

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



===== THE UNITED STATES =====
DEPARTMENT *of* JUSTICE

Ordinary Course Documents Show Sabre and Farelogix Competing

“Farelogix is Sabre’s **main competitor** in this pursuit.”

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PX316 at 5

Ordinary Course Documents Show Sabre and Farelogix Competing

“Farelogix is Sabre’s **main competitor** in this pursuit.”

“[Farelogix is] a **strong competitor** [causing] continued competition and price pressure in the market”



PX187 at 3

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PX452 at 1

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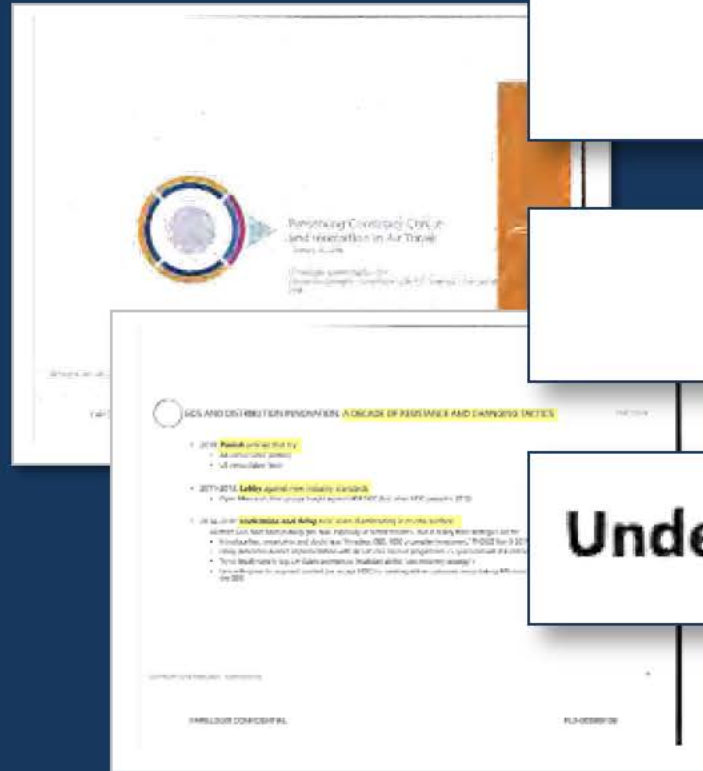
The Decades-Long Status Quo

