IN THE JUDICIAL DISTRICT
TARRANT COUNTY, TEXAS
67TH JUDICIAL DISTRICT

American Airlines, Inc., Plaintiff,	§	
v.	§	No. 067-249214-10
Sabre Inc., Sabre Holdings Corp., and Sabre Travel International Ltd., Defendants.	§	

EXPERT REPORT OF KEVIN M. MURPHY

July 20, 2012

PLAINTIFF EXHIBIT
PX426

II. Assignment and Summary of Conclusions

8 I have been asked by Counsel for Sabre Inc., Sabre Holdings Corporation and Sabre Travel International Limited (collectively, "Sabre") to explain the economic role of Global Distribution Systems ("GDSs") in the travel industry and to provide an economic analysis of allegations by American Airlines, Inc. ("American") that Sabre has engaged in "anticompetitive and exclusionary acts and practices";[2] that Sabre had no procompetitive reason for its conduct; and that Sabre's practices and actions have harmed competition. American alleges that "Sabre intends to coerce American into abandoning its effort to modernize and streamline the costly legacy system for distributing American's travel data"[3] in order to prevent American from "disrupting Sabre's monopoly position."[4] American claims that Sabre "entered into an amendment [with American] to its Participating Carrier Agreement in 2006,"[5] and that during negotiations Sabre "demanded terms that impede American's ability to develop 'direct connect' alternatives to the GDSs."[6] American claims that Sabre followed up with a "secret plan to

[2] Sixth Amended Petition ¶119.
[3] Sixth Amended Petition ¶3.
[4] Sixth Amended Petition ¶6.
[5] Sixth Amended Petition ¶5.
[6] Sixth Amended Petition ¶5.

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'neutralize' American."[7] American further claims that Sabre engaged in a variety of conduct – including "strengthening the anticompetitive provisions of its contracts with travel agencies, terminating its relationships with technology providers that help American,"[8] testing and then implementing "system-wide 'biasing' of its electronic display of American's fare and flight data in the Sabre GDS,"[9] coordinating "an agreement among numerous travel management companies and travel agencies"[10] and "more than [*doubling*] the fees it charges to distribute American fare and flight data."[11]

9. Based on my review of American's *Sixth Amended Petition* and other pleadings filed by American and Sabre in this case, my review of a variety of documents, data and deposition testimony, document review and data analysis performed at my direction by my staff, my review of the *Expert Report of Dennis W. Carlton* (dated April 18, 2012, the "Carlton Report"), the *Expert Report of M. Ray Perryman, Ph.D.* (dated April 18, 2012, the "Perryman Report"), and the *Supplement to Expert Report of M. Ray Perryman, Ph.D.* (dated July 2, 2012, the "Perryman Supplement") submitted by American to support its allegations, and my expertise as an economist, I have concluded that American's claims are inconsistent with sound economic analysis and that Professor Carlton has not provided a valid economic analysis to support those claims. In particular, I have concluded that:

- Over an extended period, American and Sabre negotiated the terms of the 2006 Distribution Content and Modified Payments Amendment ("PCA Amendment")[12] to their Participating Carrier Distribution and Services Agreement ("PCA"). Both parties entered those negotiations with a set of "demands," and neither party obtained all its hoped concessions from the other. The negotiations were long and public, and eventually resulted in an agreement into which both parties entered voluntarily. Most important for understanding why American's claims lack merit is that American negotiated a substantial reduction in its booking fee compared with its previous agreement with Sabre

[7] Sixth Amended Petition ¶6.
[8] Sixth Amended Petition ¶6.
[9] Sixth Amended Petition ¶6.
[10] Sixth Amended Petition ¶7
[11] Sixth Amended Petition ¶8
[12] *Distribution Content and Modified Payments Amendment*, Effective Date September 1, 2006 ("PCA Amendment").

(and compared with other airlines), along with other favorable terms, in exchange for its agreement to continue to provide Sabre subscribers with "full content" and to accept certain restrictions on its ability to immediately provide incentives for travel agencies to move bookings away from Sabre to another GDS.

- By definition, contracts "restrict" activities by the parties – both to require them to undertake certain actions and to prevent them from taking others. An *ex post* claim that such agreements are anticompetitive because they are "restrictive" and reduce the options available to one of the parties makes no economic sense; it is the purpose of contracts to define and limit the parties' rights and obligations. Otherwise, the parties simply could transact on a spot basis in the marketplace and obtain the same gains from trade.
- Sabre's conduct is not exclusionary or anticompetitive. Sabre has procompetitive reasons for insisting on full content from participating airlines and for other contract provisions and practices about which American complains.
- Economic efficiency would be reduced and consumers would be harmed if American prevails in its attempt to deprive Sabre of the right to negotiate the terms of the services it provides.
- American has not suffered antitrust injury.

