U.S. v. Sabre and Farelogix

Aviv Nevo, Ph.D.

Assignment and overall conclusions

- **Assignment:** Economic analysis of the proposed merger's likely effects on competition

- **Summary of opinions:**

  1. Two relevant antitrust markets
     - OTA booking services market
     - TTA booking services market

  2. Substantial lessening of competition in OTA and TTA booking services markets, leading to higher prices and reduced innovation

  3. Potential mitigating factors are insufficient to restore lost competition

Economic analysis of proposed merger

- **Key question:** Would the proposed merger substantially lessen competition in a relevant antitrust market?

- **Multiple steps to analysis:**

  - » Learn about the industry and market realities
  - » Define relevant product and geographic markets
  - » Evaluate competitive effects
  - » Consider potential mitigating factors

Overview of economic issues

Large incumbent firm buying a disruptive innovator

- Sabre
  - » Large incumbent firm with history of resisting innovation
  - » Lagging in innovation despite clearly having the resources to invest
  - » Economic incentives to protect its profitable business model

- Farelogix
  - » Disruptive innovator with innovation "in [its] DNA"
  - » Track record of innovation and disruption
  - » Economic incentives to continue innovating and expected to grow significantly

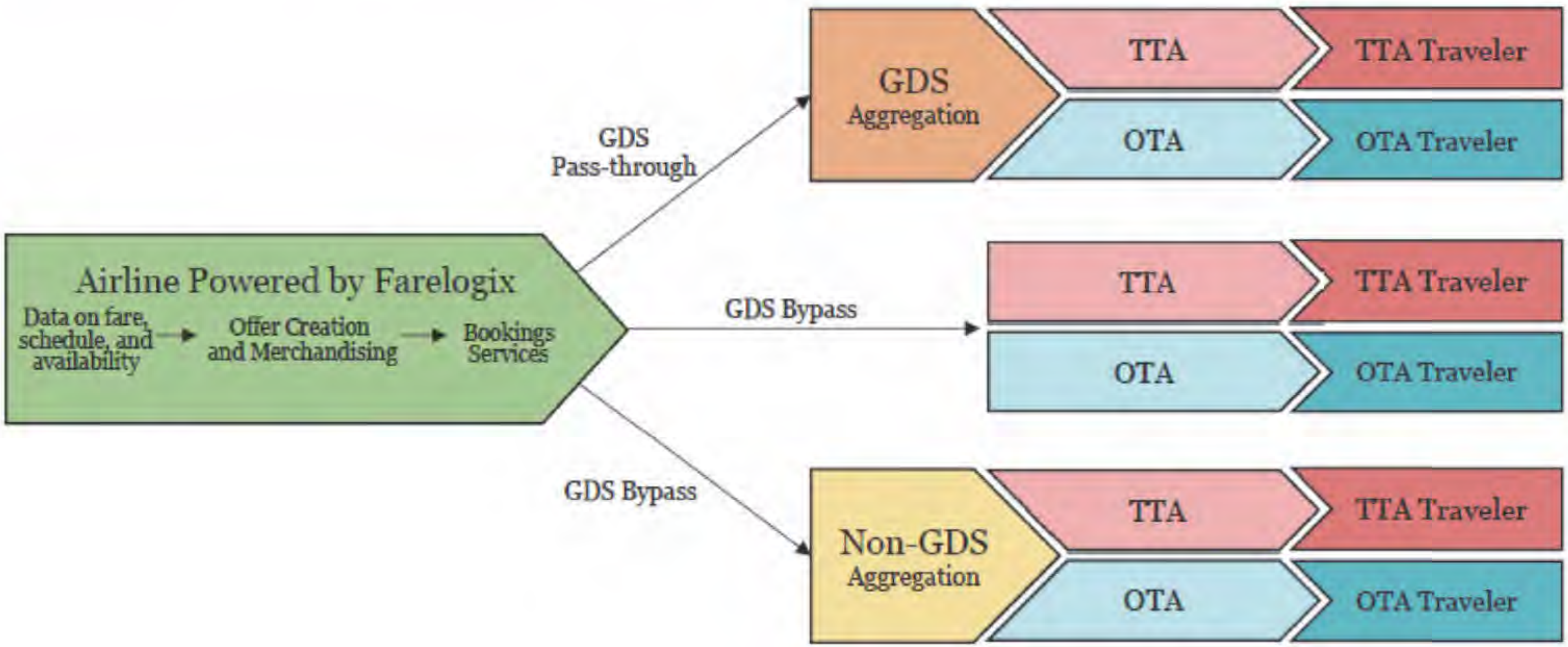
Nevo Report, §§ 4.4.1 and 4.4.2, ¶ 254, and fn. 410; Farelogix, "Innovation at Full Throttle," available at https://www.farelogix.com/about-us/, accessed December 1, 2019

Economic issues in analyzing the proposed merger

- How do merging parties interact with each other, with broader industry?
  - » Is there head to head competition?
  - » What role does Farelogix play in airline negotiations with Sabre?
  - » What role does Farelogix play in driving innovation?

The traditional GDS distribution model

Farelogix facilitates GDS disintermediation



Nevo Report, Exhibit 4

Competition between Farelogix and Sabre would be lost

- Farelogix sees Sabre and the traditional GDS distribution model as its key competitors in order delivery (booking services)

Market (Cont'd 2)

Competition: For each product, who do you see as the key competitors and why do you feel you are differentiated?

