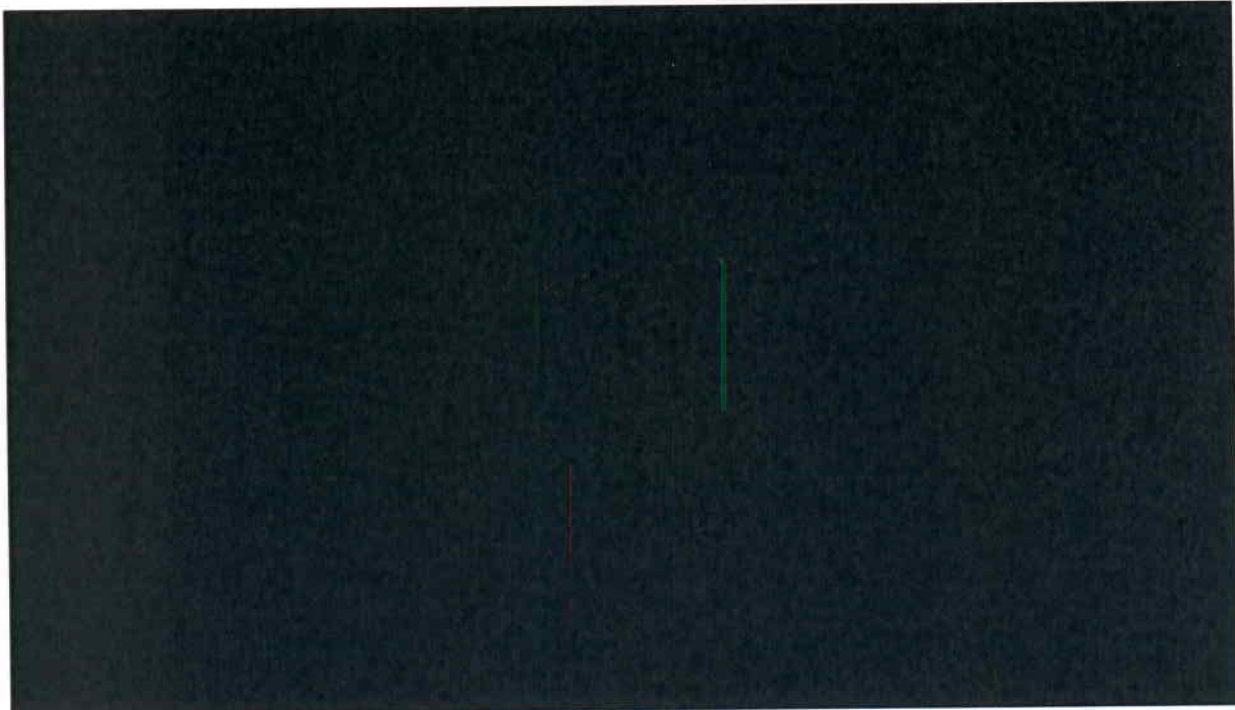
58. NDC-based transactions impose significant costs on travel agencies. (1304:16-1305:18 (Kunz-Cho); 1264:4-15 (Stratford).) Travel agencies that wish to book NDC-based tickets have two choices: They can build NDC direct connects to, and come to commercial agreements with, NDC-capable airlines. (1263:1-16 (Stratford).) However, direct connects impose significant additional costs—about \$15 per booking—to agencies for multiple reasons, and NDC-based tickets booked through direct connects often entail more added expense than other direct connects due to the complexity of adding NDC content to an agency’s workflow outside of a GDS. (*See infra* Part V.B.) Alternatively, travel agencies can receive NDC content through a GDS or non-GDS aggregator, but bookings through non-GDS aggregators like Travelfusion incur the same added expenses and inefficiencies as NDC direct connects. (1198:17-1199:2 (Ekert).)

59. Multiple third-party airlines and travel agencies testified that travel agents would prefer to receive NDC content through the GDSs, rather than multiple direct connections, and therefore that NDC-based bookings in the indirect channel are expected to increase only after the GDSs develop the ability to integrate NDC content—and not through direct connect transactions or non-GDS aggregators. (*See infra* Part V.B.)

60. Sabre is committed to developing its NDC capabilities to better serve its airline and agency customers. (720:20-721:22 (Menke).)

61. Airlines view NDC technology primarily as an opportunity to increase revenue, not cut costs. (*See* [REDACTED] DX 186, 2 at slide 5; 1648:6-14 (Wiggins); 265:21-266:1 (Carter).) The revenue benefits associated with NDC can accrue to airlines in the direct and indirect channels. (*See* [REDACTED] 1728:20-1729:6 (Adair).)

62. By way of example, 



E. Changes in the Industry and Farelogix’s Business Model Over Time

63. Farelogix’s business strategy has changed multiple times over the last 15 years. (272:1-273:18 (Carter); 435:13-436:2 (Davidson).)

64. Prior to 2009, Farelogix tried—and failed—to be a GDS (442:14-443:8 (Davidson)), and Farelogix tried—and failed—to sell a product to travel agencies that aggregated content from multiple GDSs. (272:2-273:6 (Carter).) Farelogix abandoned this business model by 2009. (272:23-273:3 (Carter).)

65. In 2009, Farelogix repositioned itself as a provider of technology solely to airlines. (273:7-11 (Carter).) The company focused on a product called Direct Connect, which was an XML API that airlines could use to create direct connections with travel agencies. (273:12-18 (Carter).) At the time, Farelogix marketed its Direct Connect product to airlines as a way to cut costs; it was not sold to travel agents. (273:19-274:4 (Carter).) This time period is referred to by Farelogix’s head of marketing as “ancient history.” (274:5-11 (Carter).)

66. Farelogix's Direct Connect failed because it did not attract a sufficient volume of transactions for Farelogix's airline customers, as travel agencies rejected its use. (274:18-24 (Carter).) Travel agencies preferred to use the GDSs for multiple reasons, including because the Direct Connect product failed to match the capabilities the GDSs could offer—e.g., comparison shopping, normalization, aggregation, mid-office, accounting, and reporting systems. (274:25-275:13 (Carter); 442:14-443:5 (Davidson).) Mr. Davidson recalled that Farelogix's "eyes [we]re bigger than what we could actually do" (442:14-443:5 (Davidson)), while Ms. Carter characterized it as "naïve to think it would work." (274:20-24 (Carter).)

67. By approximately 2011, airlines had recognized a potentially significant new source of revenue: selling ancillary products along with their tickets. (276:1-16 (Carter).) Responding to this "ancillary awake[ning]" (276:1-8 (Carter)), Farelogix began aggressively marketing FLX M, a software product it had under development since 2008. (277:4-9 (Carter); 1337:25-1338:3 (Reiz).) Farelogix also developed three other offer engines to assist airlines in creating richer offers—FLX Shop & Price, FLX Schedule Builder, and FLX Availability Calculator. (PX 25 at 5; 239:8-18 (Carter); 429:7-20 (Davidson).) Today, Farelogix sells five products: four offer engines and FLX OC. (281:21-282:8 (Carter).) A customer can buy these products individually or as a package. (*Id.*; 430:5-15 (Davidson).)

68. In the early 2010s, to more efficiently distribute ancillaries, airlines required a different communication protocol than what existed previously. (277:10-23 (Carter).) IATA began searching for a schema that it could use as a public and open standard for airlines. (440:19-441:3 (Davidson).) In February 2012, Farelogix donated the schema it had developed to IATA. (278:18-25 (Carter); 1325:7-10 (Reiz).) Later in 2012, IATA approved the new standard and labeled it NDC. (277:15-278:4 (Carter).)

69. Since Farelogix donated the baseline schema, IATA alone has controlled the development of NDC as a public and open standard, releasing two new versions on its website every year since it was first published in 2015. (150:19-21 (Garner); 278:21-279:2 (Carter).) As a result, NDC today “looks nothing like” the original schema donated by Farelogix in 2012, and Farelogix must now expend additional resources to “keep up” with NDC. (278:18-25 (Carter).)

70. Farelogix is at a *disadvantage* vis-a-vis NDC products created by newer companies because Farelogix must now retrofit increasingly out-of-date legacy technology to match the latest NDC versions. (279:7-16 (Carter); 420:11-25 (Davidson).) Moreover, Farelogix must maintain several different aging NDC API connections for legacy customers, going back to versions from 2015, which is costly. (421:1-10 (Davidson); *see also* 1331:21-1332:8 (Reiz).) Farelogix also has some customers dating back to the pre-NDC days of EDIFACT, placing Farelogix at a further disadvantage because of the need to maintain and support those legacy connections. (1341:25-1342:6 (Reiz); 1343:14-22 (Reiz); 279:13-16 (Carter).) Because support for these connections is “much more labor intensive,” Farelogix must devote more employees to FLX OC. (1339:19-23 (Reiz).)

71. Meanwhile, the latest version of NDC is available to any new or old entrant: there is no patent protection for NDC, and it can be downloaded for free from IATA’s website. (271:15-18 (Carter); 1327:2-6 (Reiz).) According to IATA’s website, there are more than 160 companies that are NDC certified (1327:13-16 (Reiz)), and it is realistic for any programmer to become level 4 certified (1328:4-5 (Reiz)). Programmers do not need any “proprietary knowledge in order to implement [the] IATA NDC standard.” (1326:22-24 (Reiz).)

72. Due to the adoption of NDC, Farelogix discontinued its Direct Connect product and focused on developing what would be called FLX OC. (278:5-12 (Carter); 421:1-10 (Davidson).)

73. In late 2017, IATA released version 17.2 of the NDC schema, which was the first “commercially viable” version of NDC. (150:14-18 (Garner); *see also* 208:21-209:2 (Radcliffe); 433:3-16 (Davidson).) Thus, by the middle of 2018, requests from airlines to integrate FLX OC into the GDSs increased, and the GDSs were working meaningfully toward that end. (209:6-25 (Radcliffe); 433:17-22, 439:2-11 (Davidson); 287:24-288:4 (Carter).) In mid-2018, American Airlines first announced it would offer an NDC-enabled corporate bundle (286:25-287:8 (Carter))—essentially, a package of fares and ancillaries customized to a particular company’s needs with pricing consideration. (424:4-14 (Davidson).) United Airlines announced a similar bundle shortly thereafter. (286:25-287:8 (Carter).)

74. Farelogix is now handling 26 NDC GDS integration projects, as compared to six at the start of 2018. (287:24-288:4 (Carter); 375:23-376:6, 439:2-11, 441:4-17 (Davidson).)

75. GDS passthrough, not direct connects or transactions through non-GDS aggregators, has led to the increased interest in NDC. (287:24-288:12 (Carter).) As Mr. Radcliffe testified, the GDS passthrough option neither bypasses nor competes with the GDS. (210:8-22 (Radcliffe); *see also* 269:9-14 (Carter).) Although in the early days of NDC, some airlines had expressed interest in direct connects, “the number one thing that [Farelogix] hear[s] from airlines now is about plugging into a GDS.” (285:7:10 (Carter).) As Mr. Davidson testified, the “Holy Grail” has been “to have the NDC going through the GDSs as GDS passthrough.” (381:19-21 (Davidson).) And today, “GDSs are accepting GDS passthrough. . . . it’s completely different than it was a couple years ago.” (419:9-16 (Davidson).)

76. Because of the reach of the GDSs, Farelogix expects “pretty much all” future growth in FLX OC volumes to “come from GDS passthrough.” (442:6-10 (Davidson).) This aligns with ticket volume trends: since 2016, FLX OC ticket volumes resulting from direct connects for United Airlines have stagnated, and for American Airlines have declined. (1335:17-1336:5 (Reiz).) And this expectation also aligns with the airlines’ shifting views of NDC: although airlines had previously expressed some interest in NDC due to the potential cost savings of direct connects (273:19-274:4 (Carter)), Farelogix’s marketing message in 2020 “very, very rarely” addresses that point (265:13-20 (Carter)) because now “the message that resonates more with our airlines . . . is all about revenue and how much money they can make selling ancillaries through their NDC pipe” (265:22-25 (Carter)). Today, airlines expect most NDC bookings to come from GDS passthrough. [REDACTED]

77. The marketplace has changed dramatically over the last few years. (272:1-273:18 (Carter); 435:13-436:2 (Davidson).) Thus, in June 2018, Farelogix wrote that “[t]here are really no barriers now as all GDSs have openly adopted NDC.” ([REDACTED] 465:4-11 (Davidson).) According to Jim Davidson, “[t]he path of least resistance and investment for travel agencies will be to consume an airline’s NDC API that is delivered thru [sic] a GDS.” (PX 81 at 1.) Indeed, Farelogix teaches its own employees that the old direct connect strategy is “ancient history.” (274:5-11 (Carter).)

F. Sabre Purchased Farelogix to Acquire Farelogix’s Merchandising Engine and Advance Its Own NDC Capabilities

78. On November 14, 2018, Sabre announced its acquisition of Farelogix. (See 1660:7-21 (Wiggins).) Contemporaneous documents and sworn testimony demonstrate that two primary goals motivated this acquisition: acquiring FLX M and advancing Sabre’s capability to distribute NDC-enabled content.

79. First, by acquiring Farelogix, Sabre will own FLX M. (*See* 744:24-745:2 (Menke) (explaining that Sabre’s primary focus was on Farelogix’s “merchandising capabilities to help our online customers sell the products and services that they want”); 552:22-553:7 (Boyle) (testifying that “the instigation effectively around our re-engagement [with Farelogix in 2017 about a possible merger] was their merchandising engine”).)