A DECADE OF RESISTANCE AND CHANGING TACTICS

Punish airlines that try

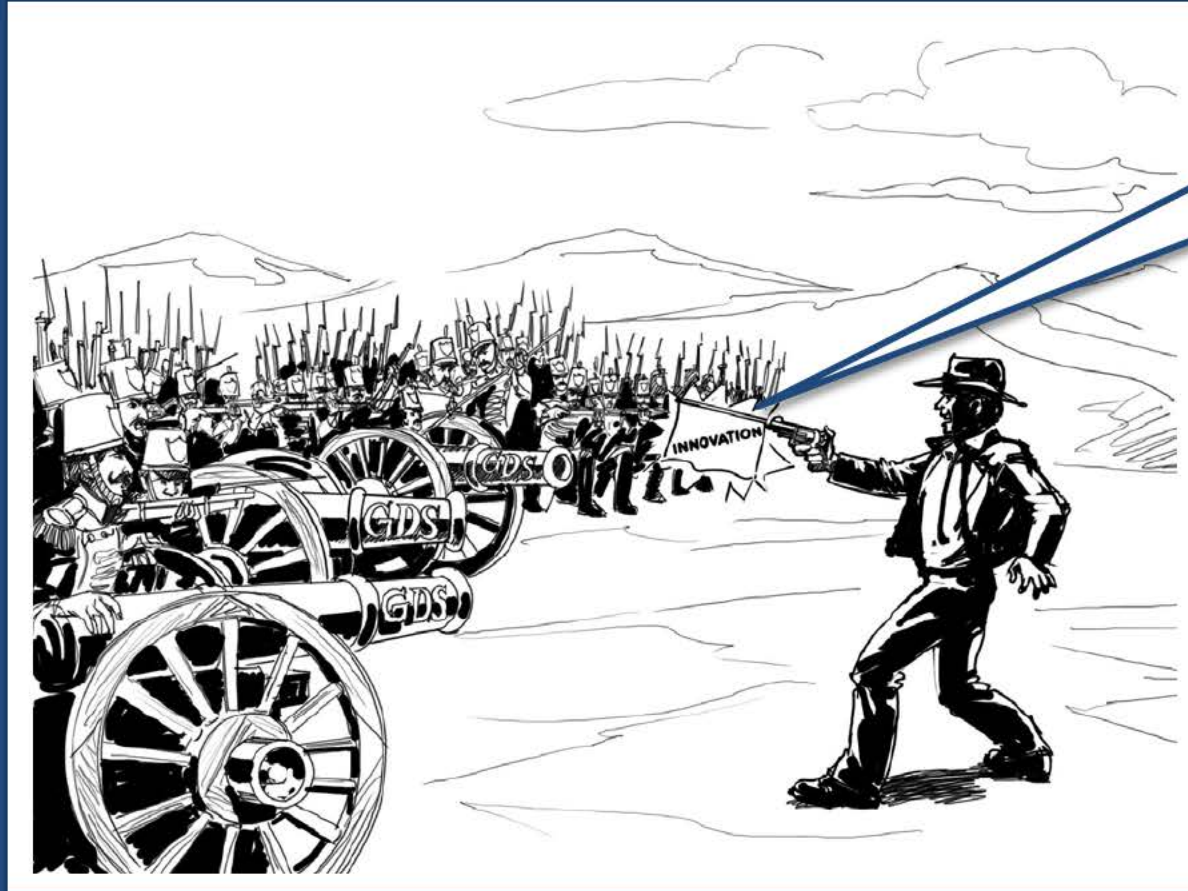
Lobby against new industry standards

Undermine and delay NDC even if embracing it on the surface



Farelogix Disrupts the Status Quo

FARELOGIX on *Sabre*



PX090 at 1

Sabre is Threatened by Farelogix

Sabre on **FARELOGIX**

The competition

amadeus



Travelport 
Redefining travel commerce

Datalex 

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SABR-002633968

Ordinary Course Documents Illustrate Market Reality

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

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

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

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



Firms Can Compete In More than One Market

“The fact that [acquiring firm] may offer more comprehensive services than [acquired firm] *does not change the fact* that, with respect to the type of services offered by [acquired firm], [acquiring firm’s] services overlap with those of [acquired firm] and are reasonable substitutes.”

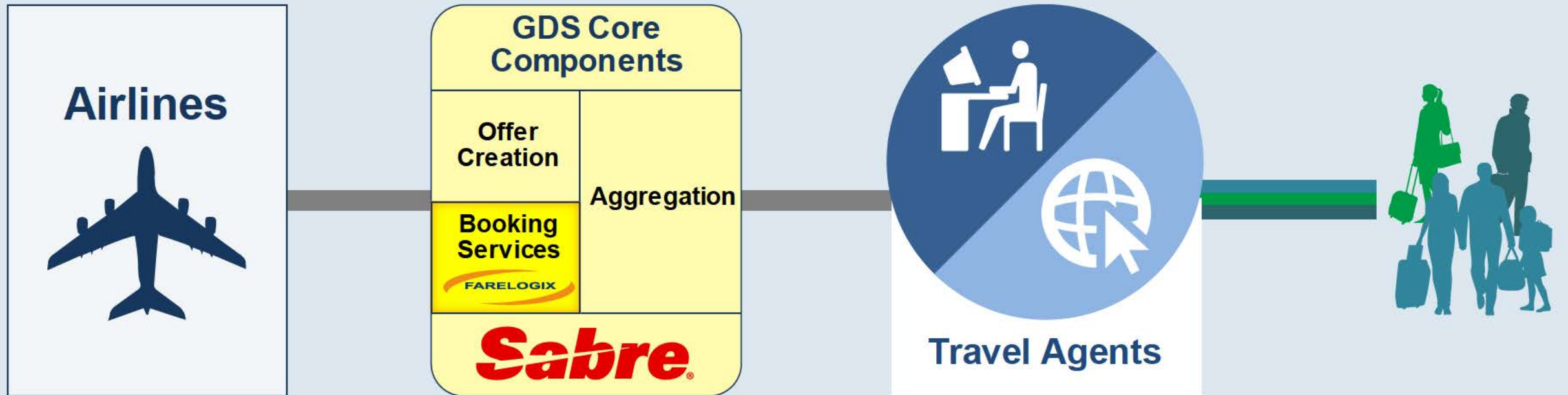
United States v. Energy Sols., Inc., 265 F. Supp. 3d 415, 439 (D. Del. 2017)