Order Delivery: Competitors – Sabre and Amadeus PSS as both have articulated plans for offer NDC APIs as part of their PSS offering. Also traditional GDS distribution until NDC is fully adopted

FLX Advantage

1. Superior technology
2. Neutrality and independence as airlines have a strong fear of putting all their "distribution eggs" in their PSS, which, for most cases is also the GDS
3. Speed to market with enhancements and innovation
4. Price

Nevo Report, ¶ 174 and fn. 288; Farelogix Presentation, "On-Site Meeting Agenda," June 27–28, 2018, FLX-000874214–80 (PX72) at FLX-000874219

Competitive significance of Farelogix is expected to increase without the proposed merger

Deal Model Case Comparison

	Mgmt. Case			Sabre Base Case			Sabre Synergy Case		
$ millions, ex per ticket	2018E	2019F	2020F	2018E	2019E	2020E	2018E	2019E	2020E
Revenue Drivers									
Offer Products New Sales	[redacted]								
Offer Cumulative Sales									
Offer Products ASP									
Order Product New Sales									
Order Cumulative Sales									
Order Products ASP									
NDC Connect Tickets									
NDC Connect Rev / Ticket									
NDC GDS Connect Tickets									
NDC GDS Connect Rev / Ticket									

Sabre's projections for growth of FLX-OC for standalone Farelogix (2018–2020)	
GDS bypass	[redacted] tickets
GDS pass-through	[redacted] tickets

Nevo Report, Appendix 7 and fn. 523; Sabre Presentation Draft, "Project Marlins Recommendation," July 23, 2018, SABR-000000023–33 at SABR-000000031. See also PX16 (SABR-000068016)

Economics of bargaining: leverage that Farelogix provides to airlines would be lost

From: Theo Kruijssen

From: Theo Kruijssen

Subject: High level valuation considerations

1) Current EBITDA multiple:

Post acquisition adjusted EBITDA based on 2014 numbers is around [redacted]. Forecasted Q4 annualized EBITDA would be more than [redacted] (See table below.) [redacted]

included in these EBITDA numbers. (Collected revenue is [redacted]

2) Value of best-of breed Technology:

c. [redacted]

b. By acquiring FLX acquirer would remove a competitor and would stop losing business to FLX.

c. By acquiring FLX acquirer would increase control over airlines who are now using FLX as a negotiation tool during contract renewals

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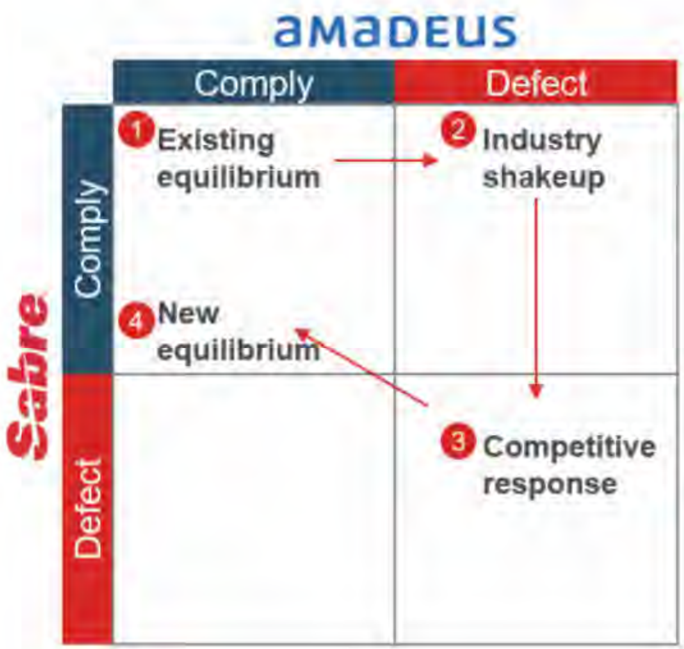
Nevo Report, ¶ 174; Email from Theo Kruijssen to Jeff Reisenberg et al., "high level valuation considerations," September 8, 2014, EVR-FARELOGIXCID-000001456–9 at EVR-FARELOGIXCID-000001458. See also PX181 (EVR-FARELOGIXCID-000001240)

Innovation competition would be lost

Sabre economics are being challenged as the travel distribution ecosystem undergoes change



Changes in ecosystem

1. As new supplier contracts change **existing equilibrium**, Sabre should push to minimize further changes where possible (non-US and Euro Majors)
2. During **industry shakeup**, Sabre should focus on areas of strength and hold share with key agency segments in key regions (TMCs, NAM)
3. During **competitive response**, GDSs will develop new strategies around commercials and technologies to retain/gain share
4. GDSs should re-establish **new equilibrium** at stable economics for all participants in the ecosystem (GDS, agency, airline, traveler)

Nevo Report, Exhibit 18; Sabre Presentation, "Air LOB 'Engine 1' Commercial Strategy Discussion," January 8, 2018, SABR-000759615–44 at SABR-000759635. See also PX201 (SABR-000688189)

Market definition

Role of market definition

- "[M]arket definition helps specify the line of commerce and section of the country in which the competitive concern arises"

- "[I]dentify market participants and measure market shares and market concentration"

Guidelines, § 4

Guiding principles of market definition

- Customer substitution limits firms' ability to raise prices
  - » Therefore focus on "customers' ability and willingness to substitute away from one product to another in response to a price increase..."
- Relevant markets need not include all substitutes
  - » "[P]roperly defined antitrust markets often exclude some substitutes to which some customers might turn in the face of a price increase even if such substitutes provide alternatives for those customers"
- Goal is to understand competition that may be lost due to the proposed merger

Guidelines, § 4

The hypothetical monopolist test

- "[A] group of products is **too narrow** to constitute a relevant market **if competition from products outside that group is so ample that even the complete elimination of competition within the group** would not significantly harm either direct customers or downstream customers"

- "[T]he test requires that **a hypothetical profit-maximizing firm**, not subject to price regulation, that was the only present and future seller of those products ('hypothetical monopolist') **likely would impose at least a small but significant and non-transitory increase in price ('SSNIP')** on at least one product in the market, including at least one product sold by one of the merging firms"

Nevo Report ¶¶ 80–85 and fn. 156; Guidelines, §§ 4 and 4.1.1 (emphasis added)

Forming the candidate market

- Start with a product of one of the merging parties

- Form candidate market
  - » Based on market realities
  - » Using reasonably available and reliable evidence

- Apply the hypothetical monopolist test to assess whether products outside the candidate market constrain prices of products in the candidate market – even under a (hypothetical) monopoly

- Consider geographic and product components of the candidate market

Nevo Report, ¶ 80 and §§ 3.2–3.4; Nevo Rebuttal Report, ¶ 64

Geographic market: U.S. point of sale

- U.S. point of sale used in ordinary course of business
  - » Document and internal analysis
  - » Contract terms: prices differ by point of sale

- I use ordinary course definition of U.S. point of sale
  - » Determined by location of travel agency or traveler at the time of the booking request

- Airlines cannot practicably substitute from sales through U.S. travel agencies to bookings made outside the U.S.
  - » Not practical for an individual traveler to switch geographic point of sale
  - » Costly for an airline to replace sales
  - » Sales are made under contract rates that differ by point of sale