80. FLX M is an industry-leading merchandising engine that can unlock significant revenue benefits for airlines seeking to distribute more sophisticated content through direct or indirect channels. (*See* 714:20-715:8 (Menke) (explaining that FLX M is the most important Farelogix asset because it is central to offer creation and gives airlines an opportunity to “drive more revenue”); 562:19-563:14 (Boyle) (testifying that “help[ing] airlines with retail and distribution and fulfillment” starts “with the offer and the flexible rules engine that Farelogix developed”); 1710:2-1711:6 (Tackett) (explaining that Alaska Airlines “scored [FLX M as being] superior to the others that we had considered”); ; 1338:14-20 (Reiz) (stating that “[s]ome of the airlines make more than \$1 billion a year incremental revenue” from FLX M”); PX 001 at 1 ([REDACTED]

[REDACTED]) Indeed, multiple third party airlines have testified that FLX M can generate millions of dollars in additional revenue on an annual basis in their direct channels. (*See, e.g.*, [REDACTED]

[REDACTED]

81. In contrast to FLX M, Sabre’s current merchandising solution is not competitive. (552:22-553:7 (Boyle) (explaining that Sabre “didn’t have a compelling product” that could

“create an offer with a flexible rules engine”); 771:11-22 (Gilchrist) [REDACTED]

[REDACTED]; 629:18-21 (Kruijssen) (FLX M is “better than Sabre’s merchandising engine”).)

82. Accordingly, incorporating FLX M into Sabre’s technology stack would enable Sabre to offer a significantly more competitive merchandising solution. (*See* 552:22-553:7 (Boyle) (explaining that Sabre viewed FLX M “as a key building block, an ability to create an offer with a flexible rules engine [that] we hadn’t done ourselves”); DX 145 at 5 (November 10, 2018 presentation made to Sabre’s board of directors for approval of the Farelogix acquisition, indicating that the acquisition would enable airlines to “integrate[] PSS-agnostic merchandising engine with PSS”); 556:5-23 (Boyle) (explaining that Sabre is committed to growing Farelogix’s business after the acquisition, “including growing with non-Sabre hosted [airline PSS] customers, because our system was effectively like a closed system in some ways with the PSS, and certainly non-hosted customers was really an important element for us”); 781:4-782:3 (Gilchrist) (acquiring FLX M “will give [Sabre] inroads in [to] new customers that we can’t currently do business [with] today as far as merchandising is concerned” and “[f]or [Sabre’s] existing PSS customers who have struggled without merchandising capabilities [offering Farelogix’s merchandising solution] will give [Sabre] a much, much stronger level of capability”); 772:5-22 (Gilchrist) [REDACTED]

[REDACTED]

[REDACTED])

83. Notably, FLX OC and FLX M cannot be broken apart because they share the same code base. (1340:11-22 (Reiz).)

84. Second, integrating Farelogix’s technology solutions and engineering talent will help Sabre execute on its commitment to NDC-enabled distribution and fulfillment. In September 2017, dissatisfied with the pace of Sabre’s NDC development, Sabre CEO Sean Menke reached out to Sabre executives to stress the “need to more aggressively move forward with [Sabre’s] NDC/NDC+ initiatives.” (DX 62; *see also* 552:13-21 (Boyle) (“Sean had talked about Sabre being engaged for NDC. . . . He talked about, I think at that point in time, technology transformation. He was starting to bring in, was continuing to bring in an entire new executive team, so there was really just a lot of change on the way around our company and how we looked at things.”).)

85. Sabre’s contemporaneous documents evaluating the deal reflect this rationale. For example, in a February 2, 2018 deal discussion presentation, Mr. Boyle noted that Farelogix’s technology solutions would help Sabre “bring[] NDC-enabled distribution to scale in the marketplace.” (555:7-13 (Boyle) (referencing DX 86 at 4).) And Sabre’s November 10, 2018 presentation seeking approval from its board of directors detailed how combining with Farelogix would accelerate Sabre’s “NDC-enabled strategy.” (DX 145 at 5 (describing several value propositions of a possible merger with Farelogix, including that Farelogix “has key building blocks that complement our organic plans enabling at-scale NDC+,” “NDC Offers integrated in the GDS,” “Immediate access to NDC API,” “Ability to scale NDC volume quickly,” “Adds NDC platform to leading Sabre product offering”).)

86. These documents are consistent with testimony from the Sabre employees who were involved in evaluating the potential acquisition of Farelogix: For example, Mr. Menke testified that Sabre is focused on providing its customers with NDC “capabilities that allow them to execute their strategy[.]” (721:23-722:7 (Menke).) And Mr. Boyle testified that, “[o]n the GDS side, it’s about accelerating. It’s about being able to bring NDC enabled distribution to scale. And scale is clearly an important element for us as the GDS operates its scale.” (561:10-562:8 (Boyle); *see also* 781:4-782:3 (Gilchrist) (“And, of course, it will certainly help us to further the cause of NDC. . . . Sabre is 100 percent committed to be the leader of NDC.”).)

87. Moreover, Sabre’s public commitments following its announcement of the proposed acquisition evidence its intent to continue offering FLX OC in any distribution channel airlines want and for the same price after the acquisition closes. (*See, e.g.*, DX 225.) Specifically, in August 2019, Sabre sent letters to Sabre and Farelogix customers in which Sabre committed, among other things, to make FLX OC available at “industry competitive rates that are no greater than they are today”; to support and invest in Farelogix’s capabilities “at levels no less than current levels”; and to extend any existing Farelogix contract and Sabre GDS contract “on the same terms for a period of at least three years past the current termination date.” (*See, e.g.*, DX 225.)

88. Sean Menke testified that these commitments reflect Sabre’s post-acquisition plans relating to FLX OC. (*See* 722:25-7:23:3 (Menke).) Indeed, Sabre recognizes the “different strategies that different carriers have around the world” (721:14-22 (Menke)), and Sabre is committed to being a “technology provider” that “helps them sell their products and services . . . through any distribution outlet that they think is the best.” (721:23-722:7 (Menke).)

89. Mr. Menke testified that Sabre included the three-year contract extension commitment because Sabre recognizes that “[t]here’s a lot of competition in the marketplace, and if [customers] had concerns . . . [and] didn’t want to remain a customer of Sabre and Farelogix, . . . they could [instead] work with others that are out there.” (722:8-24 (Menke).)

90. Mr. Menke unequivocally denied that there is “any connection between [GDS bypass or direct connects] and [his] reason for buying Farelogix.” (744:19-23 (Menke).) As Mr. Menke testified, he “often hear[s] people talk about indirect distribution, [d]irect distribution, which is [a]irline.com or [h]otel.com. On the [d]irect [c]onnect, I don’t care what form of distribution it is. It’s just to help our customers sell their products and services at the end [of the] day.” (706:12-17 (Menke).)

91. Consistent with Mr. Menke’s testimony, Sabre’s deal valuation models demonstrate Sabre’s intent to continue offering FLX OC at the same price or lower in the direct and indirect channels after the transaction is complete: As part of Sabre’s due diligence, Chris Boyle created three sets of projections to model the value of a potential acquisition—the Farelogix “Management Case,” “Sabre Base Case,” and “Sabre Synergy Case” models. (PX 15 at 59; 538:4-540:11 (Boyle).) The “Management Case” modeled projections of sales volumes and prices of FLX OC solutions used to distribute airline content in the direct channel and when passed through a GDS between 2018 and 2020. (*Id.*) The “Sabre Base Case” reflected Sabre’s more conservative view of these sales and price projections, assuming Farelogix remained as a standalone entity even after the acquisition. (*Id.*) The FLX OC projections in the “Sabre Synergy Case” mirror those in the “Sabre Base Case,” and both models project FLX OC prices decrease over time. (567:20-570:7 (Boyle).) In all three cases, the projected revenue per ticket was lower than current FLX OC prices. (569:2-9 (Boyle).) These projections are consistent with

[REDACTED]

[REDACTED] In approving the deal, Sabre's board of directors relied upon the projections Mr. Boyle calculated in his deal valuation models. (717:17-718:1 (Menke).)

92. Furthermore, the "Management Case" projections Farelogix provided value the company between [REDACTED] million and [REDACTED] million, but the "Sabre Synergy Case" model valued Farelogix between [REDACTED] million and [REDACTED] million. (PX 15 at 59; 572:3-21 (Boyle).) However, the \$360 million purchase price to which Sabre and Farelogix agreed is lower than the valuation ranges in Sabre's own "Synergy Case" model. (572:22-573:1 (Boyle).)

93. This customer-centric approach, and the animating strategy behind the proposed acquisition, is rooted in Mr. Menke's plan to transform Sabre into a trusted technology partner of airlines. (*See, e.g.*, 700:14-18 (Menke).) Indeed, within two months of becoming Sabre's CEO on December 31, 2016, Mr. Menke articulated this vision to transform Sabre. (DX 43 at 2 (Sean Menke's "Sabre 2017 Priorities" presentation, listing "Be the most trusted tech partner for our customers" as a priority); 700:14-18 (Menke) (explaining that his focus on transforming Sabre's technology when he first became CEO was "very well documented and public"); 703:11-16 (Menke) (noting that he prioritized "understanding what has to evolve in the marketplace" when he first joined Sabre, and that the key question for him was "how do we align with trust and understand that we have to be a valued technology partner"); 558:12-22 (Boyle) (testifying that when Mr. Menke became Sabre's CEO he made it "very clear that he believed we needed to shift our focus to, you know, better aligning with airlines and how we helped airlines to enable their strategies").) Airlines have noticed Mr. Menke's efforts and believe Sabre is "serious about their commitment to industry modernization" and "very vocal in their support of NDC." (211:12-18 (Radcliffe).)

94. Under Mr. Menke's leadership, Sabre is in the process of evolving its business model to focus on offering end-to-end technology solutions across the travel industry ecosystem that enable Sabre's airline and travel agency customers to better execute their own advanced retailing, distribution, and fulfillment strategies. (See 558:14-22 (Boyle) ("[F]rom the beginning, Sean brought a really airline-centric background, both in operations and revenue . . . and it was very clear that he believed we needed to shift our focus to . . . better aligning with airlines and how we helped airlines to enable their strategies."); 705:23-707:14 (Menke) (testifying that Sabre is focused on providing airlines and hoteliers technology that better enables them to create and distribute the products and services that solve their business problems, and on providing travel agencies with capabilities to meet the demands of travelers); 727:24-728:7 (Menke) (explaining that Sabre's technological transformation involves advancing not only its retailing and distribution capabilities, but its mainframe systems as well).)

95. Sabre's acquisition of Farelogix is a part of Mr. Menke's plan to transform Sabre. (See DX 145 at 3 (November 10, 2018 presentation to Sabre's board of directors, explaining that "the acquisition and the combination of key elements of our technology and team will meaningfully accelerate our technology and commercial objectives in delivering next generation Retailing, Distribution and Fulfillment to airlines".) Indeed, according to Mr. Menke, this acquisition will enable Sabre to "provid[e] our airline customers with the most advanced technology that's out there today to be able to create products and services," while accelerating the development and reach of Farelogix's products. (716:7-716:20 (Menke); see also 705:23-706:17 (Menke) (testifying that acquiring Farelogix allows Sabre to provide airlines and hoteliers technology that better enables them to create and distribute the products and services that solve

their business problems); 727:18-728:7 (Menke) (describing how combining with Farelogix “will help accelerate a number of the things that the industry has been wanting”).)

96. Advancing Sabre’s NDC capabilities is also essential to Sabre’s ability to continue to compete with Amadeus. (*See* 716:25-717:16 (Menke) (in context of rationale for the Farelogix acquisition, explaining that “Amadeus is actually our biggest competitor”).) As Dr. Murphy explained, “if you’re in the platform business and the prospect that one of your most direct competitors is going to have a content advantage on you [is] a pretty strong motivating force I would say as an economist.” (1473:19-22 (Murphy).)

97. Stakeholders on both sides of the travel ecosystem support the transaction. In fact, multiple third party travel agencies and airlines have noted that Sabre’s acquisition of Farelogix will advance Sabre’s NDC distribution and retailing capabilities. For example:

(a) Kurt Ekert, CEO of CWT, testified that the proposed acquisition “will enable Sabre to . . . offer much better value to the airlines than they can today.” (1199:13-18 (Ekert); *see also* 1201:1-5 (Ekert) (“[I]f Sabre at scale or any GDS, for that matter, is able to make NDC a reality, well, that means we don’t have to go and make fundamental changes to how we operate our business. And it will be more seamless to us.”).)

(b) Werner Kunz-Cho, CEO of Fareportal, stated, “Sabre with a Farelogix merger will be able to embrace a wider array of content, particularly in the low cost carrier domain which is very important to us.” (1316:22-24 (Kunz-Cho); *see also* 1290:20-1291:7 (Kunz-Cho) (noting that one benefit of the merger will be enhanced ability to meet growing traveler demand for ancillaries).)

(c) In a letter of support sent to the Department of Justice, BCD Travel noted that the combination “will benefit the travel industry as a whole—by accelerating the adoption of

[NDC] protocol—as well as the travel agencies that use global distribution systems (GDSs) such as Sabre, and companies and travelers we serve.” (DX 284 at 1.)

