

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

SABRE CORP.,
SABRE GLBL INC.,
FARELOGIX INC., and
SANDLER CAPITAL PARTNERS V, L.P.,

Defendants.

Civil Action No. 1:19-cv-01548-LPS

PLAINTIFF'S PROPOSED FINDINGS OF FACT

REDACTED PUBLIC VERSION

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I. DEFENDANTS AND THE PROPOSED TRANSACTION

1. Sabre Corporation (“Sabre”) is a Delaware corporation headquartered in Southlake, Texas. Pretrial Order (“PTO”) Ex. 1 ¶ 2, D.I. 182. Sabre Corporation is the ultimate parent entity of Sabre GBL Inc., Sabre’s principal operating subsidiary and a signatory to the merger agreement with Farelogix. PTO Ex. 1 ¶ 3, D.I. 182.

2. Sabre’s Travel Solutions division contains its Travel Network and Airline Solutions business units. Tr.¹ 679:15-18 (Menke/Sabre). Travel Network operates Sabre’s global distribution system (“GDS”). PTO Ex. 1 ¶ 5, D.I. 182. Sabre’s GDS is the largest in the United States. PX389 at -437 (showing Sabre’s market share in the U.S. market). Airline Solutions sells other information technology (“IT”) products for airlines, including a passenger service system (“PSS”). PTO Ex. 1 ¶ 7, D.I. 182. A PSS houses IT infrastructure critical to an airline’s operations, including its reservations and inventory systems. PTO Ex. 1 ¶ 8, D.I. 182.

3. In 2018, Sabre’s revenues were approximately \$3.9 billion. PTO Ex. 1 ¶ 9, D.I. 182. Most of Sabre’s revenues and profits come from GDS booking fees paid by Sabre’s airline customers. Tr. 665:4-13 (Menke/Sabre); PX156 at -948.

4. Farelogix, Inc. (“Farelogix”) is a Delaware corporation headquartered in Miami, Florida. PTO Ex. 1 ¶ 11, D.I. 182. Farelogix is majority owned by Sandler Capital Partners V, L.P., a private equity fund and a signatory to Sabre’s merger agreement with Farelogix. PTO Ex. 1 ¶ 12, D.I. 182.

¹ “Tr.” refers to the trial transcript.

5. Like Sabre, Farelogix sells a suite of IT solutions for airlines. PTO Ex. 1 ¶ 13, D.I. 182. Farelogix's primary product, Open Connect, enables airlines to sell tickets through travel agencies. Tr. 366:21-24, 382:16-18 (Davidson/Farelogix) (describing Open Connect as at the "core" of Farelogix's business); PX072 at -232; Tr. 236:17-25 (Carter/Farelogix); PX025 at -949; Tr. 1475:18-1476:2, 1493:13-16 (Murphy). Farelogix refers to Open Connect and its NDC API as its "order management" or "order delivery" product. Tr. 238:20-22 (Carter/Farelogix); Tr. 405:17-19 (Davidson/Farelogix).

6. Farelogix also sells four "offer management" products, or "offer engines," that help airlines create combinations of itineraries, fares, and ancillary products to offer travelers. PTO Ex. 1 ¶ 20, D.I. 182; PX025 at -945, -956, -974, -979, -985; Tr. 239:8-18 (Carter/Farelogix); cf. PX086; Tr. 479:20-480:18 (Davidson/Farelogix) (describing the engine business as "██████" for Farelogix); PX100 at -054 (offer engines help drive greater adoption of Open Connect). Farelogix's offer management products are distinct from Open Connect. Tr. 239:19-21 (Carter/Farelogix); Tr. 383:5-10 (Davidson/Farelogix). Farelogix's primary offer management product, FLX Merchandise, is a tool that helps airlines create offers for ancillary products. PTO Ex. 1 ¶¶ 4, 21, D.I. 182.

7. In 2018, Farelogix's revenues were approximately \$██████. DX145 at -006. Open Connect generates more than half of Farelogix's revenues. PTO Ex. 1 ¶ 19, D.I. 182; Tr. 379:17-380:2 (Davidson/Farelogix); Tr. 729:13-15 (Menke/Sabre).

8. On November 14, 2018, Sabre agreed to purchase Farelogix in a transaction valued at approximately \$360 million (the "merger" or "transaction"). PTO Ex. 1 ¶ 1, D.I. 182.

II. INDUSTRY BACKGROUND

A. Airlines sell tickets through two distinct sales channels: direct and indirect

9. Airlines sell tickets and ancillary content (e.g., early boarding or seat upgrades) directly to travelers through their websites, call centers, and airport kiosks, and indirectly through travel agencies. PTO Ex. 1 ¶¶ 4, 22, D.I. 182; Tr. 276:17-277:2 (Carter/Farelogix); Tr. 1096:11-1097:1 (Wilding/Sabre) (defining ancillaries).

10. Distribution through airlines' proprietary channels is referred to as direct distribution, the direct channel, or colloquially, "airline.com." Tr. 91:6-17 (Garner/American); Tr. 240:3-9 (Carter/Farelogix); PX025 at -943; Tr. 1700:3-8 (Tackett/Alaska).

11. Airlines typically sell to leisure travelers (as opposed to business travelers) through the direct channel. *See* Tr. 101:21-23, 123:22-125:17 (Garner/American) (corporate travelers do not typically book through American Airlines' website).

12. Distribution through travel agencies is referred to as the indirect channel or indirect distribution. Tr. 91:21-92:2 (Garner/American); Tr. 171:20-23 (Radcliffe/United); Tr. 240:14-17 (Carter/Farelogix); Tr. 1700:12-20 (Tackett/Alaska).

13. For many airlines, travel agencies are a critical sales channel, accounting for a significant portion of their revenue. *See* PX306 at -613; Tr. 1367:8-17 (Reiz/Farelogix); *see, e.g.*, Tr. 92:3-5 (Garner/American) (American Airlines earns 50 percent of its revenue through the indirect channel); Tr. 1703:21-1704:2, 1704:18-25 (Tackett/Alaska).

B. Airlines need booking services to sell tickets through travel agencies

14. To sell tickets through travel agencies, airlines need booking services. *See* Tr. 996:2-4 (Nevo). "Booking services" enable an airline to send its flight offers to a travel agency,

receive and process flight reservations, or “bookings,” made by the travel agency, and make any necessary changes to those bookings. Tr. 899:3-900:4 (Nevo).

15. Airlines that sell tickets through travel agencies need to communicate with travel agencies in a format compatible with the agencies’ internal systems. *See* Tr. 146:17-147:4 (Garner/American).

16. To serve their customers, travel agencies use proprietary systems to shop for and book flights. Tr. 1180:8-1183:1 (Ekert/CWT) (explaining that a travel agency that serves corporate customers may use comparison shopping engines that allow the agency to pull up only those options that adhere to a corporation’s travel policies). Travel agencies cannot meet the needs of their traveler customers by searching for and booking flights on airlines’ websites. *See* Tr. 1215:24-1216:12 (Stratford/BCD) (explaining that booking through an airline website does not allow BCD to provide the benefits that their customers value); Tr. 1184:10-1185:13 (Ekert/CWT) (explaining that CWT allows corporate travelers to access full array of airline content).

17. When a travel agent creates a booking, the agent typically receives a record of the booking that is compatible with the agency’s IT system, which allows the agent to easily manage the booking and provide post-booking services like invoicing and duty of care. *See, e.g.*, 1220:1-1221:7 (Stratford/BCD) (explaining automated processes applied to records and limitations of “passive segments,” which are records of bookings created outside of the GDS).

18. GDSs, such as Sabre’s GDS, are computerized systems that help travel suppliers, such as airlines, distribute their content to travel agencies and create and manage bookings.

Sabre Answer ¶ 22, D.I. 22. There are three GDSs in the United States: Sabre, Amadeus, and Travelport. PTO Ex. 1 ¶ 31, D.I. 182.

19. The GDSs provide airlines a bundle of three core services: offer creation, aggregation, and booking services. Tr. 884:20-885:24, 974:18-25 (Nevo). A GDS provides “offer creation” by using airlines’ fare, scheduling, and availability information to assemble the flight options that an airline can provide in response to a travel agent’s search. PX096 at -098; Tr. 190:12-16 (Radcliffe/United). Offer creation is also called “offer construction” or “shopping.” Tr. 97:3-18 (Garner/American). A GDS provides “aggregation” by combining flight options from various airlines, allowing travel agencies to request and receive offers from multiple airlines. PX237 at -752; Tr. 92:9-16 (Garner/American). Finally, a GDS provides “booking services” by allowing airlines to send offers to travel agencies, create bookings when agencies select an offer, and manage any changes to those bookings. Tr. 899:18-900:4 (Nevo); *see also* Tr. 1150:1-23 (Lobl/Delta); Tr. 1721:21-1722:6 (Adair/Delta).

20. GDSs also provide travel agencies additional services and technology, notably mid- and back-office software. Tr. 1428:7-1429:20 (Murphy) (explaining that travel agencies depend on the GDSs for back-office software); *see, e.g.*, Tr. 1186:24-1187:7 (Ekert/CWT) (the GDSs are the “closest thing that [CWT has] to an operating platform”).

21. GDSs’ legacy technology provides limited booking services functionality. PX096 at -105 (“For over 60% of consumers, choice and shopping experience is severely limited by legacy air travel intermediaries and their distribution models”). Using the legacy GDS technology, airlines are largely limited to distributing simple offers for a seat on a given flight. *See* Tr. 92:24-93:22 (Garner/American) (American cannot sell all of its products using Sabre’s

EDIFACT connection, but it can sell its full range of products—“not just fares”—using NDC technology).

22. Airlines cannot distribute their full range of products and services through Sabre’s legacy GDS technology. Tr. 93:20-22 (Garner/American); Tr. 177:1-178:8 (Radcliffe/United); Tr. 1719:1-4 (Adair/Delta); Tr. 1151:19-21 (Lobl/Delta). Airlines cannot effectively sell ancillaries or bundles, or price tickets in real time, using legacy GDS technology. Tr. 1719:8-16 (Adair/Delta); Tr. 177:15-178:8 (Radcliffe/United). As a senior Sabre executive stated, “Sabre is perceived by airlines as . . . behind the curve technologically.” PX362 at -178.

C. Farelogix’s innovative booking services provide an alternative to the GDSs

1. Background on Farelogix’s Open Connect

23. Farelogix provides booking services to airlines through its “Open Connect” product. Tr. 115:15-21 (Garner/American); Tr. 1150:24-1151:1 (Lobl/Delta). Open Connect is also referred to as “FLX OC,” Tr. 1333:17-1334:1 (Reiz/Farelogix), and used to be called “NDC Xpress.” Tr. 601:10-12 (Kruijssen/Farelogix).

24. Open Connect provides airlines with the same booking services functionality as the GDSs. PX183 at -628 (Farelogix’s NDC Xpress provides airlines with “all airline indirect/GDS channel distribution functions”); PX090 at -374 (“The Farelogix software products are tested, proven and utilized just like the GDS products are tested, proven and utilized”). Airlines use both Sabre’s GDS and Farelogix’s Open Connect to connect to travel agencies and to receive and manage bookings made by travel agencies. Tr. 366:21-24, 386:12-14 (Davidson/Farelogix); PX072 at -232; PX096 at -099; Tr. 243:25--246:4 (Carter/Farelogix); PX025 at -948 to -950; Tr. 1721:21-1722:6 (Adair/Delta); Tr. 1498:24-1499:3 (Murphy).

25. Farelogix's Open Connect product consists of two main components: an NDC API, which provides the "pipe" that carries messages between the airline and the travel agency or other third party, and an orchestration layer, which standardizes and normalizes the content transmitted between the airline's and third party's internal systems. PTO Ex. 1 ¶ 17, D.I. 182; PX025 at -948, -949, -951; Tr. 238:20-239:7, 243:6-16, 246:5-247:11 (Carter/Farelogix); Tr. 1348:22-1349:11 (Reiz/Farelogix). Farelogix always sells Open Connect and its NDC API together. Tr. 264:22-25 (Carter/Farelogix).

26. An NDC API is an application programming interface that enables software applications to communicate with each other using messaging based on New Distribution Capability, an XML-based data transmission standard. PTO Ex. 1 ¶ 15, D.I. 182. In contrast, Sabre's legacy GDS technology uses APIs that communicate using EDIFACT messaging, which has more limited capabilities than NDC. *See* Tr. 92:24-93:3, 93:8-22 (Garner/American) (describing the EDIFACT connection used by Sabre as "in place for many decades"); PX246 at -981 (NDC "allows for enhanced communications between airlines and travel agents").

27. In addition to the NDC API and orchestration layer that make up Open Connect, Farelogix also provides support services for its Open Connect customers. Tr. 246:18-247:11 (Carter/Farelogix); PX025 at -951; Tr. 343:18-24 (Radcliffe/United). For example, Farelogix helps implement connections between the airline and travel agencies or other third parties and customizes Open Connect to meet an individual airline's distribution needs. Tr. 95:10-23 (Garner/American); *see also* PX025 at -951; Tr. 246:18-247:11 (Carter/Farelogix).

28. Airlines sometimes use "Farelogix NDC API" to refer to Open Connect and the related services that Farelogix provides. Tr. 96:6-11 (Garner/American) ("NDC API" is

shorthand for the total package of products and services that Farelogix provides with its API); *see also* Tr. 1333:17-1334:1 (Reiz/Farelogix).

2. Despite differences in their offerings, Farelogix's Open Connect is an alternative to Sabre's GDS

29. Though Sabre's GDS and Farelogix's Open Connect are different, airlines view them as alternatives. Tr. 115:15-21 (Garner/American); Tr. 1150:24-1151:1 (Lobl/Delta). Some airlines prefer Farelogix's offering. *See* Tr. 111:10-17 (Garner/American) (American would prefer to use Farelogix for more bookings because it is a "lower cost alternative" and "provides more choice for customers"). As American Airlines' vice president of sales and distribution strategy put it, Farelogix does "what GDSs do, only better." Tr. 115:15-21 (Garner/American).

30. Farelogix's CEO acknowledged that Open Connect is "an alternative booking system." Tr. 366:11-19 (Davidson/Farelogix). A senior Sabre executive described Farelogix as a "real alternative to the GDSs." PX367 at -278.

3. Farelogix's Open Connect offers airlines multiple ways to replace Sabre's booking services

31. Airlines can use Open Connect to reach travel agencies in three ways. PX081 at -046; PX025 at -943; Tr. 178:15-179:4 (Radcliffe/United).

32. First, Open Connect enables airlines to establish "direct connects" with travel agencies. PX081 at -046. A direct connect is a link directly between the airline and the travel agency without an intermediary such as a GDS. Tr. 106:10-13, 106:19-107:4 (Garner/American); Tr. 1705:13-1706:2 (Tackett/Alaska); Tr. 175:15-19 (Radcliffe/United). A direct connect is a form of "GDS bypass." Tr. 106:19-107:4 (Garner/American); PX084 at-887;

Tr. 367:20-24 (Davidson/Farelogix); Tr. 240:18-24 (Carter/Farelogix); Tr. 182:11-12 (Radcliffe/United).

33. A travel agency can access the content from an airline's direct connect via a Farelogix proprietary user interface, known as SPRK, or the agency's own aggregation platform. PX025 at -952; Tr. 1349:20-1350:3 (Reiz/Farelogix); Tr. 99:1-100:10 (Garner/United); *see, e.g.*, PX033 at -341 (travel agencies can use SPRK to access Lufthansa content). Farelogix provides SPRK to Open Connect airline customers who then can deploy SPRK as they choose. PX025 at -952; Tr. 1349:12-23 (Reiz/Farelogix). If an airline deploys SPRK, travel agencies can use SPRK to book that airline's content. Tr. 1349:24-1350:1 (Reiz/Farelogix).

34. Second, Open Connect enables airlines to connect to travel agencies via a non-GDS aggregator or third-party aggregator such as Travelfusion. Tr. 1494:4-7 (Murphy); *see, e.g.*, Tr. 1221:8-17 (Stratford/BCD) (explaining that BCD uses Travelfusion to access Lufthansa content). Distribution through a non-GDS aggregator is another form of GDS bypass. Tr. 241:24-242:2 (Carter/Farelogix); *cf.* Tr. 1494:4-14 (Murphy). Connecting Open Connect to a non-GDS aggregator has a "multiplier effect" because an airline can reach many travel agencies with a single connection. PX081 at -046; Tr. 369:18-370:11 (Davidson/Farelogix); Tr. 178:15-179:4 (Radcliffe/United).

35. Third, Open Connect enables airlines to connect to travel agencies who opt to use a GDS as an aggregator. This delivery path, referred to as "GDS pass-through," enables an airline to use its Farelogix NDC API to push NDC content to travel agencies using GDS aggregation. PX084 at -887; Tr. 367:25-368:4 (Davidson/Farelogix).

36. Farelogix is neutral as to whether an airline chooses the GDS bypass or GDS pass-through delivery path; either increases the number of bookings made through Farelogix's NDC API and increases Farelogix's revenue. Tr. 367:14-368:21 (Davidson/Farelogix). Farelogix does not distinguish between GDS bypass and GDS pass-through in how much it charges its Open Connect customers per ticket. Tr. 368:22-25 (Davidson/Farelogix).

37. A GDS pass-through connection can create a [REDACTED] for Farelogix because "a GDS integration of an airline's NDC API . . . can generate millions of booking transactions" for Farelogix. PX081 at -045 to -046; Tr. 369:1-17 (Davidson/Farelogix). Today, Farelogix has 26 GDS pass-through implementations established or in progress. Tr. 242:11-22 (Carter/Farelogix). Farelogix is doing all of these GDS pass-through projects independent of the merger. Tr. 242:23-25 (Carter/Farelogix).

38. When an airline books through Open Connect, whether in GDS bypass or GDS pass-through, Farelogix provides the booking services and replaces the GDS as the booking services provider. Tr. 886:16-888:3, 917:18-918:3, 1063:8-1064:7, 1065:20-1067:23 (Nevo); Tr. 118:14-16 (Garner/American). Through each of the three Open Connect booking paths, Farelogix allows an airline to send offers, receive bookings, and make changes to those bookings. Tr. 886:14-887:16 (Nevo); Tr. 179:17-180:5 (Radcliffe/United).

D. Farelogix's business model differs from the traditional GDS business model

1. Sabre and the other GDSs provide two-sided platforms, serving airlines and travel agencies

39. GDSs are a two-sided platform. Tr. 972:17-20, 975:1-8 (Nevo). Both airlines and travel agencies are GDS customers. Tr. 969:13-18, 972:17-24 (Nevo); Tr. 1428:7-1429:10 (Murphy); PTO Ex. 1 ¶ 6, D.I. 182.

40. Historically, each GDS has operated as the gatekeeper to its individual network of travel agencies. Tr. 119:1-9 (Garner/American) (“Each GDS is a gatekeeper to discrete customers . . .”); DX246 at 9 (“GDSs exert market leverage over both Suppliers and Sellers . . . GDSs act as a Gatekeeper”).

41. Farelogix’s CEO frequently refers to Sabre, Amadeus, and Travelport as an oligopoly. Tr. 399:15-23 (Davidson/Farelogix); PX096 at -108 (Farelogix complaining to the European Commission about the “GDS oligopoly”); *see also* PX306 at -613; Tr. 1367:8-13 (Reiz/Farelogix) (describing Amadeus and Sabre as having “a high degree of control over travel agency distribution”).

42. Sabre, in particular, has dominated the U.S. market, controlling around 50 percent of the airline bookings made through travel agents in the United States. *See* PX389 at -437; *see also* Tr. 931:10-19, 947:11-19 (Nevo) (noting that Sabre has roughly 50 percent share in each of the TTA and OTA booking services markets).

43. The GDSs rely on a “traditional” payment model, under which airlines pay the GDS a “booking fee” for each flight a passenger takes. Tr. 107:18-108:4, 108:19-24 (Garner/American). The GDS then keeps part of the fee and gives the rest to the travel agency making the booking as an “incentive payment.” Tr. 108:19-24 (Garner/American); Tr. 1209:17-1210:18 (Stratford/BCD); *see also* Tr. 1435:20-1436:19 (Murphy) (defining the GDS “net fee”); PX245 at -288 (chart showing the spread between airline booking fees and travel agency incentives).

44. The incentive structures in travel agencies’ GDS agreements “tie” the agency to the GDS. *See* Tr. 954:19-25 (Nevo); PX092 at -622 (describing the types and structure of

incentives); DX306² at 2 ([REDACTED]); Tr. 398:22-399:7 (Davidson/Farelogix); PX096 at -107 (travel agencies “[r]emain loyal to the GDS because of dependency on GDS incentive payments”). [REDACTED] [REDACTED]. *See, e.g.*, Tr. 1210:7-1211:7 (Stratford/BCD) (explaining that the “value per segment” BCD receives from Sabre increases as the volume of segments BCD books with Sabre increases); [REDACTED]). [REDACTED] [REDACTED]. *See* Tr. 1381:14-17, 1382:1-1383:2 (Ekert/CWT).

45. As Farelogix explained to the European Commission in 2018, travel agencies “remain loyal to the GDS because of dependence on GDS incentive payments” Tr. 398:22-399:7 (Davidson/Farelogix); PX096 at -107. A sizable portion of travel agencies’ revenue comes from GDS payments. Tr. 1203:19-20 (Ekert/CWT) (GDS fees represent about 10 percent of CWT’s revenue); DX306 at 5 ([REDACTED]); [REDACTED]); DX306 at 1 ([REDACTED]).