10. As I explain in my report, Professor Carlton has mischaracterized the nature of competition for Sabre's services, and so has reached the wrong conclusions about the impact of Sabre's conduct on competition and consumers. Outcomes in the marketplace reflect the strong competition Sabre faces and the intrinsic nature of the services that travel agency and corporate travel office customers want from GDSs – namely, the ability to efficiently compare travel alternatives and allow travelers and their employers to select their preferred itinerary based on price, convenience, service and other factors.

11. American does not acknowledge the competitive constraints on GDSs such as Sabre. American also wrongly characterizes practices in the GDS industry and Sabre's bargaining position and actions as "exclusionary" and "anticompetitive," and Professor Carlton wrongly claims that Sabre engages in these activities to preserve its alleged market power and reduce competition. In particular, American wrongly claims that the financial and content parity

provisions in its historical agreements with Sabre, and Sabre's general insistence on obtaining "full content" from American and other carriers, are anticompetitive. However, these historical business practices (which pre-dated the spin-off of the GDSs from their original airline owners, and thus arose when American owned Sabre) allow Sabre to provide its travel agency customers with the service they want – comprehensive data on fares, availability and service fees – which in turn allows those agencies to satisfy consumer demand. Thus, these practices have a strong procompetitive motivation and benefit the traveling public by facilitating comparison shopping across the "full content" – product and service offerings, terms and conditions and pricing – offered by competing travel service providers like airlines.

12. American and Professor Carlton also wrongly claim that American cannot offer its allegedly more efficient direct connect system because of Sabre's alleged anticompetitive agreements with travel agencies. My empirical analysis demonstrates that many of Sabre's largest travel agency and corporate customers could switch all their American bookings to direct connect without incurring any cost other than the loss of incentives on the American bookings moved to direct connect, and many other agencies could switch a substantial fraction of their American bookings. Contrary to American's claim, most of American's bookings could be done through direct connect without any "penalty" on the travel agency.

13. Professor Carlton's characterization of the marketplace and his evaluation of the competitive effect of Sabre's conduct is improper and fails to explain a variety of observed events and outcomes. In particular, Professor Carlton makes the following errors:

- He improperly analyzes the competitive forces that determine GDS pricing. As a result, he reaches the wrong conclusions regarding market definition, market power and the competitive effects of Sabre's conduct.
- His analysis of Sabre's alleged market power is inconsistent with sound economic principles.
- The goal of market definition and analysis of competition is to understand the economic forces that constrain pricing. Professor Carlton's analysis is at odds with and ignores the forces that historically have determined booking fees.

- He fails to account for the two-sided nature of the market. As a result, he focuses on the wrong economic measure of price and misunderstands the forces that determine prices and market outcomes.
- He ignores American's importance to Sabre in the alleged relevant markets he has defined. In particular, if American refused to provide its content to Sabre, provided Sabre with less than full content, or took other steps to shift its business away from Sabre, it would impose disproportionate costs on Sabre through reduced bookings of both American's and other suppliers' content through Sabre. As a result, his conclusions about the alleged impact of Sabre's market share on pricing and other market outcomes are incorrect.
- His analysis of the impact of Sabre's conduct on American's ability to price discriminate across customers is incomplete and misleading. In particular, he completely ignores a direct implication of his analysis – that American would charge higher prices to the customers served by Sabre in his alleged market.
- He does not account for the fact that booking fees result from negotiations between GDSs and airlines and reflect the value that both sides bring to the table. Given the negotiated nature of these prices, Professor Carlton's focus on "market shares" is wrong as a matter of economics. Such negotiations result in sharing gains from trade so that both parties benefit. However, the resulting "market share" of the supplier or buyer does not describe the alternatives available to the parties (and thus the nature of the competitive forces) leading to their agreement. Again, failing to recognize the nature of competition leads Professor Carlton to reach erroneous conclusions about the effects of Sabre's conduct on competition.
- He fails to recognize that even an agreement by American not to use direct connect (which is more restrictive than the limitation on public marketing in its agreement with Sabre) would not imply that American did not receive the competitive benefits of direct connect. American received concessions from Sabre for giving up any benefits that it expected to obtain if it immediately implemented direct connect (assuming, contrary to evidence that I have seen, that it had such a product available to market). Indeed, the

option of using such contracts is required to ensure that buyers receive the full benefit of having self-supply as a competitive option.