(d) Rocky Wiggins, Chief Information Officer at Spirit Airlines, testified that the deal “is a great step” for Sabre because “it would accelerate Sabre’s capability in the NDC area.” (1658:5-16 (Wiggins); *see also* 1661:17-1662:4 (Wiggins) (agreeing with the proposition that combining with Farelogix “is another example of Sabre’s commitment to deliver the end to end NDC-enabled retailing, distribution and fulfillment technology required to accelerate your company’s – profitability and growth”).)

(e) [REDACTED]

98. Even employees of United Airlines and American Airlines have expressed positive views of the transaction: The day the Sabre-Farelogix transaction was announced, Mr. Radcliffe of United sent his superiors a draft public-facing statement regarding the transaction that stated the transaction was “a clear sign that [Sabre is] serious about their commitment to industry modernization” and that United “welcome[s] this investment and look[s] forward to seeing Farelogix use this as an opportunity to provide [United] with even better service.” (DX 143; 226:20-228:10 (Radcliffe).) [REDACTED]

[REDACTED] (PX 452.)

II. DOJ Did Not Meet Its Burden to Define a Relevant Product Market

A. FLX OC and Sabre’s GDS Do Not Compete in the Same Product Market

99. FLX OC is an input that airlines can use to distribute their content, either through the direct or indirect channel. (1441:16-1442:13 (Murphy).)

100. Unlike the Sabre GDS, FLX OC does not deliver a travel agency network to airlines (202:24-203:12 (Radcliffe); 267:1-12; 273:7-11 (Carter)); if an airline uses FLX OC to directly connect with a travel agency, the airline itself must establish a commercial relationship with that agency. (1423:22-1424:19 (Murphy); *see also* 973:23-974:5 (Nevo); 202:17-203:2 (Radcliffe).)

101. Also unlike the Sabre GDS, FLX OC does not create offers, it only delivers them. (Tr. 802:20-803:3 (Vilches); Tr. 385:20-386:14 (Davidson).) In NDC, the airline creates its own offers. (1172:14-16 (Lobl).) An airline then controls how FLX OC is deployed to distribute that offer. (DX 246 at 13 [REDACTED]; 265:1-12 (Carter).) Farelogix is “agnostic” as to how an airline customer uses FLX OC. (285:11-17 (Carter).)

102. In GDS bypass involving the use of FLX OC, it is the airline, not Farelogix, that competes with the GDS. (420:6-10 (Davidson) (“Q. And when you supply an NDC API to an airline and it decides to do a direct connect, do you perceive yourself as competing with it, with a GDS? A. No, it’s up to the airline how they want to use that NDC API.”).) As Professor Murphy testified: “[T]he competition I think in fact occurs through the airline and a GDS for access to travel agents, and that’s true whether you’re thinking about this as a permanent shift from GDSs to airlines in a direct connect, or you’re thinking about it in the bargaining context. . . . It’s always about what the airline can do If we are thinking about here direct connect, in the direct connect wor[l]d, Farelogix would be a supplier to the airline that the airline would then use in its direct connect endeavors, but it’s still the airline engaging those direct connect endeavors.” (1446:25-1447:21 (Murphy).) This testimony is consistent with Sabre’s public filings, which describe its competitors as “other GDSs, local distribution systems and

travel marketplace providers primarily owned by airlines or government entities and direct distribution by travel suppliers”—not input suppliers like Farelogix. (PX 251 at 5.) It is also consistent with the views of airlines—for example [REDACTED]

103. Meanwhile, in GDS passthrough, neither the airline nor Farelogix competes with the GDS. (269:9-14 (Carter) (“Q. And in GDS passthrough, when an airline uses FLX OC and connects it into a GDS, is Farelogix competing with the GDS? A. I don’t see how.”); 420:2-10 (Davidson) (“And when you do an NDC API GDS passthrough, do you perceive yourself as competing with the GDS? A. No, we are obviously utilizing the GDS to pass that API through”).) As Mr. Radcliffe from United testified, the GDS passthrough option neither bypasses nor competes with the GDS. (210:8-22 (Radcliffe).)

B. “Booking Services” Is Not a Cognizable Product

104. Dr. Nevo opines that there are relevant product markets for “booking services.” (885:14-20 (Nevo).) According to Dr. Nevo, “booking services” include: (1) transmitting an airline offer to a travel agency or aggregator; (2) receiving or processing an order or booking; and (3) receiving or processing changes to the order. (Nevo Demonstrative at 20.)

105. “Booking services” is not a standalone product that either party has sold. (*See, e.g.*, 268:2-9 (Carter)) (“Q. In your 15 years of experience in the industry, are you aware of anyone that ever sold a booking services product? A. Not to my recollection, no.”); 443:12-17 (Davidson) (“Q. In the normal course of your business, is there a product or service that you refer to as a booking service that you offer? A. No, we don’t.”); 848:1-2 (Wilding) (“Q. And those services are booking services; right? A. I don’t know what you mean by ‘booking

services.”); (985:12-986:6 (Nevo); 1348:2-4 (Reiz).) (“Q. Have you heard the term booking services? A. No. Not before today, sitting here today.”)

106. For instance, Ms. Carter testified that she had never seen an RFP for booking services; rather, FLX OC has competed in RFPs for NDC API capabilities. (268:10-14 (Carter).) Accordingly, Ms. Carter testified that Sabre and Farelogix do not compete in the sale of “booking services,” as DOJ used the term in its complaint. (269:1-4 (Carter) (“Q. The DOJ says that Farelogix and Sabre compete for booking services for airline tickets. Do Farelogix and Sabre compete in this regard? A. No.”).) Mr. Davidson, who has been with Farelogix since its inception, similarly testified that Farelogix had never received an RFP seeking a booking services product. (443:21-23 (Davidson).) Mr. Davidson further testified that while he was President of Amadeus North America, prior to joining Farelogix, Amadeus did not offer anything referred to as booking services as a product either. (444:6-9 (Davidson).)

107. Dr. Nevo acknowledged that Sabre has not provided “booking services” in a commercial transaction in the United States; therefore, he is “separat[ing]” out “booking services” functionality from the services that Sabre actually sells through its GDS platform. (985:8-987:6 (Nevo).) Dr. Nevo also was unable to answer which of Farelogix’s products other than FLX OC comprise a “booking services” product. (*See* 959:20-961:23 (Nevo).)

108. Dr. Nevo was unable to determine a value or price for either party’s “booking services.” (*See* 987:10-11 (Nevo).) Specifically, when Dr. Nevo was asked the price attributable to the booking services functionality within Sabre’s GDS platform, he explained that “Sabre has not offered it in the U.S. I believe there is no price.” (*Id.*) When asked the value of the “booking services” functionality within the Sabre GDS, Dr. Nevo testified that he “did not quantify what [the] value is” and that it “was not part of [his] analysis[.]” (987:12-17 (Nevo).)

Finally, when Dr. Nevo was asked whether he compared the value of the “booking services” functionality in the Sabre GDS to the value of the “booking services” in FLX OC, he testified: “That is not something that I’ve offered, no.” (987:18-25 (Nevo).)

109. FLX OC and Sabre’s GDS are priced differently. FLX OC is sold on a per-ticket basis and requires airlines to pay a subscription fee. (603:22-24 (Kruijssen); 993:6-12 (Nevo).) Sabre’s GDS is sold on a per-segment basis. (107:18-108:1 (Garner); 990:20-22 (Nevo).)

110. The cost to airlines for FLX OC is “roughly a tenth” of Sabre’s GDS fee. (1453:17-1454:6 (Murphy).) As Professor Murphy explained, this disparity is attributable to “comparing the price of an input to the price of the final product . . . services provided by FLX OC . . . are only one of the many things it takes to compete in the downstream market.” (1453:7-16 (Murphy).) Ms. Carter compared the differences between Sabre’s GDS and FLX OC: “I could go up tomorrow and I could buy a car per se if I could do it, \$30,000, and then I could go out the next day and I could buy a train ticket for five bucks, and they are very different things. Are they both providing transportation services? This is where I get stuck on what is the product?” (268:20-25 (Carter).) And even Dr. Nevo testified during his deposition that the FLX OC price and Sabre’s GDS fee are “apples and oranges.” (993:2-12 (Nevo).)

C. The Purported Markets Fail Because They Exclude Airline Direct Sales

111. Chris Wilding, who has negotiated as many as 100 GDS agreements with airlines on behalf of Sabre, testified that airline websites are “one of the primary competitors that we face as a GDS” and explained that Sabre continues to see “a point of share shift from the GDS channel to the dot com.” (860:18-22, 864:14-17 (Wilding).)

112. Airlines have stated in internal documents that they can shift bookings from the indirect channel to the direct sales channel. [REDACTED] 1165:21-1166:7 (Lobl).) For example, [REDACTED]

[REDACTED] As Jeffrey Lobl, Delta's Director of Distribution, explained: Delta is "trying to provide the best experience in our direct channels and we're hoping that customers will choose it because it's the best experience." (1165:11-14 (Lobl).) Alaska Airlines' Shane Tackett similarly testified that Alaska Airlines is seeking to grow volumes in its direct channel. (1702:23-1703:3 (Tackett).) [REDACTED]

113. Airline direct sales have exerted significant competitive pressure on GDS fees. (1426:22-25 (Murphy); *see also* Murphy Demonstrative at 26.) Indeed, Professor Murphy explained that aside from the Amadeus and Travelport GDSs, airline.com is the biggest constraint on Sabre's GDS fees. (1433:15-17 (Murphy) ("[I]t's really an 800-pound gorilla here. It's really the major place where the non-GDS alternatives are."))

114. Dr. Nevo also testified that airline.com asserts pressure on GDS fees. (1009:21-1010:1 (Nevo).)

115. While airline.com is a constraint in both of DOJ's alleged markets, it is a particularly close competitor for the distribution of tickets to OTAs. (1552:14-24 (Murphy).) OTAs and airline.com "appeal to many of the same type of customers who are interested in . . . leisure travel." (1439:1-6 (Murphy).) Industry participants recognize that both OTAs and airline.com serve leisure travelers. (103:22-24 (Garner); 1282:25-1283:1 (Kunz-Cho); [REDACTED]

[REDACTED])

116. Airlines have recognized that their revenues derived through sales via OTAs can be replaced by sales through airline websites. (Murphy Demonstrative at 11; 1438:21-1439:15, 1485:17-18 (Murphy).) For example, American Airlines' Corey Garner testified that with regard to OTAs, American "could take a bit more risk, revenue risk, because of the type of fare and the replaceability of the revenue." (110:2-12 (Garner).)

117. The competition between OTAs and airline websites has increased with the rise of metasearch sites that provide direct channel results alongside OTA results. [REDACTED] [REDACTED] Metasearch sites may direct the consumer to the OTA website or the airline's website. (1701:14-21 (Tackett).) In that scenario, the airline considers the ultimate booking on its website to be a direct channel sale. (1702:1-11 (Tackett).) The metasearch site also permits a consumer to complete a booking through the airline's website without leaving the metasearch site. (1701:22-23, 1702:17-22 (Tackett).)

118. Fareportal co-CEO Werner Kunz-Cho testified that there is competition between OTAs and the direct channel via metasearch sites: "[W]e compete with the sorts of Google Flights because the speed to which we respond to a search is highly critical for us to grow our business and satisfy our customers." (1300:19-25 (Kunz-Cho).)

119. Professor Murphy testified that "[t]he way I like to think about it, direct channel is a mouse click away. If you are in OTA, a mouse click away is Airline.com, and that clearly has been the alternative that has been relevant." (1434:1-9 (Murphy).) Professor Murphy explained that OTAs and airline websites are substantial competitors even though there might not be a 100 percent overlap between travelers who use OTAs and airline websites, because "in economics, they don't have to be exactly the same. You just need enough people on the margin between these two things, particularly given how big the direct sales channel is, to make them a very

important competitor. . . . So even if 20 percent of [the] direct sales were people who would move back and forth, that is a very big number.” (1439:7-15 (Murphy).) For an airline, the “closest alternative” to distribution through an OTA is distribution through its own website. (1552:23-24 (Murphy).)

120. In conducting his SSNIP analysis, Dr. Nevo testified that airline.com serves as a competitive constraint on Sabre’s GDS. (1009:22-1010:1 (Nevo).) But Dr. Nevo did not attempt to determine whether airline.com was a bigger competitive constraint on Sabre’s GDS than FLX OC. (1006:12-14 (Nevo)) (“Q. You also told me that you could not sort out which was the bigger effect, airline.com or FLX OC? A. I could not and did not try.”)

121. Dr. Nevo’s SSNIP tests assume that an airline confronted with a hypothetical price increase has only two choices: pay the increase or walk away. (1481:23-1482:11 (Murphy).) As Professor Murphy explained, however, Dr. Nevo’s assumption “ignores the actual competitive constraints on GDS pricing which is the ability to withhold content or not reach a deal or impose a surcharge.” (1481:13-22 (Murphy).)

III. DOJ Did Not Meet Its Burden to Define a Relevant Geographic Market

122. Dr. Nevo testified that there is a relevant market for “booking services” with a U.S. point of sale because “[i]t’s not practical for an airline to substitute away from a U.S. point of sale.” (897:16-898:13 (Nevo).) According to Dr. Nevo, his geographic market is based on “who the customer for the product is.” (1016:14-20 (Nevo).) Dr. Nevo further explained that the geographic market for technology products “depends on how they’re priced,” i.e., whether it is a product “that you can buy in the U.S. that has a different price than if you buy it, for example, in Israel.” (1017:19-1018:3 (Nevo).)