46. Travel agencies also face significant switching costs in transitioning customers from one GDS to another. Tr. 1185:23-1186:23, 1205:21-1206:16, 1381:10-13 (Ekert/CWT)

² DX306 and PX502 contain confidential video deposition testimony that was not played during the trial but was admitted into evidence. Cites to DX306 or PX502 refer to the page(s) of the exhibit on which the relevant confidential testimony was printed followed by the relevant page and line numbers in the deposition transcript.

(explaining that it took CWT 20 months and cost millions of dollars to migrate business between GDSs); Tr. 1216:17-1218:2 (Stratford/BCD). To switch GDSs, travel agencies may have to retrain their agents on how to use the new GDS platform. Tr. 1216:17-1217:5 (Stratford/BCD). Travel agencies also often rely on mid and back-office systems provided by their GDS, Tr. 1193:10-1194:14 (Ekert/CWT), so moving away from their GDS would require a significant adjustment to their workflows.

47. Due to these incentive structures and switching costs, most travel agencies use a single GDS in a given geography or for a particular corporate client. Tr. 119:1-9 (Garner/American) (“an individual corporate client typically uses one . . . TMC, and that TMC will typically use one GDS for that corporate customer”); Tr. 1185:20-22 (Ekert/CWT) (CWT only uses Sabre in the United States); Tr. 1216:13-16 (Stratford/BCD) (BCD’s customers are typically tied to a specific GDS).

48. As a result of these market dynamics, airlines must distribute through all three GDSs to reach the entire universe of travelers booking through travel agencies. PTO Ex. 1 ¶ 32, D.I. 182; *see also* Tr. 119:1-9 (Garner/American).

2. Farelogix is a technology provider to airlines

49. In contrast with the GDSs, Farelogix provides IT services, including booking services, only to airlines. Tr. 906:13-17 (Nevo); Tr. 263:20-264:9 (Carter/Farelogix) (Farelogix is “an IT provider for airlines” and sells its FLX OC product “[o]nly to airlines”); PTO Ex. 1 ¶¶ 14, 47, D.I. 182.

50. Farelogix focuses on selling Open Connect to airlines that rely on the indirect distribution channel. Tr. 404:25-405:9 (Davidson/Farelogix).

51. Farelogix's prices are significantly lower than Sabre's. *See, e.g.*, 175:4-8 (Radcliffe/United) (Farelogix charges United "a fraction" of what United pays Sabre); Tr. 107:12-17 (Garner/American) (Farelogix is 80 to 90 percent less expensive than Sabre); Tr. 408:19-21 (Davidson/Farelogix).

52. Farelogix has no travel agency customers and no commercial relationship with travel agencies. PTO Ex. 1 ¶¶ 48-49, D.I. 182.

E. Farelogix has disrupted Sabre's control over airline ticket sales through U.S. travel agencies

53. Airlines recognize that Farelogix has disrupted the GDSs. In late 2018, American's vice president of sales and distribution strategy described Farelogix as "the GDSs' leading competitor/agitator for years." PX452; *see also* Tr. 130:8-22 (Garner/American) (describing Farelogix as the "lone disruptor" and "lone alternative to GDS distribution"). Similarly, a Delta executive described Farelogix as "a disruptor in the industry" that is "forcing the GDSs to innovate and be more responsive to airline and agency commercial needs." Tr. 1720:23-1721:16, 1735:8-1736:3 (Adair/Delta); PX001 at -069. And United's director of distribution testified that Farelogix is "[REDACTED]," Tr. 343:18-344:1 (Radcliffe/United), which "keeps GDSs on their toes relative to innovating to keep up." PX299 at -770.

54. Sabre views Farelogix's innovative, disruptive presence as a threat. DX145 at -005 (noting that Farelogix's team "have been innovators" and that Farelogix is "driving [the] industry in a way not always aligned with Sabre"); PX002 at -858; PX048 at -802. Sabre recognizes that NDC technology from Farelogix has "[REDACTED]." PX247 at -766 [REDACTED]

██████████”); Tr. 696:20-697:12 (Menke/Sabre) (admitting that Farelogix has been “one of the sources of this new technology”).

55. As Farelogix’s CEO wrote in 2018, “NDC has recently become a full-fledged disruptive distribution strategy, embraced by the world’s largest airlines,” including Open Connect customers American, United, Lufthansa Group, Emirates, and Qantas. PX098 at -067; Tr. 371:4-10, 371:20-372:22 (Davidson/Farelogix).

1. Farelogix spurred the industry to adopt NDC technology

56. Over the last decade, Farelogix has driven the industry to develop and adopt NDC technology. Tr. 255:21-25 (Carter/Farelogix). NDC technology significantly improves on the legacy GDS technology. PX104 at -707; Tr. 394:5-10, 394:21-395:16 (Davidson/Farelogix). As American’s vice president of sales and distribution strategy testified, “we would not be talking about NDC today if it weren’t for Farelogix and their position as a disruptor.” Tr. 112:7-14 (Garner/American).

57. In the early 2010s, Farelogix pioneered the development of NDC. Tr. 255:21-25 (Carter/Farelogix) (Farelogix “started” the development of the NDC standard); Tr. 149:5-10 (Garner/American) (IATA started with a version of the Farelogix NDC API in creating the NDC standard). In 2013, Farelogix donated the XML schema that formed the baseline version of NDC to the International Air Transport Association (“IATA”), an airline trade organization in charge of guiding the development of the NDC standard. Tr. 255:21-255:25 (Carter/Farelogix); Tr. 440:19-441:3 (Davidson/Farelogix); PX096 at -097; PTO Ex. 1 ¶ 58, D.I. 182. Farelogix continues to use its own schema to supplement gaps in the IATA NDC schema. Tr. 411:5-9 (Davidson/Farelogix); PX072 at -226.

58. Farelogix is still the market leader in developing and commercializing NDC technology today. PX072 at -223 (Farelogix document describing the company as the “NDC market leader”); *see also* Tr. 374:4-8 (Davidson/Farelogix) (confirming that Farelogix is the firm with the most airline customers on the IATA NDC leaderboard). Today, Farelogix processes more NDC bookings than any other booking services provider. *See* PX094 at -569 (“Probably the far majority of [NDC] transactions are coming from our airlines”). As Farelogix told a prospective buyer in June 2018 during due diligence, Farelogix is the “only company” that does NDC order delivery “at scale.” Tr. 411:10-14 (Davidson/Farelogix); PX072 at -226.

59. NDC helps airlines distribute richer content, including more complex, personalized offers, than they could through legacy GDS technology. Tr. 261:19-262:23 (Carter/Farelogix) (noting, among the benefits of NDC, “more content and capability than available through . . . legacy global distribution system connectivity”); Tr. 177:15-178:8 (Radcliffe/United); Tr. 1151:16-21 (Lobl/Delta); Tr. 1719:1-19 (Adair/Delta); PX246 at -987 (NDC allows for “access to rich content and differentiated products”). By enabling airlines to distribute a richer, broader range of offers, NDC gives travelers greater choice and enables airlines to increase their sale of ancillary products. PX104 at -707; Tr. 178:9-14 (Radcliffe/United); Tr. 1648:6-22 (Wiggins/Spirit).

60. As it expands, NDC technology will benefit all participants in the travel distribution ecosystem—“from airlines to intermediaries to travel sellers to the millions of ticket purchasers.” PX104 at -707. As Farelogix’s CEO testified, NDC will enable “increased airline product innovation and consumer choice.” Tr. 395:3-11 (Davidson/Farelogix); PX104 at -707; *see also* PX197 at -917, -919 to -920 (outlining new types of offers available through next-

generation technology). Travel agencies benefit from having more content because they can augment their offers to their traveler customers. Tr. 1734:4-23 (Adair/Delta); *see also* Tr. 1226:22-1227:15 (Stratford/BCD). Travelers benefit from additional content because “they get more choice.” Tr. 1734:24-1735:3 (Adair/Delta); *see also* Tr. 1649:4-9 (Wiggins/Spirit); Tr. 1151:22-24 (Lobl/Delta) (testifying that travelers would benefit from access to more complex content). Indeed, [REDACTED]

2. Farelogix’s NDC technology threatens the traditional GDS distribution model by enabling airlines to unbundle GDS services

61. NDC revolutionizes the traditional GDS distribution model by shifting key GDS functions away from the GDS, leaving the GDSs as a mere provider of aggregation services. Tr. 1065:25-1066:12 (Nevo); Tr. 118:3-6 (Garner/American) (in GDS pass-through, Sabre’s role is “an aggregator for travel agents”).

62. NDC shifts two key functions away from the GDS. First, unlike legacy GDS technology, NDC allows an airline to create its own offer instead of relying on the GDS for offer creation. Tr. 1719:1-19 (Adair/Delta); Tr. 1151:2-8, 1172:14-20 (Lobl/Delta); Tr. 249:2-10 (Carter/Farelogix) (“The whole point of NDC is for the airline to have more control over its offer”); Tr. 385:13-19 (Davidson/Farelogix); Tr. 190:12-24 (Radcliffe/United). By shifting offer creation from the GDS to the airline, NDC gives an airline greater control over the distribution of its products. Tr. 1719:1-16 (Adair/Delta); PX300 at -260; Tr. 385:13-19 (Davidson/Farelogix). As Farelogix explains in its marketing materials, Farelogix’s Open Connect and NDC API give the airline “[f]ull control over distribution and channel management, with less dependence on GDS/PSS.” PX025 at -953; Tr. 247:12-20 (Carter/Farelogix).

63. Second, NDC enables airlines to decouple booking services from the GDS bundle. *See* Tr. 902:19-903:18, 1065:25-1066:20 (Nevo). In both GDS bypass and GDS pass-through, Farelogix's Open Connect replaces the GDS as the booking services provider. Tr. 902:19-903:18, 917:18-918:3 (Nevo). By replacing Sabre's GDS booking services with Farelogix's booking services, airlines can lower their distribution costs. Tr. 175:4-8, 175:20-23 (Radcliffe/United); Tr. 107:12-17 (Garner/American); Tr. 408:19-21 (Davidson/Farelogix) (admitting that bookings made through Farelogix are cheaper than bookings made through Sabre's GDS); PX300 at -253 (United Airlines deck describing NDC as "an emerging alternative to the legacy distribution model, promising to . . . reduce distribution costs for airlines").

64. Open Connect can help airlines achieve cost savings in several ways. PX025 at -953; Tr. 247:24-248:2 (Carter/Farelogix). For example, Open Connect enables airlines to bypass the GDSs and avoid expensive GDS booking fees. PX025 at -953; Tr. 248:11-19 (Carter/Farelogix) (recognizing that Open Connect generates "Cost Savings" by enabling GDS bypass); Tr. 786:5-10 (Vilches/Sabre) (direct connects are good for airlines because they are cheaper than the GDSs); Tr. 1724:7-23 (Adair/Delta) ("for many of the airlines, NDC is a GDS bypass play to save millions, if not hundreds of millions of dollars in costs because of GDS booking fees"). American Airlines, for example, estimated that it is 80-90 percent cheaper to book through a Farelogix direct connect than through the Sabre GDS. Tr. 107:12-17 (Garner/American); PX453 at -969.

65. Open Connect also offers airlines a lower cost of ownership because Farelogix provides orchestration, API maintenance, and support services as part of Open Connect. Tr. 247:24-248:10 (Carter/Farelogix).

66. Significantly, by giving an airline more control over its offer and order management, Open Connect provides the airline more leverage with its GDS and PSS providers. PX025 at -953; Tr. 248:20-249:14 (Carter/Farelogix).

67. In GDS pass-through, Open Connect enables airlines to push for lower booking fees because the airline creates the offers and Farelogix handles booking services instead of the GDS. Tr. 190:12-191:19 (Radcliffe/United); *see also* Tr. 848:12-849:7 (Wilding/Sabre); PX496 (noting that airlines want to use NDC to “drive down cost and use as leverage with GDSs”).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]; *see also* PX085 at -595 (over time, airlines’ NDC APIs will “fully replace their existing legacy GDS connectivity,” which may lead to lower GDS booking fees); PX300 at -260; Tr. 190:3-191:19 (Radcliffe/United).

68. By enabling airlines to totally or partially disintermediate the GDS, NDC poses a threat to Sabre’s traditional business model. PX002 at -885 (“NGD [Next Generation Distribution] shifts control to airlines and weakens the GDS value proposition”; “as an airline gains control of offers, the value of the intermediated channel will decrease”); Tr. 1736:4-1737:1, 1719:1-19 (Adair/Delta) (“Question: So if NDC comes to fruition, is the GDS primary business model at risk? Answer: I believe so.”). Sabre recognizes that the “[c]omplete adoption of the NDC standard by suppliers could create significant threats” for Sabre. PX237 at -802 (as offer creation shifts outside the GDS, the “[v]alue of GDS could be decreased”); Tr. 671:15-23 (Menke/Sabre). As a document Farelogix’s CEO circulated in May 2018 states, the “[b]enefits

of two-path NDC delivery [GDS bypass and GDS pass-through] include: Deleverages the traditional GDS-airline commercial relationship.” PX084 at -887; Tr. 367:14-368:12 (Davidson/Farelogix); *see also* PX072 at -305.

III. THE RELEVANT MARKETS ARE OTA BOOKING SERVICES AND TTA BOOKING SERVICES IN THE UNITED STATES

69. Booking services are IT solutions that enable an airline to transmit offers to travel agencies, receive and process bookings from travel agencies, and process any changes to those bookings. Tr. 899:3-900:4 (Nevo); *see also* Tr. 1150:1-23 (Lobl/Delta); Tr. 1721:21-1722:6 (Adair/Delta).

70. Airlines obtain booking services in two ways. Airlines purchase booking services from a GDS as part of the traditional GDS bundle. Tr. 899:3-17 (Nevo). Alternatively, airlines can use a standalone booking services solution such as Open Connect. Tr. 899:3-900:17 (Nevo). Airlines can connect a standalone booking services solution to travel agencies directly or indirectly through a non-GDS aggregator or a GDS acting as only an aggregator. Tr. 886:14-887:11 (Nevo).

71. Booking services enable airlines to reach different types of travel agencies in distinct geographies. To assess whether distinct types of agencies or different geographic areas constitute separate relevant antitrust markets, Professor Nevo analyzed an airline’s ability to substitute booking services for one travel agency segment with booking services for another segment (e.g., substituting from TTA booking services to airline.com or OTA booking services for OTAs, or substituting sales through travel agencies outside the United States for travel agencies in the United States). Tr. 897:14-898:4, 905:9-908:13 (Nevo).

72. Professor Nevo concluded that the proposed transaction implicates two relevant markets: (1) booking services for airline tickets sold through OTAs in the United States (“OTA booking services”) and (2) booking services for airline tickets sold through TTAs in the United States (“TTA booking services”). Tr. 898:14-899:2, 912:6-23, 913:21-914:2 (Nevo).

A. Relevant product markets

1. Booking services is a relevant product

73. Industry participants, including Defendants, recognize that the cluster of products and services that comprise booking services fulfill a distinct need, although they may label it “order management” or “order delivery.” Tr. 884:20-885:20, 900:5-13 (Nevo); Tr. 94:9-95:2 (Garner/American); Tr. 238:20-22 (Carter/Farelogix); PX025 at -950, -953 (describing Farelogix Open Connect as providing “order management”); Tr. 405:17-19 (Davidson/Farelogix) (equating order management and order delivery); PX197 at -929; Tr. 681:19-25 (Menke/Sabre) (Sabre describing “Order Management” functionality); PX173 at -562 (American Airlines’ direct connect is a “method of providing . . . booking services directly to travel agents without using a GDS”); PX048 at -815 (describing Open Connect as providing “Booking Management Services and Orchestration”). Although market participants may use different labels, Professor Nevo explained that the functionality captured is the same from an economic perspective. Tr. 884:20-885:20, 900:5-13 (Nevo).

74. Sabre has previously recognized that a court may define a relevant antitrust market for booking services: in a counterclaim to an antitrust suit brought by American Airlines, Sabre alleged that “there is a relevant market for booking airline tickets.” Order Granting Pl.’s Unopposed Mot. for Judicial Notice ¶ 3, D.I. 228 (“Judicial Notice Order”).

75. Sabre's economic expert, Professor Murphy, testified that Sabre and Farelogix "both provide booking services" and agreed that there is an "overlap in the functionality" of the products at issue. Tr. 1495:23-1496:3 (Murphy). In a 2012 white paper submitted to the Department of Justice, Professor Murphy described a direct connect as providing "booking services." PX178 at -451.

76. Although Sabre's GDS offers booking services bundled with other GDS services, including offer creation and aggregation, booking services are a separable function. Tr. 884:20-888:3 (Nevo). As Professor Murphy acknowledges, it is possible to "substitute a subset" of a bundle, either by buying the bundle in pieces or doing without some parts of the bundle. Tr. 1499:11-1500:14 (Murphy). And as Professor Nevo explained, an unbundled product can compete with a component of a bundle of services. Tr. 900:14-902:9 (Nevo).

77. Airlines can buy booking services products separately from offer management or aggregation products. Tr. 902:18-903:18 (Nevo); *see also* Tr. 100:11-20, 140:8-18 (Garner/American) (describing the separability of booking services and aggregation); Tr. 1502:3-10 (Murphy) (explaining that offer creation can occur outside the Sabre GDS platform). For example, Farelogix's booking service product, Open Connect, is offered separately from its offer management products, and Farelogix does not offer aggregation. Tr. 383:5-10 (Davidson/Farelogix); Tr. 239:8-21 (Carter/Farelogix); Tr. 885:25-887:16 (Nevo). Similarly, Travelfusion and other third-party aggregators offer standalone aggregation products. Tr. 370:6-11 (Davidson/Farelogix); *see also* Tr. 1314:23-25 (Kunz-Cho/Fareportal) (Travelfusion aggregates direct connects); Tr. 100:19-20 (Garner/American) (non-GDS aggregators do not

provide booking services); Tr. 1170:16-20, 1171:6-15 (Lobl/Delta) (explaining that aggregators do not provide NDC APIs).

a. *Sabre and Farelogix both provide booking services*

78. Sabre provides booking services through its GDS and its direct connect product. Tr. 899:3-17, 900:18-901:1 (Nevo); Tr. 1495:23-1496:3 (Murphy). Sabre's former CEO testified that booking and fulfillment are functions of the Sabre GDS used by airlines. Tr. 1079:10-15 (Klein/Sabre). In its antitrust litigation with US Airways, Sabre alleged that "Sabre sells US Air the service of generating bookings on US Air flights." Judicial Notice Order ¶ 1, D.I. 228.

79. Farelogix provides booking services through Open Connect, which includes its NDC API. Tr. 885:25-886:13 (Nevo); Tr. 174:24-175:3 (Radcliffe/United); Tr. 264:22-25 (Carter/Farelogix). Farelogix's Open Connect and NDC API "[m]akes and manages bookings and reservations out of the PSS." PX072 at -232; *see also* Tr. 243:25-246:4 (Carter/Farelogix); PX025 at -950 (describing Open Connect's functionality, including "Reservation Placement and Management").

80. Sabre previously has recognized that Farelogix provides booking services. In its 2015 10-K, Sabre described American's direct connect, provided by Farelogix, as "a method of providing its information and booking services directly to travel agents without using a GDS." Judicial Notice Order ¶ 2, D.I. 228. In a 2017 competitive assessment of Farelogix, Sabre described Open Connect as providing "Booking Management Services and Orchestration." PX048 at -815.

81. Sabre and Farelogix provide a set of overlapping services. Tr. 94:9-24, 118:14-16 (Garner/American). Sabre and Farelogix each allow airlines to send their offers to travel

agencies, process orders or bookings, and service those orders. Tr. 1150:1-23 (Lobl/Delta); Tr. 1721:21-1722:6 (Adair/Delta).

b. *Sabre's and Farelogix's booking services are substitutes and compete with one another*

82. Sabre's and Farelogix's booking services offerings are substitutes and compete with one another. Tr. 902:10-903:18 (Nevo).

83. Airlines view Sabre's GDS and Farelogix's Open Connect as substitutes. American has described Farelogix's direct connect technology as "providing a low cost substitute for GDSs." PX453 at -968, -972; *see also* Judicial Notice Order ¶ 5, D.I. 228 (American describing the GDSs and Farelogix as "Competitive Booking Sources"); PX452 (describing Farelogix as "the GDSs' leading competitor"). Similarly, a United executive testified that Farelogix offers United its only alternative way to reach U.S. travel agencies, outside of going through a GDS. Tr. 174:17-176:12 (Radcliffe/United). And a Delta executive testified that Farelogix provides airlines with an alternative to the GDS for distributing content to travel agencies. Tr. 1150:24-1151:1, 1152:22-1153:1 (Lobl/Delta).

84. As Professor Nevo explained, airlines can substitute between Sabre's and Farelogix's booking services in three ways. First, Farelogix replaces Sabre's GDS as the booking services provider when Open Connect is used to bypass the Sabre GDS, either through a direct connect or via a non-GDS aggregator. Tr. 902:10-903:18 (Nevo). Indeed, in pricing a direct connect product for ██████████ Sabre considered substitution between its GDS and a Sabre or a Farelogix direct connect solution. PX392 at -034; Tr. 831:24-832:6, 832:15-20 (Wilding/Sabre) (analyzing how a direct connect would cannibalize Sabre's GDS sales).