Candidate product markets

- Booking services for airline tickets sold through OTAs in the United States ("OTA booking services")
- Booking services for airline tickets sold through TTAs in the United States ("TTA booking services")

- Two components to product market:
  1. Booking services
  2. Distribution channel: OTAs or TTAs

Nevo Report, §§ 2.1 and 3.3

Component 1: Booking services

- Airlines require booking services to sell through travel agencies

- Booking services are part of the traditional GDS bundle or offered by non-GDS alternatives

- Services included in booking services
  1. Transmitting an airline offer to a travel agency or aggregator
  2. Receiving or processing an order or booking
  3. Receiving or processing changes to the order

- Booking services appears under different labels (e.g., order management, order delivery)

Nevo Report, ¶¶ 24, 41, 103 and fns. 100 and 288

Farelogix replaces the GDS in booking services whether in GDS bypass or GDS pass-through

	Offer creation	Booking services	Aggregation
Traditional GDS distribution model	GDS	**GDS**	GDS
GDS pass-through	Chosen by airline	**Farelogix**	GDS
GDS bypass	Chosen by airline	**Farelogix**	Travel agency or non-GDS aggregator

Nevo Report, ¶¶ 63, 270–273

Component 2: Distribution channels

- Airlines sell tickets through:
  - » Direct channel (airline.com)
  - » Indirect channel (travel agencies)

- Within indirect channel, airlines sell through two types of travel agencies:
  - » Online travel agencies (OTA)
  - » Traditional travel agencies (TTA)

Nevo Report, §§ 2.1.1 and 2.1.2

Multiple reasons OTA and TTA booking services constitute relevant antitrust product markets

- Industry recognition of distinct channels
- Different functionality and traveler focus
- Costly for airlines to induce travelers to switch distribution channels
- Hypothetical monopolist test confirmation

Nevo Report, §§ 3.3 and 3.4

Industry recognition of distinct channels

- Sabre analyzes OTAs and TTAs differently
  - » Airline market trends
  - » Distinct business strategies

- Airlines distinguish OTAs and TTAs when assessing indirect distribution options

- Sabre's contracts with some airlines have different fees and volume thresholds for tickets sold through OTAs and TTAs

Nevo Report, ¶¶ 121–123

OTA and TTA channels offer different functionality and attract different types of travelers

OTA channel

- Appeal to leisure travelers
- Travelers less loyal to a specific airline
- Travelers seek lower prices and value comparison shopping
- Travelers put lower priority on support services
- Travelers value combining purchases of airline tickets, hotel, car rental

TTA channel

- Appeal to corporate travelers
- Travelers tend to book closer to the travel date and to book shorter trips
- Travelers less price sensitive
- Travelers value dedicated travel support services
- Corporate clients often require reporting, compliance, and duty of care services

Nevo Report, ¶¶ 110–114

Costly for airlines to induce switching between distribution channels

- Travelers booking through a channel value the benefits of that channel
  - » Many corporate travelers unlikely to be willing or able to switch from TTAs
  - » Travelers booking through OTAs may
    - Not need or value additional TTA services
    - Prefer OTA comparison shopping and experience to airline.com

- Costly for airlines to induce incremental sales within channels
  - » Evidence from American dispute with Orbitz and Expedia in 2011
  - » Sabre presentation cites study that concludes that "Customer acquisition costs increase exponentially as airlines move to more direct"

Nevo Report, ¶¶ 115–119 and fn. 204; Sabre Presentation, "Next Gen Distribution (NGD) Commercial Model Offsite," March 30, 2017, SABR-000810769–942 at SABR-000810937. See also PX388 (SABR-001591293)

Hypothetical monopolist test: OTA booking services

- Hypothetical monopolist controls booking services in candidate market
  - » GDS and non-GDS (Farelogix) booking services used for sales through OTAs
  - » Does not control TTA channel or direct distribution channel (airline.com)

- Would hypothetical monopolist impose a SSNIP?
  - » SSNIP is 5% of average OTA booking fee of $1.99 (about $0.10)
- Answer depends on airline response to the SSNIP:
  - » Pays SSNIP and passes on to travelers, likely small reduction in ticket sales (SSNIP small relative to average fare of $154)
  - » Rejects SSNIP, costly to replace OTA bookings relative to SSNIP
    - American had to significantly reduce fares and incur marketing costs to retain volume during dispute with Expedia and Orbitz

- Airline better off paying SSNIP than rejecting it
- Hypothetical monopolist would impose a SSNIP
- Test confirms OTA bookings services is a relevant antitrust market

Nevo Report, ¶¶ 129–136, ¶ 118 and fn. 203; Nevo Reply Report, ¶¶ 56–57

Hypothetical monopolist test: TTA booking services

- Hypothetical monopolist controls booking services in candidate market
  - » GDS and non-GDS (Farelogix) booking services used for sales through TTAs
  - » Does not control OTA channel or direct distribution channel (airline.com)

- Would hypothetical monopolist impose a SSNIP?
  - » SSNIP is 5% of average TTA booking fee of $2.22 (about $0.11)
- Answer depends on airline response to the SSNIP:
  - » Pays SSNIP and passes on to travelers, likely small reduction in ticket sales (SSNIP small relative to average fare of $270)
  - » Rejects SSNIP, costly to replace TTA bookings relative to SSNIP
    - Travelers less likely to switch channels: corporate policies often require using TTAs

- Airline better off paying SSNIP than rejecting it
- Hypothetical monopolist would impose a SSNIP
- Test confirms TTA bookings services is a relevant antitrust market

Nevo Report, ¶¶ 137–143, 116; Nevo Reply Report, ¶¶ 56–57

Competitive effects

Multiple mechanisms and analyses indicate that the proposed merger would lessen competition