123. But Dr. Nevo testified that Farelogix’s customers for FLX OC are airlines (*See* 1016:18-23 (Nevo).) Thus, the point of sale for FLX OC should be where the airline is based.

Moreover, Dr. Nevo provided no evidence that the transaction fee for FLX OC varies by the location of the travel agency that purchases a ticket; he could not, because it does not. (*See* 875:19-1070:4 (Nevo).)

124. 13 of 15 FLX OC customers are airlines based outside of the United States. (1018:4-8 (Nevo).)

[REDACTED]

IV. DOJ Is Not Entitled to a Presumption of Harm

A. DOJ Misuses Projections

125. Dr. Nevo calculated market concentration using projections for 2020 shares. (917:1-17 (Nevo).) But these projections do not contemplate growth in shares for any other API provider, including airlines' proprietary APIs. (1013:12-1014:14 (Nevo); Nevo Demonstrative at 32 & 35.)

126. IATA's leaderboard includes airlines that have the goal of generating 20% of their third-party revenue through NDC bookings by the end of 2020. (192:14-17 (Radcliffe).) At least 12 of the 21 leaderboard airlines do not use FLX OC. (220:10-16 (Radcliffe).) For instance, Datalex is Scandinavian Airlines' and Jet Blue's NDC API provider. (1049:12-13 (Nevo); Defs.' Closing Demonstrative at 3; Davidson Demonstrative Exhibit 1.) Yet, Dr. Nevo's market share calculations for 2020 in his markets for booking services sold through "TTAs" and OTAs do not show any growth by Datalex or any other API provider besides Farelogix. (Nevo Demonstrative at 32, 35.)

127. Similarly, airlines, like Delta, have self-supplied NDC APIs. (1732:13-18 (Adair).) Yet, Dr. Nevo's market share calculations do not project any growth for any of these

airlines, or for Southwest, which has recently joined the ATPCO NDC Exchange. (104:4-14 (Nevo); Nevo Demonstrative at 32, 35.)

B. DOJ Miscalculates Market Shares in Its Proposed “TTA” Market

128. In calculating shares in his alleged market for booking services sold through TTAs, Dr. Nevo attributed all GDS integration (also known as “GDS pass-through”) volume to Farelogix, not the GDSs. (919:18-920:3 (Nevo).) In this alleged market, Dr. Nevo calculated that Farelogix had [REDACTED] market share in 2018, while Sabre had [REDACTED] market share. (Nevo Demonstrative at 35.) Using Sabre’s projections for 2020, Dr. Nevo calculated that Farelogix would have [REDACTED] market share in 2020, while Sabre would have [REDACTED] market share. (Nevo Demonstrative at 35.) Using 2018 data, Dr. Nevo calculated a post-merger Herfindahl-Hirschman Index (“HHI”) level of 3,895, with a post-merger change in HHI of 6. (Nevo Demonstrative at 36.) Using Sabre’s projections for 2020, he calculated a post-merger HHI of 4,085 for 2020, with a change in HHI of 657. (Nevo Demonstrative at 36.)

129. In the context of GDS integration, FLX OC is a complement to, not a substitute for, the Sabre GDS because providing NDC content enhances the value of the GDS. (1456:7-1458:17 (Murphy).) As Mr. Menke explained, by adding NDC content, GDS integration increases the complexity of the offers within the GDS. (709:20-710:5 (Menke).) With increasingly complex offers, travel agents need the ability to compare and shop offers. (710:12-20 (Menke).) To enable that comparison shopping, travel agents need the normalization and aggregation functions provided by the GDS to compare various types of offers in “apples-to-apples” comparisons. (1188:12-1189:9, 1192:23-1193:9 (Ekert).)

130. When an NDC-enabled sale is made through a GDS, the GDS maintains the connection and commercial relationships with travel agencies and airlines; the NDC provider

(including Farelogix) does not replace the GDS, but acts as an upstream, vertical complement to the GDS. (269:5-14 (Carter); 739:5-8 (Menke); 1456:7-1458:17 (Murphy).)

131. As a result, the sale should properly be understood as a sale by the *GDS*, not by *Farelogix*. (1486:4-7 (Murphy).) Even in Dr. Nevo's view of the future, the GDS still gets paid for the transaction. (1068:21-1069:6 (Nevo).)

132. If Dr. Nevo's calculations using Sabre's 2020 projections are corrected so that GDS integration sales are assigned to the GDS, not the NDC API supplier, the result is an HHI level of 3,898 and an HHI change of 19. (Murphy Demonstrative at 37.)

C. DOJ Miscalculates Market Shares in its Proposed OTA Market

133. In calculating shares in his alleged market for booking services sold through OTAs, Dr. Nevo excluded airline direct sales. (Murphy Demonstrative at 34.) Dr. Nevo calculated that Farelogix had [REDACTED] market share in 2018, while Sabre had [REDACTED] market share. (Nevo Demonstrative at 32.) Using Sabre's projections for 2020, Dr. Nevo calculated that Farelogix would have [REDACTED] market share in 2020, while Sabre would have [REDACTED] market share. (Nevo Demonstrative at 32.) Using 2018 data, Dr. Nevo calculated a post-merger HHI level of 4,268, with a post-merger change in HHI of 371. (Nevo Demonstrative at 34.) Using Sabre's projections for 2020, he calculated a post-merger HHI of 4,465, with a change in HHI of 1,093. (Nevo Demonstrative at 34.)

134. If Dr. Nevo's calculations using 2018 data are corrected so that airline direct channel sales are included in his alleged market for booking services sold through OTAs, the result is a post-merger HHI level of 1115 and a change in HHI of 19. (Murphy Demonstrative at 36, 1485:4-6 (Murphy).) If Dr. Nevo's calculations using Sabre's 2020 projections are corrected so that airline direct channel sales are included in his alleged market for booking services sold

through OTAs, the result is a post-merger HHI level of 1127 and a change in HHI of 53.

(Murphy Demonstrative at Slide 36, 1485:6-8 (Murphy).)

V. DOJ Did Not Meet Its Burden to Prove a Likely Substantial Reduction in Competition

A. FLX OC Is Not Unique and Airlines Have Many Other Options to Facilitate Direct Connections

135. In the current marketplace, Farelogix is not unique in its ability to provide NDC APIs to airlines. (271:19-22 (Carter); 417:13-24 (Davidson); 1328:6-11 (Reiz).) NDC is an open standard (271:15-18 (Carter); 1326:17-1327:6 (Reiz)), and as a result, NDC has enabled many other IT companies—including many new entrants—to compete for and win NDC API bids in the past five years. (269:15-20, 270:9-271:2 (Carter); 1327:7-20 (Reiz); 1687:16-23 (Gregorson).)⁵ In particular, since IATA’s introduction of the first minimally viable schema version 17.2, competition to provide NDC APIs has increased substantially. (432:18-433:25 (Davidson).) In addition, NDC has enabled airlines, including full service carriers, to self-supply their own NDC APIs. (See 271:3-8 (Carter); 447:6-9 (Davidson); 1732:16-18 (Adair).) Mr. Davidson testified that, given today’s market, Farelogix does not consider its FLX OC NDC API product to be unique. (417:16-19 (Davidson); 1291:10-11 (Kunz-Cho) (“I think the Farelogix NDC capabilities are pretty much up to par with the industry.”).) Rather, today, Farelogix competes in a worldwide IT market and considers any company that can build an NDC API as a viable competitive threat. [REDACTED] 1444:18-21; 1471:11-17 (Murphy).)

136. The increasing use of web services and the common services layer (“CSL”) has also made it easier for other IT companies to compete with Farelogix and put Farelogix at a

⁵ As Mr. Gregorson of ATPCO testified, “[t]here are third party systems that are popping up that are new entrants because NDC created an opportunity for them to go into space.” (1687:11-23 (Gregorson).)

competitive disadvantage. (1342:22-25 (Reiz).) As Mr. Reiz explained, unlike connecting using an EDIFACT protocol, the CSL is “easy to consume and to use [] to implement NDC.” 1328:16-17 (Reiz); *see also* 450:23-451:5 (Davidson) (existing connections with PSSs no longer provide “competitive advantage” to Farelogix because “the airlines are insisting on web services” connections to the PSS, not EDIFACT).) The CSL is “provided by either the airlines themselves, or by the PSS, and they provide all of the functionality, all of the system directives.” (1341:17-24 (Reiz).) For instance, United uses a CSL to connect United’s internal systems to the FLX OC NDC API, and the orchestration is done by United’s IT department, not Farelogix. (1345:4-14, 1372:3-18 (Reiz).) The CSL thus makes it “much easier for us to implement a new entity API” without requiring the IT company to develop a complex orchestration layer. (*Id.*; *see also* 451:10-15 (Davidson) (“[C]onnecting into the PSS” via the CSL “can be done in probably 10 to 15 percent of the time that it used to take us to do it.”).) And for Farelogix, the increasing use of the CSL puts it at a disadvantage relative to other IT companies because Farelogix must “maintain the EDIFACT links and implement the new ones as well,” and utilize resources that Farelogix would prefer to employ elsewhere. (1343:15-25 (Reiz).)⁶

137. Farelogix has been unsuccessful in competing for NDC APIs over the last five years. Since 2015, Farelogix has submitted a total of [REDACTED] bids for its NDC API product, FLX OC. Of those [REDACTED] bids, Farelogix won a total of only [REDACTED]—a [REDACTED] success rate. [REDACTED]

[REDACTED]⁷ Since the introduction of schema version 17.2 at the end of 2017, Farelogix submitted 18 total NDC API bids and won just

⁶ EDIFACT connections are hard to maintain in part because it is “very hard to find programmers for EDIFACT.” (1342:10-21 (Reiz).)

⁷ As Ms. Carter summarized, FLX OC is “[o]bviously not [unique] given that we’re losing more than we are winning.” (271:19-22 (Carter).)

—a success rate. 269:24-25 (Carter).⁸ Even excluding those bids that Farelogix considers ongoing, Farelogix has still won just of its bids since the introduction of schema version 17.2. (See) And Farelogix has added new U.S. customers since 2015. (See)⁹

138. In addition to its failure to win new business through RFPs, Farelogix has also lost at least two large airlines as FLX OC customers. Delta once had a contract for FLX OC, but chose to let that contract expire and instead built its own NDC API. (1730:3-11, 1732:13-18 (Adair).) And Air Canada has informed Farelogix that it does not plan to renew its contract for FLX OC. (481:20-482:6 (Davidson).)

139. Many IT companies currently compete against Farelogix to provide NDC APIs to airlines. Farelogix has lost bids to provide NDC API services to several companies, including OpenJaw, Datalex, Amadeus, and [TP] Connects. (270:9-14 (Carter).) Other companies that competed against FLX OC for NDC API bids include DXC, IBS, SAP, and JR Technologies. (270:20-271:2 (Carter).)

140. Airlines themselves are also self-supplying their own NDC APIs. British Airways, Air France, and Delta have all self-supplied NDC APIs instead of purchasing a third-party's product such as FLX OC. (271:3-8 (Carter); 217:19-218:1 (Radcliffe); 419:24-420:1 (Davidson); 446:21-447:3 (Davidson).)

⁸ bids since 2017 are considered “Unknown—Ongoing,” meaning Farelogix considers the bid active, but does not know who else is competing. bids since 2016 are considered “Unknown—Closed,” meaning Farelogix does not know who won the bid, but Farelogix understands that it lost the bid.)

⁹ Sabre has won no NDC API bids since 2015. (See)

141. Although Farelogix donated the baseline schema to IATA for the NDC standard, that baseline schema “looks nothing like” the NDC standard today. (278:13-20 (Carter).) Indeed, Farelogix’s early entry is a disadvantage, because “[a]s an early adopter, [FLX OC was] developed . . . to the early schemas. . . . [So, Farelogix] continually ha[s] to go back and retrofit those to the newer one. Somebody bidding on and winning [an] NDC API today would simply start at a newer schema, and obviously we have to develop that at our expense, so it puts us at a . . . disadvantage.” (420:17-25 (Davidson); *see also* 421:1-10 (Davidson).)

142. Moreover, it is important to note that direct connects do not have to use the NDC standard. (*See* 1195:13-17 (Ekert); 1253:21-1254:3 (Stratford); *see also* 199:15-20 (Radcliffe) (United’s direct connect to Priceline supplied by Farelogix is “not an NDC API connection”); 1301:22-1302:9 (Kunz-Cho) (agreeing that [REDACTED] airlines that [Fareportal] ha[s] contracted for direct connect do not use Farelogix”).) Nevertheless, the following companies currently offer NDC APIs that are functionally equivalent to Farelogix’s NDC API:

Amadeus

143. Since 2018, Amadeus has won [REDACTED] ([REDACTED]) [REDACTED] Since 2015, Amadeus has won at least [REDACTED] NDC API RFPs. (*Id.*) In addition to winning these [REDACTED] bids, Amadeus also provides NDC API services to Spirit Airlines. (1646:12-15 (Wiggins).)

144. Amadeus is currently providing substantially the same NDC API services as Farelogix. (417:16-419:4 (Davidson).)

ATPCO NDC Exchange

145. The ATPCO NDC Exchange (“NDC Exchange”) is an airline-owned entity that converts non-NDC APIs into standardized NDC APIs. (DX 210 at FLX-DE-00101520; 448:14-

449:7 (Davidson); 1344:14-1345:2 (Reiz); 1667:20-22, 1671:9-21 (Gregorson).) Farelogix recently lost potential business to NDC Exchange when Southwest—a large, complex American airline, which accounts for over half of the volume of direct connect transactions in the United States—chose to use the NDC Exchange despite initially engaging in discussions with Farelogix. (448:24-449:7 (Davidson); 1345:15-21 (Reiz).) ATPCO was able to develop NDC connections to Southwest’s API connection in a mere two weeks. (1686:4-7 (Gregorson).)