- He incorrectly characterizes Sabre's contracts with travel agencies. In particular, his claim that these contracts prevent agencies from shifting to direct connect is contradicted by empirical evidence. In addition, he ignores the fact that American is free to directly incentivize some of its largest corporate customers to switch away from Sabre.
- He wrongly dismisses any procompetitive justifications for Sabre's business practices in spite of the fact that many of these practices, such as the full content provision and pricing based on bookings (rather than say searches), have been common industry practices for decades, even when American itself owned Sabre.
- He simply assumes that direct connect is efficient and attributes its lack of success to Sabre's conduct without ever examining whether this assumption is accurate and/or supported by the available evidence. His conclusion that Sabre's challenged conduct affected competition depends on his assumption that, but-for those practices, travel agencies voluntarily would have adopted direct connect, yet he provides no evidence that this would have occurred, and thus that the challenged conduct had any impact on direct connect.

14. Dr. M. Ray Perryman, American's damages expert, has submitted two reports in this matter. I explain that none of the alleged damages quantified by Dr. Perryman reflect antitrust injury. I also explain why Dr. Perryman's analysis of Sabre's profitability is uninformative.

15. My work in this matter is ongoing, and I reserve the right to supplement and amend my opinions if additional information becomes available to me, including additional data, documents and testimony produced in discovery, additional analyses submitted in this proceeding by Professor Carlton and Dr. Perryman, and testimony and evidence presented at trial. A list of the materials on which I relied in reaching my opinions is attached to this report as Appendix B.

VIII. American and Sabre May Disagree on How to Share Gains from Trade, But This Does Not Affect Competition

111. Properly interpreted, American's complaints are not about harm to competition, but about the impact of Sabre's conduct on how American serves itself through direct connect. American's direct connect is *not* a competitor in the marketplace for any airline's bookings other than American's own. As such, American will realize the competitive benefits of its ability to switch to direct connect when it negotiates with Sabre, whether or not it exercises that option or ultimately supplies direct connect to agencies. A direct interconnection from agencies to American's reservation system provides no additional GDS competition to serve United, Delta, US Airways and other airline, hotel, and car rental companies. Any benefits from direct connect will accrue only to American, so American will internalize the consequences of its decisions and agree to limit its use of direct connect only if it receives sufficient compensation.[140] While, in principle, there could be some impact of American's use of direct connect on other airlines, that impact would be indirect (since they cannot use American's direct connect) and that impact could be positive or negative.

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[140] In terms of the framework of anticompetitive effects used in the economics literature, there is no "externality" on other buyers (see Bernheim, B.D. and Whinston, M.D., *Exclusive Dealing*, J. Pol. Economy 106 (1998), pp. 64-103 and Whinston, M.D., *Lectures on Antitrust Economics* (2008), pp. 144-151.

112. Negotiations between American and Sabre now occur in the shadow of American's lawsuit claiming Sabre's business model, actions and negotiating position are anticompetitive. After spending the last few years exploring and investing in a direct connect alternative to the traditional GDS model that it claims is obsolete, American appears to want to continue to rely on Sabre, without allowing Sabre to negotiate freely for the commercial relationship that would permit Sabre to offer the services its customers desire.

113. In general, economic efficiency is enhanced when parties transact through the marketplace, rather than through costly litigation or regulation. However, each party may prefer to strengthen its own bargaining position by using litigation or regulation. One way to do so is to deprive the other party of its property rights by claiming, for example, that the party wrongfully threatened to walk away from the negotiations or to stop engaging in trade.

114. The right to choose business partners, and to decline to do business with some, creates incentives for the parties to reach a mutually beneficial agreement. American has used the threat to cease doing business with Sabre, or to reduce its dealings with Sabre significantly, as a means of incentivizing Sabre to come to such an agreement. Correspondingly, Sabre's ability to refuse to enter into an agreement that harms its business interests, but instead to insist on mutually beneficial contract terms with American, promotes economic efficiency and enhances Sabre's incentives to innovate and compete aggressively to try to outperform competitors.

115. Rather than negotiating a mutually acceptable deal with Sabre based on the value each brings to the table, American argues that Sabre should be forced to unbundle its GDS system and allow American to use only selected features of the GDS (such as enabling interconnection with Farelogix), while American should be free to withhold from Sabre some of the content that Sabre seeks. Forcing Sabre to provide American with what American wants while at the same time preventing Sabre from negotiating for what it desires in exchange would reduce Sabre's ability to collect on the economic value it has created.