“[W]ithin this broad [relevant market], well-defined submarkets may exist which, *in themselves, constitute product markets* for antitrust purposes.”

Brown Shoe Co. v. United States, 370 U.S. 294, 325 (1962)



Indirect Distribution of Airline Tickets



Market Definition Is a Pragmatic Determination

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

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

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

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

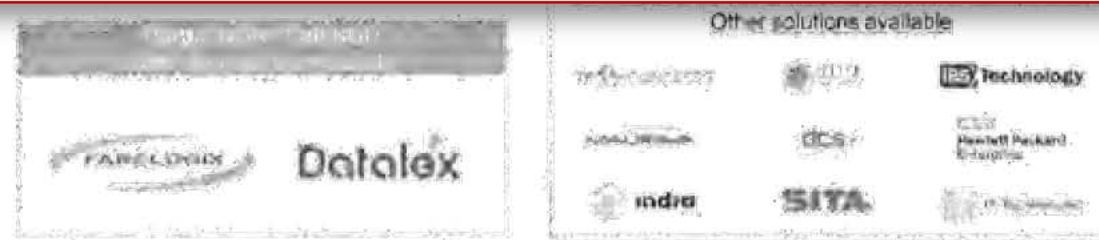


Section 7 Guards Against Lessening of Competition

Sabre on **FARELOGIX**

Among competitors, Amadeus, Farelogix, and Datalex are the most relevant threats with others providing more limited technology

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SABR-000110913

Plaintiff Can Establish a *Prima Facie* Case In Multiple Ways

- **Market shares can establish a *prima facie* case**

“While there is no bright-line rule . . . the Supreme Court has held that a post-merger market share of 30% triggered the *presumption of anticompetitive effects*.”

United States v. Energy Sols., Inc., 265 F. Supp. 3d 415, 441 (D. Del. 2017)
(citing *United States v. Phila. Nat’l Bank*, 374 U.S. 321, 364 (1963))

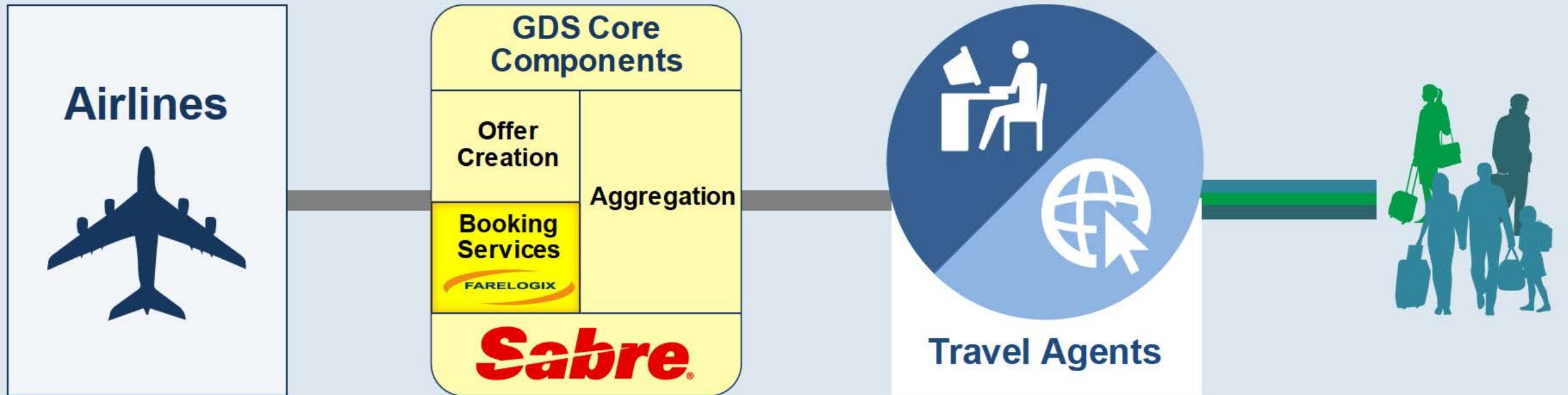
- **Other types of evidence can establish a *prima facie* case**