146. Over fifty additional airlines are in discussions with ATPCO to join the NDC Exchange, and ATPCO has already reached agreements with four airlines—Air Canada, British Airways, Delta, and Southwest. (1686:8-11 (Gregorson); 481:17-23 (Davidson).) Of those four airlines, only Air Canada is a current FLX OC customer, and Air Canada has chosen not to renew its agreement with Farelogix. (481:24-482:6 (Davidson).) ATPCO expects to sign at least [REDACTED] more airlines as customers in 2020. (DX 306 at 17.)

147. ATPCO is currently providing substantially the same NDC API connections as Farelogix. (417:16-419:4 (Davidson); 1344:20-1345:14 (Reiz).) In fact, Mr. Reiz testified that NDC Exchange implements NDC APIs in the same manner that Farelogix implements NDC APIs for United Airlines. (1345:4-14 (Reiz).) As Mr. Reiz explained, by connecting to an airline’s CSL, both Farelogix and ATPCO are able to map the airline’s internal API format to NDC. (*Id.*) In addition, an airline can connect an API built by any IT provider into NDC Exchange to distribute NDC content. (1695:10-24 (Gregorson).) An airline can also plug a self-supplied API into NDC Exchange. (1695:25-1696:2 (Gregorson).)

148. NDC Exchange is also a more efficient tool than FLX OC for airlines to use to connect to travel sellers because airlines need to connect into NDC Exchange only once to establish the technical connection with NDC Exchange’s seller members, rather than establishing

individual connections with those travel sellers. (1675:4-15 (Gregorson); DX 285 at ATPCO-00000010; DX 286 at ATPCO-00000022; *see also* 1675:24-1680:4 (Gregorson).) It is also a more efficient tool for travel sellers because some travel agencies “do not want to come direct to an airline [because of] the complexities.” (1733:16-22 (Adair).)

Datalex

149. Since 2018, Datalex has won [REDACTED]

[REDACTED] Datalex has recently been able to move past its prior financial difficulties. (476:9-13 (Davidson).) In addition to Scandinavian Airlines, Datalex currently provides NDC API solutions for JetBlue. (1022:19–22 (Nevo).) There is no evidence that any of Datalex’s clients have gone out to bid again since it began experiencing financial challenges.

[REDACTED]

150. Datalex is currently providing substantially the same NDC API services as Farelogix. (417:16-419:4 (Davidson).)

DXC

151. DXC—formerly Hewlett-Packard—won a bid to provide NDC API services in 2017. [REDACTED] 213:3-10 (Radcliffe).) Although DXC provides an NDC API to a smaller airline—Flybe—IATA’s schema standardization makes connections built for smaller airlines no different than those built for larger airlines. (1329:1-17 (Reiz).) In addition, any NDC API provider has the technical ability to provide NDC APIs for airlines with multiple hubs. (1329:18-21 (Reiz).) DXC also competed against Farelogix for United Airlines’ business in 2017. (216:3-19 (Radcliffe).)

152. DXC is currently providing substantially the same NDC API services as Farelogix. (417:16-419:4 (Davidson).)

OpenJaw

153. Since 2018, OpenJaw has won [REDACTED]
[REDACTED]) And since 2016, OpenJaw has won [REDACTED] NDC API RFPs. (*Id.*)¹⁰

154. OpenJaw is currently providing substantially the same NDC API services as Farelogix. (417:16–419:4 (Davidson).)

SAP

155. SAP, one of the largest technology providers in Europe, currently provides the NDC API for Easyjet, which is a top 20 airline worldwide. [REDACTED]
[REDACTED]

156. SAP is currently providing substantially the same NDC API services as Farelogix. (417:16-419:4 (Davidson).)

Self-Build

157. The updates to the IATA NDC schema have made it easier for airlines to self-build NDC API connections. (433:3-24 (Davidson).) Since 2017, both British Airways and Delta Air Lines have chosen to self-build an NDC API solution. [REDACTED]

[REDACTED]) Both British Airways and Delta Air Lines are considered top 20 airlines worldwide. [REDACTED] Air France has also built its own NDC API. (217:19-22 (Radcliffe); Tr. 271:3-8 (Carter).) In addition, both American Airlines and United Airlines informed Farelogix that they considered self-building an NDC API solution. (128:15-129:1 (Garner); [REDACTED] [REDACTED] ; DX 34 at 1).)

¹⁰ Although DOJ has appeared to suggest that North American-based airlines would not use a Chinese company as their NDC API provider, DOJ’s market is not limited to North American airlines, and several North American-based corporate booking tools use a Chinese company—Travelfusion—as their non-GDS aggregator. (*See* 1189:17-1190:6 (Ekert); 1249:9-11 (Stratford); 1292:2-8 (Kunz-Cho).)

158. As demonstrated by the multiple airlines that have already built their own NDC APIs and testimony from airline employees at trial, it is not cost prohibitive or technologically infeasible for airlines to build their own NDC APIs: [REDACTED]

[REDACTED]

[REDACTED] see also PX 453 at 10 (reflecting [REDACTED])

[REDACTED].¹¹ Delta executives

testified that [REDACTED] (PX 502 at 9)

159. Farelogix considers airline self-builds to be a significant competitive threat. (270:9-271:8 (Carter); 446:21-447:9 (Davidson); [REDACTED])

160. Airlines self-supply substantially the same NDC API connections as Farelogix. (417:16-419:4 (Davidson).)

TPConnects

161. Since 2018, TPConnects has won [REDACTED]
[REDACTED]

162. TPConnects is currently capable of providing substantially the same NDC API services as Farelogix. (417:16-419:4 (Davidson).)

New Entrants

163. Because the IATA schema standardized the creation of NDC API connections, new entrants are expected to enter and compete for NDC API RFPs. For example, companies

¹¹ These costs are barely more than airlines pay, or would pay, IT providers like Farelogix. (See [REDACTED] noting that American and United paid Farelogix [REDACTED] respectively for FLX OC in 2019.) Indeed, these investments are minuscule relative to what Cory Garner testified to be his estimate of potential cost savings to American. (See 162:2-12 (Garner) (discussing American's estimate that it would save \$101 million annually).)

like JR Technologies, InteRes, Gateway, and IBS are poised to compete in the future. (1687:1-3, 1687:16-1688:2 (Gregorson); 270:20-271:2 (Carter).)

Sabre Does Not Compete

164. Sabre does not successfully compete to provide NDC APIs, as Farelogix has never [REDACTED]

[REDACTED] Farelogix does not consider Sabre a viable competitor in the NDC API space. (1444:24-1445:9 (Murphy); [REDACTED])

Third Parties' Views

165. Third party industry participants, such as travel management companies, airlines, and ATPCO, all testified that there are alternative NDC API providers—including in-house solutions—aside from Farelogix. (1228:13-20 (Stratford) (“Q: Do you know who else provides APIs for airlines aside from Farelogix? A: Well, a lot of them do -- a lot of them do it themselves, develop it. Some are developing it in-house. . . . There’s OpenJaw that also provides that capability . . .”); [REDACTED])

[REDACTED]; 1669:16-1670:11 (Gregorson) (“Q: Who provides APIs to airlines? A: Third-party providers or the airlines themselves can provide them. Q: And can you give some examples of third-party providers? A. Farelogix would be one. . . . There’s others in the marketplace that also do that. Datalex, OpenJaw. . . .”); 1732:13-18 (Adair) (“Q: So in your understanding, does Delta have an NDC API? A: Yes. Q: And did Delta develop its own NDC API? A: Yes.”).)

**American and United Airlines' Testimony
Was Uninformed, Self-Interested, and Contradicted**

166. Although employees of the only two airlines that have publicly opposed this transaction—American and United—testified that, in their opinions, FLX OC is the only product that could satisfy their airlines' particular needs, these employees: (i) testified that they have not submitted RFPs for NDC APIs (166:8-167:5 (Garner); 212:19-213:2 (Radcliffe)); (ii) are not technologists; and (iii) contradicted this testimony by acknowledging that their own IT departments could also build NDC APIs (159:12-162:24 (Garner); [REDACTED] DX 246 at 21).

167. United Airlines "seriously" considered another NDC API provider, DXC (then HPE), for United's NDC API in 2017. (213:3-19 (Radcliffe).) DXC hosts United's entire PSS system and processes over 2,500 flights a day for United. (214:1-19 (Radcliffe).) Mr. Radcliffe admitted that when United considered signing a contract with Farelogix in 2017, it did not request proposals or information from any NDC API providers besides Farelogix and DXC. (212:19-213:2 (Radcliffe).) United has not issued an RFP to or requested information from any other companies currently IATA-certified as NDC API providers. (215:6-12 (Radcliffe).) Mr. Radcliffe was not aware at trial how many airlines on the IATA leaderboard use a provider other than Farelogix as their NDC API provider. (219:24-220:4 (Radcliffe).) [REDACTED]

[REDACTED]

[REDACTED]

168. Similarly, Mr. Garner testified that American Airlines has not issued an RFP to any of the 21 companies that are currently IATA-certified as NDC API providers. (166:8-13 (Garner).) Mr. Garner was not aware which companies currently offer NDC API solutions; Mr. Garner admitted at trial that he did not know that SAP, one of the largest software companies in

the world, offers an NDC API solution. (166:18-167:5 (Garner).) Mr. Garner also testified that American Airlines had offered its NDC API IT services contract to Sabre, “as a bit of a gamble to see if Sabre could execute on it.” (153:5-8 (Garner).)

169. The testimony of Mr. Garner and Mr. Radcliffe, who are not technologists, is contradicted by that of Mr. Reiz, the only technologist who testified at trial and the individual who created the NDC standard. (*See* 1329:15-21 (Reiz) (“Q. Would you say that Farelogix is the only company who can build an NDC API for a full service airline? A. No. Q. Can those same NDC API—and I want to put aside Farelogix for now. Can anybody who is developing an NDC API also handle airlines with multiple hubs? A. Yes.”).) The testimony of Mr. Garner and Mr. Radcliffe is also contradicted by the fact that multiple complex full service carriers have created their own NDC APIs or use an NDC API provider other than Farelogix. (*See* [REDACTED] [REDACTED] (showing, among others, Japan Airlines and Avianca using Amadeus, Delta Airlines self-building, British Airways self-building); *see also* 1732:13-18 (Adair) (confirming Delta self-built its NDC API); 271:3-8 (Carter) (discussing self-builds done by British Airways, Air France, and Delta); 996:13-24 (Nevo) (discussing Southwest self-built API and use of NDC Exchange).)

170. In addition, the FLX OC NDC API follows the NDC Standard and any augmentations to the standard that American or United request Farelogix to develop are published publicly with IATA. (1331:4-1333:8 (Reiz).) In fact, Mr. Reiz believes building these augmentations puts Farelogix at a competitive disadvantage to IT providers that are not asked to deviate from the NDC standard. (1330:13-18 (Reiz).)

171. Mr. Garner and [REDACTED] testified that Farelogix offers unique services to their respective airlines. (95:10-96:5 (Garner); [REDACTED])

However, Mr. Davidson clarified that none of the services provided to these airlines is unique to Farelogix. (421:11-425:17 (Davidson).)

172. Mr. Garner and ██████████ testified that Farelogix provides unique implementation services. (95:10-23 (Garner); ██████████) Mr. Davidson clarified that these services simply refer to the technical support provided by every company that offers APIs. (421:11-422:1 (Davidson).) Mr. Garner also testified that Farelogix “support[s] the maintenance of [its API] connections on an ongoing basis.” (95:10-23 (Garner).) Mr. Davidson emphasized that this simply referred to the general maintenance services that Farelogix’s competitors also provide. (422:2-10 (Davidson).) These services are not proprietary or unique to Farelogix. (*Id.*)

173. Mr. Garner testified that Farelogix offers unique “paid seat assignment” enhancements. (95:10-96:5 (Garner).) Mr. Davidson explained that this feature is one that is included in the baseline IATA NDC schema. (422:11-25 (Davidson).) No part of this feature is proprietary or unique to Farelogix. (*Id.*) Mr. Garner also testified that Farelogix offers unique enhancements for corporate bundles. (105:12-105:23 (Garner).) Mr. Davidson made clear that corporate bundles are offered as part of the airlines’ management or pricing engines. (424:4-24 (Davidson).) Indeed, both American and United own or control their own shopping engines, allowing those airlines to provide these corporate bundles irrespective of Farelogix. (424:25-425:17 (Davidson).)

174. Mr. Radcliffe also testified that ██████████
██████████) Mr. Davidson explained that this augmentation is designed to be incorporated into a future version of the IATA NDC schema. (423:1-424:3

(Davidson).) Farelogix does not use any proprietary or special technology when providing these enhancements. (423:25-424:3 (Davidson).)

175. Mr. Davidson testified that neither American nor United has expressed to him the view that Farelogix is unique: [REDACTED]

176. To the contrary, both American and United [REDACTED]

177. Both American and United have made their own efforts to acquire Farelogix.

178. United has attempted to acquire Farelogix since 2015. (223:22-24 (Radcliffe).) In 2015, United considered a joint venture [REDACTED] to acquire Farelogix and gain “strategic influence over product direction” at Farelogix. (PX 299.) At the same time United was considering a joint venture with American, United considered partnering with a group of airlines and [REDACTED] [REDACTED] to acquire Farelogix and turn the company into “an industry utility.” (PX 299.)

