

MERGER ANTITRUST LAW

LAWJ/G-1469-05
Georgetown University Law Center
Fall 2021

Tuesdays and Thursdays, 3:00-5:00 pm
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READING GUIDANCE

Class 26 (December 2): Sabre/FareLogix (Unit 15)

In our last class, we spend most of our time on the DOJ's challenge to the Sabre/FareLogix transaction. The reading materials start with the usual company press release and investor presentation (pp. 4-22) but feel free to skip those. I suggest you read the DOJ press release (p. 23) to get your bearings and skim or skip the complaint (pp. 24-44). The opinion is lengthy, but after reading the introductory sections (pp. 47-51), you can skip the findings of fact (pp. 51-112) and instead focus on the legal analysis (pp. 112-38). As you read the legal analysis, try to see why the DOJ failed to convince the court of the merits of its complaint. Think about how you might have tried the case differently. As with *AT&T/Time Warner*, you can learn as much, if not more, by analyzing litigation failures as you can by analyzing litigation successes.¹

Finally, read the two short excerpts from *T-Mobile/Sprint* with some care (pp. 146-62). In *H&R Block/TaxACT*, *Sysco/US Foods*, and *Staples/Office Depot*, we have seen how courts can be guided substantively by expert economic analysis. Even *AT&T/Time Warner* took the economic analysis very seriously, although it rejected the conclusions of the DOJ's expert economist on the merits. *T-Mobile/Sprint* is one of the first modern cases to reject sophisticated economic analysis as probative essentially and to rely instead on more "traditional modes" of fact finding through percipient witnesses. Consider the court's attitude about expert economic testimony carefully and ask yourself what states could have done, if anything, to make their case more persuasive to the judge.

P.S. Do not forget that we have an optional review session on Friday, December 3, from 3:00 pm to 5:00 pm. You can find the Zoom link in the last entry on the class schedule in Canvas.

¹ Incidentally, the Sabre/Farelogix transaction was also subject to merger review by the UK's Competition and Markets Authority ("CMA"). A week after the court issued its decision denying the DOJ's request to enjoin the deal, the CMA issued its final report and blocked the deal. Competition & Markets Authority, [Anticipated Acquisition by Sabre Corporation of Farelogix Inc.](#) (Apr. 9, 2020). The parties abandoned the deal on May 1 citing the CMA's decision. Press Release, Sabre Corporation, [Sabre Corporation Issues Statement on its Merger Agreement with Farelogix](#) (May 1, 2020).