1. Increased concentration in already highly concentrated relevant antitrust markets

2. Elimination of head to head competition

3. Loss of bargaining leverage for airlines

4. Reduced innovation

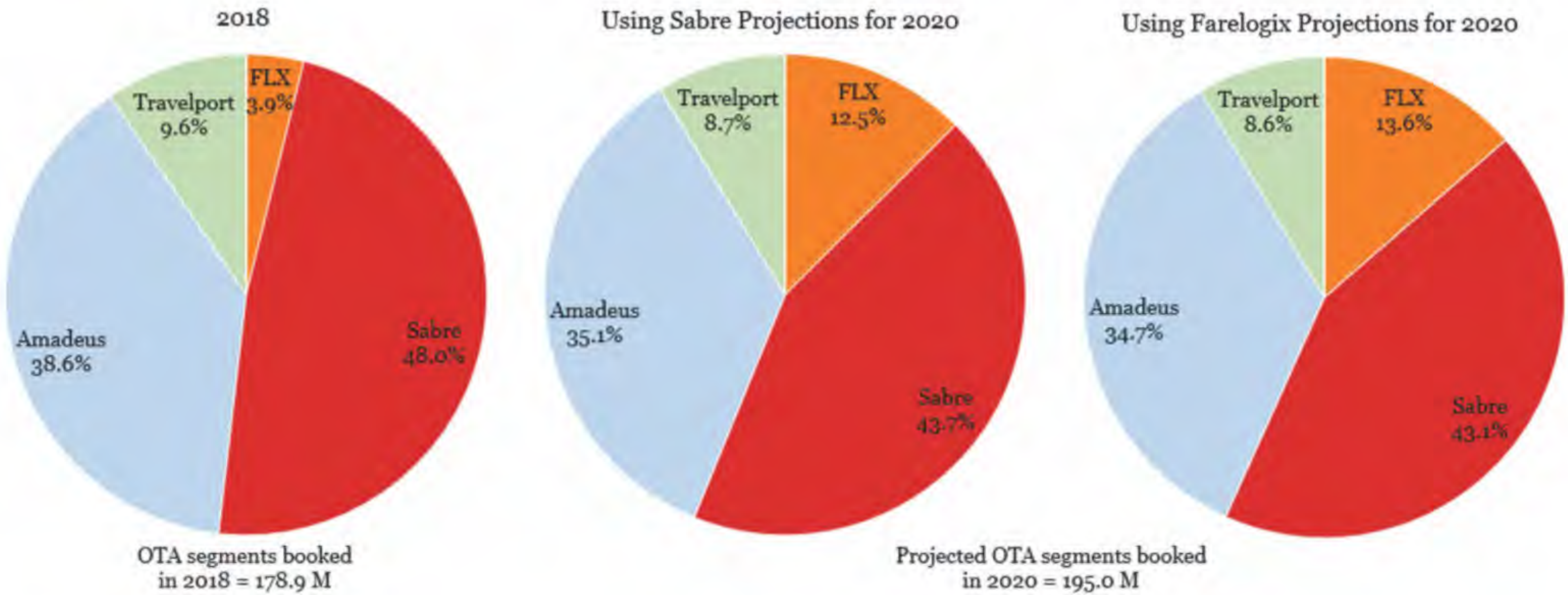
Nevo Report, § 4

Competitive effects

Increased concentration in relevant markets

- The proposed merger would significantly increase concentration in already highly concentrated relevant antitrust markets
- Market shares and concentration understate competitive significance of Farelogix

Market shares for OTA booking services



Nevo Report, Exhibit 6

Shares based on projections better capture competitive significance of firms in this industry

- Standard practice is to use market shares that accurately reflect competitive conditions
  - » Often use historical shares
  - » Historical shares can understate or overstate a firm's competitive significance
- Guidelines discuss use of shares based on projections
  - » "Recent or ongoing changes in market condition"
  - » "Consider reasonably predictable effects of recent or ongoing change in market conditions"
- Industry facts support use of projected shares
  - » NDC and new booking services technologies in relatively early stages
  - » Farelogix is expected to grow

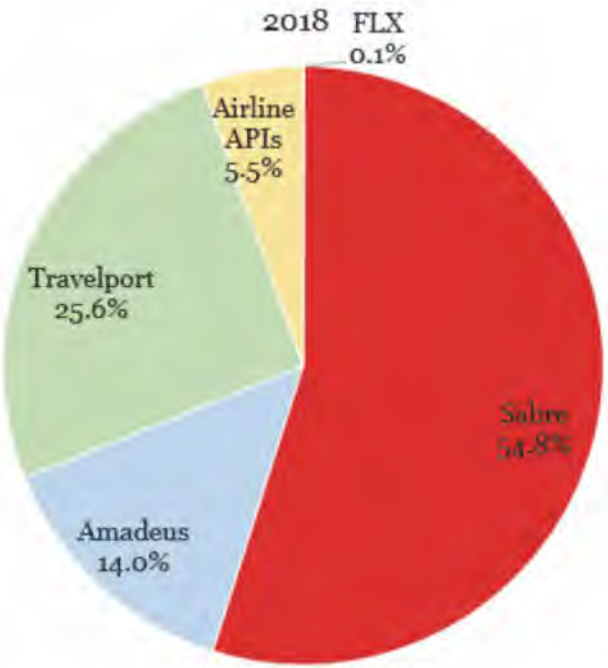
Guidelines, § 5.2

OTA booking services:
Post-merger HHI and change in HHI

OTA

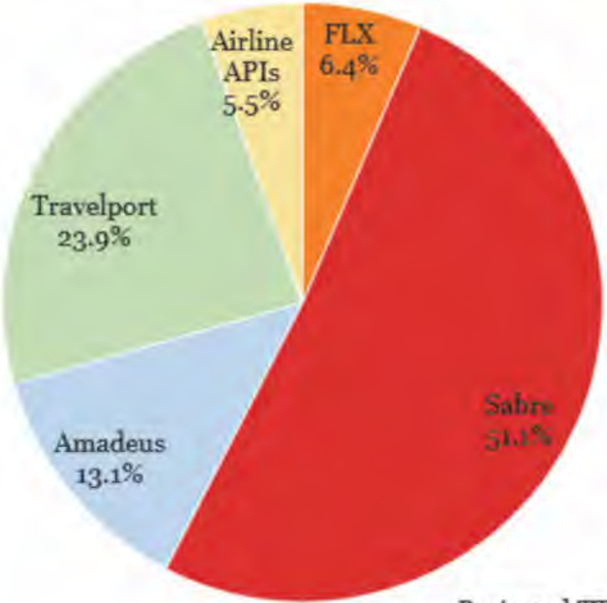
		Projected 2020 Shares	
	2018 Shares	Sabre Data	Farelogix Data
Post-Merger HHI			
Level	4,268	4,465	4,495
Above 2,500	✓	✓	✓
Change in HHI			
Change	371	1,093	1,175
Above 200	✓	✓	✓