A. The Economics of Bargaining

116. Historical evidence that the vast majority of airlines have made their content available through all, or nearly all, GDSs, together with the intense bargaining that accompanied negotiation of agreements to do so, suggests that there are substantial gains to trade from agreements between a GDS and an airline. From an economic perspective, this is not surprising.

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A GDS benefits from adding an additional airline to its system, because doing so enhances its service without a proportionate increase in its distribution costs. Airlines benefit from belonging to an additional GDS, because it enhances their access to travel agency customers and to travelers. All else constant, this mutually beneficial relationship creates economic surplus or value and gives both parties an incentive to reach an agreement.

117. Bargaining over how to share the value the parties create through their trade can lead to strategic threats by each party to walk away in an effort to convince the other to concede a greater share of the value that their agreement will create. Each party wants the other to retain only enough of the value to be willing to agree to a contract, an outcome that each party will resist. The result, although seemingly irrational since both parties are better off reaching agreement, can be bargaining breakdowns and, as here, attempts by one or both parties to use regulation or litigation as a tool to enhance their bargaining strength.

118. Economists use bargaining models to understand the terms of trade that result in situations such as this. These terms of trade (which include the resulting price or booking fee, content provision, restrictions on the parties' activities and other terms) determine how the joint benefits from transacting with each other are split between the two parties.

119. Negotiations between American and Sabre occur within the constraints of a two-sided market, in which Sabre balances demand from both sides of the market. Airlines bargain for lower booking fees but, if those fees are too low, Sabre will be forced to reduce incentive payments to travel agencies. This in turn will result in higher fees to consumers and reduced demand for travel, or may create incentives for the airline to provide additional incentives directly to the agency and thereby "undo" its supposed gain in lower booking fee. Bargaining between American and Sabre over booking fees results in a split of the benefits that the parties gain from transacting with each other (net of their next best alternative) given the optimal distribution (in incentive payments and other benefits) to the other side of the market to create that value.

120. The best-known bargaining model is the "Nash bargaining model."[141] The basic idea of bargaining models is that two parties in a bilateral negotiation split the joint benefits from their transaction such that each obtains what it could get in its next best alternative (e.g., buying from or selling to another party, including engaging in self supply), plus a share of the incremental value generated from transacting together. A common assumption is that the parties split the incremental surplus equally, with each getting one half of that surplus.[142] A key feature of these models is that a party receives a greater share of the overall value the better its "bargaining position" or "fallback payoff" (what it would receive in its next best alternative without the transaction) relative to the other party. Correspondingly, as one party's fallback payoff increases over time relative to the other party's, the split will favor the party with the improved fallback payoff.

121. This economic model explains why American has done and will do better in its negotiations with Sabre the greater the fallback payoff it would receive if it implemented direct connect or another system that bypassed Sabre. American also has done and will do better in negotiations to the extent that, but for an agreement, Sabre's product is less valuable because it lacks information from American, or lacks American's full content. In other words, American will do better in negotiations with Sabre as its position improves and Sabre's position worsens in the event that American's content no longer is available through Sabre.

122. American complains about the booking fees it has been paying GDSs and other aspects of the GDS business model. It has tried to improve its fallback position by aggressively pursuing and marketing its direct connect alternative and encouraging agencies to use Farelogix, an alternative GDS,[143] thereby demonstrating to Sabre that it (American) will lose less business by pulling out of Sabre. The growth of AA.com also has made American less reliant on the GDSs, and the expansion of web options and ancillary fees has enhanced American's ability to withhold content and denigrate Sabre's service.

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[141] The Nash bargaining solution has several attractive properties: it is the unique solution that is Pareto efficient, satisfies independence of irrelevant alternatives, and results in payoffs that are invariant to affine transformations.
[142] The assumption that each party receives half of the incremental surplus may not hold for all transactions.

[143] See, SBR0112628, SBR0112807, SBR0112746, SBR0112908, SBR0354438.

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123. Simultaneously, changes in the marketplace may have reduced Sabre's fallback payoff. Travel agencies now account for a smaller share of ticket sales on airlines such as American than they did before the growth of airline websites,[144] and the ability of so many agencies and agency customers to book American without using a GDS lowers Sabre's fallback payoff (and improves that of American). Unless it can provide information and booking on American flights, the demand for Sabre's services will decline. Similarly, unless it can assure agencies – and thus agencies can assure their customers – that Sabre provides comprehensive information, Sabre's value in the marketplace will decline.