Professor Murphy agreed that using Open Connect in GDS bypass “would be viewed as a substitute” to the Sabre GDS. Tr. 1540:25-1541:9 (Murphy).

85. Second, in GDS pass-through, Farelogix replaces the booking services component of the traditional Sabre GDS. Tr. 902:10-903:18 (Nevo). In GDS pass-through, Open Connect is substituting for (and therefore competing with) the booking services component of the traditional GDS bundle. Tr. 902:10-903:18 (Nevo).

86. Third, Farelogix and Sabre compete to provide airlines with an NDC booking services solution. *See* PX316 at -534 (Sabre describing Farelogix as its “main competitor” for an airline RFP for a direct connect product); *see also* Tr. 927:4-928:8 (Nevo) (explaining that as Sabre expands its NDC capabilities, competition between Sabre and Farelogix will likely intensify). Sabre recognizes that its direct connect product is functionally similar to Farelogix’s Open Connect. PX011 at 6 (“NDC Connect is similar in concept to our AS Direct Connect, though priced lower”).

87. Professor Murphy testified that Sabre’s direct connect product and Open Connect are substitutes and competitors, but he did not view this competition as significant. Tr. 1510:25-1512:13 (Murphy). The record, however, reflects significant competition between Sabre’s and Farelogix’s direct connect solutions for major airlines. *See* Tr. [REDACTED]; DX094 at -409; Tr. 846:1-847:25 (Wilding/Sabre) ([REDACTED] considering Sabre replacing Farelogix as its NDC API provider); PX316 at -534; Tr. 761:1-25 (Gilchrist/Sabre) (Sabre describing Farelogix as its “main competitor” in providing a direct connect solution for [REDACTED]).

88. Professor Murphy also asserts that the relationship between Sabre's GDS and Farelogix is vertical because Farelogix's NDC API is an input into the distribution service provided by Sabre. *See generally* Tr. 1422:16-1427:7 (Murphy). Professor Murphy acknowledges, however, that there is a direct overlap between Sabre's and Farelogix's booking services solutions. Tr. 1495:23-1496:3 (Murphy). And Professor Murphy recognizes that Defendants' internal documents describe each other as competitors. Tr. 1557:15-1558:3 (Murphy).

89. As Professor Nevo explains, the evidence indicates that Sabre and Farelogix compete, not that Sabre and Farelogix are complements in airline distribution. *See* Tr. 888:4-21, 924:7-927:3 (Nevo). Farelogix competes with the GDSs to sell airlines booking services, even though it does not sell the full GDS bundle or have commercial relationships with travel agents. *See generally* Tr. 884:20-888:3, 902:10-17 (Nevo). As GDS bypass and GDS pass-through bookings increase, Farelogix will supplant Sabre as the booking services provider for many more airline bookings. Tr. 927:4-928:8 (Nevo) (explaining that Farelogix's growth will "come in large part from Sabre").

c. *Booking services are distinct from two-sided aggregation services*

90. Booking services are separable from the two-sided aggregation services of a GDS or a non-GDS aggregator. *See* Tr. 902:10-903:18, 1065:25-1066:20 (Nevo) (explaining that in GDS bypass, aggregation is done by the travel agency or a non-GDS aggregator, while in GDS pass-through, aggregation is done by the GDS).

91. Farelogix sells airlines its Open Connect as a standalone product. PTO Ex. 1 ¶ 14, D.I. 182; Tr. 430:8-15 (Davidson/Farelogix). Farelogix has no travel agency customers and

no commercial relationship with travel agencies. PTO Ex. 1 ¶¶ 48-49, D.I. 182; Tr. 902:10-12 (Nevo); PX096 at -097 (“Airlines are our only customers; No travel agency subscribers”).

92. Sabre’s GDS offers booking services as a component of its GDS platform. Tr. 884:20-885:24, 962:17-21 (Nevo). Aggregation is the two-sided component of the GDS platform, bringing together airlines and other travel suppliers on one side with travel agencies on the other. Tr. 884:20-885:24, 975:1-8 (Nevo). For traditional content, the GDS provides airlines offer creation, booking services, and aggregation as a bundle. Tr. 884:20-885:24 (Nevo). In contrast, for GDS pass-through of NDC content, Sabre’s GDS primarily functions as an aggregation platform; the airline creates the offer and booking services is procured separately. Tr. 887:17-888:3, 902:10-903:18 (Nevo). In addition, Sabre offers booking services through its direct connect product, decoupled from any aggregation services. Tr. 900:18-901:7 (Nevo).

93. Sabre’s decision to offer booking services as a component of its two-sided GDS platform does not mean that it does not compete with Farelogix in a one-sided booking services market. *See* Tr. 884:20-885:24, 962:17-21 (Nevo) (explaining that booking services is part of the GDS bundle); Tr. 1424:4-13, 1425:24-1426:1, 1502:19-1503:1 (Murphy) (describing the two-sidedness of the Sabre GDS and stating that Farelogix is one-sided); *cf.* Tr. 1432:18-1433:25, 1514:3-8, 1521:11-16 (Murphy) (admitting that airline.com is a one-sided platform and arguing that airline.com competes with the GDS). Professor Murphy explained that Open Connect is a one-sided product. Tr. 1425:25-1426:3 (Murphy). Professor Murphy further explained that the Sabre GDS provides the same “booking services” functionality as Open Connect. Tr. 1496:1-3 (Murphy). His testimony shows that booking services is a “stage” of the supply chain that can be severed from the rest of the GDS *without* changing the fact that the GDS

is a two-sided platform. Tr. 1500:25-1502:2 (Murphy); *see also* Tr. 1502:3-10 (Murphy) (agreeing that offer creation is a “stage” on one side of the GDS platform). In GDS bypass, Farelogix disintermediates the Sabre GDS altogether. Tr. 887:17-888:3, 902:10-903:18 (Nevo). In GDS pass-through, the GDS continues to serve as a two-sided aggregation platform, but booking services shifts from Sabre to Farelogix. Tr. 902:10-903:18 (Nevo).

2. OTAs and TTAs are the relevant distribution channels

a. *Direct and indirect distribution are distinct channels*

94. Direct distribution—such as sales through an airline’s website—and indirect distribution through travel agencies are distinct distribution channels. Tr. 903:19-904:3 (Nevo); Tr. 91:8-92:5 (Garner/American).

95. Defendants’ ordinary course documents recognize the distinction between the direct and indirect channels. *See, e.g.*, PX025 at -943; Tr. 240:3-17 (Carter/Farelogix). Sabre’s GDS only facilitates sales through travel agencies; accordingly, Sabre tracks its market share in indirect channels only. *See* PX389 at -437.

96. Other industry participants also recognize the difference between indirect and direct distribution channels. *See, e.g.*, Tr. 91:6-17, 91:21-92:2, 124:6-20 (Garner/American) (explaining differences between customer experience and American’s cost of sale for OTAs and American’s website); Tr. 1699:25-1700:20 (Tackett/Alaska). Witnesses testified that the features offered through travel agencies differ from those on airline websites; for example, unlike airlines’ own websites, OTAs and TTAs help travelers comparison shop. *See* Tr. 1212:10-12 (Stratford/BCD); Tr. 1281:20-22 (Kunz-Cho/Fareportal); Tr. 172:16-21 (Radcliffe/United).

97. In the early 2000s, the launch of airline websites led to a large volume of indirect bookings shifting to the direct channel, but over the last decade, the “[c]hannel shift to direct distribution has stabilized.” PX245 at -286; Tr. 688:3-17 (Menke/Sabre); *see also* PX253 at -154; Tr. 693:6-22 (Menke/Sabre) (Sabre’s CEO telling investors in October 2019 that the shift to the direct channel that took place when airline websites were launched has moderated); Tr. 1026:22-25 (Nevo).

b. *OTAs and TTAs are distinct distribution channels*

98. Airlines rely on the GDSs and other booking services providers to sell tickets through two types of travel agencies: online travel agencies (“OTAs”) and traditional travel agencies (“TTAs”). Tr. 92:6-8, 100:21-101:11, 102:20-103:3, 103:10-21 (Garner/American); Tr. 171:24-172:1, 172:22-24, 174:7-16 (Radcliffe/United); Tr. 903:19-904:6, (Nevo); Tr. 1150:1-5 (Lobl/Delta). OTAs and TTAs allow airlines to sell to distinct groups of travelers—as such, the segments are not reasonable substitutes for one another. *See* Tr. 905:9-25, 907:6-908-13 (Nevo).

99. OTAs are travel agencies that sell travel primarily via the internet. PTO Ex. 1 ¶ 23, D.I. 182; Tr. 103:10-21 (Garner/American). OTAs cater primarily to cost-conscious leisure travelers that value comparison shopping. Tr. 905:9-18 (Nevo); PTO Ex. 1 ¶ 25, D.I. 182; Tr. 1282:23-1283:1 (Kunz-Cho/Fareportal); Tr. 172:9-21 (Radcliffe/United). Booking.com, Priceline, Expedia, and Fareportal are examples of OTAs. PTO Ex. 1 ¶ 24, D.I. 182.

100. TTAs are comprised of travel management companies (“TMCs”) and other brick-and-mortar travel agencies. Tr. 100:21-101:11, 102:20-103:3 (Garner/American). A TMC is a type of travel agency that primarily serves business travelers. PTO Ex. 1 ¶ 27, D.I. 182; *see, e.g.*, Tr. 1184:13-16 (Ekert/CWT) (“bulk of our business is corporate”); Tr. 335:12-14

(Radcliffe/United). Indeed, business travelers are often required by their employer to book through a given TMC. Tr. 172:22-173:7 (Radcliffe/United). BCD Travel, Carlson Wagonlit (“CWT”), and American Express Global Business Travel (“Amex GBT”) are examples of TMCs. PTO Ex. 1 ¶ 28, D.I. 182; Tr. 1178:7-9 (Ekert/CWT). Brick-and-mortar travel agencies refer to travel agencies that mostly have a physical presence. PTO Ex. 1 ¶ 26, D.I. 182.

101. The industry recognizes TTAs and OTAs as separate market segments. Tr. 903:19-904:6, 904:25-905:25 (Nevo). As Sabre’s former CEO testified, the distinction between TTAs and OTAs is a “standard industry definition.” Tr. 1078:6-11 (Klein/Sabre). In certain instances, Sabre charges airlines a different booking fee for bookings made through TTAs versus OTAs. Tr. 904:25-905:8 (Nevo); *see, e.g.*, PX322 at -128. Airlines distinguish between an OTA and a TTA market in their internal documents as well. *See, e.g.*, PX453 at -970 (American Airlines calculating its booking share separately for OTAs and other agencies for U.S. point of sale).

102. TTAs and OTAs offer different levels of functionality to travelers, and serve distinct groups of travelers with differing priorities and needs. Tr. 905:9-25 (Nevo). TMCs provide support services that business travelers require. *See* Tr. 1243:25-1244:18 (Stratford/BCD); Tr. 1183:4-1184:9 (Ekert/CWT); Tr. 101:21-102:16 (Garner/American); Tr. 173:19-174:4 (Radcliffe/United). Among other things, TMCs ensure that business travelers comply with their travel policies, help with duty of care, provide expense reporting and other back-office support, and manage changes to travel itineraries. *See* Tr. 1180:8-1184:2 (Ekert/CWT); Tr. 1211:15-1212:9, 1243:25-1245:1, 1246:22-1247:10 (Stratford/BCD); Tr.

173:19-174:4 (Radcliffe/United). Unlike TTAs, OTAs provide minimal customer support. Tr. 905:9-18 (Nevo).

c. *Distribution through OTAs and TTAs are separate relevant markets*

103. Direct distribution is not a reasonable substitute for distribution through OTAs or TTAs. *See* Tr. 905:9-909:8 (Nevo) (explaining that it is costly to induce travelers to switch booking channels). For many airlines, travel agencies remain an “essential airline sales channel.” PX306 at -613; Tr. 1367:8-17 (Reiz/Farelogix); *see, e.g.*, Tr. 1703:21-1704:2, 1704:18-25 (Tackett/Alaska); [REDACTED]. Airlines rely on the indirect channel—[REDACTED]—because they cannot reach all travelers through the direct channel. Tr. 348:2-24 (Radcliffe/United); Tr. 1703:11-1704:2, 1704:11-25 (Tackett/Alaska). In particular, airlines cannot use airline.com to reach customers that want to compare different airlines’ fares or that need or want to book through TMCs. Tr. 1171:20-1172:9 (Lobl/Delta).

104. As Professor Nevo explained, market definition focuses on airlines’ ability to induce travelers to substitute between channels. Tr. 906:13-907:21 (Nevo). Because OTAs, TTAs, and direct distribution offer different functionality and appeal to different sets of travelers, it would be difficult and costly for an airline to induce a large volume of travelers to switch between channels. Tr. 905:9-909:8, 914:3-23 (Nevo).

d. *OTAs are a distinct and important distribution channel for airlines*

105. OTAs are an important distribution channel for airlines. Tr. 123:22-124:5 (Garner/American); PX237 at -764 ([REDACTED]); Tr. 172:9-15 (Radcliffe/United); Tr. 1703:8-20 (Tackett/Alaska)

(Alaska distributes approximately [REDACTED] percent of its bookings through OTAs). Airlines distribute through OTAs because of the “[REDACTED].” [REDACTED]; Tr. 1703:21-1704:2 (Tackett/Alaska); *see also* PX173 at -341; Tr. 1078:24-1079:9 (Klein/Sabre) (noting that travelers have brand loyalty to OTAs); Tr. 171:24-172:8 (Radcliffe/United).

106. OTAs enable airlines to reach customers they might not otherwise reach through their websites alone. [REDACTED]. OTAs provide a different travel experience than airline.com because OTAs allow travelers to comparison shop across airlines, hotels, cars, and other travel options, which airline.com does not offer. Tr. 124:6-15 (Garner/American); Tr. 172:16-21 (Radcliffe/United). OTAs also enable airlines to sell tickets to customers in areas where they “don’t have a large presence,” and might not be able to reach travelers through the direct channel based on brand loyalty alone. Tr. 1703:4-1704:2 (Tackett/Alaska). As an Alaska Airlines executive testified, the OTA channel is “an important way of making sure our flights show up to customers in those areas that otherwise wouldn’t know to come to AlaskaAir.com to purchase.” Tr. 1703:11-20 (Tackett/Alaska).

107. Airlines view OTAs as an important and necessary distribution channel. Tr. 123:22-124:5 (Garner/American) (OTAs represent “a really significant amount of customers that [American] need[s] to serve in order to fill [its] aircraft”); Tr. 1703:11-1704:2 (Tackett/Alaska). Even though American’s cost to distribute through OTAs is higher than its cost to distribute through the direct channel, American sells through OTAs because the customer segment served by OTAs “is just simply too large to ignore.” Tr. 124:16-25 (Garner/American); *see also* PX237

at -764 ([REDACTED] [REDACTED]).

108. Professor Murphy assumes that because airline.com has a large share and is “one click away” from an OTA, it is a close substitute for distribution through OTAs. Tr. 1432:12-1434:11, 1440:2-18 (Murphy). However, as Professor Nevo explained, substitution, not the size of a distribution channel, determines whether a channel is a close substitute for distribution through OTAs. Tr. 914:3-23 (Nevo). Trial testimony shows that it would be impractical and costly for airlines to replace OTA bookings with bookings through airline.com. Tr. 907:6-909:8 (Nevo); Tr. 109:25-110:10, 123:22-125:17 (Garner/American) (discussing how full-content provisions limit American’s ability to shift bookings to airline.com); Tr. 171:24-172:21 (Radcliffe/United); Tr. 1552:12-1553:9, 1554:1-8 (Murphy) (acknowledging that airlines incur advertising and other costs in moving travelers from OTAs to airline.com and that he did not calculate these costs).

e. *TTAs are a distinct and important distribution channel*

109. TTAs are an important distribution channel for airlines. Tr. 102:17-103:6 (Garner/American); Tr. 172:22-173:9 (Radcliffe/United); Tr. 1704:6-25 (Tackett/Alaska). TMCs, in particular, are very important to airlines because they serve lucrative business travelers. Tr. 101:12-20 (Garner/American) (describing TMCs as “indispensable” and their corporate customers as “some of the highest yielding”); Tr. 1184:10-1185:16 (Ekert/CWT) (noting that TMCs are “the highest yielding channel to the airlines”); PX253 at -154 (large TMCs represent “airlines’ most valuable travelers”); Tr. 1704:18-25 (Tackett/Alaska).

110. Business travelers booking through TMCs are an important customer segment for airlines. Tr. 101:12-20 (Garner/American); Tr. 172:22-173:9 (Radcliffe/United); Tr. 1149:10-21 (Lobl/Delta). Business travelers are a “higher yielding” segment for airlines because they tend to book more expensive airline tickets than leisure travelers. PTO Ex. 1 ¶ 29, D.I. 182; Tr. 1704:11-25 (Tackett/Alaska). For many airlines, business travelers are the most profitable traveler segment. PTO Ex. 1 ¶ 30, D.I. 182.

111. Business travelers booking through TTAs are unlikely to switch to booking through OTAs or airline.com because those channels do not provide the support services required by business travelers. *See* Tr. 905:9-25 (Nevo); Tr. 101:21-102:16 (Garner/American) (discussing services TTAs offer their customers); *see, e.g.*, Tr. 1180:8-1183:1 (Ekert/CWT) (describing the services CWT offers its corporate customers). Further, many business travelers are required by their employer to book through a particular TMC, so they could not switch to other channels. Tr. 172:22-173:7 (Radcliffe/United); *see also* Tr. 1172:10-13 (Lobl/Delta) (stating that Delta could not convince all of the TTAs it does business with to switch to delta.com).

B. Relevant geographic market

112. The United States is the relevant geographic market. Tr. 897:1-898:13, 909:9-914:2 (Nevo). Booking services allow airlines to sell tickets through TTAs physically located in the United States and through OTAs with an IP address located in the United States—in other words, they allow airlines to reach the customers of U.S. travel agencies. Tr. 897:1-13 (Nevo).

Bookings made through travel agents located in the United States are referred to as “U.S. point of sale.” Tr. 897:1-13, 1017:12-14 (Nevo); Tr. 836:16-22, 853:4-11 (Wilding/Sabre).

113. As Professor Nevo explained, airlines cannot easily induce travelers to switch from booking through U.S. travel agencies to booking through travel agencies in other parts of the world or replace sales to travelers in the United States with sales to travelers in other countries. Tr. 897:14-898:13 (Nevo). Because it is impractical and costly for airlines to induce switching, an airline would have to accept a small price increase on booking services for U.S. point-of-sale bookings. Tr. 897:14-898:13 (Nevo).

114. Sabre’s GDS business has a strategy for the U.S. market and separately tracks its market share for U.S. point of sale and rest-of-world point of sale. PX389 at -437. Sabre’s pricing is different for the United States versus other regions. For certain airlines, Sabre’s GDS charges a lower price for U.S. point-of-sale bookings versus rest-of-world point-of-sale bookings. Tr. 852:24-853:24 (Wilding/Sabre); PX389 at -437.

115. Professor Murphy claims the geographic market for NDC APIs should be global because many of Farelogix’s airline customers are based outside the United States. Tr. 1424:20-1427:7, 1443:22-1444:21 (Murphy). Professor Murphy noted, however, that focusing on the United States does not change his analysis. Tr. 1424:20-1427:7 (Murphy). As Professor Nevo explained, Sabre and Farelogix compete to supply booking services to airlines (whether or not they are based in the United States) for the sale of tickets through travel agents in the United States. Tr. 897:1-898:13, 924:7-928:8 (Nevo).

C. Economic analysis confirms that OTA booking services and TTA booking services in the United States are relevant markets

116. To confirm the relevant markets, Professor Nevo applied the hypothetical monopolist test, as set out in the Horizontal Merger Guidelines and endorsed by the Third Circuit. Professor Nevo defined each candidate market by starting with Farelogix's Open Connect product then adding its closest substitutes. Tr. 896:4-19, 994:2-10 (Nevo). The test assumes that the hypothetical monopolist controls all the booking services products in the market for the given geography, then asks whether the hypothetical monopolist would profitably impose a small price increase ("SSNIP") on those products. Horizontal Merger Guidelines § 4.1.1 ("Guidelines"); Tr. 910:2-12 (Nevo). If so, the market is a relevant market.

1. OTA booking services in the United States is a relevant market

117. OTA booking services in the United States ("OTA booking services") is a relevant market. Tr. 898:14-900:4, 903:19-904:6, 909:9-912:13 (Nevo).

118. To define the candidate market for OTA booking services, Professor Nevo started with Farelogix's Open Connect and assumed that the hypothetical monopolist controlled that product and all other booking services products used in the OTA channel in the United States. Tr. 895:5-896:19, 909:16-910:1, 994:2-10 (Nevo). Professor Nevo explained that the candidate market includes the booking services component of the traditional GDS bundle as well as non-GDS booking services alternatives like Farelogix. Tr. 898:14-899:17 (Nevo).

119. Professor Nevo calculated that a five percent SSNIP on OTA booking services would be \$0.10. Tr. 910:2-12 (Nevo). Professor Nevo considered whether an airline would accept the SSNIP and adjust its fares to reflect the higher costs, or reject the SSNIP and stop using OTA booking services. Tr. 910:13-912:5 (Nevo).