Market shares for TTA booking services

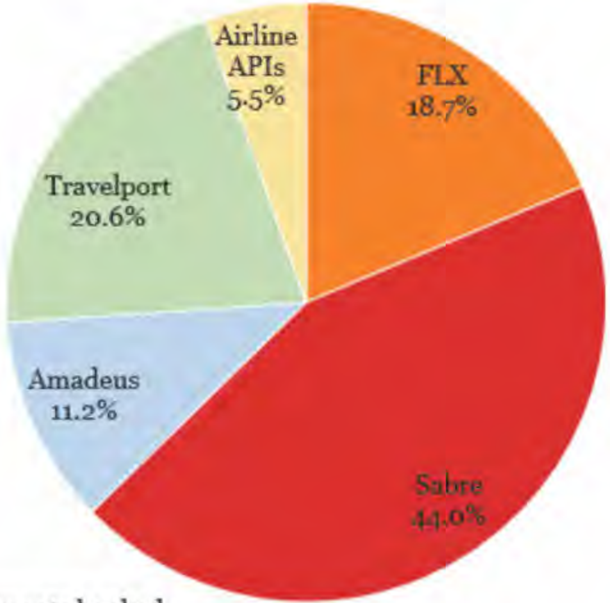


TTA segments booked
in 2018 = 237.6 M

Using Sabre Projections for 2020



Using Farelogix Projections for 2020



Projected TTA segments booked
in 2020 = 259.1 M

TTA booking services: Post-merger HHI and change in HHI

TTA

		Projected 2020 Shares	
	2018 Shares	Sabre Data	Farelogix Data
Post-Merger HHI			
Level	3,895	4,085	4,510
Above 2,500	✓	✓	✓
Change in HHI			
Change	6	657	1,643
Above 200		✓	✓

Market shares and concentration measures understate the competitive significance of Farelogix

- Airlines leverage the potential to use Farelogix for booking services to negotiate more competitive contract terms with the GDSs
  - » Competitive impact exists even when Farelogix processes little or no volume
- Farelogix is an innovative company that has invested in technology that has disrupted booking services
  - » Competitive pressure to innovate not fully captured by Farelogix market shares

Nevo Report, § 4.1.3

Competitive effects

Elimination of head to head competition

- Merging parties compete to provide airlines with booking services
- Competition expected to intensify
- Merged firm would have incentive and ability to raise prices

Evidence shows the merging parties compete to provide airlines with booking services

- Products overlap in functionality
  - » Airlines can substitute between products offered by the merging parties
- Industry participants describe merging parties as competitors
- Evidence indicates scope and intensity of competition will increase
  - » Farelogix expected to grow
  - » Sabre developing NDC capabilities to better compete with Farelogix

- The merger would eliminate this competition

Sabre sees Farelogix as a competitor for order management (booking services)

Nevo Report, ¶ 173 and fn. 285; Sabre Presentation, "Pan-Sabre Product Strategy: Next Gen Retailing/Next Gen Distribution," August 15, 2017, SABR-002944066–121 at SABR-002944105. See also PX5 (SABR-000014952)

Airlines see Farelogix as a competitor to Sabre for booking services

[redacted]

United

(Nov 2019)

Farelogix is the leading supplier of NDC technology to airlines (including us), and has been the GDSs' leading competitor/agitator for years.

American

(Nov 2018)

Farelogix is the leading supplier of NDC technology to airlines (including us), and has been the GDSs' leading competitor/agitator for years.

[redacted]

Delta

(Nov 2018)

Nevo Report, ¶¶ 175, 249 and fns. 290–292, 406; Deposition of Michael Tye Radcliffe (United), November 22, 2019, p. 155; Email from Cory Garner to Maya Leibman et al., "Re: SABRE buys Farelogix," November 14, 2018, AA-CID-SF_00000603, (PX452); Email chain between Jeffrey Lobl and Kate Modolo, "re: [EXTERNAL] Sabre/Farelogix," November 14, 2018, DL_FLXCID_000000091–2 at DL_FLXCID_000000091

Overlap and competition between merging parties is expected to continue to grow

- Farelogix expected to continue to grow in both relevant markets
  - » Sabre projections of standalone Farelogix
  - » United and Lufthansa recently announced Farelogix direct connects with TripActions, a U.S.-based TMC
  - » Farelogix has NDC booking services connections with many airlines on the IATA leaderboard, who committed to use NDC for at least 20 percent of bookings by 2020

- Sabre expected to expand NDC capabilities as a standalone firm
  - » Developing "NDC DCP" product to compete with NDC capabilities of FLX-OC
  - » Sabre recognizes this as a solution to help "stop FLX from continuing to gain traction"

Nevo Report, ¶¶ 176, 178, 181 and fn. 310; Exhibit 11 to Deposition of Rodrigo Celis (Sabre), November 8, 2019, Email from Rodrigo Celis to Chris Boyle, et al., "Discuss Farelogix," May 16, 2017, SABR-001147092–3 (PX51) at SABR-001147092

Merged firm has incentive to increase prices

- Standard economic analysis: upward pricing pressure
- Increasing price has two effects
  - » Earn higher margins on retained sales
  - » Reduced number of sales
- Optimal price balances these effects

- A merger changes the balance
  - » Some previously lost sales are no longer lost (diverted to other merging party)
  - » Price increase may now be profitable

- Apply this economic logic to the proposed merger
  - » Merged firm would have economic incentive to raise prices for booking services
  - » Consistent with ordinary course analysis from industry participants

Nevo Report, § 4.2

Incentive for merged firm to increase Farelogix prices consistent with Sabre ordinary course strategic thinking

- Example 1: Sabre ordinary course analysis
  - » Strategy for pricing direct connects
  - » Ties Sabre's GDS market share to direct connect pricing strategy

- Example 2: [redacted] negotiations
  - » Sabre has high share among GDSs in [redacted]
  - » Sabre recognized low direct connect prices cannibalizes Sabre's GDS business
  - » Not willing to commit to keep Farelogix direct connect prices at current rates after the proposed merger

- Sabre thinking consistent with merged firm having incentive to increase Farelogix prices in relevant markets
  - » 48% share of OTA market
  - » 55% share of TTA market

Nevo Report ¶¶ 187–190, fn. 324, and Exhibits 6 and 8

Competitive effects

Loss of bargaining leverage for airlines

- Industry participants see Farelogix as a significant source of leverage for airlines in negotiations with Sabre
- Economics of bargaining predicts that proposed merger would reduce airlines' ability to negotiate favorable terms with Sabre, including booking fees
- Negotiation outcomes consistent with predictions from bargaining analysis

Industry participants view Farelogix as significant source of leverage for airlines in negotiating with Sabre

United
(June 2015)

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.