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

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

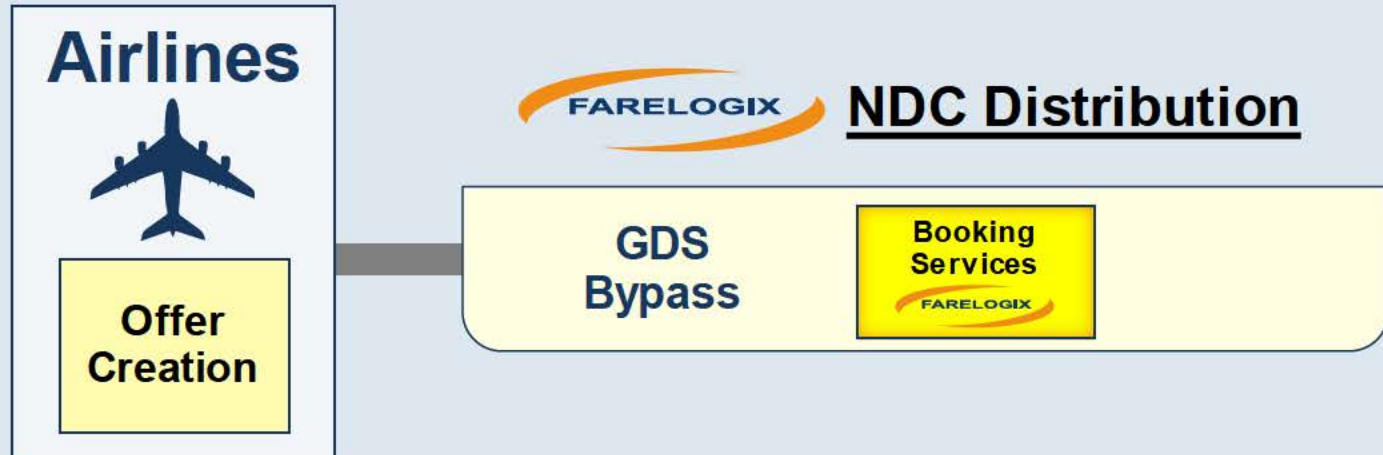


Indirect Distribution of Airline Tickets



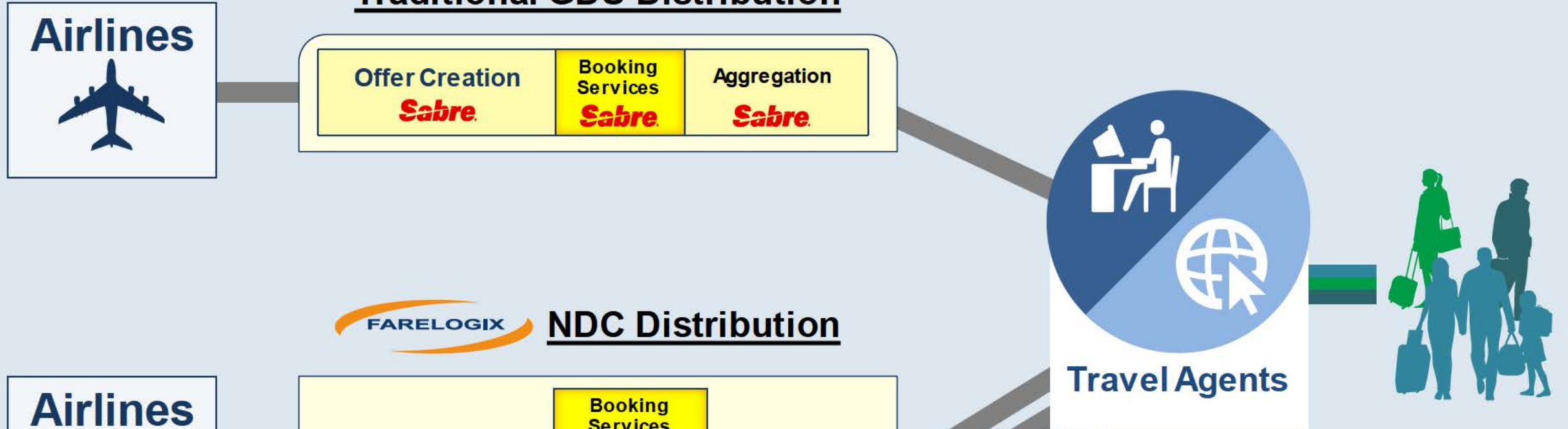
Sabre and Farelogix Both Provide Booking Services