120. Professor Nevo concluded that an airline would accept a SSNIP because it would be more expensive for an airline to forgo distribution through OTAs than accept the SSNIP. Tr. 910:13-912:13, 914:3-23 (Nevo). To reject a SSNIP, the airline would need to be able to persuade travelers booking through OTAs to switch to other channels, or sell additional tickets to different travelers through other channels. Tr. 904:7-24, 906:19-908:13, 909:16-912:5 (Nevo) (explaining that it would be very costly to fill the seats with travelers booking through other channels). American Airlines' experience pulling out of Expedia and Orbitz in 2011 demonstrates that it is costly to replace OTA volume—even when other OTAs are an option, which they would not be if the hypothetical monopolist controlled them all. Tr. 908:14-909:8 (Nevo). Airlines likewise testified that they would opt to pay more rather than not distribute through any OTAs. Tr. 125:8-17 (Garner/American) (American would not pull out of all OTAs, even if the cost to sell through them increased, because that would create revenue risk). Testimony from a Delta executive confirmed that if the cost of distributing through OTAs went up five percent, Delta would not stop distributing through OTAs. Tr. 1149:22-25 (Lobl/Delta).

121. Because the SSNIP represents a very small percentage of the average OTA ticket fare, Professor Nevo concluded that it would have a de minimis effect on the number of tickets sold. Tr. 910:13-912:5 (Nevo).

122. As such, a hypothetical monopolist would impose a SSNIP on OTA booking services in the United States. Tr. 909:9-912:13 (Nevo). Accordingly, OTA booking services in the United States is a relevant market. Tr. 912:6-13 (Nevo).

2. TTA booking services in the United States is a relevant market

123. Booking services for the sale of airline tickets sold through TTAs in the United States (“TTA booking services”) is a relevant market. Tr. 898:14-900:4, 912:14-914:2 (Nevo).

124. As with OTA booking services, Professor Nevo defined a candidate market for TTA booking services starting with Open Connect and assumed the hypothetical monopolist controlled that product and any other booking services products used in the TTA channel in the United States. Tr. 896:4-19, 912:14-913:3, 994:2-10 (Nevo). To be conservative, Professor Nevo also added Southwest’s proprietary API, which provides booking services for Southwest alone. Tr. 895:5-896:3, 912:14-913:3, 921:17-922:7 (Nevo).

125. Professor Nevo calculated that a SSNIP on TTA booking services would be \$0.11. Tr. 912:14-913:20 (Nevo). Compared to the cost of rejecting a SSNIP for OTA booking services, airlines would find it even more costly to induce travelers to switch from TTAs to other channels. Tr. 912:14-913:20 (Nevo). A SSNIP on TTA booking services is smaller relative to the average price of airline tickets booked through TTAs, and business travelers are relatively less price sensitive, so they are unlikely to shift in response to a small price increase. Tr. 912:14-913:20 (Nevo). TTAs are a critical sales channel for airlines, who would rather pay a SSNIP than pull out of all TTAs. Tr. 101:5-102:19, 109:25-110:16 (Garner); Tr. 172:22-174:4, 348:14-349:14 (Radcliffe).

126. As such, Professor Nevo concluded that a hypothetical monopolist would impose a SSNIP on TTA booking services. Tr. 912:14-914:2 (Nevo). Accordingly, TTA booking services in the United States is a relevant antitrust market.

3. Professor Nevo properly applied the hypothetical monopolist test

127. Defendants claim that Professor Nevo's application of the hypothetical monopolist test was flawed because he did not assess the standalone price or value of Sabre's booking services functionality or compare it to the value of Farelogix's booking services. Tr. 987:7-25 (Nevo). In applying the test, Professor Nevo instead used the average of the price for Open Connect and Sabre's GDS booking fee. Tr. 910:2-12; 994:6-21, 1060:9-1061:4 (Nevo). Professor Nevo's approach was conservative; because the GDS booking fee is greater than the implied price of the booking services provided by the GDS, the SSNIP is larger and thus, the test is harder to satisfy. Tr. 994:11-21, 1060:9-1061:4 (Nevo). If Professor Nevo had used the lower, implied priced for GDS booking services, the SSNIP would have been smaller and thus, a hypothetical monopolist would be even more likely to profitably impose a price increase. Tr. 1060:9-1061:4 (Nevo).

128. Professor Murphy claims that Professor Nevo's application of the hypothetical monopolist test inappropriately excluded airline.com as a competitive constraint. Tr. 1480:12-1481:5 (Murphy). However, Professor Nevo's exclusion of airline.com from the relevant markets was based on a standard implementation of the hypothetical monopolist test: he began with one of Defendants' booking services products and added similar products used in the United States, such as other GDSs and Southwest's proprietary API. Tr. 896:4-19, 909:16-910:1, 912:14-913:20 (Nevo). With these candidate markets, Professor Nevo evaluated whether an airline could use alternative channels, including airline.com, to profitably replace the passenger traffic lost if it rejected a five percent price increase imposed by a hypothetical monopolist on

OTA or TTA booking services. Tr. 903:19-904:6, 905:9-906:12, 907:22-909:8, 910:13-912:5 (Nevo). Professor Nevo concluded that an airline could not. Tr. 912:6-13, 913:21-914:2 (Nevo).

129. Further, Professor Nevo's analysis of bargaining leverage explicitly considered airline.com. Tr. 937:19-938:11 (Nevo). In his review of previous airline-GDS negotiations, Professor Nevo found that direct connects and GDS New Entrants ("GNEs") had a distinct and incremental effect on GDS prices beyond any constraint from airline.com. Tr. 938:12-940:20 (Nevo) ("So this outcome is consistent with the GNEs providing an additional leverage to the airlines"); *see also* Judicial Notice Order ¶¶ 4, 6, 8, 10, 16-20, D.I. 228. In prior testimony and advocacy on behalf of Sabre, Professor Murphy reached the same conclusion. Tr. 1525:8-1526:16, 1530:2-1531:7, 1533:24-1534:16, 1537:6-1538:11, 1539:5-18 (Murphy); PX178 at -444, -451; PX426 at -225. The fact that Sabre seeks parity with airlines' direct connects and provisions restricting an airlines' use of direct connects further supports Professor Nevo's conclusion that Farelogix's direct connects impose an additional constraint on GDS pricing beyond any constraint imposed by airline.com. PX178 at -395; PX389 at -441; PX497 at -377 (Sabre seeking parity with airlines' direct connects); Judicial Notice Order ¶¶ 8-10, D.I. 228.

IV. THE PROPOSED TRANSACTION IS PRESUMPTIVELY UNLAWFUL IN THE RELEVANT MARKETS

A. The proposed transaction is presumptively unlawful in both relevant markets based on market concentration

130. Professor Nevo measured market concentration using the Herfindahl-Hirschman Index ("HHI"). Tr. 919:21-920:10 (Nevo). The HHI is a standard measure used in economic literature and is calculated by computing the share of each firm in the market, squaring the shares, and summing them. Tr. 919:21-920:10 (Nevo); Guidelines § 5.3. An industry with an

HHI over 2,500 is considered highly concentrated, and a merger that causes an increase in HHI of more than 200 points raises significant competitive concerns. Tr. 915:24-916:6; 920:11-921:3 (Nevo); Guidelines § 5.3.

131. In the market for OTA booking services, Professor Nevo calculated measures of concentration and found that they exceeded the thresholds that raise significant competitive concerns. Tr. 921:4-7, 920:20-921:3 (Nevo). Using 2018 data, Professor Nevo calculated that Sabre has a 48 percent market share and Farelogix has a 3.9 percent share. Tr. 917:1-13 (Nevo). With these shares, he calculated a post-merger HHI of 4,268, with an increase in HHI of 371 points. Tr. 920:20-921:3 (Nevo). Using Sabre's projections for Farelogix's growth, Professor Nevo calculated that in 2020, Sabre will have a 43.7 percent market share and Farelogix will have a 12.5 percent share. Tr. 917:14-17 (Nevo). Using these shares, he calculated a post-merger HHI of 4,465, with an increase in HHI of 1,093 points. Tr. 920:20-921:3 (Nevo).

132. In the market for TTA booking services, Professor Nevo calculated measures of concentration and similarly found that they exceeded the thresholds that raise significant competitive concerns. Tr. 922:22-923:7 (Nevo). His market share calculations in the TTA booking services market included Southwest as a market participant, using bookings made through Southwest's "self-build" API. Tr. 921:4-23 (Nevo). Because Southwest does not compete to provide booking services for other airlines, its inclusion in these calculations is conservative. Tr. 921:24-922:7 (Nevo). Using Sabre's projections of Farelogix's growth, Professor Nevo calculated that in 2020, Sabre will have a 51.1 percent market share and Farelogix will have 6.4 percent market share. Tr. 922:17-21 (Nevo). With these shares,

Professor Nevo calculated a post-merger HHI of 4,085, with an increase in HHI of 657 points.

Tr. 922:22-923:7 (Nevo).

B. Explanation of Professor Nevo's market share calculations

133. To calculate market shares, Professor Nevo relied on Sabre's projections of Farelogix's expected growth by 2020. Tr. 918:4-919:20 (Nevo). Calculating market shares based on forward-looking projections is appropriate where, as here, there are "recent or ongoing changes in market conditions" that are "reasonably predictable" and historical sales understate a firm's competitive significance. Tr. 918:4-919:6 (Nevo); Guidelines § 5.2.

134. Sabre's projections of Farelogix's expected growth by 2020 formed the basis for Sabre's valuation of Farelogix and the \$360 million purchase price. Tr. 717:17-718:1 (Menke/Sabre); DX145 at -006.

135. As a conservative approach, Professor Nevo relied on the "Sabre base case" for Farelogix's standalone growth, rather than Farelogix's projections, which anticipated more growth. Tr. 918:4-919:20 (Nevo); Tr. 537:7-540:15, 564:9-566:21 (Boyle). Sabre's base case adjusted down Farelogix's projections, but still projected "robust" growth. Tr. 537:7-538:3 (Boyle/Sabre); PX011 at 8. As Sabre's deal lead for the Farelogix acquisition testified, the base case best reflects Farelogix's likely growth. Tr. 537:7-540:21, 564:24-566:21 (Boyle) (describing Sabre's base case numbers as "reasonable" and "realistic" and indicating that they aligned with Farelogix's revised projections of its revenue growth); PX011 at 8.

C. Market shares understate Farelogix's competitive significance in both relevant markets

136. Even using Sabre's base case, Farelogix's market share understates its competitive significance in both relevant markets. Tr. 923:8-924:6 (Nevo); *see also* Tr. 1541:18-

21 (Murphy) (accepting that it is possible for a firm's market share to understate its competitive significance).

137. First, Farelogix's share does not reflect how Farelogix has pushed the GDSs to innovate. Tr. 923:8-924:6 (Nevo); *see also* Section V.H.2.

138. Second, Farelogix's market share does not illuminate Farelogix's impact on airline-GDS negotiations. Tr. 923:8-924:6 (Nevo); *see also* Tr. 787:10-23 (Vilches/Sabre). Airlines have traded restrictions on their ability to pursue direct connects with Farelogix for lower GDS booking fees. *See* Section V.C. When airlines make this trade, Farelogix does not gain market share, but its presence in the market puts competitive pressure on the GDS. Tr. 923:8-924:6 (Nevo).

139. Airlines recognize they have benefited from having non-GDS indirect distribution technology options like Farelogix. Tr. 1722:11-1722:20 (Adair/Delta). As American Airlines' vice president of sales and distribution strategy explained, Farelogix's five percent share of American's indirect bookings does not accurately reflect the competitive significance of Farelogix because "Farelogix has been a disruptor from the beginning" and Farelogix's share is "enough to be a sufficient competitive threat." Tr. 112:7-14 (Garner/American).

D. Professor Murphy's market share calculations are incorrect

140. In his market share calculations, Professor Murphy credits bookings made using Farelogix to the airline in GDS bypass (in his calculation of shares and HHIs in the OTA booking services market) and to the GDS in GDS pass-through (in his calculation of shares and HHIs in the TTA booking services market). Tr. 1483:8-1486:11 (Murphy). These attributions flow from Professor Murphy's characterization of Farelogix's booking services an "input" into

the downstream market for airline distribution. *See* Tr. 1446:20-1448:2 (Murphy). However, as Professor Nevo explained, Farelogix should be credited for both its GDS bypass and its GDS pass-through bookings because Farelogix provides the booking services in both scenarios. Tr. 917:18-918:3 (Nevo); Tr. 179:17-180:5 (Radcliffe/United); Tr. 118:3-16 (Garner/American).

V. THE PROPOSED TRANSACTION WILL SUBSTANTIALLY LESSEN COMPETITION IN THE RELEVANT MARKETS

141. The proposed transaction will eliminate head-to-head competition between Sabre and Farelogix. Tr. 892:11-21; 924:7-21 (Nevo). It will also eliminate the bargaining leverage that Open Connect provides airlines in their GDS negotiations. 931:20-932:3 (Nevo). As a result, this transaction will substantially lessen competition in the relevant markets, harming airlines and travelers. Tr. 892:11-21 (Nevo).

A. Sabre and Farelogix are close competitors in both relevant booking services markets

142. Sabre and Farelogix view each other as key competitors for booking services. *See, e.g.*, PX072 at -219 (in a presentation created for a potential acquirer, Farelogix described Sabre and Amadeus as its primary “Order Delivery” competitors, both in their development of NDC APIs and in “traditional GDS distribution until NDC is fully adopted”); PX197 at -938 (describing Farelogix as a “non-GDS competitor[]” in next-generation order management); PX005 at -927; PX048 at -802 (Sabre strategy documents showing Farelogix as one of Sabre’s “most relevant threats” in next-generation distribution); Tr. 405:10-406:17 (Davidson/Farelogix).

143. Defendants claim that the Sabre documents describing Farelogix as a threat refer only to merchandising. *See, e.g.*, Tr. 682:9-17, 726:7-727:3 (Menke/Sabre). However, the documents describe Farelogix as a competitor in next-generation distribution and state that Sabre

should invest in next-generation distribution and NDC to protect its GDS business. PX197 at -913, -914, -938; PX048 at -802; Tr. 679:3-680:18, 682:9-23, 683:7-24 (Menke/Sabre).

B. Farelogix poses a number of different competitive threats to Sabre

1. Airlines could shift bookings from Sabre to Farelogix

144. Farelogix can take business away from Sabre by handling bookings that would otherwise go through Sabre's GDS. *See, e.g.*, Tr. 105:24-106:2 (Garner/American) (TripActions is implementing a direct connect with American, which will allow it to book through Farelogix instead of Sabre).

145. Sean Menke, Sabre's CEO, testified that GDS bypass is not a threat to Sabre. Tr. 737:18-21 (Menke/Sabre); *but see* Tr. 671:15-23, 740:25-741:7 (Menke/Sabre).

146. In its 2018 10-K, Sabre identified "direct connect initiatives . . . bypassing the GDSs" as a risk factor for Sabre's business. PX251 at -162. Internal Sabre documents also indicate that bypass remains a risk. *See, e.g.*, PX156 at -953; PX159 at -770 to -771; PX160 at -728; PX161 at -390; PX497. For instance, a 2020 planning forecast deck provided to Mr. Menke in August 2019 indicates that the "ability for major carriers to shift share to direct connect" creates risk for Sabre's business in 2020. PX343 at -188 ([REDACTED]

[REDACTED]); Tr. 1619:20-1621:9 (Shirk/Sabre).

147. Sabre's economic expert, Professor Murphy, admitted that direct connects can be a competitive constraint on the GDSs and that "GDS bypass is somewhat of a threat" to Sabre. Tr. 1520:9-14, 1558:23-1559:6 (Murphy).

148. Sabre's GDS business relies heavily on a small number of large airlines. PX174 at -299. Open Connect is used by many of Sabre's largest GDS airline customers. Tr. 504:20-506:2 (Boyle/Sabre); PX156 at -944 ([REDACTED]); Tr. 237:1-3 (Carter/Farelogix); [REDACTED]. Sabre's revenues and profits could be materially impacted if those airlines use direct connects to disintermediate or bypass Sabre. PX174 at -299 ("if the Sabre GDS proves inadequate in facilitating bookings for one or more major airlines or if the Sabre GDS was significantly disintermediated by travel providers using direct connect programs [that] . . . could reduce our transaction fee revenue and have a material adverse effect on our business").

149. To mitigate the risk of GDS bypass, Sabre tries to structure its GDS agreements with U.S. airlines using Open Connect to prevent them from "[a]ccelerat[ing] bypass investment." PX389 at -439; PX156 at -953; Tr. 836:23-839:14 (Wilding/Sabre). Sabre executives have recommended [REDACTED] [REDACTED]. PX156 at -953; Tr. 842:19-23, 843:17-845:11 (Wilding/Sabre). Instead, Sabre executives have specifically recommended [REDACTED]. PX389 at -441; Tr. 839:23-25, 840:10-841:2 (Wilding/Sabre). Similarly, Sabre's GDS contracts [REDACTED] [REDACTED]. PX323 at -079 ([REDACTED]); PX322 at -121 ([REDACTED] [REDACTED]); Tr. 1595:1-11, 1596:6-8, 1597:8-24 (Shirk/Sabre).

2. Farelogix's aggressive pricing and innovative technology puts pressure on Sabre to lower its booking fees

150. Industry participants testified that Farelogix's prices are significantly lower than Sabre's. *See, e.g.*, Tr. 175:4-8 (Radcliffe/United) (Farelogix charges United "a fraction" of what United pays Sabre); Tr. 107:12-17 (Garner/American) (Farelogix is 80 to 90 percent less expensive than Sabre); Tr. 408:19-21 (Davidson/Farelogix).

151. Defendants' ordinary course documents suggest that the availability of Farelogix's lower-cost distribution option allows airlines to get better prices from the GDSs. *See, e.g.*, PX025 at -953 (Farelogix marketing materials tout cost savings from "Distribution/GDS Fee (bypass model)" and "GDS/PSS leverage"); PX183 at -628 (Farelogix's CFO predicted in 2015 that Farelogix's direct connects "will put more pressure on GDSs to reduce their distribution fees in the future"); *see also* Tr. 250:2-17 (Carter/Farelogix).

152. Airlines pursuing an NDC strategy have begun using NDC as a lever to drive down their GDS booking fees. PX496; Tr. 854:6-8, 855:2-15, 856:20-857:8 (Wilding/Sabre). Certain airlines have already asked Sabre for lower fees for NDC bookings. Tr. 848:12-24 (Wilding/Sabre). And in at least one instance, Sabre offered an airline using Open Connect a lower booking fee for NDC bookings. DX055 at -191; Tr. 851:22-24, 852:10-853:11, 853:22-24 (Wilding/Sabre).

3. Airlines benefit from the bargaining leverage Farelogix gives them in their GDS negotiations with Sabre

153. Farelogix has provided airlines with leverage in their negotiations with GDSs, which has substantially lowered airlines' booking fees and helped ensure the continued availability of payment models more favorable to airlines. Tr. 923:8-10, 923:16-23, 931:20-

932:18, 934:18-25, 939:7-940:22, 941:7-945 (Nevo); Tr. 115:22-116:4, 116:13-17, 117:7-17 (Garner/American); Tr. 188:17-189:5 (Radcliffe/United).

154. The economics literature and Horizontal Merger Guidelines recognize that a merger between competing sellers may result in harm if it prevents customers from playing firms off against each other in negotiations. Tr. 932:19-933:5 (Nevo); Guidelines § 6.2. In a negotiation, the bargaining leverage of each side depends on its fallback option, also known as its disagreement point or next-best alternative. Tr. 933:13-934:17 (Nevo). The better the alternative that a side has, the more aggressive it is willing to be in negotiations. Tr. 933:13-934:17 (Nevo). Professor Murphy accepts this bargaining framework as the economic lens for analyzing the travel distribution industry. Tr. 1528:7-1531:7, 1536:4-1538:11 (Murphy); PX178 at -442 to -443.

155. Open Connect is an airline's next-best alternative to the GDSs to reach travel agencies. Tr. 115:11-21 (Garner/American); Tr. 174:17-23, 176:5-12 (Radcliffe/United). By giving the airlines "a better fallback option in case there is disagreement" with a GDS, Farelogix provides the airline with a "significant source of leverage." Tr. 932:4-18, 933:13-934:17 (Nevo). The mere existence of Farelogix as an alternative creates a threat to Sabre that benefits the airline, even if the airline does not end up using Farelogix's booking services. Tr. 923:8-924:6, 934:18-935:6 (Nevo).

156. Airlines gain bargaining leverage with the GDSs by having direct connects as an alternative distribution channel. Tr. 786:11-20; 787:10-14 (Vilches/Sabre); PX299 at -770; Tr. 115:22-116:4, 117:7-17 (Garner/American). Professor Murphy agreed that airlines have used the threat of direct connects to obtain lower booking fees in their GDS negotiations with Sabre. Tr.

1523:6-23, 1570:20-1571:2 (Murphy) (explaining that direct connects are one of the “tools” airlines can use to negotiate a better deal with the GDSs). According to Farelogix’s CEO, the mere presence of Farelogix in an airline’s negotiations with Sabre is “almost guaranteed” to save the airline 10 to 20 times Farelogix’s annual fees. PX087 at -731; Tr. 413:8-14 (Davidson/Farelogix).