179. United’s 2015 efforts to acquire Farelogix were ultimately unsuccessful. (224:6-7 (Radcliffe).)

180. Starting in 2017, United began considering another offer to acquire Farelogix. (224:11-13 (Radcliffe).) Mr. Radcliffe raised the issue of a Farelogix acquisition with new leadership at United, including CFO Gerry Laderman and now-CEO Scott Kirby. (224:14-225:8

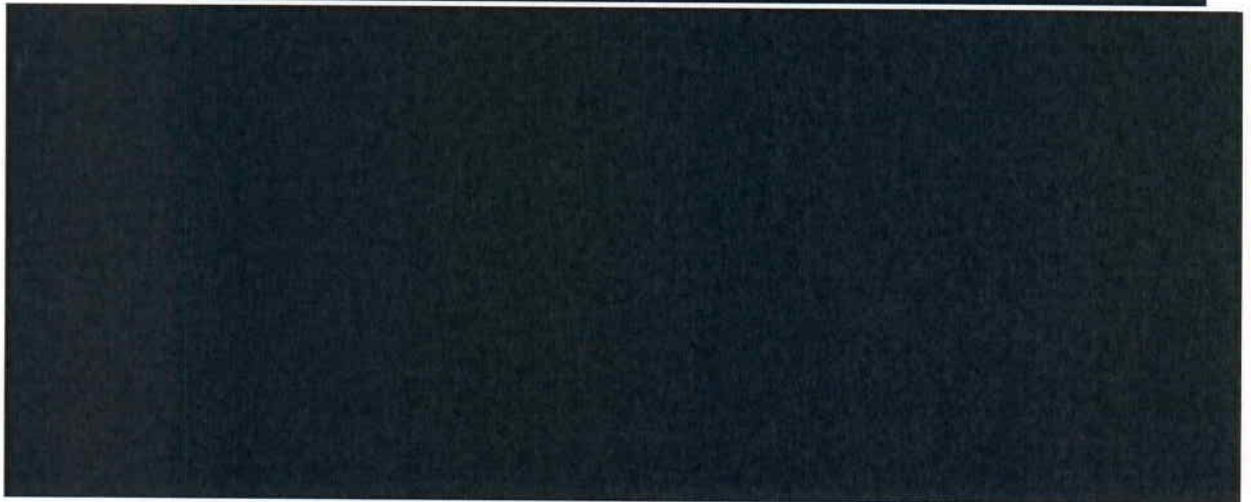
(Radcliffe.) United was still interested in a Farelogix acquisition in 2018 when Sabre announced that it had entered into a deal to acquire Farelogix. (225:17-226:1 (Radcliffe).)

181. Mr. Radcliffe testified that United's goal in acquiring Farelogix would be to "protect" Farelogix and keep it "an independent company." (183:12-16 (Radcliffe).) But



182. Mr. Radcliffe is disappointed that United did not successfully acquire Farelogix. (224:6-10 (Radcliffe).)

183.





B. FLX OC Does Not Constrain GDS Fees

184. Direct connects are not new in the travel industry. (1194:24-1195:6 (Ekert).) In fact, the idea and technology have been around since at least the 1980s. (*Id.*) Nevertheless, in 2018, direct connect transactions comprised only approximately 5% of bookings made in the United States by passenger volume (most of which are attributable to Southwest Airlines, which is not a FLX OC customer). (Murphy Demonstrative at 26.)

185. Direct connect volumes are de minimis because direct connect transactions are significantly more expensive for travel agencies than transactions through the GDS. (274:20-275:6 (Carter).)

186. Direct connect transactions result in significantly increased costs to travel agencies for several reasons: First, building individual direct connections to numerous airlines requires travel agencies to spend millions of dollars in upfront capital. (See 1196:10-12, 1197:3-7; 1198:2-12 (Ekert); 1311:7-1312:6 (Kunz-Cho).) Moreover, TMCs would require new agent points of sale systems to be developed to incorporate multiple direct connects because the travel agency has “to have somewhere to connect that content.” (1236:24-1237:2 (Stratford).) As Ms. Stratford testified, the cost to BCD Travel of building a new agent point of sale system would be greater than \$22 million. (See 1257:15-22 (Stratford).)

187. This challenge is further complicated by the fact that each individual airline connection needs to be customized based on the NDC—or other schema—standard generated by each individual airline’s API. (1304:16-1305:8 (Kunz-Cho).) For this reason, travel agencies cannot flip a switch to turn on direct connections, but instead must go through the “laborious and costly” process of building and maintaining them. (1287:9-11 (Kunz-Cho); see also 1289:7-14 (Kunz-Cho) (“[B]uilding an API is an engineering exercise of about six to seven months” and requires many engineers involved “to build it, to test it, to launch it, and then to maintain it.”); DX 289 at 10 (



188. Second, maintaining direct connects raises operating costs “exponentially” (1196:12-14 (Ekert)), because servicing bookings made using direct connects is much costlier for

travel agents than servicing bookings made using the GDSs. Two of the largest TMCs in the world, CWT and BCD Travel, have both estimated that if they were to move transactions away from the GDS and to direct connect, costs per booking would rise approximately \$15. (1196:24-1197:2 (Ekert); 1256:6-17 (Stratford).) These increased costs are due in part to the fact that a direct connect booking is made outside of the GDS. (1191:1-3 (Ekert); 1255:16-18 (Stratford).) When a booking is made outside of the GDS, the travel agency must then bring it back into the GDS to store the booking information. (1255:19-25 (Stratford).) Unlike when a booking is made through the GDS, this type of booking is “static,” meaning that the “automated becomes manual.” (1191:4-10 (Ekert); 1255:25-1256:3 (Stratford).) If, after a booking is completed, the customer needs to make a change, the travel agency is unable to make that change and modify the booking on a live basis, but instead must reach out directly to the airline. (1191:4-8 (Ekert); 1256:3-5 (Stratford).) The increased costs of static bookings are ultimately passed on to the customer in the form of additional fees. (1264:25-1265:5 (Stratford); *see also* 1222:7-11 (Stratford) (“[Airlines] don’t understand what it takes to service a customer beyond . . . the initial booking . . . that [is] pretty much the big issue around NDC that we face today, is that the servicing of an NDC booking is quite costly, quite complex and ugly.”).) This added cost remains even if non-GDS aggregators are used to bypass the GDS. (1190:3-6 (Ekert).)

189. In addition to these costs, direct connects negatively impact travel agency operations by slowing response times and otherwise leading to lengthier search processes—in other words, direct connects hinder travel agencies’ ability to provide the efficient services their customers demand. (*See* 1255:13-15 (Stratford) (“[W]e prefer to use the GDS. Just from an efficiency standpoint, we don’t want to go to multiple places to assess content.”); 1298:20-1299:11 (Kunz-Cho) (“Making a call to various providers—that a call is being made, an

electronic call, a request to a large number of providers naturally has a tendency to cause delays and latencies.”.) This inefficiency exists as well if non-GDS aggregators are used by travel agents. (1190:3-6 (Ekert).) In today’s complex and fast-moving travel environment, travel agencies depend on the “millisecond,” “near instantaneous” search responses of the GDS. (1188:4-5, 1191:15-19 (Ekert).) As stated by Fareportal co-CEO Werner Kunz-Cho, “[i]n the e-commerce space, speed is very essential to drive conversions” and “[w]ithout efficient speed, we lose conversion and we measure speeds in sub-seconds, which makes a difference.” (1299:1-4 (Kunz-Cho).) Removing content, and therefore bookings, from the GDS channel requires agents to search multiple platforms for travel content, thereby reducing efficiency and providing a “degraded user experience” versus the GDS. (1191:20-1192:15 (Ekert); 1263:1-16 (Stratford); 1300:3-25 (Kunz-Cho); *see also* 1288:13-15 (Kunz-Cho) (“[H]aving access to a wider array of airfare content and ancillaries through a single pipe is far more efficient.”).) The efficiency of the GDSs is part of the reason why access to full content (i.e., all publicly available fares) through the GDSs is so significant to travel agencies. (1247:11-1248:7 (Stratford).)¹²

190. Because of these costs and inefficiencies, building direct connects with even a fraction of the airline suppliers that travel agencies transact with is neither feasible nor desirable for travel agencies. (1197:8-22 (Ekert); 1236:11-1237:24 (Stratford).) In fact, building and maintaining direct connections with even 50 of these airlines is something that “it is unlikely that any travel management company in the world could do that in terms of technically, operationally or in terms of affordability” and “there is [not] a TMC in the world that is capable of doing that.” (1197:17-22 (Ekert); *see also* 1232:25-1233:7 (Stratford) (“There aren’t many in the industry

¹² This is also part of the reason why it would be “an official nightmare” for travel agencies if major US airlines did not have full content agreements with the GDSs. (1248:12-19 (Stratford).)

that have the resources, capabilities or funding to be able to support multiple and direct connects. You have to have the technology to do that; and, again, the average agency isn't going to have that."); 1304:4-15 (Kunz-Cho) ("Q. Does Fareportal have that kind of—those kind of resources available to it now? A. No.") Doing so would require travel agencies to re-create and replicate the GDS, a burdensome task that they are not interested in undertaking. (See 1240:4-11 (Stratford) ("[BCD does not] want to manage 30-50 APIs. There's 260 IATA airlines . . . that becomes very costly . . . I don't want to become a GDS."); 1314:19-21 (Kunz-Cho) ("If we connect with 600 airlines worldwide, we would become a GDS. It's not our business to become a GDS."))

191. The two airlines that have testified in opposition to this transaction—United and American—have either recognized that direct connects are not currently able to scale or have declined to cover any of the added expenses that direct connects cause travel agencies to incur. Regarding United, Ms. Stratford testified that a United employee, Jake Cefolia, called to apologize to BCD that United had pushed selling bundled offers through NDC without taking into account whether travel agencies could service bundled offers. (1269:23-1270:25

(Stratford).) And Mr. Radcliffe testified that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] (339:24-340:3
(Radcliffe). [REDACTED]

[REDACTED] (339:14-17 (Radcliffe).) Regarding American, senior executives refused to cover added expenses that BCD would have incurred as a result of American's unsuccessful early 2010s effort to encourage travel agencies to book through American's direct connect portal. (1272:19-1274:8 (Stratford).)

192. The presence of non-GDS aggregators does not solve the problems resulting from direct connects because the use of a non-GDS aggregator presents the same added costs and inefficiencies that make direct connects unattractive to travel agencies: As Mr. Ekert testified, “it is highly inefficient for us, and the user experience and quality of what we do is degraded when we . . . access inventory through Travelfusion as compared to the GDSs.” (1190:3-6 (Ekert).) Rather than the sub-second response times of the GDS, aggregators such as Travelfusion typically have response times of fifteen to twenty seconds. (1190:8-20 (Ekert).) This time delay for every transaction, when multiplied by tens of thousands of searches for travel content, would result in an “unreal” increase in the labor costs of travel agencies. (1191:15-1192:10 (Ekert).) In addition, non-GDS aggregators do not provide the services—e.g., mid-and back office support and facilitating duty of care—that the GDSs provide, and present similar added expenses as direct connect transactions. (*See* 1198:17-1199:2 (Ekert) (“Whether that is through Travelfusion or a, quote, ‘non-GDS’ direct connect, it is basically indifferent to us.”); 1223:12-1224:15 (Stratford) (“I think the challenge of even using a third-party aggregator today from what . . . we’ve experienced . . . is that, again, you’re still searching in multiple places. So I still have to go to the GDS to search. . . . The problem then is I book Travelfusion and then again, it’s either creating a passive segment or how is that getting into my systems to be able to service it.”).)

193. Due to the inefficiency of direct connects, industry participants recognize that the volume of direct connects and transactions through non-GDS aggregators is unlikely to grow significantly in the future. (1186:24-1187:7 (Ekert); 1245:2-1247:10 (Stratford).) Thus, the volume of NDC-enabled bookings is likely to significantly increase only with GDS integration. For example:

(a) Jeffrey Lobl of Delta Air Lines testified that “Delta was expecting that the overwhelming majority of our API consumption will be done by the GDSs” because “we had a lot of conversations with our travel agency partners and the overwhelming majority of them want to continue working through the GDSs.” (1157:19-24 (Lobl).) Mr. Lobl further explained that Delta’s travel agency partners “want to continue working through the GDSs” because “[t]hey don’t have the technological capability to replicate what GDSs provide to them, and so they would prefer to keep the GDSs involved in providing the technology.” (1157:19-1158:9 (Lobl); *see also* 1730:21-25 (Adair) (direct connects “upset how [agencies] wanted to work”).) Accordingly, Delta has not pursued a direct connect strategy (*see* 1724:24-1725:19 (Adair); 1160:13-1161:1 (Lobl)), and Delta does not view NDC as a means to “disintermediate” the GDS or pursue direct connections (1160:24-1161:9 (Lobl); *see also* 1166:12-167:2 (Lobl) (“[T]here’s [an] impression of NDC out in the marketplace that [NDC is] intended to facilitate disruption . . . that is not what we are viewing NDC [as] a tool for.”)).