Traditional GDS Distribution

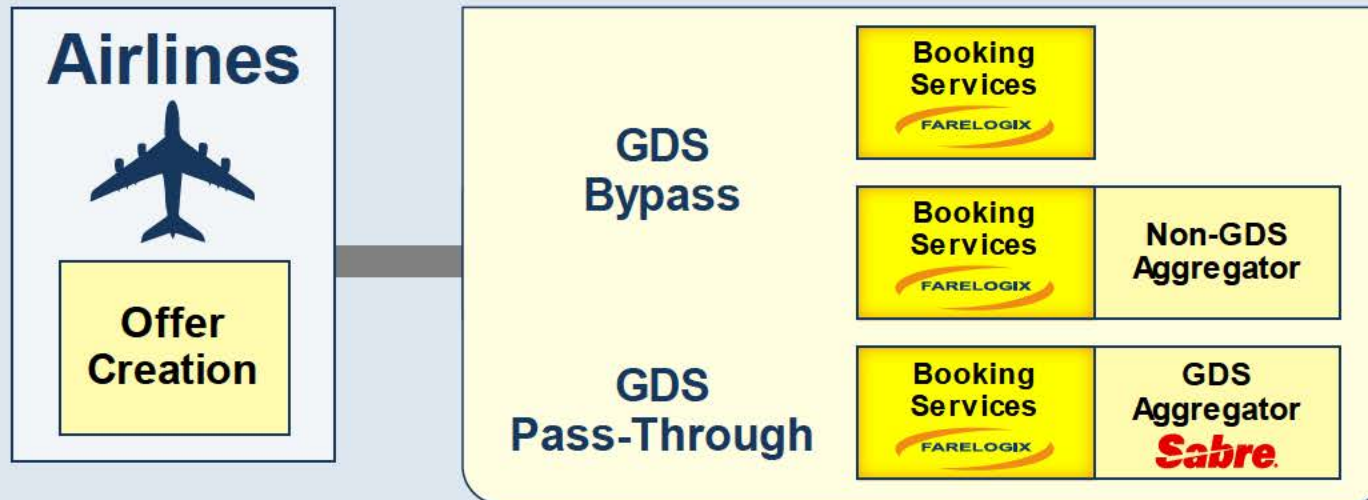


Sabre and Farelogix Both Provide Booking Services

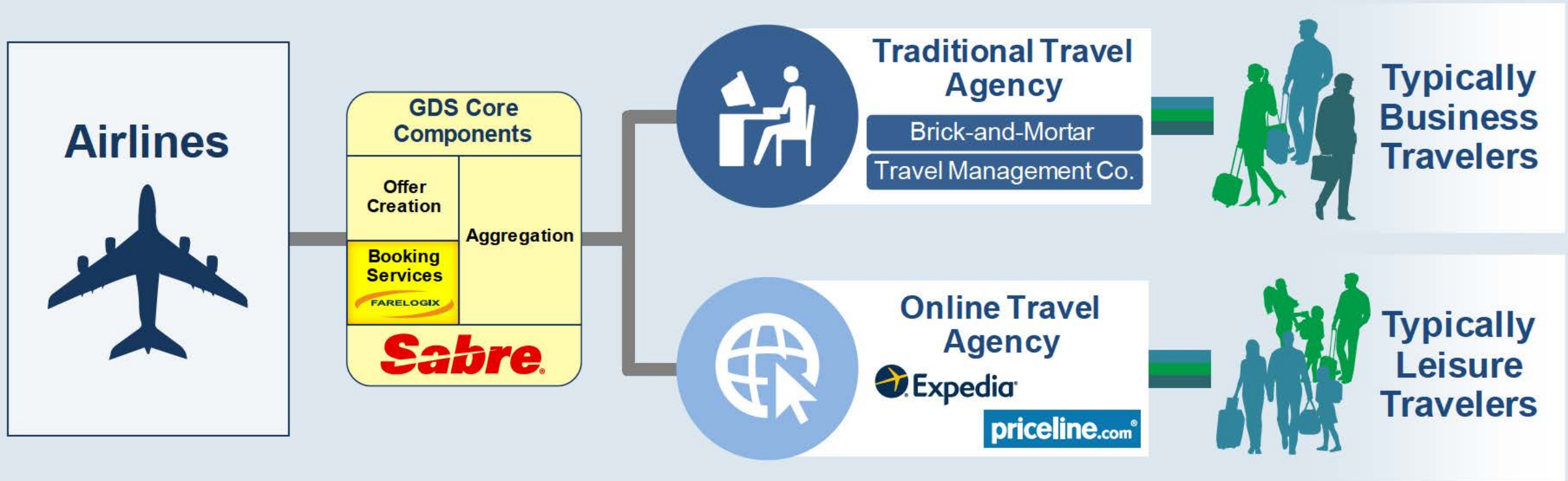
Traditional GDS Distribution



NDC Distribution



Indirect Distribution of Airline Tickets



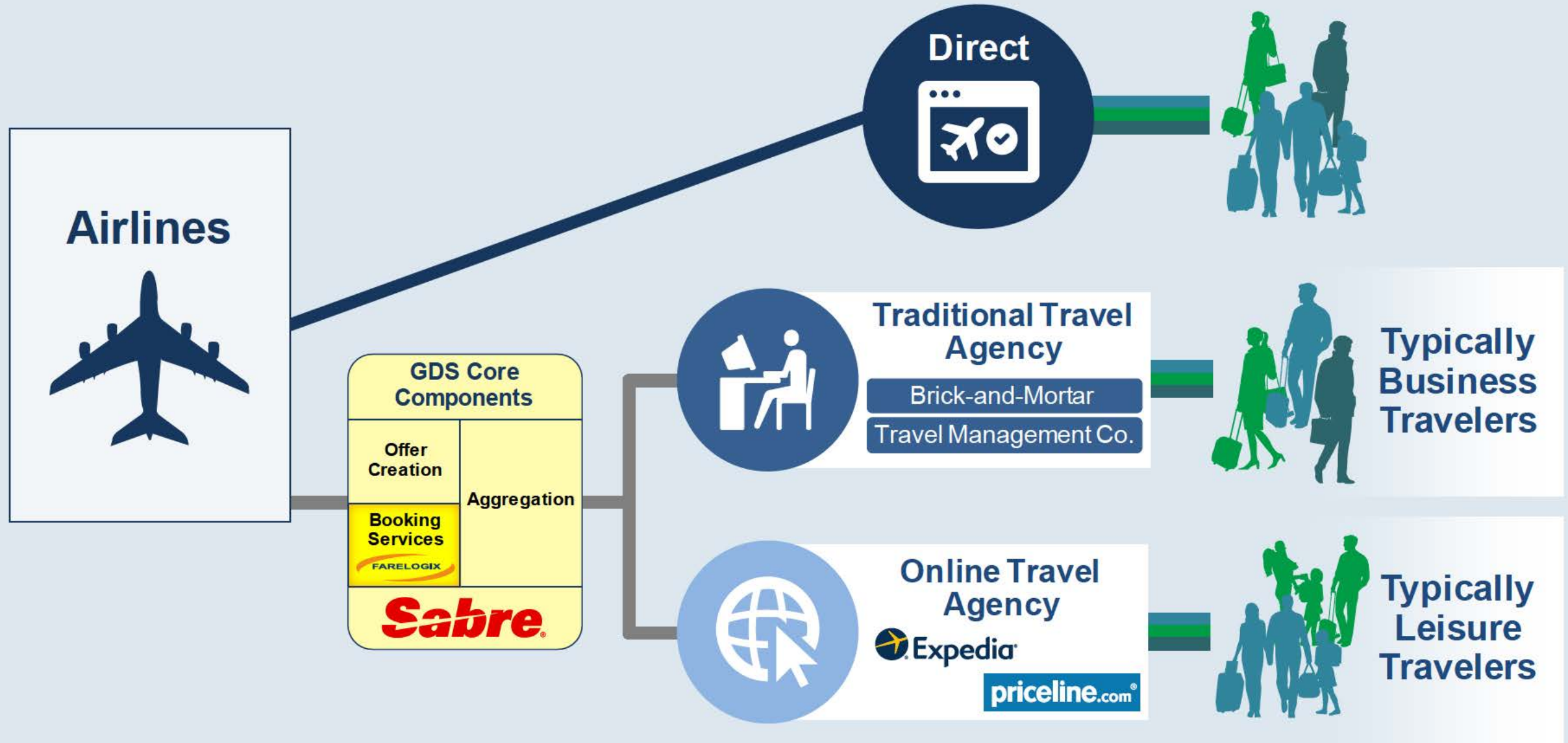
Hypothetical Monopolist Test

“A common method employed by courts and the FTC to determine the relevant [] market[s] is the hypothetical monopolist test. Under the *Horizontal Merger Guidelines* issued by the U.S. Department of Justice’s Antitrust Division and the FTC, if a hypothetical monopolist could impose a small but significant non-transitory increase in price (“SSNIP”) in the proposed market, the market is properly defined.”

Fed. Trade Comm’n v. Penn State Hershey Med. Ctr.,
838 F.3d 327, 338 (3d Cir. 2016)



Indirect and Direct Distribution are Not Substitutes