157. Airlines using Open Connect can gain leverage by threatening to withhold content from Sabre and distribute it only through the direct connect. Judicial Notice Order ¶¶ 13, 24, D.I. 228; *see also* Tr. 1570:20-1571:2 (Murphy) (explaining that airlines can threaten to withhold content to negotiate a better deal with the GDSs). As Sabre’s CEO testified, the value of Sabre’s GDS decreases when an airline withdraws content from the GDS. Tr. 672:7-10 (Menke/Sabre); *see also* PX156 at -953 (“[REDACTED]”). For example, in a 2012 submission to the Department of Justice, Sabre noted that American had negotiating leverage with Sabre in 2006 “stemm[ing] both from its control over its own content and the introduction of additional distribution channels.” PX178 at -394. As Professor Murphy explained in Sabre’s antitrust litigation with American Airlines, threats to withhold content and “switch away from GDSs to other alternatives (including American’s direct connect) were major forces leading to lower GDS booking fees” PX426 at -225; *see also* Judicial Notice Order ¶¶ 13, 24, D.I. 228.

158. In its SEC filings, Sabre acknowledged that airlines with “direct connect initiatives” can use the threat of direct connects to “apply pricing pressure” and negotiate GDS contracts that are “less favorable” to Sabre. PX251 at -162; Tr. 667:1-668:19 (Menke/Sabre)

(discussing this risk and admitting that “pricing pressure is competition”); PX173 at -231; PX251 at -163.

C. Competition between Sabre and Farelogix to provide booking services benefitted airlines in their 2006 and 2011 GDS negotiations with Sabre

159. U.S. airlines first used Farelogix and other GDS alternatives as leverage during the 2005-06 round of GDS negotiations. Tr. 939:17-940:22, 1062:7-17 (Nevo). By 2006, three GDS New Entrants (“GNEs”)—G2 Switchworks, ITA, and Farelogix—had emerged as challengers to the legacy GDSs (Sabre, Amadeus, and Travelport). Tr. 939:17-940:2 (Nevo); Tr. 1105:16-1106:1 (Wilding/Sabre); Tr. 1574:1-16 (Murphy) (explaining that these three companies “were selling themselves to travel agents as a potential GDS alternative”).

160. Professor Nevo compared the fees airlines obtained under their 2003 GDS contracts and their 2006 GDS contracts. He found that airlines received lower GDS booking fees from Sabre when they gained leverage from the GNEs. Tr. 938:12-940:22 (Nevo).

161. Defendants’ economic expert, Professor Murphy, reached the same conclusion. As Professor Murphy wrote in a 2012 white paper submitted to the Department of Justice on behalf of Sabre, American Airlines “leveraged the introduction of non-Sabre distribution channels in 2006 to reduce its booking fees.” Judicial Notice Order ¶ 4, D.I. 228. “American’s documents acknowledge that the ‘\$133M in annual GDS booking fee savings’ that it obtained between 2004 and 2009 were ‘driven by distribution alternatives,’ including the introduction of ‘GDS new entrants [GNEs] like G2 and Farelogix’ in 2006.” Judicial Notice Order ¶ 6, D.I. 228.

162. In his 2012 white paper, Professor Murphy explained that “ [REDACTED]

[REDACTED]

[REDACTED].” PX178 at -447. American improved its fallback position “by

aggressively pursuing and marketing its direct connect alternative and encouraging agencies to use Farelogix, an alternative GDS.” Tr. 1525:8-22, 1531:8-15 (Murphy); PX178 at -444; PX426 at -207; *see also* Judicial Notice Order ¶ 6, D.I. 228 (American obtained an “[i]mproved negotiating position with the GDSs due to strengthened value proposition and reach of the Direct Connect”).

163. “[B]y enhancing its fallback payoff . . . even without having to follow through on threats to partner with G2 Switchworks or other ‘non-traditional’ GDSs (a category into which American placed Farelogix) to bypass Sabre,” American was able to substantially reduce its average booking fee. “As the 2006 negotiations illustrate, American obtained the benefits of its ability to switch to other options without having to do so.” PX426 at -211 to -212; Judicial Notice Order ¶ 7, D.I. 228 (noting that through “the introduction of additional distribution channels,” American “was able to secure significantly improved economics”); PX178 at -394.

164. Ultimately, in the 2006 negotiations, U.S. airlines agreed to full content and restrictions on their ability to promote direct connects in exchange for significantly lower booking fees. As Sabre argued in its antitrust litigation with American, “AA received hundreds of millions of dollars in discounts from Sabre in exchange for agreeing to distribute its content through the Sabre GDS and to refrain from marketing a direct connect product” publicly for three years. Judicial Notice Order ¶ 10, D.I. 228; PX172 at -387; Tr. 1075:18-1076:20 (Klein/Sabre); *see also* Judicial Notice Order ¶¶ 8, 11, 14-15, D.I. 228; PX178 at -450 to -451; Tr. 1532:25-1534:16 (Murphy); PX426 at -223, -225, -241 (Sabre and Professor Murphy arguing that American obtained a substantial reduction in booking fees for agreeing to full content and terms limiting its ability to market direct connects).

165. Similarly, in 2006, Sabre gave US Airways a better price in exchange for US Airways agreeing to full content and to not pursue a direct connect strategy. Tr. 869:4-871:8 (Wilding/Sabre); Judicial Notice Order ¶¶ 16-22, D.I. 228. As Sabre argued to a federal district court in 2015, US Airways “leveraged their access to content and these GNEs that were popping up” and, in response, Sabre “dropped the price. That’s competition When your customer is saying, we’re going to go to a competitor, you drop the price. That’s price competition.” Judicial Notice Order ¶ 23, D.I. 228.

166. By the next round of negotiations, in 2011-12, the market landscape had changed. By 2010, G2 Switchworks and ITA no longer served as GDS bypass alternatives; Farelogix was the only new entrant remaining in the market. Tr. 942:2-20 (Nevo); *see also* Tr. 170:25-171:3 (Radcliffe/United) (noting that G2 Switchworks was “purchased by Travelport and shut down”).

167. As Professor Nevo explained, in this next round of negotiations, U.S. airlines maintained their gains from the 2005-06 negotiations, even though Farelogix was the only remaining new entrant. Tr. 942:2-943:2 (Nevo) (explaining that “the rate decrease that airlines were able to get using the GNE as a leverage were already embedded or baked in . . . with just Farelogix, they were able to maintain those same rates”).

168. Similar to 2006, U.S. airlines agreed in 2011 to restrictions on direct connects in exchange for better terms. For example, as Professor Murphy testified in federal district court on behalf of Sabre, US Airways received better terms in 2011 in exchange for the restriction on its direct connect. Tr. 1534:18-1535:3, 1536:5-7, 1537:3-1538:11 (Murphy).

D. Farelogix has continued to give airlines leverage in their GDS negotiations with Sabre

169. Airlines continued to use Farelogix as leverage in GDS negotiations with Sabre after 2011. Sabre's former CEO testified that airlines put Farelogix and direct connects on the table in their 2013 negotiations with Sabre as "something they would trade" for things that "would benefit them." Tr. 1080:15-1082:23 (Klein/Sabre).

170. Professor Nevo analyzed the booking fees paid by major U.S. airlines from 2012-2018. Tr. 942:2-20 (Nevo). He concluded that his analysis was consistent with Farelogix continuing to give airlines leverage in their GDS negotiations throughout the period, helping them preserve the discounts they obtained in earlier rounds of negotiation. Tr. 942:2-943:2 (Nevo).

171. American Airlines uses Farelogix as leverage in its GDS negotiations. Tr. 115:22-116:4, 116:13-117:17 (Garner/American); *see also* Tr. 943:11-944:8 (Nevo) (summarizing American documents that discuss the leverage Farelogix provides). Sabre recognizes it will gain leverage over American by acquiring Farelogix: in a text message exchange, a Sabre senior vice president predicted that American's vice president of sales and distribution strategy, Cory Garner, would "hate" the Farelogix deal because "it entrenches us more." PX140 at -626 to -644; Tr. 750:7-751:15 (Gilchrist/Sabre). As the Sabre executive described it, Farelogix was American's "Trojan horse to fuck us." PX140 at -626 to -644; Tr. 750:7-751:15 (Gilchrist/Sabre). This Sabre executive testified that he expected Mr. Garner would "be negative towards the deal" and would believe that "American is losing a lever against Sabre." Tr. 764:13-20 (Gilchrist/Sabre).

172. United Airlines also benefits from the leverage Farelogix gives United in its GDS negotiations. In 2017, United’s director of distribution advised United’s leadership that partnering with Farelogix for NDC distribution would “improve[] United’s position” in upcoming contract negotiations with Sabre, Amadeus, and Travelport. PX300 at -253; Tr. 187:12-25 (Radcliffe/United). He testified that in GDS negotiations, including the most recent negotiations, “[t]he existence of the direct connect alternative powered by Farelogix gave me the ability to command a lower price from the GDSs” and otherwise obtain “better terms.” Tr. 181:17-182:14, 189:6-22 (Radcliffe/United) (United has “certain freedoms in the [GDS] agreement that are made possible because of the existence of a bypass opportunity”).

173. Even U.S. airlines that have not aggressively pushed direct connect strategies benefit in their GDS negotiations from Farelogix’s market presence. Delta’s managing director of distribution strategy testified that having Farelogix as a GDS alternative improved Delta’s bargaining position with the GDSs. Tr. 1152:17-1153:1 (Lobl/Delta). An airline does not need to explicitly reference “Farelogix” or “direct connects” in its negotiations with GDSs in order for Farelogix to give the airline leverage. Tr. 1154:18-25 (Lobl/Delta) (“I didn’t have any doubt that [direct connect] was inherent to the discussions” in GDS negotiations); Tr. 230:16-231:11 (Radcliffe/United).

174. Prospective Open Connect customers also may gain leverage in negotiations with Sabre. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *see also* PX213 at -185.

E. Farelogix helped changed the distribution model for bookings through OTAs

175. Airlines have used the bargaining leverage from their Farelogix alternative to erode the GDSs' dominance over airline bookings through OTAs in two primary ways. First, Farelogix has enabled airlines to establish direct connects with some of the largest OTAs. Tr. 103:25-104:5 (Garner/American) (10-11 percent of American's OTA bookings are made using American's Farelogix NDC API); PX453 at -970; Tr. 175:9-176:4 (Radcliffe/United) (United has a direct connect with Priceline). American, for example, estimates that it achieved cost savings of \$35 million per year from shifting OTAs to direct connects. PX453 at -970. One large OTA, Fareportal, testified that [REDACTED]

[REDACTED]

[REDACTED]. DX306 at 5-7 ([REDACTED])

[REDACTED]).

176. Second, Farelogix has helped airlines convince GDSs to switch to a "wholesale model" in the OTA market. *See* PX453 at -970 (because American offers a direct connect option, American will not pay GDS fees for OTA bookings); Tr. 108:5-15 (Garner/American); Tr. 943:3-944:8 (Nevo). Under the wholesale model, the payment flow shifts: the airline, not the GDS, pays the travel agency an incentive, and the travel agency pays the GDS a technology fee for each booking made through the GDS. Tr. 108:25-109:5 (Garner/American). Under the wholesale model, airlines pay less for distribution. Tr. 109:6-9 (Garner/American); Tr. 943:3-

944:8 (Nevo). American Airlines, for example, estimates that it has achieved cost savings of \$66 million per year from shifting OTAs to the wholesale model. PX453 at -970.

F. Absent the merger, competition between Sabre and Farelogix in booking services will increase

177. Professor Nevo predicted that, absent the merger, competition between Farelogix and Sabre will intensify. Tr. 888:22-889:18, 924:7-21, 927:4-928:8 (Nevo). Sabre's deal negotiator told Farelogix's investment bankers that Sabre would be a "really tough competitor" to Farelogix if Sabre's bid was rejected. PX018 at -277; Tr. 500:4-501:16 (Boyle/Sabre).

178. Similarly, Sabre's president of Travel Solutions advised Sabre's CEO that "most [of Farelogix's] pipeline is our customer base," and that if Sabre "played hardball their pipeline would be challenged." PX339 at -160; Tr. 1602:17-1603:9 (Shirk/Sabre) (confirming that "pipeline" was a reference to "Farelogix's sales prospects" and that the "majority" of "Farelogix's prospects are Sabre's customers").

1. Farelogix is expected to grow significantly

179. Farelogix is expected to grow significantly in the next several years as its airline customers continue to expand their NDC bookings. Tr. 888:22-889:18, 927:4-928:8 (Nevo); *see, e.g.*, Tr. 192:6-17, 193:9-194:2 (Radcliffe/United); Tr. 250:18-21 (Carter/Farelogix) (FLX is continuing to grow today). In April 2018, IATA announced a leaderboard of airlines committed to making at least 20 percent of their indirect channel bookings via an NDC API by December 2020. PTO Ex. 1 ¶ 63, D.I. 182. Farelogix provides the NDC API for nearly half of the airlines on the IATA NDC Leaderboard, including two of the three U.S. airlines. PTO Ex. 1 ¶¶ 64-65, D.I. 182; PX094 at -566, -569; Tr. 373:9-374:8, 651:13-15 (Davidson/Farelogix). Sabre's board presentation recommending the purchase of Farelogix states that Farelogix has "contracts for

ticket based revenue and subscription with half of the NDC leaderboard and growing.” DX145 at -005.

180. Sabre’s own projections indicate that Farelogix will grow significantly by 2020, absent the merger. Tr. 537:7-538:3 (Boyle/Sabre). Sabre projected that Farelogix’s volume would grow from [REDACTED] bookings in 2018 to [REDACTED] bookings in 2020, PX011 at 8; PX012 at 9, and that Farelogix’s Open Connect revenue would increase from \$ [REDACTED] in 2018 to \$ [REDACTED] in 2020. DX145 at -006.

181. Increases in both GDS bypass bookings and GDS pass-through bookings are expected to contribute to Farelogix’s growth going forward. Tr. 539:3-540:11 (Boyle/Sabre); PX011 at 8. Farelogix is doing GDS bypass implementations for a number of airlines today, including American, United, and Lufthansa. Tr. 375:7-22 (Davidson/Farelogix). Farelogix is also working on 26 GDS pass-through implementations. Tr. 375:23-376:9 (Davidson/Farelogix). Both GDS bypass and GDS pass-through implementations are expected to increase Farelogix’s bookings and revenue. Tr. 368:13-21 (Davidson/Farelogix).

2. Farelogix’s growth in GDS bypass and GDS pass-through will come at Sabre’s expense

182. Sabre’s forecasts show Farelogix’s GDS bypass tickets nearly doubling between 2018 and 2020. Tr. 539:19-23 (Boyle/Sabre); PX011 at 8. Since Sabre has a roughly 50 percent share in the United States, Farelogix’s growth is “going to come in large part from Sabre. And that is exactly the competition that is going to intensify.” Tr. 927:4-928:8 (Nevo). As United’s director of distribution testified, each booking made through bypass “present[s] a threat to the GDSs” because it “eroded revenue that could alternatively have gone through their booking system.” Tr. 185:12-21 (Radcliffe/ United).

183. Ordinary course documents indicate that Farelogix's GDS bypass bookings will increase. *See, e.g.*, PX033 at -340 to -342. For example, Lufthansa's direct connects are already "[i]n production with large TMCs, OTAs and consolidators." PX025 at -954; PX033 at -341; Tr. 1351:14-21 (Reiz/Farelogix). As the head of Sabre's GDS business told Sabre's CEO in late 2018, Lufthansa continues to use content restrictions in the GDSs "to try to drive agencies to direct connects/NDC." PX159 at -771; Tr. 1582:18-1583:1 (Shirk/Sabre). Lufthansa recently launched a direct connect with Expedia. Tr. 375:20-22 (Davidson/Farelogix); PX161 at -390; Tr. 1583:17-1584:17 (Shirk/Sabre). Sabre projected that it would lose [REDACTED] bookings in North America and \$ [REDACTED] in contribution annually as the Lufthansa-Expedia direct connect comes online. PX161 at -390; *see also* PX343 at -188 ([REDACTED] [REDACTED]).

184. American and United already use Farelogix direct connects to distribute through OTAs, like Priceline and Orbitz, and TMCs, including AmTrav and TripActions. Tr. 249:15-250:1, 259:4-20, 261:7-23 (Carter/Farelogix); PX025 at -954; PX033 at -340, -342; Tr. 191:24-192:5 (Radcliffe/United). United expects growth in bookings through direct connects and third-party aggregators linked to its Farelogix NDC API. DX246 at -084; Tr. 193:9-194:2 (Radcliffe/United).

185. American and Lufthansa also use Farelogix's NDC API to connect to third-party aggregators. Tr. 95:10-23; 112:15-23; 139:7-18 (Garner/American); Tr. 259:25-260:18 (Carter/Farelogix). For example, CWT and BCD use Travefusion to access the Lufthansa Group content distributed through Farelogix's NDC API. Tr. 1352:16-1353:12, 1353:21-1354:1 (Reiz/Farelogix).

186. Sabre is aware that a “[g]rowing number of airlines [are] pursuing direct connect.” PX048 at -814. Delta is currently considering using Open Connect and is willing to connect directly to travel agencies outside the GDS. Tr. 1720:5-1721:17 (Adair/Delta); Tr. 1170:7-10 (Lobl/Delta). [REDACTED] [REDACTED]. PX502 at 8 (Dep. Tr. 42:14-21 (Lobl/Delta)).

187. As Sabre’s senior vice president for the Air Line of Business wrote in early 2019, airlines’ “experience with the GDSs has been so negative in the past (the famous gun to their heads) that they will bypass us if they can.” PX367 at -278.

188. Sabre’s CEO admitted that Sabre would be impacted if even a portion of the market shifts to GDS bypass. Tr. 739:17-24, 746:7-20 (Menke/Sabre).

3. GDS pass-through is expected to grow dramatically, generating more revenue and bookings for Farelogix

189. Most of Farelogix’s growth is expected to come from GDS pass-through. Tr. 375:23-376:9 (Davidson/Farelogix); PX072 at -241. GDS pass-through takes bookings away from Sabre and the other GDSs. Tr. 1063:8-1064:7 (Nevo).

190. When an airline uses Farelogix’s NDC API to connect to a GDS (or a third-party aggregator), there is a “multiplier effect” that creates a large volume opportunity for Farelogix. PX081 at -046; *see also* Tr. 242:11-13, 284:13-20 (Carter/Farelogix) (describing GDS pass-through as a “growth opportunity for Farelogix” and noting that GDS pass-through gives the airline “access to all the travel agencies connected to that GDS”).

191. Farelogix’s growth in GDS pass-through is likely to shrink Sabre’s GDS revenues. United’s director of distribution testified that he expected to pay lower booking fees for GDS pass-through bookings because United will “take the heavy lifting” of creating and

pushing out offers. Tr. 190:12-191:19 (Radcliffe/United); *see also* [REDACTED]

[REDACTED]).

192. In establishing its GDS pass-through connection with American, Sabre's then-president of Airline Solutions recognized that Sabre "need[ed] to be careful to not have this overenable Farelogix only to hurt us in all our accounts." PX308 at -982; Tr. 1599:9-25 (Shirk/Sabre).

4. Competition to provide NDC booking services will increase

193. Sabre considers Farelogix a competitor in developing NDC technology. *See, e.g.*, PX246 at -989 (listing Farelogix as among "the competition" for NDC); PX197 at -938 (describing Farelogix as a "non-GDS competitor[]" in next-generation offer and order management).

194. Farelogix and Sabre compete to sell airlines direct connect products. *See* Tr. 1520:15-1521:3 (Murphy). [REDACTED]

[REDACTED]. Tr. 304:24-306:2 (Garner/American)

[REDACTED]); DX094 at -409; Tr. 847:8-25 (Wilding/Sabre). And Sabre and Farelogix competed to provide an NDC direct connect platform to [REDACTED] PX316 at -534. Sabre recognized that Farelogix was its "main competitor" for the [REDACTED] opportunity. PX316 at -534; Tr. 761:12-25 (Gilchrist/Sabre).

195. In particular, Farelogix will increasingly compete with Sabre to provide an NDC API to Sabre's PSS customers. *See* Tr. 1510:25-1511:19 (Murphy) (acknowledging that Sabre

could replace Farelogix's direct connect platform with its own). Farelogix has established relationships with many of Sabre's PSS customers, including [REDACTED], and is "continuing to be aggressive in the market." PX241 at -318. In June 2018, the president of Travel Solutions told Sabre's CEO that, if Sabre's PSS was not able to support "[REDACTED] [REDACTED]," then Sabre was "creating a possible big risk with Farelogix, their positioning and further putting our [Airline Solutions] NDC position at risk for the company and driving FLX possibly up in value." PX311 at -892; Tr. 1600:2-8, 1600:22-1601:8, 1629:6-1630:7 (Shirk/Sabre).

G. The proposed transaction will lessen competition and lead to higher prices for booking services

196. Professor Nevo's economic analysis concluded that post-merger Sabre would have the incentive to raise the prices of its and Farelogix's booking services. As Professor Nevo explained, competing firms like Sabre and Farelogix balance the benefit of higher prices against the cost of losing sales to their competitors. Tr. 928:9-929:18 (Nevo). After the acquisition, any sales that Sabre or Farelogix would have lost to each other will be retained by the merged firm, which gives Sabre the incentive to increase the price of booking services. Tr. 929:19-931:19 (Nevo). Similarly, Sabre will also have the incentive to increase the price of Farelogix's booking services to prevent direct connects from cannibalizing its GDS sales in the U.S. market where Sabre has a high market share. Tr. 929:19-931:19 (Nevo).