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[redacted]

American
(Sept 2016)

Farelogix
(July 2017)

But let's not loose site of that just having FLX in the game is almost guaranteed to save them 10 to 20X of our annual fees in a SABRE negotiation.

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Nevo Report, ¶¶ 198, 201–202 and fns. 333, 336, and 339; Exhibit 10 to Radcliffe (United) Litigation Deposition, Email chain between Michael Tye Radcliffe and Eric Portier, et al., "RE: Carmel update 050615_wDecision_Tree.pptx," June 2, 2015, UA-SabreFX-001770–1 (PX299) at UA-SabreFX-001770; American Draft Presentation, "NDC and Farelogix vs Internal Build," September 2016, AA-CID-SF_00001848–62 at AA-CID-SF_00001854; Email from Jim Davidson to Mel Trudeau et al., "Re: Farelogix Proposal for the Aeromexico Indirect channel," July 6, 2017, FLX000241731–35 (PX87) at FLX-000241731

Merger of two sellers can reduce customers' ability to negotiate more competitive terms

- "A merger between two competing sellers prevents buyers from playing those sellers off against each other in negotiations"

- Bargaining analysis relevant to evaluating this merger
  - » Contracts are negotiated between Sabre and each airline
  - » Farelogix is an alternative to Sabre for an airline purchasing booking services

Guidelines, § 6.2; Nevo Report, ¶ 315 and fn. 329

Negotiating dynamics between airlines and Sabre consistent with standard bargaining framework

- Airlines negotiate with Sabre
  - » Negotiate over contract terms, including booking fees and content provisions
- Bargaining leverage of each firm affects negotiating outcomes
  - » Leverage depends on the cost to each firm of disagreement or, in other words, the value of its "fallback option"
- Airlines' leverage increases with access to alternative booking services suppliers, such as Farelogix
  - » Reduces the cost of refusing content provisions
  - » Could shift bookings from Sabre towards Farelogix to avoid high booking fees
- Before the merger, the ability to use Farelogix gives the airlines more leverage to negotiate favorable contract terms

Nevo Report, § 4-3-3

Bargaining economics applied to the proposed merger

- Now consider what happens if Sabre and Farelogix merge

- Disagreement point is more costly for the airline
  - » Merged firm could increase booking fees on both Sabre's and Farelogix's products

- Airline's fallback option is more costly for the airline so the airline has less leverage
  - » Leads to less favorable contract terms for the airline, including higher booking fees

Nevo Report, § 4.3.3

Effect of Farelogix on the cost to Sabre of disagreeing

- Airline's ability to use Farelogix pre-merger makes disagreement potentially more costly for Sabre than it would be post-merger
  - » Sabre's traditional GDS business model becomes less valuable if more airlines are using Farelogix to bypass the GDS
  - » Could lead to an unraveling of traditional GDS business model

- Therefore, post-merger Sabre's fallback option is less costly so Sabre has more leverage
  - » Leads to less favorable contract terms for the airline, including higher booking fees

Nevo Report, § 4.3.3

Sabre experience in Brazil shows risk of large shifts in bookings to non-GDS alternatives

- Direct connect portal unbundled GDS booking services
- New aggregators entered the market
- Sabre booking fees and volume fell in Brazil
- Sabre: [redacted]

Nevo Report, ¶ 217 and fn. 353; Sabre Presentation, "Next Gen Distribution (NGD) Commercial Model Office," March 30, 2017, SABR-000810769–942 at SABR-000810858. See also PX388 (SABR-001591214)

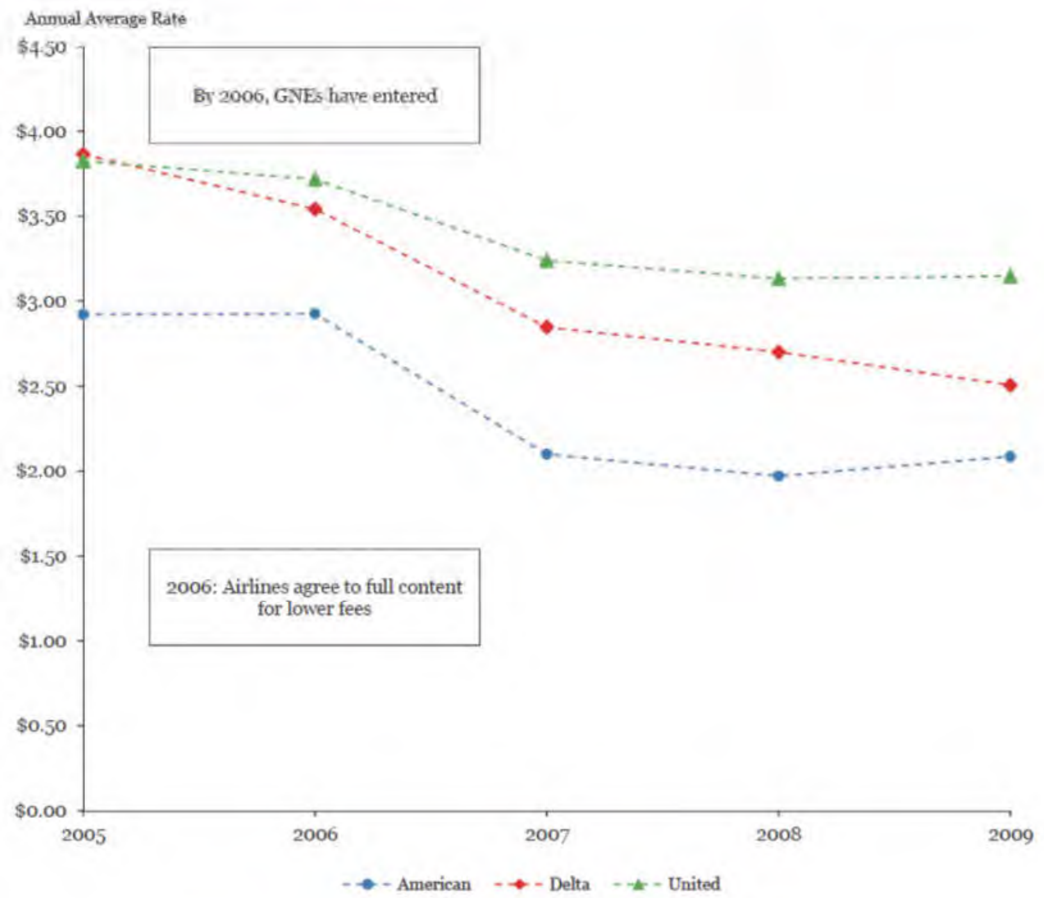
Evidence from market outcomes consistent with predictions from bargaining economics