(b) 


(c) Rose Stratford testified that “broad delivery of systemwide NDC solutions will be best delivered by the GDS” because “it really is about the infrastructure that TMCs have and, you know, around servicing the workflows. The GDSs . . . know what those are and understand the complexities.” (1265:23-1266:19 (Stratford).)

(d) Similarly, Shane Tackett of Alaska Airlines testified that Alaska Airlines never developed a direct connection with a travel agency because “it wasn’t clear what the value

of doing [direct connect] would be; it wasn't clear what the level of investment it would take to actually make a direct connection work would be; and we were very focused on continuing to upgrade our own direct channel experience with the finite engineering resources we have."

(1708:23-1709:10 (Tackett).)

(e)

(f) Farelogix witnesses have seen this industry focus as well, with Mr.

Davidson indicating he expects "pretty much all" future growth in FLX OC volumes to "come from GDS passthrough." (442:6-10 (Davidson).) Similarly, Ms. Carter agreed that "the number one thing that [Farelogix] hear[s] from airlines now is about plugging into a GDS." (285:7:10 (Carter).) This is in part because airlines need more technical support for GDS bypass than passthrough because they "have to deal with each travel agency themselves and individually." (1337:10-14 (Reiz).)

(g) Chris Wilding of Sabre reinforced these sentiments, testifying that "every airline I talk with very much wants [Sabre] to implement NDC . . . [E]veryone that is working with an NDC solution wants to have it integrated into the Sabre GDS because they believe that is the best way to distribute their content[.]" (857:13-22 (Wilding).)

194. As Professor Murphy explained, "[d]irect connects have not grown in popularity not because they couldn't connect [but] [i]t really is more because the travel agents didn't want it." (1572:6-9 (Murphy).)

195. The evidence shows that direct connects in general have not had a significant impact on GDS fees, and FLX OC in particular has had no impact on GDS fees: Airline

witnesses have testified to the lack of impact threatening to increase direct connect volumes or to implement direct connects has had on their GDS fees (*see* [REDACTED], that they are interested in NDC only in channels that customers want to use and not necessarily for cost reduction purposes (*see* 1156:21-1157:24 (Lobl); 1724:7-23 (Adair)), and that they have not used Farelogix to negotiate lower GDS fees (*see* 1153:24-1154:6, 1154:12-11:55:3 (Lobl) (Delta has not explicitly referenced Farelogix to negotiate lower GDS fees); 1714:13-15 (Tackett) (same for Alaska Airlines)). Mr. Radcliffe admitted at trial that United has not explicitly mentioned Farelogix in negotiations with Sabre regarding United's GDS contract. (230:16-18 (Radcliffe).)

And the reverse is also true; [REDACTED]

[REDACTED] Indeed, Mr. Davidson only has personal knowledge of one airline ever using Farelogix as a negotiating tool against the GDSs. (434:1-20 (Davidson).) This example, from 2010, involved a non-U.S. airline. (434:1-20 (Davidson).)

196. In addition, for the reasons stated above, DOJ cannot use GDS integration transactions as the basis for its claim. (*See supra* Part IV.B.)

C. The Primary Competitive Constraints on the GDS Remain

197. As explained previously, the primary competitive constraints on Sabre's GDS fees are other GDSs and airline.com. (*See supra* ¶¶ 24-31.)

198. Sabre's acquisition of Farelogix will not diminish the competitive threats those other entities pose to Sabre's GDS: indeed, Dr. Nevo did not quantify the relative impact of FLX OC versus airline.com and the other GDSs. (*See* 1026:15-1027:16 (Nevo).)

D. Sabre's Commitments Undermine DOJ's Allegations of Harm

199. On August 9, 2019, Mr. Menke sent letters to current Sabre and Farelogix airline customers, making several commitments concerning what Sabre would do following its

acquisition of Farelogix. (*See* 720:17-19 (Menke); DX 225; DX 228; DX 298.) Specifically, Mr. Menke wrote “that, after the acquisition, Sabre will:

(a) Continue to offer and support Farelogix’s NDC APIs and Open Connect 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 travel agents;

(b) Continue to offer Farelogix’s NDC APIs and Open Connect capabilities to airlines and other third parties for both GDS bypass and GDS pass-through;

(c) Continue to make Open Connect agnostic to any form of distribution or provider;

(d) Commit to make Farelogix’s NDC APIs and Open Connect available at industry competitive rates that are no greater than they are today;


(e) Provide at least the current level of support (or more) for the capabilities;

(f) Continue to invest in the development of Farelogix’s capabilities at levels no less than current levels; and

(g) Offer to extend any existing Sabre GDS contract or Farelogix contract on the same terms for a period of at least three years past the current termination date.”

(DX 225.)

200. Mr. Menke’s commitments are consistent with his visions to transform Sabre and build an integrated end-to-end solution. (722:25-723:15 (Menke).)

201. Sabre is willing to enter into contracts making these commitments binding. (730:20-23 (Menke).) Sabre has even met with some airline executives to discuss the commitments. (*See, e.g.,* )

202. A three-year extension of FLX OC contracts would provide airlines that currently use FLX OC time to find an alternative supplier before their next negotiation with Sabre or other GDS providers: For example, [REDACTED]

203. Moreover, Dr. Nevo conceded that the three-year commitment by Mr. Menke would give airlines time to build their own NDC API before the next round of contract negotiations. (*See* 1029:12-17 (Nevo).)

E. There Is No Evidence That the Merger Will Lessen Innovation

204. DOJ has presented no evidence that Farelogix is an “innovator” or “disrupt[or]” as it relates to “booking services” today—rather, DOJ has pointed to the fact that Farelogix developed the original NDC schema over ten years ago. (1764:23-1765:4 (Elmer); *see also* PX1 at DL_FLXCID_000000069 [REDACTED]

[REDACTED].) But as the bidding data and testimony from party and third-party witnesses have shown, FLX OC is no longer “unique.” (*See supra* Part V.A.) Moreover, many of the Farelogix software engineers that work on FLX OC are simply maintaining its current connections. (1343:6-25 (Reiz).)

205. The only other evidence presented—that Tim Reiz once considered developing a new type of PSS (1371:7-15 (Reiz))—is not specific to the “booking services” markets and is something that Tim Reiz testified he could not accomplish given Farelogix’s limited resources.

(1372:25-1373:4 (Reiz).) Moreover, Sabre CEO Sean Menke testified that Sabre is acquiring Farelogix precisely for its inventive talent (716:17-20 (Menke)), and Tim Reiz himself testified that he is excited to join Sabre because doing so will enable him to put Sabre's resources behind his work to potentially develop a next generation PSS and artificial intelligence technologies. (1346:6-18 (Reiz).) Finally, Fareportal co-CEO Werner Kunz-Cho testified that "this merger will likely help innovation and allow Sabre to provide better content in ways that airlines wish to see that content displayed." (1307:6-10 (Kunz-Cho).)

F. DOJ's Airline Witnesses Will Not Be Harmed by the Merger

206. Despite DOJ's claim that the transaction will "harm both airlines and travelers," DOJ only presented the testimony of two airlines that claimed any harm, American Airlines and United Airlines, and no "travelers." (25:4-8 (DOJ Opening).)

207. In order to assure United that Sabre would "fully maintain and develop Farelogix's products and services, including Farelogix's Open Connect," Sabre CEO Sean Menke sent United a letter offering to extend United's Sabre and Farelogix contracts for three years past the current termination dates. (DX 228; [REDACTED]) Mr. Menke's offer would extend United's Farelogix contract termination date to [REDACTED] ([REDACTED] [REDACTED])

208. [REDACTED]

[REDACTED]

[REDACTED]

209. [REDACTED]

210. United's internal estimates suggest that it could build its own NDC API for just

[REDACTED] (329:5-11 (Radcliffe).) [REDACTED]

211. Mr. Menke also sent a letter to American Airlines with the same commitments as he made to United. (*See* 720:13-721:9, 722:8-22 (Menke).) American has not yet accepted Sabre's offer. (*See* 723:16-23 (Menke).) But Mr. Menke testified that he is hopeful that airlines will begin engaging with Sabre's offer after Sabre's acquisition of Farelogix closes. (*See* 723:16-724:7 (Menke).)

212. Moreover, American has been exploring the requirements to build its own NDC API since at least 2015. (*See* DX 453 at AA-CID-SF_00000966, 0975.) And the evidence submitted at trial suggests that it would be profitable for American to build its own NDC API: American's internal estimates suggest that it would cost between [REDACTED] to build its own NDC API, and that it would cost about [REDACTED] per year to maintain the NDC API. (DX 453 at AA-CID-SF_00000975; 162:2-19 (Garner).) These costs are surpassed by what American has estimated to be approximately \$101 million in cost savings per year that would result from pursuing its direct connect strategy. (*See* DX 453 at AA-CID-SF_00000970;

162:2-24 (Garner).) Accordingly, if American decides to accept Mr. Menke’s offer to extend the terms of its Farelogix contract for three years after the proposed acquisition closes, American would have time to build its own NDC API—which would pay for itself in year one based on American’s own forecasts—before its GDS contract with Sabre would expire. (See DX 453 at AA-CID-SF_00000970; 162:2-24 (Garner).) Finally, if American expected it would have been harmed by the transaction, it would not have offered to publicly support the proposed merger if Sabre had agreed to [REDACTED]

[REDACTED] (DX 202; 155:16-156:14, 158:14-17 (Garner).)

G. DOJ’s Documentary Evidence of Purported Competitive Harm Is Flawed

213. The documents that DOJ relied on during trial and in closing arguments do not show that Sabre’s acquisition of Farelogix would harm competition:

214. PDX 4: DOJ claims that PDX 4 shows that Sabre has already considered a price increase for FLX OC. However, Mr. Gilchrist, who is not a member of the senior executive team, testified that this text merely reflected what he believed Mr. Garner’s reaction to the acquisition would be, not Sabre’s plans for Farelogix’s products. (763:24-764:23 (Gilchrist).)

215. PX 48: The headline in DOJ’s Closing presentation discussing PX 48 states that “Farelogix and Sabre sell ‘Booking Management’ products.” (DOJ Closing Slides at 15.) The comments explaining page 15 make clear, however, that the table is comparing certain functionality in FLX OC to the functionality of “SabreSonic”—i.e., Sabre’s PSS, not its GDS. (PX-048 at SABR-000027815.) Moreover, this 2017 document prepared by low-level Sabre employees was only shown to Professor Murphy and not to any one of the Sabre executives who testified at trial and could have provided the proper context.

216. PX 72: DOJ referenced this document to purportedly show that Farelogix has stated that Amadeus and Sabre are its two main competitors for Order Delivery. (1923:13-21.)

However, the exact reference in the document states, “Order Delivery: Competitors - Sabre and Amadeus PSS as both have articulated plans *for offer NDC APIs as part of their PSS [not GDS] offering.*” (PX-72 at FLX-000874219 (emphasis added).)

217. PX 80 and PX 187: DOJ used PX 80 and PX 187 to suggest that Farelogix believed Sabre would value a Farelogix transaction because Sabre could “tak[e] out a strong competitor” by acquiring FLX OC. (PX 187.) DOJ went so far as to cite this language in its Complaint and Pre-trial brief, but Theo Kruijssen testified at trial that this language was not about FLX OC at all, but concerned Farelogix’s Merchandising and Shop & Price products, as Sabre is not currently a competitor in the NDC API space and FLX M is a superior product to Sabre’s Merchandising engine. (614:16-21, 629:18-24 (Kruijssen).) The document does not mention FLX OC at all. (625:4-10 (Kruijssen).) Similarly, DOJ attempted to cast aspersions on the phrase “taken out by GDS” being in the documents, but Mr. Kruijssen explained that this language referred to the fact that a Sabre transaction would be a full acquisition and take away the possibility of Farelogix shareholders benefitting from a “double valuation.” (613:14-17 (Kruijssen).) Mr. Kruijssen explained that this language referred to the fact that he personally preferred a transaction that would allow Farelogix shareholders to retain a minority investment in the company so they could sell the remaining stake if the company’s valuation increased. (625:15-626:9 (Kruijssen).)

218. PX 84: DOJ referenced this document as supporting the claim that Farelogix provides leverage in the context of GDS passthrough transactions. (1758:2-9, 1781:2-9.) However, this document discusses GDS bypass and GDS passthrough as a “two path NDC delivery” strategy and there is no indication within the document that any benefits listed are specifically tied to GDS passthrough. Indeed, one of the purported benefits is specific to GDS

bypass. (PX 84 at 2 (stating it “[s]trengthens commercial relationship between airline and strategic TMCs/ OTAs/ Corporations”).)

219. PX 87: DOJ claims that PX 87 is an instance where Farelogix was competing head-to-head against Sabre for business from [REDACTED] (1847:9-11.) However, as Greg Gilchrist testified, the [REDACTED] bid involved a negotiation where Sabre was competing against Amadeus—not Farelogix—for PSS and GDS. (770:11-21 (Gilchrist).)

220. PX 96: DOJ introduced PX 96 for the proposition that Farelogix complained to the European Commission about GDS conduct at the same time it was negotiating a deal with Sabre. (396:17-402:12 (Davidson).) However, Mr. Davidson clarified that Farelogix made this presentation at the request of the airline-owned IATA, and that the presentation was intended as a historical NDC educational tool—not as a complaint. (439:24-440:18 (Davidson).)