197. Based on his analysis of booking fees and ordinary course documents from airlines, Professor Nevo also concluded that the proposed transaction would eliminate the significant bargaining leverage Farelogix provides to airlines. Tr. 943:3-945:4 (Nevo)

(discussing an analysis by American that predicted a significant increase in booking fees if Farelogix was acquired by a GDS).

198. The proposed merger changes these bargaining dynamics in two ways, both of which result in airlines receiving less favorable terms in their GDS contracts with Sabre. Tr. 935:7-937:2 (Nevo). First, the proposed merger would make airlines' fallback option less appealing and, thus, reduce airlines' leverage in their GDS contract negotiations. Tr. 935:7-24 (Nevo). Second, the proposed merger would eliminate the threat to Sabre of its entire business model unraveling if airlines shift volume to Farelogix and induce other airlines to follow. Tr. 935:25-937:2 (Nevo). This risk is not merely theoretical. In the early 2000s, Sabre created a direct connect-like product for an airline in Brazil, which led to the entry of new aggregators. Tr. 937:3-18 (Nevo). As a result, Sabre's booking fees and volume fell significantly in Brazil. Tr. 937:3-18 (Nevo).

1. Defendants' documents indicate that the transaction will lessen competition

199. In August 2018, Theo Kruijssen, Farelogix's chief financial officer, sent Farelogix's CEO a document analyzing Farelogix's acquisition prospects, which noted that acquiring Farelogix would allow Sabre to "tak[e] out a strong competitor vs. continued competition and price pressure in market." PX187 at -960; Tr. 615:6-616:18 (Kruijssen/Farelogix).

200. Mr. Kruijssen testified that this document refers to Farelogix's offer management engines competing with Sabre's PSS because Farelogix does not "compete with Sabre in any other areas." Tr. 616:19-24 (Kruijssen/Farelogix). However, in a presentation shared with a potential acquirer two months prior, Farelogix separately identified Sabre as a "key competitor"

in order delivery *and* offer management. PX072 at -219. Ordinary course documents authored by Mr. Kruijssen also indicate that Farelogix’s Open Connect product competes with Sabre’s GDS. *See, e.g.*, PX181 at -238 (Mr. Kruijssen described Sabre and Travelport as Farelogix’s “main competitors”); Tr. 590:15-591:23 (Kruijssen/Farelogix) (acknowledging that Travelport is a GDS that does not have a PSS business).

201. When Farelogix considered a potential purchase by Sabre or Travelport at the end of 2014, Mr. Kruijssen similarly stated that one of the benefits to a GDS of purchasing Farelogix would be reduced competition: “By acquiring Farelogix,” he wrote, the purchaser would “remove a competitor and would stop losing business to FLX.” PX181 at -240; Tr. 593:23-594:12 (Kruijssen/Farelogix). A Farelogix board member and former Sabre senior executive shared this view, noting that “[l]oss prevention on Sabre bookings” would be one of the “upside synergies” of the transaction. PX181 at -238 at -239.

2. The transaction will eliminate the bargaining leverage Farelogix gives airlines today

202. The elimination of the unique threat posed by Farelogix will reduce airlines’ negotiating leverage, resulting in higher GDS booking fees for airlines. Tr. 923:8-924:6, 934:18-935:24, 939:7-940:22, 941:7-945:4 (Nevo).

203. If the transaction is consummated, airlines will lose their ability to use Farelogix as leverage in GDS negotiations, which will give Sabre greater ability to increase the price of its or Farelogix’s booking services. Tr. 923:8-924:6, 934:18-935:24, 928:9-930:3, 935:7-937:2 (Nevo); [REDACTED].

204. United’s director of distribution wrote to colleagues that “[i]f a GDS owns Farelogix, they may . . . remove a major threat that is out there in the industry that helps apply

pressure to GDSs when we negotiate. Without that alternative in the market, we lose leverage.”

PX299 at -770; Tr. 184:21-186:12 (Radcliffe/United); *see also* Tr. 181:17-182:4

(Radcliffe/United) (“If there was no other way but just the GDSs to connect or have travel agencies connect, I feel like . . . the GDS would have all the leverage”). He described the acquisition as the “stuff of nightmares” and “the worst case scenario coming true.” PX301 at -261; Tr. 231:12-234:10 (Radcliffe/United).

205. Delta’s managing director of distribution strategy testified that if Farelogix is no longer an independent competitor in the market, it could hurt Delta’s negotiation position in its upcoming GDS negotiations because Delta would have to rely more on Sabre. Tr. 1153:2-23 (Lobl/Delta).³

206. In 2015, American Airlines estimated that a GDS acquisition of Farelogix would result in \$500 million in net present value harm to American’s business. PX453 at -974.

³ Due to technical difficulties, the video did not play properly during the cited portion of Mr. Lobl’s testimony. Mr. Lobl testified as follows: “Q: If Farelogix is no longer an independent competitor in the market, do you believe that that would hurt Delta’s negotiating position in the [REDACTED] negotiations that it will have with the GDSs? A: I believe it could. Q: And why is that? A: Because like all negotiations, it’s - - it’s a matter of the reliance each party has on each other; and Farelogix being an alternative to a GDS . . . potentially decreases . . . the reliance on Sabre. Q: And are you basing this opinion on your past experience negotiating with GDSs? A: Yes. Q: And is it also based on your knowledge of Delta’s distribution options? A: Yes.” PX503 (Dep. Tr. 17:12-18:6 (Lobl/Delta)). The parties submitted a joint letter to the Court on February 13, 2020 requesting that this portion of Mr. Lobl’s testimony be admitted as PX503.

American “would also suffer indirect impacts driven by the opportunity cost of losing access to Farelogix technology.” PX453 at -976.⁴

207. Farelogix’s senior vice president of marketing testified that GDS bypass is one way that airlines can achieve distribution cost savings. Tr. 248:11-19 (Carter/Farelogix); *see also* PX025 at -953. American estimated that it “avoid[s] \$101M/year in GDS costs as a result of our direct connect strategy.” Tr. 162:2-12 (Garner/American); PX453 at -970. Similarly, Lufthansa’s use of Open Connect and GDS bypass allowed them to “gain[] greater control over distribution strategy and costs.” Tr. 250:2-17 (Carter/Farelogix); PX025 at -954.

208. As the GDS performs fewer functions for the airline in GDS pass-through, airlines expect to pay a lower price to the GDS. Tr. 1066:21-1067:23 (Nevo); *see also* Tr. 190:12-191:19 (Radcliffe/United) (GDS pass-through will potentially result in lower booking fees because the airlines will “take the heavy lifting from the GDSs”); PX300 at -260 (United presentation noting that using Farelogix NDC for “GDS pass through replaces existing legacy technology” and, therefore, may result in lower GDS segment fees).

⁴ U.S. full-service carriers (“FSCs”) are particularly likely to be harmed by the transaction. They rely more on indirect distribution than low-cost carriers. Tr. 688:10-13 (Menke/Sabre); *compare* Tr. 102:17-19 (Garner/American) (approximately 30 percent of American’s revenue through TMCs) *with* Tr. 1704:6-25 (Tackett/Alaska); DX306 at 20 (Dep. Tr. 1704:8-10 (Tackett/Alaska)) (█ percent of Alaska’s bookings are made via TMCs); *see also* PX389 at -437 (showing that █

█. FSCs have more complex distribution needs than other carriers. Tr. 120:19-121:5 (Garner/American) (American’s operational complexity—compared to a smaller carrier that flies point to point—affects American’s distribution needs); █

█ For U.S. FSCs, Farelogix is the only alternative option to the GDSs for booking services. Tr. 120:10-18 (Garner/American); █

209. As airlines shift to NDC, Sabre expects that they will use “NDC as a bargaining chip in negotiations” with Sabre’s GDS. PX247 at -784; Tr. 698:8-14 (Menke/Sabre). Already, certain airlines with an NDC strategy have requested lower fees for NDC bookings. Tr. 848:12-24 (Wilding/Sabre). Sabre has offered at least one airline lower pricing for NDC bookings versus bookings made via legacy GDS technology. DX055 at -191; Tr. 851:22-24, 852:10-853:11, 853:22-24 (Wilding/Sabre).

210. Chris Boyle, who led Sabre’s evaluation of the proposed Farelogix acquisition, sent a presentation to Sabre’s CEO describing “[m]itigate risk from potential GDS bypass” as part of the “value” of acquiring Farelogix. PX011 at 3; PX012 at 7; Tr. 506:23-507:20, 509:1-4, 510:25-511:8 (Boyle/Sabre). Sabre’s CEO then forwarded a version of this presentation containing the “mitigate risk” language to the chairman of Sabre’s board of directors. Tr. 741:4-7 (Menke/Sabre). Mr. Boyle testified that he was not involved in creating the slide that discussed mitigating GDS bypass risk and that he deleted this reference in the presentation in late July 2018 because it did not reflect his views. Tr. 506:8-506:19 (Boyle/Sabre). However, ordinary course documents indicate that Mr. Boyle participated in the meeting where the slide was created and suggest he likely deleted the bullet in September 2018 after speaking with Sabre’s antitrust counsel. Tr. 513:9-516:20, 519:14-535:2 (Boyle/Sabre); PX024; PX014; PX492; PX493; PX494; PX495; PX439.

211. “With the direct connect competitive threat extinguished” if a GDS purchases Farelogix, American expects that GDSs will refuse to allow American to continue its wholesale agreements. PX453 at -974.

212. The transaction also will harm future customers by eliminating Open Connect as a lower-cost alternative to the GDSs. [REDACTED]

[REDACTED]

3. Defendants recognized that the transaction will enable them to increase prices for booking services

213. As Farelogix’s CFO explained in analyzing a potential deal with Sabre or Travelport in 2014, “by acquiring FLX acquirer would increase control over airlines who are now using FLX as a negotiation tool during contract renewals.” PX181 at -240; Tr. 589:20-23, 593:12-595:13 (Kruijssen/Farelogix). In 2018, when Sabre again sought to acquire Farelogix, Farelogix’s CFO similarly noted that buying Farelogix could reduce the “price pressure in [the] market” for Sabre. PX187 at -960; Tr. 615:6-616:18 (Kruijssen/Farelogix). On the day the acquisition was announced, a Sabre senior vice president put it simply: American Airlines’ “FLX bill is going up big time.” PX140 at -626 to -644; Tr. 751:7-11 (Gilchrist/Sabre).

214. Communications between the Defendants reveal that Farelogix and its private equity owner Sandler believed Sabre could increase Sabre’s booking fees post-merger. Tr.

486:22-487:11, 492:22-493:22, 495:11-14 (Boyle/Sabre); PX006 at -279; PX009 at -037.

During deal negotiations, Sabre and Farelogix's CEOs discussed whether there would be an opportunity for "possible uplift on GDS transaction fees" as a result of Sabre's acquisition of FLX. Tr. 496:3-497:14 (Boyle/Sabre); PX227 at -130 ("[T]his is something we discussed on the phone and you had a strong level of confidence surrounding the opportunity."); *see also* Tr. 488:13-21 (Boyle/Sabre) (Farelogix took the same position in deal discussions with Sabre in 2015). A Farelogix board member, Mike Marocco, told Sabre's deal lead that he believed Sabre could increase its GDS booking fees by 50 cents per booking as a result of the acquisition. Tr. 494:18-495:6 (Boyle/Sabre); PX007 at -734. Mr. Marocco argued that Sabre should "take number of segments/trips in GDS and add \$0.50 each and that is the value creation and [Farelogix] should get some of that." PX007 at -734; *see also* PX009 at -037 ("Simple concept of [Bookings x Incremental Booking Fee = New Revenue] is how FLX see values creation").

After the meeting with Farelogix, [REDACTED]

[REDACTED]. PX008 at -480.

215. Ordinary course documents from Sabre's negotiations with airlines after the deal announcement support Professor Nevo's conclusion that Sabre will have the incentive to increase the prices of Farelogix's booking services post-merger. Tr. 931:10-19 (Nevo). In January 2019, after [REDACTED] asked for no change to its current Open Connect terms with Farelogix, Sabre quoted [REDACTED] a price nearly [REDACTED] higher than Farelogix's Open Connect pricing. *Compare* PX393 at -079; PX392 at -026 to -027; Tr. 751:17-760:1 (Gilchrist/Sabre); Tr. 828:14-829:2, 830:1-22 (Wilding/Sabre) ([REDACTED]) *with* Tr. 413:20-414:17 (Davidson/Farelogix);

PX087 at -734; PX011 at 6 ([REDACTED]). The direct connect price quoted to [REDACTED] caused a blowup with [REDACTED] negotiator, Richard Clarke, who texted a Sabre executive an expletive to express his displeasure with Sabre's changed "position on FLX." Tr. 758:8-22 (Gilchrist/Sabre); PX393 at -079. Even Sabre's proposed floor price to [REDACTED] for a direct connect solution would have been [REDACTED] Farelogix's current pricing. Compare PX392 at -026 ([REDACTED]) with PX087 at -734; Tr. 413:20-414:17 (Davidson/Farelogix); PX011 at 6 ([REDACTED]).

H. The elimination of Farelogix will slow the pace of innovation and reduce quality in booking services

216. Removing Farelogix as an independent firm will eliminate important innovation competition and reduce innovation in the relevant markets for booking services, harming airlines and travelers. Tr. 882:5-22, 890:24-892:10, 945:5-951:11 (Nevo).

217. Over the last several years, Farelogix has continued to innovate in NDC booking services. Tr. 1036:17-1037:2 (Nevo); *see also* PX033 at -340, -342; Tr. 195:6-196:12 (Radcliffe/United). Farelogix has poured resources into Open Connect and its NDC API to help bring NDC technology to the industry. Tr. 381:12-17 (Davidson/Farelogix); PX086. Farelogix continues to augment its products to fill gaps in the NDC schema. Tr. 411:5-9 (Davidson/Farelogix).

218. Farelogix's NDC technology enables airlines to distribute greater content variety to travelers booking through OTAs and TTAs. For example, Open Connect enables American to distribute differentiated content to Priceline, Orbitz, and other global OTAs, PX025 at -954, and enables American and United to distribute corporate bundles through TMCs like AmTrav and TripActions. PX033 at -340, -342; Tr. 195:6-196:12 (Radcliffe/United). As United's director of

distribution explained, Farelogix direct connects enable airlines to put “interesting content” into the market faster than is possible with the GDSs. Tr. 174:17-20, 175:20-176:1 (Radcliffe/United).

219. Farelogix has disrupted the GDSs’ control over indirect distribution and pushed the GDSs to innovate in booking services. Tr. 188:17-189:22 (Radcliffe/United); Tr. 94:9-18, 97:19-98:10, 107:12-17, 112:7-14 (Garner/American); Tr. 1722:11-20 (Adair/Delta); PX001. Having Farelogix as an alternative has helped American Airlines “move technology forward” in the market, which has resulted in the GDSs working with American “to try to improve their own technology.” Tr. 115:22-116:10 (Garner/American); *see also* PX299 at -770 (United Airlines’ director of distribution noting that Farelogix “keeps GDSs on their toes relative to innovating to keep up”); PX001 at -069 ([REDACTED]).

1. Sabre and the other GDSs’ history of resisting innovation

220. In the early 2010s, the GDSs tried to undermine the development of the NDC standard. Tr. 401:1-14 (Davidson/Farelogix); PX096 at -109. Between 2011 and 2013, Sabre and the other GDSs lobbied against IATA’s petition to approve the NDC standard. Tr. 401:15-24 (Davidson/Farelogix); PX096 at -109. In response, Farelogix called out Sabre’s “ulterior motive” for opposing NDC: “today’s battle is one of old vs. new, with the dominant players in the old technology trying to prevent, or at the very least to delay, the implementation of the new standard in order to retain artificial control of the distribution marketplace.” Tr. 395:17-396:16 (Davidson/Farelogix); PX104 at -717 to -718.

221. Sabre, Farelogix, and airline executives recognize that Sabre and the other GDSs were reluctant and slow to adopt NDC. Tr. 797:25-798:6 (Vilches/Sabre) (admitting that Sabre was too slow and took too long to develop NDC products); Tr. 285:23-286:1 (Carter/Farelogix); Tr. 1664:8-17 (Wiggins/Spirit).

222. In January 2018, Farelogix complained to the European Commission that the “GDSs consistently seek to block new non-GDS technology solutions that deliver what consumers need.” Tr. 397:19-398:7 (Davidson/Farelogix); PX096 at -107. Farelogix explained that the GDSs “continue to leverage significant market power to preserve their market position and stifle innovation.” PX096 at -108; Tr. 399:8-14 (Davidson/Farelogix).

2. Farelogix pushed Sabre to innovate in booking services technology

223. As one Sabre senior executive explained, Farelogix came in with a new and better product, which pressured Sabre and the other GDSs to be more innovative. Tr. 790:24-791:10, 794:17-21, 798:7-11 (Vilches/Sabre).

224. By early 2017, Sabre recognized that Farelogix was a leader in developing and commercializing NDC technology. PX237 at -753 (April 2017 Sabre deck identifying Farelogix as the only “new tech provider[] supporting suppliers with pursuit of NDC”); PX002 at -873 (“Farelogix and Amadeus are the primary players” in next-generation retailing and distribution). Sabre realized it was falling behind Farelogix and Amadeus, who were “providing thought leadership” around next-generation distribution technology. PX002 at -882.

225. Throughout 2017, Sabre’s GDS business was “under urgent pressure from key airline carriers,” including Open Connect customers [REDACTED], “to deliver NDC capabilities in the near-term.” PX241 at -318; Tr. 685:5-14 (Menke/Sabre).

3. The transaction will slow the pace of innovation in booking services

229. By placing Farelogix in the hands of Sabre, the transaction will slow the expansion of NDC technology and the availability of rich content, including ancillaries, through the indirect channel. Tr. 882:5-22, 890:24-892:10, 945:5-951:11 (Nevo). Professor Nevo explained that a merger may reduce innovation where one of the merging firms' actions disrupt the business model of the other firm. Tr. 945:24-947:10, 948:2-16, 949:16-950:11 (Nevo). Farelogix's innovative booking services products do just that, threatening to erode Sabre's lucrative GDS business model. Tr. 882:5-22, 890:24-892:10, 945:5-950:11, 1036:17-1037:2 (Nevo); *see also* PX084 at -887; PX367 at -276 to -277 (describing how Farelogix challenges the traditional airline-GDS commercial relationship).

230. Professor Nevo also explained that because Farelogix wants to grow, it has a strong incentive to innovate and invest in NDC booking services technology to offer airlines an attractive alternative to the GDSs. Tr. 882:5-22, 945:5-16, 946:11-947:10 (Nevo). For years, Farelogix invested heavily in Open Connect to bring a strong product to market. Tr. 380:15-381:15 (Davidson/Farelogix); PX086.

231. In contrast, Sabre resisted investing in NDC technology to protect its legacy GDS model. Tr. 882:5-22, 945:5-23, 947:11-949:15 (Nevo); PX104 at -718 (Sabre's critiques of NDC were "consistent with a desire to ensure that the status quo stays in place"). As Professor Nevo explained, Sabre's behavior aligns with its economic incentive to protect its margins. NDC threatens to unravel Sabre's business model by reducing the value of the GDS offering and opening the door to new aggregators. Tr. 882:5-22, 947:11-949:15 (Nevo); *see also* PX237 at -802 ("XML standards with defined APIs open the door for new entrant aggregators").

232. Professor Nevo concluded that Sabre does not have an economic incentive to introduce disruptive technology that challenges its profitable business model and is only likely to introduce such innovations “in response to a shake-up by others.” Tr. 950:3-11 (Nevo). As a 2017 white paper authored by Farelogix’s chief technology officer notes, “As a result of dominance in both PSS and GDS markets, Amadeus and Sabre have little incentive to innovate their legacy technology to meet changing airline requirements.” PX306 at -613. Professor Nevo testified that an internal Sabre document suggests that even when a player like Farelogix shakes up the industry, Sabre’s response is to try to move the industry back to its “cozy equilibrium” with Amadeus. Tr. 890:24-892:10, 947:11-949:15 (Nevo).

4. An independent Farelogix would result in increased innovation

233. But for the merger, Farelogix would likely continue to innovate and Sabre would continue to invest in NDC technology to keep up. Tr. 946:11-23, 948:17-949:15, 1038:4-13 (Nevo) (explaining how Sabre and Farelogix’s history of innovation sheds light on their likely trajectories going forward). If Sabre does not advance its technology, GDS disintermediation could impact the GDS: the GDS will become less relevant and eventually be cut out. Tr. 696:3-16 (Menke/Sabre); PX247 at -765. Professor Nevo explained that if Sabre commits to investing in NDC technology, Sabre and Farelogix will compete on the merits. Tr. 948:17-949:15 (Nevo). If this happens, airlines would benefit. Tr. 1509:14-1510:6 (Murphy).

234. In contrast, if Sabre acquires Farelogix, Sabre will have a diminished incentive to invest in technology that threatens the traditional GDS business model. Tr. 882:5-22, 890:24-892:10, 945:5-951:11 (Nevo). Just after the transaction was announced, a senior Delta

executive expressed [REDACTED]

[REDACTED] PX001 at -069.

5. Sabre does not have the same incentive to offer and support Open Connect as an independent Farelogix

235. In 2015, when Farelogix was previously up for sale, United's director of distribution wrote, "If a GDS owns Farelogix, they may shelve the direct connect functionality (like Travelport did when they bought Orbitz and G2)" Tr. 184:19-185:2 (Radcliffe/United); PX299 at -770. "If a GDS buys them," he continued, "they will have one less reason to invest in products to help us." PX299 at -770.