124. One party's dissatisfaction with the split of surplus reached through negotiation should not be confused with an anticompetitive outcome. One or both parties may be dissatisfied and wish that the surplus were split differently, but this does not make the process or outcome anticompetitive.

B. The History of the Parties' 2003 and 2006 Negotiations Reflects this Bargaining Framework

125. Developments in technology and airline practices resulted in changes in fallback payoffs that help explain the process and outcomes of bargaining between Sabre and major U.S. network carriers in 2003 and 2006. As shown in Exhibit 4, American's booking fee declined from 2002 to 2010. In negotiations over their 2003 and 2006 agreements, American's expanded content and ability to market content on-line outside the GDS improved its fallback payoff and allowed American to obtain more favorable terms in its negotiations with Sabre.[145] American also threatened to impose a booking surcharge on agencies that used a GDS that did not agree to American's terms, and it used this threat to obtain concessions from Sabre.

126. By 2002, American was offering and actively promoting web-only fares not supplied to the GDSs. This content, and American's ability to sell directly and reduce sales through the

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[144] The percentage of people booking on airline websites increased from seven to 30 percent from about 1996 to 2001, and is now is about 50 percent (Airline Weekly Special Report, *Changing Channels: Airline Distribution*, June 2010).

[145] Part of the decline in booking fees charged to the major U.S. network carriers likely resulted from repeal of the regulation that required the GDSs to charge all airlines essentially the same booking fee. When the GDSs were permitted to charge differential booking fees after February 1, 2004, the larger carriers likely would have received lower rates than charged to smaller carriers, even if there had been no change in the carriers' content and ability to market outside the GDS.

GDS, increased the credibility of American's threat to walk away from a full-content deal with Sabre. Without a full-content agreement with American, Sabre would have been severely disadvantaged, as American's marketing outside the GDS reduced volume through Sabre both for American flights, as well as for bookings on other airlines, hotels, rental cars, etc. that Sabre would lose as a consequence.

127. Exhibit 16 shows why American gained substantial leverage by threatening to withdraw content from Sabre. The exhibit examines the potential loss to Sabre from losing travel agency customers. In particular, the exhibit shows what percentage of its overall bookings Sabre would have to lose to make a 10 percent increase in booking fees to American unprofitable assuming that, when an agency left Sabre, Sabre lost all of that agency's (or customer's) travel business, including both air (from American and other carriers) and non-air bookings, from both leisure and corporate travelers.[146] The exhibit shows that Sabre would only have to lose 1.6 percent of its total bookings (1.8 percent of its American bookings) to make such an increase unprofitable.[147]

128. Moreover, the loss of customers will be larger (likely substantially larger) in the long run than in the short run. This is a well-accepted principle in economics and it is particularly important in cases like this where it may take time for customers to respond due to contractual commitments, short-run switching costs, etc. Thus, even if the short-run loss would be less than the critical amount and short-run profits would increase, Sabre may well find it in its interest to negotiate a lower price in order to preserve its long-run profitability. The substantial discounts American (and other airlines) were able to negotiate in 2003 and 2006 reflect the strength of this threat and the ability of American (and other airlines) to move business and inflict substantial harm on Sabre and other GDSs (particularly in the long run).

129. Other major carriers used the same threats to obtain lower fees from Sabre in exchange for access to web fares. According to Sabre, "[i]n October 2002 we announced a new Direct

[146] My calculations assume that the higher American bookings are as a fraction of an agency's overall bookings, the more likely it is for Sabre to lose the agency as a customer. I also assume that Sabre will not lose Travelocity and exclude Travelocity bookings from the break-even fraction calculations.

[147] In 2011, American was the only carrier serving 223 airport pairs, and accounted for over 70 percent of passengers on another 51 routes. American could selectively withhold fares on routes involving DFW (where it accounted for 85 percent of passengers in 2011), and where agencies would be greatly harmed by loss of American from the GDS.

