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April 28, 2020

By ECF

Patricia S. Dodszuweit, Clerk
U.S. Court of Appeals, Third Circuit
U.S. Courthouse
601 Market Street, Room 21400
Philadelphia, PA 19106-1790

RE: *United States of America v. Sabre Corp., et al.*,
C.A. No.: 20-1767

Dear Ms. Dodszuweit:

I write on behalf of Appellees Sabre Corporation, Sabre GLOB, Inc., Farleogix Inc. and Sandler Capital Partners V, L.P., in the above-captioned matter in opposition to the Government's letter submitted yesterday afternoon requesting that the Court stay the issuance of a briefing schedule of its appeal. The Government's request for a stay of briefing of the appeal it initiated more than three weeks ago would be tantamount to granting the Government an indefinite stay of the proposed merger between Sabre and Farelogix (the "Merger") pending the outcome of its appeal. As explained herein, there is no basis whatsoever to grant the Government such extraordinary relief here,

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particularly because the Government chose not to seek such relief from the District Court after it filed its appeal.

In their one paragraph letter to the Court, the Government has provided no factual basis or legal authority supporting its extraordinary request to further delay the Merger. The Government's only proffered explanation for its request for an indefinite stay is that the process required to secure the Solicitor General's approval to appeal apparently "entails multiple levels of review and is still ongoing." (Dkt. 8) But the idea that delay in issuing a briefing schedule is appropriate merely because review by the Solicitor General is ongoing makes little sense. This rationale could provide a basis for delaying briefing schedules in virtually every loss the Government appeals anywhere in the country. *See* 28 C.F.R. 0.20(b) (stating the Solicitor General shall determine "whether, and to what extent, appeals will be taken by the Government to all appellate courts"). Ordinarily, when the Government appeals, a briefing schedule is set promptly, and if the approval of the Solicitor General has not occurred by the due date for the Government's brief, the Government seeks an extension at that point in time.¹ The Government should follow that process here, especially given that the Government has provided no basis to believe the Solicitor General will not determine approval by the due date for the Government's brief. Indeed, its claim is completely unsubstantiated, belied by the Government's own statements to the District Court on this precise issue, and is simply a pretext to further delay this litigation.

As the Government knows, merger challenges brought under Section 7 of the Clayton Act are typically tried on an expedited schedule. This case was no exception. This action was filed in late August 2019, and proceeded to trial just five months later, with the parties completing

¹ *See, e.g., Littlefield v. U.S. Dep't of the Interior*, Document: 0011712599 (1st Cir. March 6, 2017) (Appellant's motion for extension of time to file the opening brief).

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expedited post-trial briefing shortly thereafter. The District Court entered its 95-page Memorandum Opinion and Order on April 7, 2020. The Government filed its notice of appeal just **24** hours later.

Tellingly, despite its immediate appeal of the District Court's decision, the Government informed the District Court in a joint status report submitted on April 14, 2020 that it was still awaiting authorization from the Solicitor General to pursue the appeal it initiated a week earlier, and that the Government was not seeking a stay from the District Court at that time. In response, Appellees explained to the District Court that "Defendants disagree that the DOJ would be entitled to a stay pending appeal should they choose to seek such relief. Given this Court's April 7, 2020, opinion, the United States has no likelihood of success on the merits of an appeal and, under prevailing Third Circuit law, the DOJ cannot make the threshold showing required for a stay. *See Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 658 (3d Cir. 1991); *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharm. Co.*, No. 00-5361 (WGB), 2001 WL 493266, at *1 (D.N.J. Jan. 17, 2001)." The Government never rebutted this authority or sought a stay from the District Court because it knew it could not satisfy the stringent standard for such relief. The Government then tactically delayed for another two weeks – more than sufficient time to secure the approval of the Solicitor General – before submitting its letter to this Court yesterday seeking an indefinite stay of its appeal.

There is simply no reason why the Government needs any additional time to consider whether to prosecute the appeal of this expedited action. The proposed Merger has been pending for 18 months. The Government investigated the Merger for nine months before filing its complaint, and then took five months to litigate its failed claims. Each of the multiple independent bases for the District Court's decision—including the Government's failure to define a relevant product or geographic market and failure to demonstrate anticompetitive effects resulting from the merger—were well-known to the Government

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since before it filed this lawsuit. Accordingly, there is no rationale to support the Government's request to stay briefing of its appeal.

For the foregoing reasons, Appellees respectfully request that the Court deny the Government's request to stay briefing, and ask the Court to enter a briefing schedule consistent with the Federal Rules of Appellate Procedure.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2020, I electronically filed the foregoing letter with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Joseph O. Larkin

Joseph O. Larkin

Attorney for Appellees Sabre

Corporation and Sabre GBL Inc.