236. In a 2015 presentation outlining the potential impact of a GDS acquiring Farelogix, American Airlines anticipated that "a GDS would eliminate our direct connect by: [r]efusing to make enhancements and ultimately ceasing all technology support" and "[i]nsisting upon new contractual terms in the next round of negotiations which limit American's ability to offer a direct connect alternative." PX453 at -974.

237. Other industry participants have inquired whether Sabre plans to maintain or "kill" Farelogix. PX501 (Amex GBT, a global TMC, inquired); Tr. 1603:21-1605:20 (Shirk/Sabre).

238. Sabre's due diligence documents suggest that Sabre [REDACTED]

[REDACTED]
[REDACTED]. PX016 at 18 [REDACTED]
[REDACTED]);

PX011 at 18.

I. Even if the relevant markets are two-sided, the proposed transaction is still likely to harm competition

239. As explained in Section III.A.1.b, Sabre and Farelogix compete in a one-sided market to provide booking services to airlines. Farelogix does not compete with Sabre's GDS bundle as a whole; it only competes with Sabre to provide booking services to airlines. Tr. 966:16-23 (Nevo).

240. Even if the Court finds that the relevant market is a two-sided GDS market, the transaction is likely to lessen competition because the loss of an independent Farelogix will slow the pace and expansion of innovation, harming both airlines and travelers. *See* Tr. 882:5-22, 890:24-892:10, 945:5-951:11, 1068:13-1069:2 (Nevo); *see also* PX453 at -976 (American anticipated lost ancillary sales from "delayed/suboptimal GDS integrations" if Farelogix is acquired by a GDS). As Farelogix executives testified and ordinary course documents show, NDC is beneficial to airlines, travel agencies, corporations, and travelers. Tr. 256:1-3 (Carter/Farelogix) (agreeing that NDC is beneficial to airlines and to the industry as a whole); PX104 at -708 (NDC "advances the interest of the traveling public"); Tr. 395:3-16 (Davidson/Farelogix). Any reduction in competition to develop NDC technology affects the entire travel ecosystem. *See* Tr. 948:17-949:15 (Nevo).

241. Further, Professor Nevo explained that by offering a GDS alternative that could "unravel" the high-margin traditional GDS business model, Farelogix may benefit the whole industry. Tr. 935:25-937:18, 947:11-948:16 (Nevo). Open Connect may enable the entry of new aggregators, which could spur greater competition in the industry. Tr. 935:25-937:18, 948:2-16 (Nevo).

242. Finally, the transaction would result in an increase in GDS “net fees,” or the difference between the booking fees paid by airlines and incentives paid to travel agencies. Professor Nevo testified that in the past, when GDS booking fees dropped due to competitive pressure, there was not an equivalent reduction in incentive payments to travel agencies. Tr. 940:23-941:6, 1041:8-25 (Nevo) (“the evidence is generally that there is not a one-to-one passthrough”); *see also* Tr. 1435:20-1436:25 (Murphy) (describing Sabre’s net fee dropping over time). By extension, any increase in booking fees from reduced competitive pressure is unlikely to be offset by an increase in incentive payments to agencies. Tr. 941:1-6, 1041:8-25 (Nevo). This is consistent with Professor Murphy’s testimony that an increase in the GDS “net price” will increase airlines’ incentive to find an alternative. Tr. 1514:15-1515:23 (Murphy).

243. This is also consistent with Sabre’s depiction of the relationship between airline booking fees and agency incentives as the industry moves towards the “NDC end state”: its GDS margins will fall as the spread between airline booking fees and travel agency incentives shrinks. PX245 at -288; Tr. 688:18-690:4 (Menke/Sabre). In the progression towards the NDC end state, airline booking fees come down, and although agency incentives also fall, they do not fall to the same degree. PX245 at -288; Tr. 688:18-690:4 (Menke/Sabre).

244. Sabre’s GDS commercial strategy indicates that the U.S. market may be moving toward the NDC end state. In 2006, Sabre established an opt-in program in the United States, known as the Efficient Access Solution or EAS, under which airlines received a reduced booking fee and agencies agreed to a reduced incentive in exchange for access to full content. Tr. 864:18-865:25 (Wilding/Sabre); PX389 at -437. As NDC has grown, Sabre has tried to move the U.S. market to a “new opt-in” model under which airlines’ booking fees and travel agencies’

incentives are further reduced. Tr. 836:23-837:25, 838:17-839:9, 866:11-23 (Wilding/Sabre);

PX389 at -438 to -439; PX156 at -949, -953 to -954. [REDACTED]

[REDACTED]. PX389 at -439 (“[REDACTED]”).

VI. ENTRY AND EXPANSION WILL NOT BE TIMELY, LIKELY, OR SUFFICIENT TO PREVENT THE TRANSACTION’S ANTICOMPETITIVE EFFECTS

A. High entry barriers constrain entry and expansion in the relevant markets

245. There are numerous barriers to entry in the relevant markets for booking services.

Tr. 953:2-13 (Nevo). As it highlighted in a June 2018 presentation to a prospective buyer,

Farelogix “Holds a Unique and Deeply Rooted Position in a Market with High Entry Barriers.”

Tr. 408:22-409:2 (Davidson/Farelogix); PX072 at -223.

1. Technical barriers to entry

246. One barrier to entry is the difficulty building an NDC booking services solution comparable to Open Connect. PX453 at -975 (“The size and complexity of a 1:1 replacement [of Open Connect] would be formidable”). Beyond providing an NDC API, Open Connect offers “[r]obust [o]rchestration” of integration with key airline and third-party IT systems and post-booking support services. PX025 at -948. Open Connect post-booking support capabilities include servicing the passenger name record (“PNR”) to make changes to a booking, exchanging and refunding tickets, managing interline bookings, facilitating ticket payment and settlement, and providing interoperability with mid-and-back office systems. PX025 at -949 to -950 (explaining the capabilities of Open Connect and the FLX NDC API); Tr. 243:11-24; 244:24-246:17 (Carter/Farelogix); Tr. 1350:7-12, 1350:23-1351:9 (Reiz/Farelogix); Tr. 203:13-20, 343:18-24 (Radcliffe/United). Farelogix also has the capability to add customized features

requested by its Open Connect customers. *See, e.g.*, [REDACTED]; Tr. 95:10-96:5 (Garner/American).

247. Integrating a booking services solution into airlines' complex PSSs is also a barrier to entry. In May 2018, Farelogix's CEO wrote that "NDC requires proven technology expertly integrated with the airline's systems and with functionality required for agency adoption." PX085 at -593; Tr. 377:19-23 (Davidson/Farelogix). Farelogix has to use "screen scrape and green screen emulators to map and integrate" content, mostly because of "Sabre and Amadeus not providing easy APIs to integrate." PX339 at -160; *see also* Tr. 1628:18-25 (Shirk/Sabre) (explaining that [REDACTED]). Farelogix has overcome this barrier and successfully integrated Open Connect with nine different airline PSSs. PX025 at -949.

248. "Web services" may facilitate integration into an airline's PSS, but integration is still required and the PSS provider still must allow the booking services provider to access the web services. Tr. 1354:10-1355:19 (Reiz/Farelogix). Access to Sabre or Amadeus's web services is not guaranteed. As Farelogix told the European Commission in 2018, Sabre and other companies' PSS contracts restrict third-party booking services providers from connecting to airlines' PSSs, which helps "preserve the status quo." PX096 at -108. Just two months before Sabre announced its acquisition of Farelogix, Farelogix's CEO expressed concern that Sabre and Amadeus would "simply block our access to their APIs" through the web services "like they did in the past when they cancelled our ability to get to the GDS connection." PX499 at -874; Tr. 1360:15-1361:13 (Reiz/Farelogix).

249. Relatedly, Sabre and Amadeus may leverage [REDACTED]. See PX072 at -280. In a 2017 white paper, Farelogix’s chief technology officer, Tim Reiz, expressed concern that Sabre and Amadeus, as the largest GDSs, may “leverage their control over the PSS to protect or compensate for decreasing GDS revenue.” Tr. 1367:18-1368:1, 1370:18-24 (Reiz/Farelogix); PX306 at -613; PX500 at -551. In particular, Farelogix was concerned about Sabre and Amadeus “blocking [] new sales in distribution initiatives commercially and technically,” PX500 at -551; Tr. 1371:3-6 (Reiz/Farelogix), and “[e]recting roadblocks to 3rd party access and integration.” PX306 at -613.

2. Reputational barriers to entry

250. Reputation and experience working with comparable airlines are additional barriers to entry. Tr. 953:2-954:11 (Nevo). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Sabre’s former CEO agreed that airlines prefer providers who already serve other large airlines in their region. Tr. 1083:11-1084:1 (Klein/Sabre); PX174 at -380. A Spirit executive echoed this sentiment, noting that airlines prefer to use a product already on the market because “you can test it, demo it; you can talk to other customers who are using the product to determine if it’s going to meet your needs.” Tr. 1645:7-16 (Wiggins/Spirit).

251. For over fifteen years, Farelogix has built expertise working with large airline customers. Tr. 409:7-14 (Davidson/Farelogix); PX072 at -223; *see also* PX033 at -336 to -341

(outlining NDC case studies from Farelogix’s work with American, United, Qantas, and Lufthansa); Tr. 478:4-13 (Davidson/Farelogix).

3. Contractual barriers to entry

252. Restrictive provisions in Sabre’s GDS contracts further constrain potential entry. Tr. 954:19-25 (Nevo). As Farelogix explained to the European Commission in 2018, the GDSs’ “[o]nerous contracts with both travel agents and airlines preserve the status quo.” PX096 at -108. “GDS contract limitations . . . effectively prohibit working with third parties or make doing so cost prohibitive.” PX096 at -107. In a 2011 blog post, Farelogix’s CEO wrote that “one of the primary reasons limiting [Farelogix’s] growth is those pesky, prohibitive, and . . . onerous GDS agreements with the airlines and travel agencies that prevent the adoption of alternative distribution systems.” PX090 at -374; Tr. 387:24-388:24 (Davidson/Farelogix).

253. The primary GDS contract restrictions restricting the growth of new entrants are “full content” provisions. Tr. 109:10-110:23 (Garner/American); Tr. 954:19-25 (Nevo). Full-content clauses prevent airlines from making unique content, like more attractive fares, available outside of the GDS, which makes it more difficult for an airline to shift sales to lower-cost channels like direct connects. Tr. 109:19-24 (Garner/American) (explaining that full content prevents American from making its lowest fares available through a lower-cost channel if not also offered through Sabre); Tr. 1172:25-1173:11 (Lobl/Delta); PX092 at -622.

254. Full-content clauses contribute to the GDSs’ ability to maintain their market power. PX096 at -108; PX092 at -621 to -622. As a Sabre senior executive explained, “Carriers see our current FC [full content] contracts as abusive but there’s nothing they can do because

they need the distribution and they are tied with a contract.” PX367 at -277; Tr. 802:10-17 (Vilches/Sabre).

255. As part of its full-content provisions, Sabre explicitly seeks [REDACTED] [REDACTED]. PX389 at -441; PX497; Tr. 1173:12-15 (Lobl/Delta) (GDSs seek full content, in part, to protect themselves from the risk of GDS bypass). Without full content, Sabre expects that it will [REDACTED]. See, e.g., PX389 at -440 ([REDACTED] [REDACTED]); PX497; Tr. 872:24-873:9, 873:18-21 (Wilding/Sabre) (explaining that Sabre’s booking volume falls if an airline distributes unique content through a direct connect).

256. Other provisions in Sabre’s GDS contracts with U.S. airlines restrict entry by limiting airlines’ ability to encourage travel agencies to book through lower-cost distribution channels, such as Farelogix. Tr. 111:18-112:6, 151:2-11 (Garner/American); see also Tr. 387:24-389:2 (Davidson/Farelogix) (describing how GDS contract provisions prevented or deterred travel agencies from going outside the GDS for content). Historically, airline-GDS contracts prohibited or limited airlines from promoting non-GDS distribution channels, like direct connects. PX092 at -621; Tr. 390:13-391:17 (Davidson/Farelogix); PX096 at -108 (“GDS contracts . . . limit use of third parties”). Airline-GDS agreements also [REDACTED] [REDACTED]. PX409 at -578 ([REDACTED]); PX323 at -078, -092 to -093; PX322 ([REDACTED]). Similarly, airline-GDS agreements [REDACTED]

[REDACTED]. PX409 at -576; PX323 at -076. Farelogix's CEO has described provisions like these as "contribut[ing] to the GDSs' ability to maintain market power." PX092 at -621.

B. Sabre and the other GDSs' history of blocking Farelogix's expansion

257. As Farelogix explained to the European Commission in 2018, the GDSs have engaged in "A Decade of Resistance and Changing Tactics" designed to "[u]ndermine and delay" Farelogix and the industry's effort to move toward NDC. PX096 at -109; Tr. 401:25-402:12 (Davidson/Farelogix).

258. In 2005, Farelogix introduced an aggregation platform for travel agencies that managed content from both GDSs and direct connects. Tr. 1356:1-1357:23 (Reiz/Farelogix). As this platform began to gain traction, Sabre launched an initiative to "shut down" Farelogix. *See* PX096 at -108, -119; Tr. 400:9-14 (Davidson/Farelogix). In 2009, Sabre and Amadeus canceled their developer agreements with Farelogix, cutting off Farelogix's feed to GDS content. Tr. 1357:16-1358:8 (Reiz/Farelogix). This move forced Farelogix to shut down its travel agency-facing business. Tr. 1359:2-5 (Reiz/Farelogix). Farelogix's CEO acknowledged that the GDSs would not have bothered to try and put Farelogix out of business unless they thought it was a threat. Tr. 393:11-15 (Davidson/Farelogix); PX102 at -964.

259. In the early 2010s, the GDSs "[p]unish[ed] airlines" that tried to innovate and get away from the GDSs. Tr. 401:10-14 (Davidson/Farelogix); PX096 at -108 to -109. In and around 2011, Sabre and the other GDSs tried to stop travel agencies from establishing direct connects with airlines using Farelogix's technology. Tr. 389:6-18 (Davidson/Farelogix).

260. Between 2013 and 2018, Sabre and the other GDSs “continue[d] to leverage significant market power to preserve their market position and stifle innovation.” Tr. 399:8-14 (Davidson/Farelogix); PX096 at -105, -108 to -109. Into early 2018, although the GDSs had made “public overtures to the contrary,” there had been “[n]o meaningful adoption of NDC through the GDS” channel. Tr. 398:3-7 (Davidson/Farelogix); PX096 at -107.

261. As Farelogix told a prospective buyer in mid-2018, “the slow adoption” of Farelogix’s order delivery products, like Open Connect, “was solely and unarguably due to the blocking and pressure GDSs put on Farelogix, airlines and travel agencies to not adopt NDC.” PX072 at -243; Tr. 412:3-10 (Davidson/Farelogix). While “Farelogix’s innovative technology and strategic flexibility has allowed it to survive targeted attempts by GDSs to put it out of business,” the GDSs’ “restrictive practices . . . have historically affected Farelogix’s ability to sell, implement, and scale its overall business model.” Tr. 389:10-389:3, 392:22-393:19 (Davidson/Farelogix); PX102 at -964.

C. Entry, expansion, or repositioning are unlikely to replace the lost competition from Farelogix

262. Entry and expansion will not be likely, timely, or sufficient to offset the likely harm from the transaction. Tr. 951:12-25, 952:8-953:13 (Nevo).

1. Farelogix is the clear market leader with a unique position that is unlikely to be replaced in the near future

263. Defendants recognize that Farelogix is the long-standing market leader in NDC booking services. As Farelogix told another prospective buyer in mid-2018, Farelogix is the “NDC market leader” and the “only company” that does NDC order delivery “at scale.” PX072 at -223, -226; *see also* PX025 at -953 (in 2016, Farelogix was “the only provider in the

marketplace delivering NDC offer and order management with production-proven, PSS-agnostic connectivity, comprehensive functionality, orchestration and support – all fully under the airline’s control”). Sabre recognizes this too: during due diligence for the Farelogix transaction, Sabre’s deal lead told Sabre’s CFO that “there is not a better solution [in] the marketplace” for Farelogix’s customers. Tr. 542:7-543:3 (Boyle/Sabre); PX436 at -875. Sabre’s presentation to the board recommending the Farelogix deal likewise noted that [REDACTED] [REDACTED]. DX145 at -006.

264. Over the last fifteen years, Farelogix has established a larger base of airline customers for NDC booking services than any other provider in the U.S. market. PX072 at -223; Tr. 731:14-732:15 (Menke/Sabre) (as of June 2019, Sabre’s CEO was not aware of any other NDC provider with “any significant role” with airlines in North America); *see also* Tr. 410:13-411:4 (Davidson/Farelogix) (Farelogix’s Open Connect and NDC API are “quite mature and have been in production for over 10 years”); PX072 at -226. As United’s director of distribution explained, [REDACTED] [REDACTED]. Tr. 340:15-25 (Radcliffe/United).

265. The installed base of offer management customers that Farelogix has built over the last few years also gives it an advantage in selling airlines its NDC booking services product. *See* PX086; PX100 at -054. According to Farelogix’s CEO, there is a “circularity” between the sale of Farelogix’s offer management products and Open Connect. Tr. 384:3-385:12 (Davidson/Farelogix); PX100 at -054; *see also* PX086; Tr. 382:3-15, 479:25-480:18 (Davidson/Farelogix) (describing Farelogix’s offer management products and Open Connect as “interrelated”). Airlines’ experience successfully implementing a Farelogix offer management

product makes them more likely to adopt Open Connect and vice versa. PX100 -054. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

266. In a similar way, the installed base of travel agencies connected to Open Connect is a competitive advantage. It is easier and less costly for agencies connected to Open Connect to connect with airlines that also use the Farelogix NDC API, rather than the NDC API of another provider. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

267. Finally, Farelogix offers unique capabilities beyond basic NDC API functionality that make Open Connect appealing to airlines and hard to replace. Tr. 1721:8-20 (Adair/Delta); *see also* Tr. 1051:14-1052:3 (Nevo). For example, Farelogix has augmented its NDC APIs with proprietary schemas that fill the gaps in the basic NDC schema. Tr. 411:5-9 (Davidson/Farelogix). Farelogix also offers dedicated teams for most airline customers and has a group that assists airlines in connecting to travel agencies or third-party aggregators. Tr. 247:3-

11, 253:5-12 (Carter/Farelogix); PX025 at -951; PX037 at -938; Tr. 370:6-17

(Davidson/Farelogix).

268. No other third-party NDC API provider offers the additional capabilities offered by Open Connect. Tr. 1721:8-20 (Adair/Delta); PX072 at -226 (no other NDC provider supports a travel agency interface like SPRK); *see also* Tr. 152:18-153:4 (Garner/American).

2. Other GDSs cannot replace lost competition

269. Farelogix poses a unique competitive threat to Sabre as the most significant non-GDS alternative in the market. Amadeus and Travelport cannot replace the threat Farelogix poses to Sabre. Threatening to shift volume to Sabre to another GDS would be ineffective because a large amount of volume, especially from corporate customers, is locked into a particular GDS. Tr. 1064:24-1065:19 (Nevo).

270. Farelogix recognizes that its “[n]eutrality and independence” distinguish it from GDSs, noting that “airlines have a strong fear of putting all their ‘distribution eggs’ in their PSS, which, for most cases is also the GDS.” PX072 at -219. Farelogix’s CFO explained to a prospective buyer, “It is very clear that the airlines, as they ramp NDC . . . would welcome a ‘scaled up’ and ‘neutral’ Farelogix in the market to provide alternatives to especially Sabre and Amadeus.” PX110 at -083. [REDACTED]

[REDACTED]; *see also* Tr. 153:9-12 (Garner/American) (Amadeus “would not be a suitable alternative to Farelogix”).

271. Other GDSs do not have the same incentive as an independent Farelogix to help airlines pursue direct connects. Sabre, for example, recognizes that [REDACTED]

[REDACTED]. PX392 at -034; Tr. 831:24-832:6, 832:15-20

(Wilding/Sabre) (Sabre modeling GDS revenue loss if it provided a direct connect solution for

[REDACTED] In pricing its direct connect solution, Sabre looks holistically at the effect the direct connect will have on its GDS businesses, rather than pricing it independently. Tr. 832:21-833:17 (Wilding/Sabre). Other GDSs would do the same.

272. American's vice president of sales and distribution strategy testified that GDSs "don't have the same economic interest to make an alternative to GDS distribution available in the market." Tr. 112:24-113:9 (Garner/American); *see also* Tr. 345:1-14 (Radcliffe/United) (explaining that [REDACTED] [REDACTED]). Shortly after the acquisition was announced, a senior Delta executive told his CEO that Farelogix is the "[REDACTED] [REDACTED]" PX001 at -069; *see also* Tr. 1720:23-1721:7 (Adair/Delta) (Farelogix is "an airline-centric entity" that "think[s] about how airlines want to solve the problems").

273. Neither Amadeus nor Travelport offers an NDC booking services solution that poses as significant a threat to Sabre as Farelogix's Open Connect. Open Connect has, in particular, won business with Sabre's PSS customers, including [REDACTED] [REDACTED]. PX241 at -318; PX048 at -807, -809. By contrast, [REDACTED] [REDACTED]. *See* Davidson Demonstrative 1. Travelport does not offer NDC APIs for airlines. Tr. 475:6-8 (Davidson/Farelogix).