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Connect Availability ("DCA") 3-Year Pricing Option to airlines. Airlines selecting this option receive a discount of approximately 12.5% from the applicable 2003 DCA rates, and are locked into that booking fee rate for three years... Through the Sabre DCA 3-Year Pricing Option, participating airlines agree to commit to the highest level of participation in the Sabre system [providing] all Sabre GDS users with broad access to schedules, seat availability and published fares, including Web fares and other promotional fares."[148] In reference to the 2003 DCA-3 agreements signed by Sabre with U.S. network carriers (including American), Sabre stated that "[i]n consideration of the reduced fees provided by Sabre Travel ... Participating Carrier shall provide through the Sabre GDS to all Sabre Subscribers located in each of the Regions access to 'Full Content,'" including "Internet Fares."[149]

130. In the subsequent round of negotiations, which began in 2005, carriers continued to threaten to market to consumers directly, and to withhold content from the GDS. American announced publicly and in discussions with travel agencies that it "may not participate in all GDSs going forward." It also announced that agencies that "source [their] fare content through a more expensive distribution channel .... may be asked to cover some distribution expense."[150] American already had signed agreements with Worldspan and Travelport, and it had announced that it would not surcharge agencies that used those and other preferred channels, leaving Sabre and Amadeus vulnerable to having all their customers incur surcharges.

131. Competition from Worldspan and Travelport thus created additional pressure on Sabre to avoid disadvantaging and losing agency customers by agreeing to a deal with American.[151] In July 2006, American announced that agencies that book travel on American through Sabre would have to pay a "source premium" of $3.50 per booking (approximately $8.75 per ticket assuming an average of 2.5 segments per ticket), while American would not "charge agencies for bookings made through alternative booking sources, including G2 SwitchWorks, Farelogix, and optional

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[148] Sabre Holdings Corp., 2003 10-K (SBR-24457251), p. 4.

[149] Direct Connect Availability – Three Year Option. ("DCA-3 Agreement"), ¶ 4(a).

[150] See Letter from David Cush to Travel Professionals (http://www.aa.com/i18n/agency/General/Misc/gds_agreements.jsp).

[151] See, e.g., an internal presentation to American's Executive Committee dated May 15, 2006 (attached to an email from Chris DeGroot), which states that "American has been in distribution discussions with Sabre off and on for over a year and did not have any significant breakthroughs until announcing a Worldspan agreement – Sabre relented on key restrictions it was seeking and lowered its rate but is still requiring a significant revenue guarantee" (C. Sultan (TCty) (AA) Deposition Ex. 5 AA-SABRE-000060835, 849).

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Galileo/Apollo Program and Worldspan Optional Program 1."[152] One report interpreted this as American "positioning itself in marketing messages and corporate advisories that without a contract [with Sabre] it would push volume through other channels."[153] Thus, once American signed agreements with Worldspan and Galileo and announced that it would not surcharge agencies that used those and other preferred channels, it created additional pressure on Sabre to avoid disadvantaging and losing customers by agreeing to a deal with American.[154]

132. American's efforts in 2006 are consistent with the prediction of bargaining theory that American has a strong incentive to improve its fallback payoff. In addition, as bargaining theory predicts, Sabre and American reached an agreement later in 2006 that reflected the change in fallback payoffs from American's enhanced content and its efforts to develop other credible booking sources that would enable it to self-supply. The outcome illustrates the economics of two-sided markets: the ability of agencies and travelers to substitute to other GDSs and other booking methods in a variety of ways created incentives for Sabre to reach agreement with American on a lower booking fee. Their new five-year agreement included terms that resulted in a 28.6 percent reduction in American's average booking fee between 2006 and 2010 (see Exhibit 4).[155]

133. In exchange, American agreed to provide Sabre with "full content," and to allow Sabre to distribute American's full content to its "opt-in" subscribers on "no less favorable levels and amounts of seat inventory for sale . . . than it makes available . . . to users of any Reservations Outlet."[156] These provisions protected Sabre's subscribers' access to American's itineraries, fares, and seat inventory. It also protected travelers buying through Sabre agencies from paying higher fares because the agency was denied access to lower fare options available only on the airline website or through other suppliers. American won concessions by enhancing its fallback payoff – which reflects its ability to reach travelers without using Sabre – even without having to

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[152] "American explains $3.50-per-segment fee to agencies," Travel Weekly, 7/17/2006.
[153] *AA-Sabre Impasse Adds User Fees*, Business Travel News, 7/17/06.
[154] American's Chris DeGroot explained these dynamics in his deposition (*see*, generally, DeGroot Dep. 107:23-115:25 and Ex. 38, 39, 42, and 43).
[155] PCA Amendment ¶5(a) & Attachment B.
[156] PCA Amendment ¶3(a). "Opt-in" subscribers are agents that agreed to receive reduced incentives from Sabre in exchange for the protections offered by the "opt-in" program.