Market Shares Establish a Presumption of Harm

Online Travel Agency

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

Traditional Travel Agency

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

Farelogix Deleverages the Power of the GDSs

Two Distribution Paths Give Airlines Maximum Control and Leverage

Deleverages the traditional GDS-Airline commercial relationship



Farelogix is a Valuable Alternative for Customers

“just having FLX in the game is almost guaranteed to save them 10 to 20X of our annual fees in a SABRE negotiation”

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PX087 at 1

Farelogix is a Valuable Alternative for Customers

“just having FLX in the game is almost guaranteed to save them 10 to 20X of our annual fees in a SABRE negotiation”

“there’s a **real alternative** to the GDSs. This is through the Farelogixs of the world”



PX367 at 1

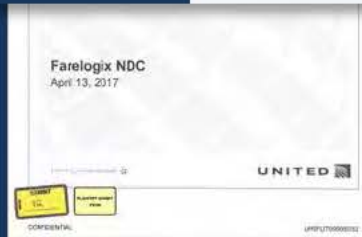
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PX300 at 2

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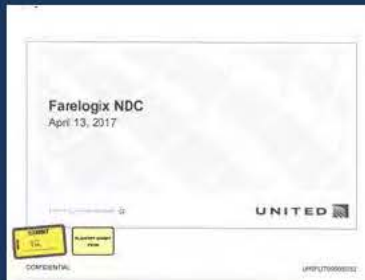
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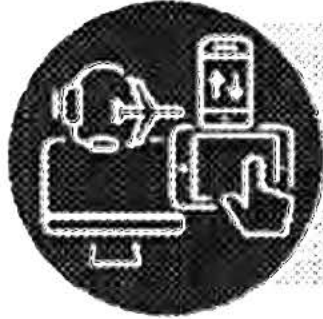
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New Technology Can Disintermediate Sabre



New technology¹ emerges at a much lower cost, disintermediating GDS

1. New technologies includes NDC and other capabilities that have the potential to disrupt travel distribution



Farelogix is an Originator of NDC

Farelogix is

- A provider of **leading and innovative** airline commerce solutions, whose sole focus is providing technology for new generation airline distribution and commerce
- The **originator** of the baseline industry schema for IATA New Distribution Capability (NDC).