3. Alternative booking services providers are unlikely to replace competition

274. Farelogix's airline customers do not view any other booking services provider as an alternative to Open Connect. *See* Tr. 120:1-18, 152:18-153:4 (Garner/American); Tr. 176:5-12, 230:4-6, 314:12-318:20 (Radcliffe/United).

275. IATA certification alone does not establish that a vendor's booking services solution could replace Farelogix. Large U.S. airlines would not rely on IATA certifications to assess a potential NDC API provider's suitability, *see* Tr. 121:25-122:13 (Garner/American), and do not view IATA certifications as a reliable measure of IT providers' capabilities. *See* Tr. 230:7-15 (Radcliffe/United). As American's vice president of sales and distribution strategy testified, American would need to "look a lot deeper than just the certification" because, at best, certification only partially reflects relevant factors, such as the company's size, resources, history of working with similarly complex airlines, and likely pace of innovation. Tr. 121:22-122:17 (Garner/American).

276. Further, large U.S. airlines likely would not consider using a booking services provider without experience serving similarly situated airlines in the United States. Tr. 120:1-18 (Garner/American); [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

277. Datalex, an Irish travel software company, is the only non-GDS booking services provider other than Farelogix that currently serves a U.S. airline on the NDC leaderboard

(Jetblue). Tr. 1022:19-22 (Nevo); PTO Ex. 1 ¶¶ 64-65, D.I. 182. However, Datalex is unlikely to expand in the U.S. market. [REDACTED]

[REDACTED]

278. Datalex is unlikely to expand in the near future due to its recent financial and accounting issues, which resulted in the company being delisted from the Irish Stock Exchange. Tr. 476:9-21 (Davidson/Farelogix); Tr. 681:4-6 (Menke/Sabre); *see also* Tr. 1556:8-17 (Murphy). One of Datalex's largest customers, Lufthansa, terminated its contract in December 2019. Tr. 476:14-17 (Davidson/Farelogix). Farelogix recognizes that Datalex's financial and accounting issues may help Farelogix win business from Datalex's airline customers. Tr. 475:24-476:8 (Davidson/Farelogix); PX108.

279. OpenJaw, which is owned by a Chinese governmental entity, [REDACTED], is unlikely to expand in the U.S. market. Professor Murphy understands that some airline customers would not want to use OpenJaw. Tr. 1556:22-25 (Murphy).

[REDACTED]

[REDACTED]

[REDACTED]. Farelogix has never lost an Open Connect customer in the United States to OpenJaw. Tr. 474:25-475:2 (Davidson/Farelogix).

280. JR Technologies and TP Connects do not offer competitive alternatives to Open Connect. Major U.S. airlines are unlikely to use either provider because they lack experience supporting an airline with global operations, do not offer a solution with equivalent functionality to Open Connect, and present challenges related to their ownership or geographic location. [REDACTED]

[REDACTED] [REDACTED]
[REDACTED]. Farelogix's CEO was not aware of losing any Open Connect customers to JR Technologies; Farelogix's only losses to TP Connects were [REDACTED], [REDACTED], [REDACTED] small airlines in the [REDACTED] and [REDACTED] Tr. 475:3-5, [REDACTED].

281. Hewlett Packard Enterprise ("HPE"), also known as DXC, is not a viable option for United Airlines, which uses HPE as its PSS provider. In order to use HPE's NDC adapter solution, United would have to [REDACTED] [REDACTED]. PX300 at -257; *see also* Tr. 213:20-25 (Radcliffe/United) (citing DXC's lack of support services and "lack of experience with travel agencies and airlines").

282. Defendants' trial demonstrative purporting to depict Farelogix's recent wins and losses in RFPs for an NDC API is incomplete and misleading. *See* Davidson Demonstrative 1. Even taking the demonstrative at face value, [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] For example, Defendants frame [REDACTED] [REDACTED] and [REDACTED] as losses, yet [REDACTED] and [REDACTED] are [REDACTED] and [REDACTED] is currently conducting an NDC pilot with Farelogix. [REDACTED]

[REDACTED]. Defendants' trial demonstrative also excludes [REDACTED] whose contract Farelogix just renewed, and its active opportunity with [REDACTED] [REDACTED]. The demonstrative fails to attribute any weight to the fact that [REDACTED],

[REDACTED]. Tr. 652:21-653:3 (Davidson/Farelogix) ([REDACTED]
[REDACTED]). Finally, it does not account for the relative size and importance of the airlines whose NDC business Farelogix has recently won, much less the size and importance of Farelogix's long-term NDC API customers in the United States. [REDACTED].

4. NDC Exchange is unlikely to replace lost competition

283. ATPCO/SITA's NDC Exchange does not provide an NDC API for airlines and lacks other key booking services functionality. Tr. 122:21-22 (Garner/American); Tr. 1691:4-24 (Gregorson/ATPCO) (explaining that NDC Exchange lacks ticketing capabilities and does not facilitate offer or order management). Rather, NDC Exchange functions as a "translation service" or "interpreter" of other APIs. Tr. 1690:25-1691:3, 1691:25-1692:8, 1692:22-1693:13 (Gregorson/ATPCO); PX141 at 3. As a result, airlines do not view NDC Exchange as alternative to the Farelogix NDC API. [REDACTED] Tr. 122:18-123:21 (Garner/American).

284. ATPCO's chief strategy officer testified that NDC Exchange does not compete with any products offered by Sabre or Farelogix, nor do any of ATPCO's other services. Tr. 1689:11-1690:5, 1693:14-1694:4 (Gregorson/ATPCO); PX141 at 1-2. ATPCO [REDACTED]
[REDACTED]. DX306 at 19 (Dep. Tr. 87:20-24, 88:24-89:2 (Gregorson/ATPCO)).

285. Farelogix has not lost an Open Connect customer to ATPCO. Tr. 478:1-3, [REDACTED]. Sabre does not view NDC

Exchange as a competitive threat. PX242 at -131 (Sabre's CEO describing NDC Exchange as "a lot of bluster").

286. NDC Exchange cannot be used to facilitate entry by booking services providers with less sophisticated capabilities than Farelogix. Although NDC Exchange can translate an airline's API into an NDC format, the output of the NDC Exchange is only as good as the input. As American's vice president of sales and distribution strategy testified, "NDC Exchange can only do as much as an airline's API can do." Tr. 123:8-11 (Garner/American). For example, if an airline's API cannot distribute ancillaries, linking that API to NDC Exchange will not enable it to distribute ancillaries. Tr. 123:12-21 (Garner/American).

5. Airline own-build solutions are unlikely to replace lost competition

287. Airlines are not likely to build their own booking services solutions to replace Farelogix. Tr. 955:1-21 (Nevo); *see* Tr. 126:22-128:14 (Garner/American); [REDACTED].

288. Airline own-build solutions are not a feasible, cost-effective solution, even for large U.S. full-service carriers. American Airlines estimated that building its own NDC API would cost about \$40 million and require annual ongoing maintenance and troubleshooting costs of \$20-25 million. Tr. 127:6-20 (Garner/American); *see also* Tr. 1645:17-1646:2 (Wiggins/Spirit) (building systems for airlines requires "lots of money"). Even for a company the size of American, a \$40 million IT project is expensive. Tr. 127:6-20 (Garner/American). An airline that built its own solution would incur additional costs to replace other services Farelogix provides with Open Connect, including a travel agency interface and IT support to travel agencies. [REDACTED] Smaller U.S. airlines also do not have

plans or the resources to build NDC APIs in-house; they would prefer to license third-party booking services solutions. [REDACTED]; Tr. 1644:25-1645:6 (Wiggins/Spirit); *cf.* DX306 at 20-21 ([REDACTED]).

289. An airline in-house booking services solution would be difficult and risky to build. PX453 at -975 (“The size and complexity of a 1:1 replacement [of Open Connect] would be formidable”). A Spirit Airlines executive explained that building an IT solution is riskier than licensing a third-party solution because if an airline builds its own solution, “there’s more uncertainty as to how much it’s going to cost or how long it’s going to take you to build it to reach the . . . acceptable objective of the requirements.” Tr. 1645:7-16 (Wiggins/Spirit).

290. Perhaps most important, an airline in-house booking services solution would take years to build. American and [REDACTED] estimated that it would take four to five years just to replace Farelogix’s existing capabilities. Tr. 127:21-128:5, 159:12-160:3 (Garner/American); [REDACTED]; *see also* Tr. 1645:17-1646:2 (Wiggins/Spirit) (building systems for airlines “takes many years”). According to American’s 2015 estimate, it would take two to three years to build an NDC API to replace Farelogix and another two years to create new connections with all the travel agents that consume American’s existing Farelogix API. Tr. 127:21-128:5 (Garner/American). Since 2015, the Farelogix NDC API “has only gotten more feature rich” and American has created more connections in the marketplace, so it is possible that “the timeline to market would be longer” than estimated. Tr. 128:6-14 (Garner/American).

291. These time and cost estimates do not account for an airline's opportunity cost in investing in an NDC booking services solution. Airlines have a limited budget to invest in IT projects, so expending significant resources on a booking services solution would delay the introduction of other airline products or upgrades. Tr. 127:6-20 (Garner/American) (American would "have to stop work on other projects that would have a much larger ROI than simply doing a one-for-one replacement" of the Farelogix system American already has); [REDACTED]

292. Beyond the difficulty, time, and cost of building one, an airline own-build solution would not provide airlines with the same leverage as Farelogix in their GDS negotiations [REDACTED]

[REDACTED]. By providing the connections for many airlines, Farelogix enjoys greater scale advantages than an airline's in-house solution could offer. As a result, agencies are much more likely to invest in connecting to a Farelogix NDC API. Tr. 955:11-21 (Nevo); [REDACTED]

[REDACTED]. Farelogix also has a greater ability to innovate with Open Connect than an airline would with its own booking services solution because the cost of the technology can be spread out over a larger installed base of customers. Tr. 1067:24-1068:12 (Nevo); [REDACTED]

293. Finally, if airlines switch to own-build solutions, the spread of NDC adoption across the industry would be delayed. [REDACTED]

[REDACTED].

6. Potential entrants will not replace lost competition

294. There is no evidence that other potential entrants will be able to replace Farelogix's competitive presence in the market. [REDACTED]
[REDACTED]
[REDACTED] PX247 at -778; Tr. 1106:6-12 (Wilding/Sabre). SAP does not understand how travel distribution works and lacks experience developing booking services solutions. Tr. 215:13-216:5 (Radcliffe/United).

VII. DEFENDANTS' CLAIMED EFFICIENCIES CANNOT JUSTIFY THE LIKELY HARM TO COMPETITION

295. Defendants' claimed efficiencies cannot offset the likely lessening of competition from the proposed transaction. Tr. 951:12-952:7, 955:22-956:13 (Nevo).

A. The transaction will not generate any meaningful cost savings

296. As Sabre's deal lead for the Farelogix transaction testified, the Farelogix deal is not driven by cost savings or a significant reduction in capital expenditures or operating expenditures. Tr. 571:9-572:2 (Boyle/Sabre). In fact, Sabre projected that the cost of integrating Farelogix into Sabre would exceed the capital expenditure savings from the deal. Tr. 540:16-21 (Boyle/Sabre); PX011 at 8.

297. Sabre plans to [REDACTED], PX011 at 5, so Sabre [REDACTED].

B. The claimed efficiencies are not verifiable

298. Defendants' efficiencies claims cannot be verified because [REDACTED]
[REDACTED]. See PX011 at 16. [REDACTED]

[REDACTED]

[REDACTED].” PX011 at 16.

C. The claimed efficiencies are not merger specific

1. Defendants’ claim that the transaction will accelerate Sabre’s development of NDC capabilities is not merger specific

299. Sabre’s claim that it needs Farelogix to accelerate its development of NDC technology is not merger specific. Tr. 954:1-18, 955:22-956:13 (Nevo).

300. Sabre’s economic expert, Professor Murphy, testified “in my view, Sabre is going to move forward with NDC content through its platform . . . via GDS passthrough . . . whether this transaction happens or not.” Tr. 1472:2-25 (Murphy).

301. Sabre could accelerate the development of its NDC capabilities through increased investment. Tr. 954:1-18 (Nevo) (noting that if the largest GDS in the U.S. cannot develop NDC technology without the merger, “how can we say anyone else can do it? It just doesn’t add up”).

302. Sabre has sufficient capital to invest in NDC capabilities independently: it had an adjusted EBITDA of almost \$1.08 billion in 2017 and an adjusted EBITA of \$1.12 billion in 2018. PX251 at -189; Tr. 665:7-13 (Menke/Sabre). In 2018, Sabre paid cash dividends of more than \$150 million and repurchased \$26 million in stock, money it could have instead reinvested in NDC capabilities. *See* Tr. 668:20-669:19 (Menke/Sabre); PX251 at -205 to -206. And Sabre continued to pay dividends to its shareholders in 2019. Tr. 669:1-3 (Menke/Sabre).

303. Sabre invested nearly \$1 billion in technology in 2017 and 2018 and plans to invest over \$1 billion in technology in 2019. Tr. 669:20-22 (Menke/Sabre); PX251 at -208; PX253 at -156. But Sabre’s financial plan allocated only [REDACTED] for investment in NDC in

2019. PX343 at -177 to -178. Looking forward, for 2020, Sabre also allocated only [REDACTED] [REDACTED] for investment in NDC. PX343 at -177 to -178.

304. Although Sabre has been slow to embrace NDC, Tr. 797:25-798:6 (Vilches/Sabre), it has plans to independently develop NDC capabilities. *See* Tr. 713:1-14 (Menke/Sabre); PX343 at -178. In August 2018, Sabre's CEO relayed this message to Farelogix's CEO: "I need to balance an acquisition and the cost versus using those dollars to accelerate our own efforts." PX227 at -130. Sabre's deal lead echoed this message to Farelogix's investment bankers, warning that if Farelogix did not accept Sabre's offer quickly, Sabre "simply will be too far down the path in our own plan." PX018 at -277; Tr. 499:25-501:8 (Boyle/Sabre).

305. Sabre has been developing NDC products with equivalent functionality to Farelogix's products, including an NDC API. Tr. 500:23-501:8 (Boyle/Sabre); PX011 at 6. In a November 2018 presentation to the board, Sabre noted that the Farelogix acquisition [REDACTED] [REDACTED] DX145 at -014.

306. Even without the Farelogix acquisition, Sabre has begun to facilitate GDS pass-through connections to obtain airlines' NDC content. Tr. 242:17-242:25 (Carter/Farelogix); Tr. 179:10:16 (Radcliffe/United). As Professor Murphy admits, GDS pass-through is happening already and will continue to happen without the transaction. Tr. 1463:7-23, 1472:2-25 (Murphy); *see also* Tr. 381:12-382:2 (Davidson/Farelogix).

307. Beyond Defendants' assertions, there is no evidence in the record supporting the view that Sabre needs to acquire Farelogix to catch up with Amadeus. *See, e.g.*, Tr. 555:7-13

(Boyle/Sabre); Tr. 782:6-8 (Gilchrist/Sabre). Other industry participants confirm that no GDS has a clear advantage in developing NDC capabilities. *See* Tr. 1269:10-20 (Stratford/BCD).

2. Defendants' claim that Sabre needs to acquire Farelogix to obtain its talent in developing merchandising products is not merger specific

308. Defendants claim Sabre is acquiring Farelogix for Farelogix's talent base, particularly for developing merchandising technology. *See* Tr. 714:4-19, 715:25-716:20 (Menke/Sabre). But approximately two-thirds of Farelogix's technology personnel work on Open Connect and the NDC API, while only around 15 people work on product development for Farelogix's offer management products. Tr. 382:19-383:10 (Davidson/Farelogix).

309. There is no evidence in the record that Sabre lacks sufficient technology talent to develop any NDC capabilities on its own.

3. Defendants' claim that Farelogix needs Sabre to achieve scale is not merger specific

310. Defendants' claim that Farelogix needs Sabre to scale its operations globally is not merger specific. Tr. 956:8-13 (Nevo).

311. As a Farelogix senior vice president wrote in June 2019, "the transactional volume of the Farelogix platform has no architectural or infrastructural scaling or performance limits. We routinely process hundreds of millions – in some cases billions – of transactions for airline customers" PX038 at -428; Tr. 255:7-19 (Carter/Farelogix).

312. To the extent Farelogix has any scaling issues, it has undertaken internal efforts to resolve them. Tr. 468:9-12 (Davidson/Farelogix); Tr. 250:22-251:2 (Carter/Farelogix). For example, Farelogix is partnering with Amazon Web Services to increase its cloud capacity. Tr. 250:22-251:2 (Carter/Farelogix); Tr. 468:16-24 (Davidson/Farelogix) (noting that Farelogix has

already delivered an end-to-end cloud implementation for one customer); *see also* PX037 at -938 (“Adopted a ‘3-Cloud’ Strategy (AWS complete . . .)”). Moving to the cloud has helped improve Farelogix’s system stability and scalability. Tr. 252:9-253:17 (Carter/Farelogix); *see also* PX038 at -428 (“Farelogix cloud deployment provides airlines the ability to rapidly scale based on any anticipated shopping or ticketing volumes”); Tr. 468:25-469:4 (Davidson/Farelogix). Farelogix has hired multiple employees to help address its reliability and scale issues, including a new vice president of IT who has performed well. Tr. 252:9-253:17 (Carter/Farelogix); PX037 at -938; Tr. 469:16-20 (Davidson/Farelogix).

313. Farelogix could have resolved any claimed scaling issues through an alternative, non-anticompetitive transaction. PX110 at -083 (Farelogix’s CEO describing the scale benefits of a transaction with ██████████). In 2018, while deal discussions with Sabre were underway, Farelogix considered selling itself to ██████████ a travel technology company with no booking services product, owned by ██████████, a large private equity firm. Tr. 607:15-608:12, 609:24-610:11 (Kruijssen/Farelogix); Tr. 403:8-14 (Davidson/Farelogix). In fact, Farelogix CFO’s “preferred” option was a sale to ██████████ not to Sabre. PX187 at 959 (identifying the ██████████ deal option as “Preferred” and Sabre as the “Least Preferred” option).

314. ██████████
██████████ Tr. 470:9-23, 471:8-19 (Davidson/Farelogix); PX456 at Tr. 646:13-20. ██████████ capital could have helped Farelogix expand its geographic footprint and scale its IT systems, including its cloud infrastructure. PX187 at -959 (identifying “increased scale and credibility” as a positive impact of an acquisition by ██████████ Tr. 611:9-612:20 (Kruijssen/Farelogix). In the short term, Farelogix’s CEO anticipated that a deal with

██████████ would have “some immediate positive effect . . . due to the added scale and global footprint of a larger combined company, [the] power of ██████ being behind it, and [the] stability that goes along with that.” PX110 at -083; Tr. 472:17-473:6 (Davidson/Farelogix).

315. In describing the benefits of being acquired by ██████████, Farelogix’s CFO wrote that there is “less chance of being ‘taken out’ by [a] GDS.” PX187 at -959; Tr. 612:21-24, 627:20-628:1 (Kruijssen/Farelogix) (explaining that by “taken out” he meant “being acquired by a GDS”). As Farelogix’s CFO wrote to his CEO, “It is very clear that the airlines . . . would welcome a ‘scaled up’ and ‘neutral’ Farelogix in the market to provide alternatives to especially Sabre and Amadeus.” PX110 at -083.

D. Any claimed efficiencies related to Farelogix’s offer management products should not be credited

316. Any claimed efficiencies resulting from Sabre’s acquisition of Farelogix’s offer management products, in particular FLX Merchandise, are out-of-market efficiencies. *See* Tr. 961:4-7 (Nevo) (stating that FLX Merchandise is not in the relevant market). As such, they should not be credited against the likely harm in the relevant markets.

VIII. DEFENDANTS’ PROPOSED REMEDY CANNOT OVERCOME THE LIKELY HARM TO COMPETITION

317. Sabre’s offer to extend its existing GDS contracts and Farelogix’s existing Open Connect contracts for three years does not adequately address the likely competitive harm resulting from the transaction. Tr. 956:14-957:8 (Nevo).

318. Temporarily freezing prices will not remedy the likely harm from the transaction if prices are likely to decrease in the next round of negotiations. Tr. 956:14-25 (Nevo).

319. Sabre's short-term commitments do not address the likely harm to innovation from eliminating Farelogix's disruptive presence in the market. Tr. 956:14-957:8 (Nevo); Tr. 131:6-18 (Garner/American). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] DX246 at -085.

320. The extension of American's Farelogix contract through 2025 would not give American enough time to develop and implement an in-house solution to mitigate the impact of Sabre's acquisition of Farelogix. Tr. 127:21-128:5 (Garner/American) (noting that it would take approximately five years for American to get an in-house solution up and running); PX453 at -975.

321. Finally, Sabre has not memorialized its offer in any legally binding agreement. Tr. 730:11-25 (Menke/Sabre). No airline has accepted Sabre's offer. *See* Tr. 730:20-25 (Menke/Sabre). For example, Alaska's executive vice president of planning and strategy testified that he could not recall having "any reaction" to Sabre's offer. Tr. 1714:16-1715:12 (Tackett/Alaska); DX225.

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2020, a true and correct copy of the foregoing was served on all counsel of record via e-mail.

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