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follow through on threats to partner with G2 Switchworks[157] or other "non-traditional" GDSs (a category into which American placed Farelogix) to bypass Sabre.[158] As the 2006 negotiations illustrate, American obtained the benefits of its ability to switch to other options without having to do so. Indeed, preventing American from agreeing to use Sabre rather than those other options could prevent American from achieving the full benefits of those outside options.[159]

134. Negotiations between Sabre and major airlines since 2006 continue to involve carriers' threats to withhold content, which now includes a variety of ancillary services that previously either were not available or were included in the base fare. The fragmentation of content – base fares with various restrictions, ancillaries that may be priced differently to different types of travelers, etc. – provides additional ways for carriers to degrade the value of the GDS by withholding content that the GDS needs in order to provide the information and service (the ability to select the best combination of fare, service and itinerary) that travel agencies and their customers want. The GAO noted that, because some carriers interpret their GDS agreements to exclude this content, "customers using online travel agencies and traditional or corporate travel agents . . . cannot readily obtain and compare information on complete trip prices that include both the fare and selected service fees. This lack of information also makes it impossible for customers using online travel agencies or for travel agents using a GDS to select or make payment for optional services at the time of booking . . . ."[160] The threat to withhold these ancillaries without completely withdrawing from the GDS further enhanced American's (and

[157] See C. DeGroot (TCty) (AA) Deposition at 63:3-13 ("Q. What was G2? A. G2 at the time was – I think some had termed it an alternative GDS or GDS new entrant. . . . Q. American signed a distribution agreement with and had [REDACTED] right? A. I believe we did, yes. Q. And when I use the word [REDACTED] that means American [REDACTED] A. Yes, I think we [REDACTED] In return for that, [REDACTED]").

[158] According to an American Executive Committee Presentation on March 7, 2006, "Airline participation in G2 has successfully pressured the GDSs toward competitive pricing – [REDACTED], currently books around [REDACTED] American tickets per month over G2." C. Sultan (TCty) (AA) Deposition Ex. 14 (AA-SABBI-000328496, -504). Also acknowledged in this presentation is the reality of how competition in the industry works: "G2 had been asking for [REDACTED] per ticket extra so that they could [REDACTED] which . . . would undermine American's efforts to change the traditional GDS model." (*Ibid.*)

[159] Under the bargaining model, American receives the full benefit of its outside option plus a fraction of the joint surplus from reaching a deal. If American were prevented from making a commitment and so could exercise its freedom ex-post to use the outside option, it would lose the share of the joint surplus it would have gained through bargaining.

[160] 2010 GAO Report at 16.

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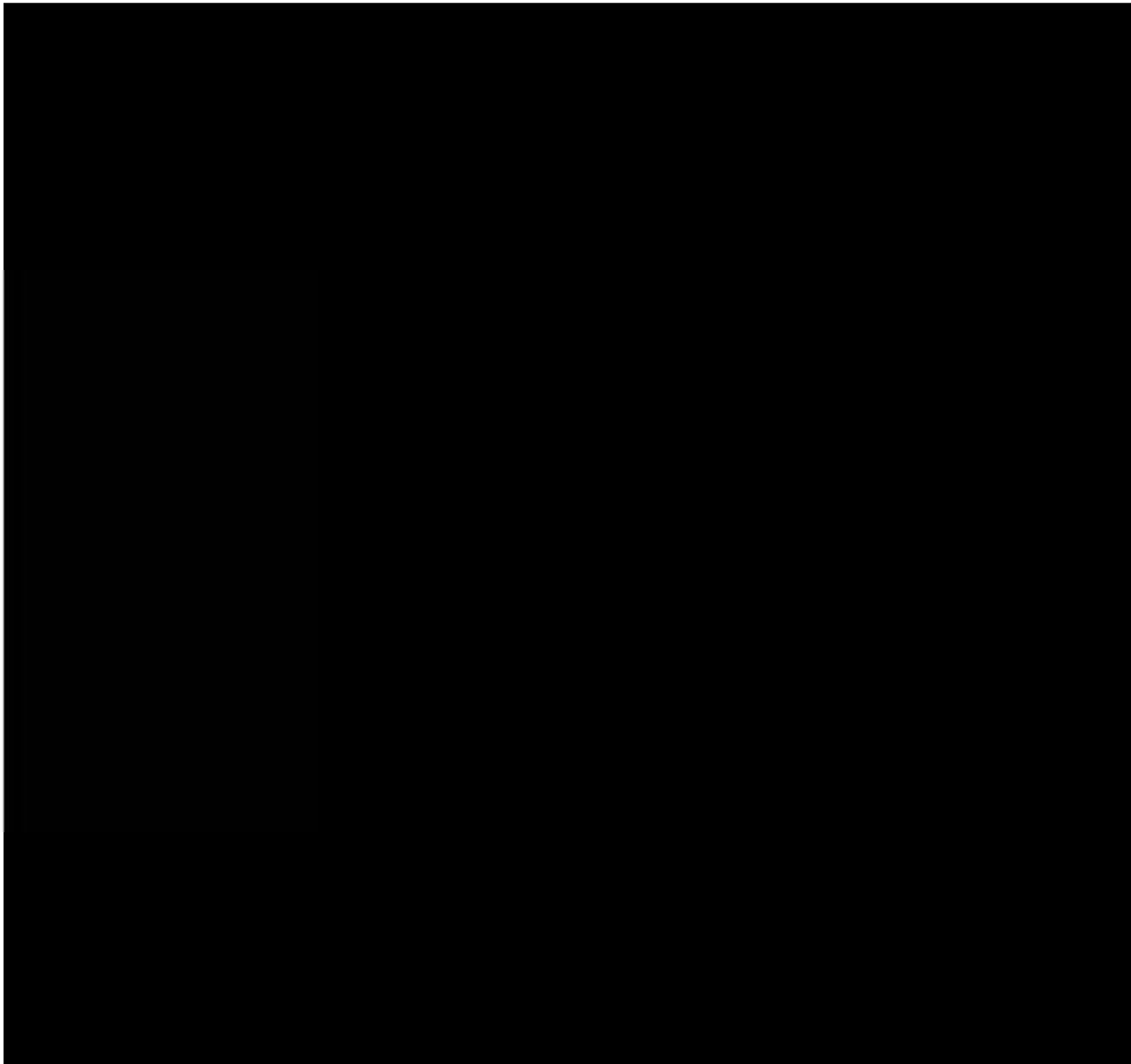
other airlines') bargaining position by allowing American to impose costs on Sabre without suffering the negative consequences of full withdrawal from the GDS.