- Examined three sources of evidence
  - » Contracted booking fees
  - » Actual booking fees paid by airlines
  - » Analysis by industry participants from the ordinary course

- Evidence consistent with predictions from the economics of bargaining

Nevo Report, § 4.3.4

Booking fee decline in 2006 consistent with non-GDS alternatives providing airlines leverage



Nevo Report, Exhibit 11

Airlines continue to receive the competitive benefits of direct connects in bargaining

[redacted]

Nevo Report, Exhibit 15

Airline ordinary course analysis consistent with the proposed merger reducing airline bargaining leverage

- American analysis from ordinary course
  - » If Farelogix were acquired by a GDS, how costly would it be to American?
  - » [redacted]

[redacted]

- American credits Farelogix with continued availability of wholesale model
  - » Without threat of Farelogix direct connects, airlines could lose wholesale model and face increased distribution costs

Nevo Report, ¶¶ 191, 244–245 and fn. 325;
Email from Nicholas Andersen to Cory Garner et al., "Fusion Intro," October 30, 2015, AA-CID-SF_00001621 and
American Airlines Presentation, "Farelogix Update," October 30, 2015, AA-CID-SF_00001622–26 (PX454) at AA-CID-SF_00001625

Competitive effects

Reduced innovation

- Farelogix is an innovative firm with economic incentive to disrupt industry status quo
- The merged firm would not have the same economic incentive to innovate
- Proposed merger would reduce competitive pressure to innovate, depriving airlines and travelers the benefits of innovation

The proposed merger would reduce innovation

- Mergers can encourage merged firm to curtail innovation below that would prevail absent the merger

- Reduced innovation "most likely" in conditions that are present here
  - "at least one of the merging firms is engaging in efforts to introduce new products that would capture substantial revenues from the other merging firm"
  - "at least one of the merging firms has capabilities that are likely to lead it to develop new products in the future that would capture substantial revenues from the other merging firm"

Nevo Report, ¶ 293 and fn. 466; Guidelines, § 6.4

The proposed merger would eliminate an innovative firm with a history of disrupting the industry

- Farelogix is a small firm competing with large incumbents
- Disrupting the industry is consistent with its economic incentives
- Farelogix's economic incentives led to a culture built around innovation

- Farelogix innovation led to the creation of NDC standards

Nevo Report, ¶¶ 71, 252, 254–255 and fns. 133, 409–410; Farelogix, "Innovation at Full Throttle," available at https://www.farelogix.com/about-us/, accessed December 1, 2019

Customers and competitors recognize Farelogix's innovative and disruptive role

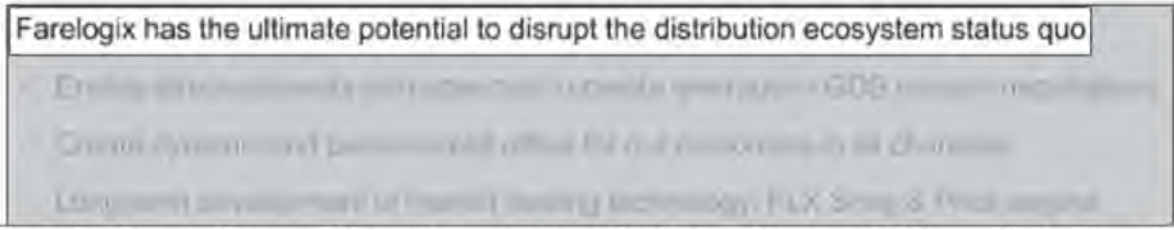
Sabre
(May 2017)

Farelogix is playing a vocal though-leader role, driving the industry direction in a way not maximally aligned with Sabre

Delta
(Jan 2019)

[redacted]

United
(June 2018)



Farelogix has the ultimate potential to disrupt the distribution ecosystem status quo

Nevo Report, ¶¶ 256–257 and fns. 417, 419, 421; Sabre Presentation, "Pan-Sabre Product Strategy SteerCo2 Next Gen Retailing & Distribution," May 22, 2017, SABR-002856854–89 (PX2) at SABR-002856858; Email from Derek Adair to Ed Bastian, et al., "Sabre/Farelogix Meeting Friday 1/11/18," January 9, 2019, DL_FLXCID_000000069–70 (PX1) at DL_FLXCID_000000069; United Presentation, "Farelogix," June 2018, UA-SabreFX-000315–33 at UA-SabreFX-000320. See also PX421 (UA-SabreFX-000366)

Sabre has economic incentive to maintain status quo

- Sabre has high shares in booking services markets:
  - » 48% of the OTA market
  - » 55% of the TTA market
- Incentive to protect profits in traditional GDS business
- Sabre actions consistent with its economic incentives
  - » Resisted NDC adoption
  - » Refused to invest in NDC
  - » Only began investing in NDC in response to "industry shakeup"

Nevo Report, Exhibits 6, 8, 18, and ¶¶ 264–267, 286–287; Sabre Presentation, "Air LOB 'Engine 1' Commercial Strategy Discussion," January 8, 2018, SABR-000759615–44 at SABR-000759635. See also PX201 (SABR-000688189)