Farelogix's Innovations Benefit the Industry and Consumers



PX090 at 1

“The Farelogix direct connect software is **innovative and changing the way the airline industry operates**”

Farelogix's Innovations Benefit the Industry and Consumers

PX299 at 1

CONFIDENTIAL

EXHIBIT 10

UK-Sabre X-001776

“Farelogix also keeps GDSs **on their toes** relative to **innovating** to keep up.”

PX299 at 1

EXHIBIT 10

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Farelogix's Innovations Benefit the Industry and Consumers



PX090 at 1

“The Farelogix direct connect software is **innovative and changing the way the airline industry operates**”



PX299 at 1

“Farelogix also keeps GDSs **on their toes** relative to **innovating** to keep up.”

Documents Showing Intent Are Probative

“[E]vidence indicating the purpose of the merging parties, where available, is *an aid in predicting the probable future conduct* of the parties and thus the probable effects of the merger.”

Brown Shoe Co. v. United States, 370 U.S. 294, 329 n.48 (1962)

“While intent is not an element of a Section 7 violation, the admissions made by [Defendants’] officers and employees prior to the merger during their intense competition with each other undergirds the government’s case and conflicts with much of [Defendant’s] presentation at trial.”

United States v. Bazaarvoice, Inc., 2014 U.S. Dist. LEXIS 3284 at 36-37



Sabre Expects to Benefit from Acquiring Farelogix

Mitigate risk from potential GDS bypass

[illegible]

Sabre Expects to Benefit from Acquiring Farelogix

Project Name	Project Description	Project Status	Project Manager
Project Alpha	Development of a new software application for the finance department.	In Progress	John Doe
Project Beta	Implementation of a new hardware system for the marketing department.	Completed	Jane Smith
Project Gamma	Upgrade of the existing database system for the HR department.	On Hold	Mike Johnson
Project Delta	Research and development of a new product line for the R&D department.	Planning	Sarah Lee
Project Epsilon	Deployment of a new security system for the IT department.	Completed	David Brown
Project Zeta	Optimization of the existing website for the sales department.	In Progress	Emily White
Project Eta	Integration of a new CRM system for the sales department.	On Hold	Chris Green
Project Theta	Development of a new mobile application for the marketing department.	Planning	Alex Black
Project Iota	Implementation of a new ERP system for the finance department.	Completed	Mia Grey
Project Kappa	Upgrade of the existing server infrastructure for the IT department.	In Progress	Noah Blue
Project Lambda	Research and development of a new product line for the R&D department.	Planning	Olivia Red
Project Mu	Deployment of a new security system for the IT department.	Completed	Peter Yellow
Project Nu	Optimization of the existing website for the sales department.	In Progress	Quinn Purple
Project Xi	Integration of a new CRM system for the sales department.	On Hold	Rachel Pink
Project Omicron	Development of a new mobile application for the marketing department.	Planning	Sam Brown
Project Pi	Implementation of a new ERP system for the finance department.	Completed	Tina Green
Project Rho	Upgrade of the existing server infrastructure for the IT department.	In Progress	Uma Blue
Project Sigma	Research and development of a new product line for the R&D department.	Planning	Victor Red
Project Tau	Deployment of a new security system for the IT department.	Completed	Wendy Yellow
Project Upsilon	Optimization of the existing website for the sales department.	In Progress	Xavier Purple
Project Phi	Integration of a new CRM system for the sales department.	On Hold	Yara Pink
Project Chi	Development of a new mobile application for the marketing department.	Planning	Zoe Brown

The FLX bill is going up big time

Defendants Cannot Rebut Prima Facie Case

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

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

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

United States v. Anthem, Inc., 855 F.3d 345, 349-50 (D.C. Cir. 2017)
(quoting *United States v. Baker Hughes*, 908 F.2d 981, 991 (D.C. Cir. 1990))



Entry Would Not Be Timely, Likely, or Sufficient

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

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

Alleged Efficiencies Cannot Rebut Anticompetitive Harm

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

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

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