221. PX 156: DOJ points to PX 156 for the proposition that Sabre wants to avoid any commercial model that would accelerate bypass. (1766:19-1767:1.) In reality, Sabre has not been reluctant to consider alternative commercial models, as reflected in strategy documents, such as [REDACTED] (PX 156 at 14; 305:3-306:2 (Garner).) Indeed, evolving its commercial model has been a feature of Sabre’s strategy under Mr. Menke, who has sought to make Sabre the industry’s trusted technology provider. (DX 43 at 2; 706:3-17, 718:13-19 (Menke).)

222. PX 178: Contrary to DOJ’s assertion, Professor Murphy did not “acknowledge the booking services market” in PX 178, a January 2012 report he submitted to DOJ on behalf of Sabre. Rather, Professor Murphy was [REDACTED]

[REDACTED] (PX 178 at 67 ¶ 139.) Professor Murphy concluded that [REDACTED]

[REDACTED]” (*Id.* (emphasis added).)

223. PX 183: When he testified, Mr. Kruijssen disagreed with the statement that “Farelogix’s lowered booking fees put pressure on the GDSs to reduce their distribution fees to airlines.” (598:17-20 (Kruijssen).) DOJ attempted to rebut Mr. Kruijssen’s statement about present-day economics by showing him PX 183, a document from 2015; Mr. Kruijssen observed in response that “I don’t think that ever happened, so this was in ’15, in the last five years. To my knowledge, that hasn’t happened.” (604:15-17 (Kruijssen).) Mr. Kruijssen noted that this document was drafted to consider arguments to make to Amadeus regarding the valuation of Farelogix and that Amadeus never increased its valuation. (628:11-17 (Kruijssen).) Mr. Kruijssen explained further that documents predating mid-2018 do not reflect current marketplace conditions for the supply of NDC APIs given that the “industry had completely changed.” (622:22-623:12 (Kruijssen).)

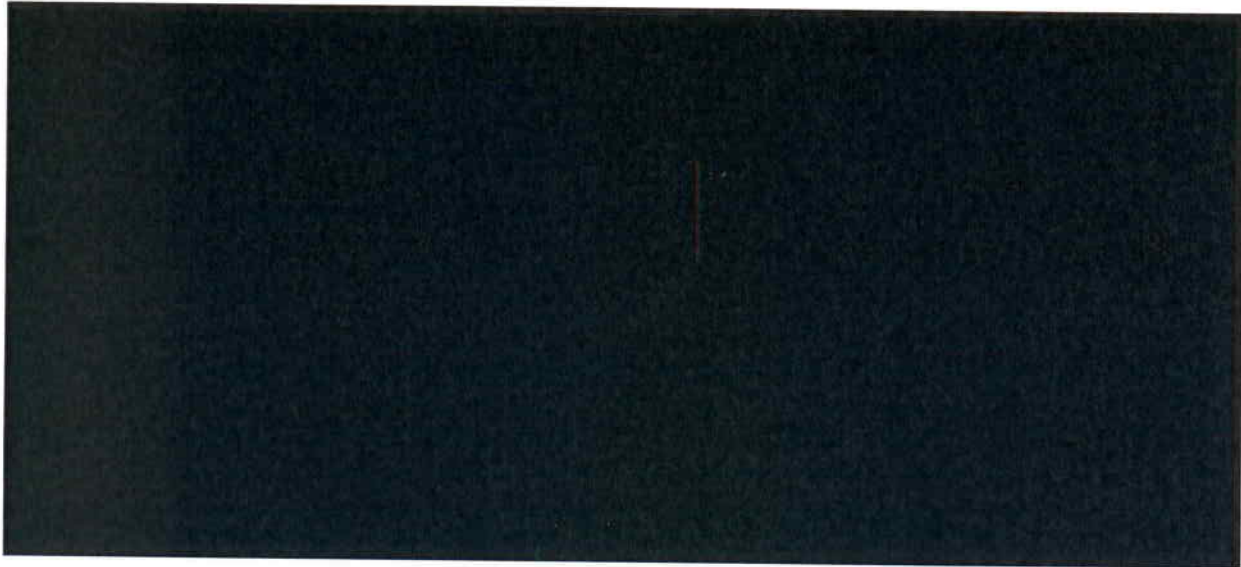
224. PX 220: DOJ’s assertion that the bullet “mitigate[d] the risk of GDS bypass” in a July 2018 powerpoint indicates that Sabre’s objective in purchasing Farelogix is to remove FLX OC from the market. (*See, e.g.*, PX 220 at SABR-0010608474; *see also* Boyle Demonstrative 1.) However, Mr. Boyle testified that the slide was inserted last minute by two subordinates during a hectic time period (544:5-23 (Boyle)), that the bullet is inconsistent with the rest of the document as well as an earlier deal rationale document from February 2018 (553:21-557:8 (Boyle) (discussing DX 86)), and that he deleted the bullet after he noticed it. (516:21-517:1 (Boyle).) Moreover, the final presentation prepared for Sabre’s board of directors for the purposes of approving the Farelogix transaction did not include “mitigating the risk of GDS bypass” as rationale for the deal. (*See* DX 145.) And, contrary to DOJ’s insinuations at trial,

Mr. Boyle testified that he did not recall “hav[ing] any communications with outside counsel or inside counsel with respect to” PX 220. (527:8-11 (Boyle).)

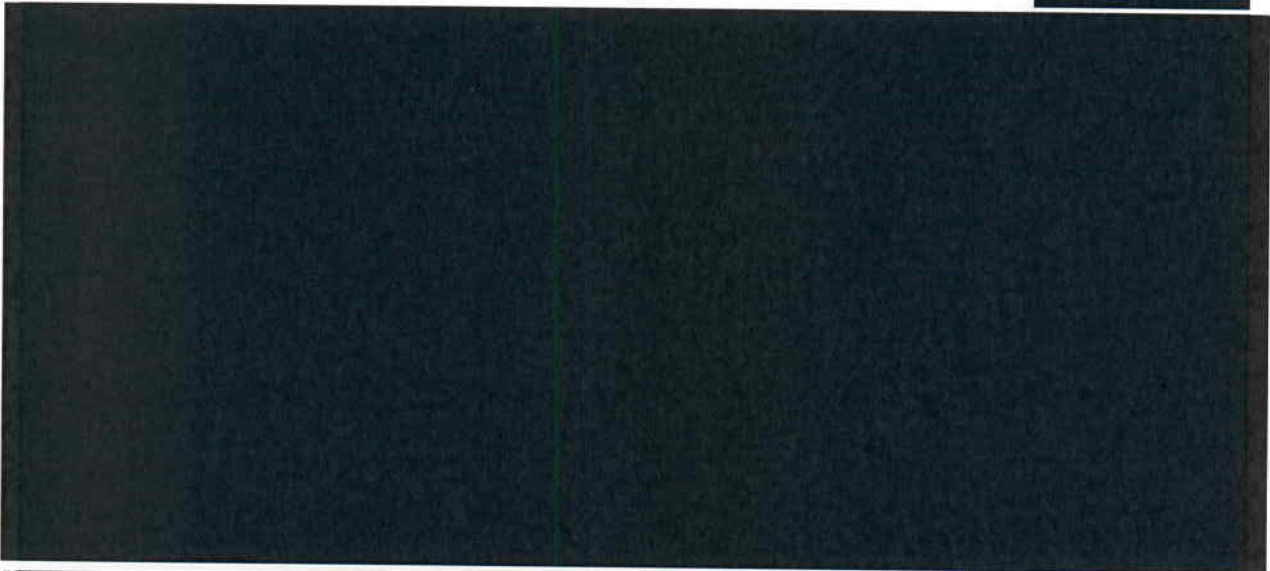
225. PX 245: DOJ points to Slide 24 in PX 245 (a Sabre deck from 2017) for the proposition that it shows the transaction would result in net harm to both sides of the Sabre GDS platform. (1943:19-1944:12.) However, Mr. Menke testified that slide 24 was a mere “illustration” of what potentially could happen if Sabre’s technology does not transform, not actually what would happen or has happened. (689:14-690:4 (Menke).) Mr. Menke further testified that the industry (and Sabre) has evolved since 2017 toward integrating NDC into the GDS. (727:2-3 (Menke).)

226. PX 251: DOJ also relies on the “Risk Factors” identified in Sabre’s 2018 10-K to support the notion that Sabre viewed direct connect as a threat. (PX 251.) However, DOJ neglects to note that the sentence prior to the one about direct connects lists direct distribution through airline websites as the first and most significant risk. (See PX 251 at 7-8.) DOJ also fails to mention that the 10-K contains another section on competition, which notes that the “travel distribution market is highly competitive, and [Sabre is] subject to competition from other GDS providers, direct distribution by travel suppliers and new entrants or technologies that may challenge the GDS model” and that “[a]ny inability or failure [by Sabre] to adapt to technological developments or the evolving competitive landscape could harm [Sabre’s] business operations and competitiveness.” (PX 251 at 11.)

227. PX 343: DOJ claims that PX 343 shows that Sabre views direct connect as a forward-looking risk. (PX 343 at 29.) However, Mr. Shirk testified that [REDACTED]
[REDACTED]
(1621:23-1622:22 (Shirk).) Regarding [REDACTED]



228. PX 392: DOJ claims PX 392 is indicative of Sabre's intent "to implement a 200 percent price increase" on direct connect solutions post-transaction. (1767:12-14.) However, the document shows that in Sabre's valuation of its GDS and PSS negotiations with [REDACTED]



[REDACTED] Nothing in PX 392 or any other evidence offered by DOJ indicates that [REDACTED] "leveraged" the threat of direct connect to achieve GDS savings.

229. PX 426: DOJ cites Professor Murphy's 2012 expert report submitted during American Airlines' litigation against Sabre in Texas state court for the proposition that he acknowledged that "American's direct connect was one of the major forces leading to lower GDS fees." (1770:1-2.) However, Professor Murphy's report states that he found that the threat of losing business to other GDSs and to American's website, as well as withholding content from Sabre entirely, were significantly more important negotiating tools for American than direct connect. (*See, e.g.*, PX 426 at 76; 1525:25- 1526:5 (Murphy) ("[Direct connect is] one of the tools they have. Again, I think I have stressed and throughout my reports that that would be one, but, you know, Sabre losing business to the other GDSs and certainly aa.com, as I mentioned here, and the threat to withhold content really being the primary ones. I think that has been consistently my view for a long time."); *see also* 1524:2-1527:20 (Murphy).) Professor Murphy's conclusions regarding the importance of other GDSs and airline websites relative to direct connect have been consistent throughout time. (*See, e.g.*, 1426:17-25, 1427:8-1428:2, 1430:15-1431:14, 1437:1-1438:6, 1432:12-1434:11 (Murphy) (describing "rival GDSs" as "the greatest constraint, particularly in the long run on Sabre," and "Airline.com" as "the major place where non-GDS alternatives are" and "the most important short-term constraint").)

230. PX 430: DOJ similarly cites Professor Murphy's testimony from the *U.S. Airways* litigation for the proposition that Professor Murphy admits that direct connects give airlines leverage. (US Closing Slides at 34.) However, in his testimony, Professor Murphy stated that he thinks the top two threats airlines used are moving business to other GDSs and diverting traffic to airline websites, not direct connect. (1571:8-11 (Murphy).) Moreover, Professor Murphy was clear that to the extent direct connects gave airlines any leverage in the past, that leverage has "weaken[ed]." (*See* 1539:24-1540:6 (Murphy) ("And the other thing I would say, at that time,

this was a time period where I think direct connects were heading, proving themselves as—the market had come around. They had been around a long time. Hadn't really found themselves very strong alternatives in the U.S. marketplace. I think it's going to weaken their bargaining position over time, but I agree, at this time it would have been there, pretty far behind the ability of full content.”.)

231. PX 436: DOJ claims that PX 436—an email about the deal model for the Farelogix acquisition—shows that Sabre recognized that there was not a better solution than FLX OC in the marketplace. However, this document demonstrates that Sabre believed there were alternatives to FLX OC, because it states that the model “ [REDACTED]

[REDACTED] (PX 436 at 1.)

232. PX 496: DOJ cites to PX 496 as an example of Sabre acknowledging that airlines are using NDC as leverage to drive down costs. But, while Mr. Wilding's text message may show that airlines “want to use [NDC to] drive down cost and use as leverage with GDSs and travel agencies” (PX 496), Mr. Wilding testified that price reductions resulting from NDC are “not something I agree with” (856:20-857:8 (Wilding)), and DOJ did not elicit testimony from Mr. Wilding that airlines have received lower GDS fees as a result of NDC.

233. PX 501: DOJ uses PX 501 to highlight a question purportedly posed by an executive at one TMC—whom DOJ did not subpoena to testify—about Sabre's intent in acquiring Farelogix. The executive 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.”” (PX 501.) DOJ presumably intends to use this question for which there is very little context—and again, from an individual whom DOJ did not call to testify—to

cast doubt on the motives of Sabre and the three travel agency executives who testified in favor of the transaction—and who DOJ had a chance to cross examine.

DATED: February 13, 2020

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,	:	
	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	Civil Action No.: 1:19-cv-01548-LPS
	:	
SABRE CORPORATION,	:	
SABRE GLBL INC.,	:	
FARELOGIX, INC., and	:	
SANDLER CAPITAL PARTNERS V, L.P.,	:	
	:	
<i>Defendants.</i>	:	

CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that on February 13, 2020, Defendants, by their undersigned attorneys, caused a copy of Defendants’ Proposed Findings of Fact to be served on the following counsel of record via electronic mail:

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