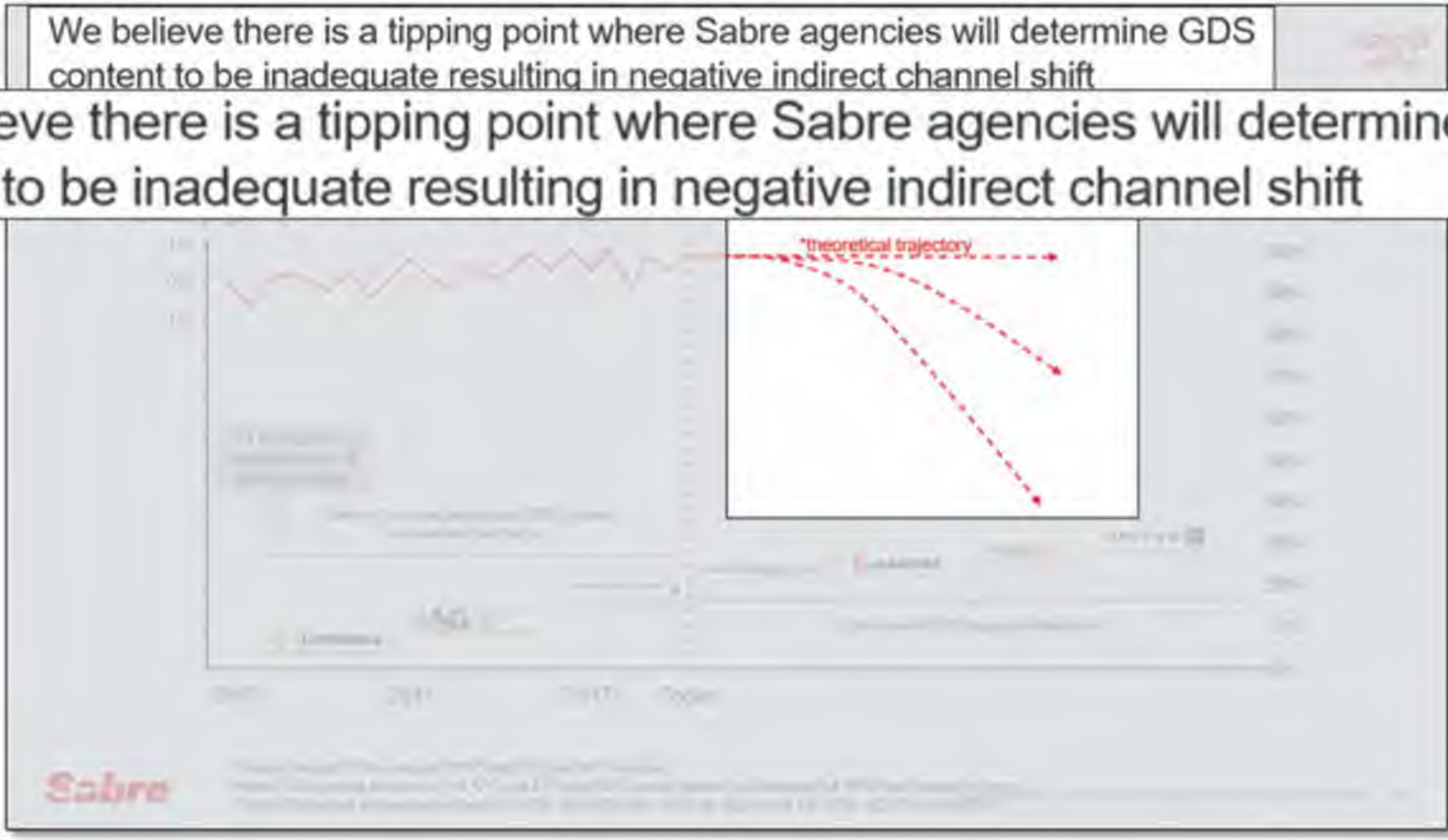
NDC threatens Sabre's profitable core business

- NDC commercial models still developing
  - » Creates uncertainty and risk for incumbent firm
- NDC shifts leverage away from the GDS
  - » Airlines control offer creation
  - » Facilitates the entry of non-GDS aggregators
  - » Increases unique content that can be distributed outside the GDS model

- The disintermediation of the GDS can leads to a tipping point that shifts the industry to new business models away from GDS equilibrium
  - » Sabre documents acknowledge this risk
  - » Sabre experience in Brazil provides an example

Nevo Report, § 2.3.2 and ¶¶ 217, 270–273

Sabre's concerns about innovation: "tipping point" and "negative indirect channel shift"



We believe there is a tipping point where Sabre agencies will determine GDS content to be inadequate resulting in negative indirect channel shift

Nevo Report, ¶ 277 and fn. 446; Sabre Presentation, "Travel Network Strategy Update," August 2017, SABR-003071025–78 at SABR-003071037. See also PX5 (SABR-000015046)

The proposed merger would eliminate a disruptive firm that pressures Sabre and the other GDSs to innovate

- Removing an independent Farelogix reduces competitive pressure to innovate on Sabre and other GDSs
  - » Farelogix has been a key driver of NDC
  - » Farelogix is predominant non-GDS NDC booking services option for U.S. airlines

- Reduced competition deprives airlines and travelers the benefits of innovation

Nevo Report, ¶ 65 and § 4.4.4

Mitigating factors

Potential mitigating factors insufficient to offset harm

- Entry and expansion are not likely, timely, or sufficient

- Claimed efficiencies are insufficient to offset the lessening of competition from the proposed merger

- Sabre's offer to extend existing contract terms is insufficient to offset the lessening of competition from the proposed merger

Nevo Report, ¶ 296

Entry and expansion are not likely, timely, or sufficient

- Barriers to entry and expansion recognized by merging parties and airlines
  - » Expertise to tailor sophisticated solutions to individual airlines
  - » Reputation and experience
  - » Constraints from existing GDS contract provisions

- Airlines testified they do not believe existing firms can replace Farelogix

- Airline self-builds not likely, timely, or sufficient
  - » Costly and time consuming
  - » Individual airlines will not have same incentive or ability to innovate as Farelogix
  - » Travel agencies more incentive to adopt Farelogix than many individual self-builds

Nevo Report, § 5.1

Claimed efficiencies are insufficient to offset the lessening of competition from the proposed merger

- Claims that proposed merger will accelerate Sabre's NDC development are not merger-specific
  - » Farelogix puts competitive pressure on Sabre to innovate, particularly in NDC development

- Claims that proposed merger is needed for Farelogix to scale, but Sabre expects standalone Farelogix to grow

Nevo Rebuttal Report, ¶¶ 113–115

Sabre's offer to extend existing contract terms does not offset the lessening of competition from the proposed merger

- Loss of bargaining leverage from eliminating an independent Farelogix would be permanent

- Contract extensions would not replace the pressure to innovate that Farelogix has put on the GDSs