135. There are procompetitive reasons for Sabre to have access to American's full content (as explained earlier), and it is not anticompetitive for Sabre to threaten not to renew its agreement with American on the terms that American demands nor is it anticompetitive for American to threaten to pull out of Sabre. Rather, such threats to walk away create incentives for the parties to reach a mutually attractive and efficient agreement.



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X. Professor Carlton's Relevant Market and Monopoly Power Conclusions are Invalid

145. Professor Carlton concludes in his report that Sabre has "substantial market power" in a relevant market "for GDS services provided to brick-and-mortar travel agencies," a market that he claims is "not competitive."[172] He claims further that Sabre "used its market power to impose

[170] *See* C. Sultan (TCty) (AA) Deposition at 101:1-20; 120:25 – 121:5 and 123:2 – 124:20.

[171] Carlton Report ¶¶ 71-72.

[172] Carlton Report ¶8. In his previous report, he claimed that Sabre has "market power in the provision of GDS services to American and other airlines" (Carlton TRO Report ¶6). Even though it is clear from this that he considers provision of services by GDSs to airlines as a relevant market, and thus that he recognizes that GDSs

a variety of contractual restrictions and take other actions that harmed competition by restricting promotion and adoption of competitive alternatives to their GDS services and inhibited competition among GDSs."[173] In particular, he argues that "Sabre's challenged practices reduced the competition faced by Sabre by inhibiting the emergence of American's new Direct Connect technology."[174]

146. Professor Carlton's claims reflect a misunderstanding of economic incentives in the marketplace, and confusion between the exercise of market power to harm competition and bargaining between a buyer and seller over how to share the value created if they reach agreement. In analyzing the type of conduct about which American complains, the market definition/market power analysis presented by Professor Carlton is uninformative about whether business practices in this particular context result from competition, or instead constitute barriers that protect anticompetitive exercise of market power that harms consumers. Contract restrictions often serve procompetitive purposes, even when (often especially when) engaged in by a firm that accounts for a large share of sales of a product.

147. A proper economic analysis of alleged anticompetitive conduct requires a three-part inquiry that asks the following questions.

148. First, would the conduct be expected absent an ability to exclude competition? Is similar conduct and are similar business practices observed in other industries, within this industry, or generally in circumstances where the hypothesized anticompetitive effects are not likely? If so, then the practice likely has procompetitive motivations, and one must be cautious in condemning it. Prohibiting practices that are widely used absent an ability or incentive to exclude risks preventing procompetitive conduct.

149. Second, does the conduct or practice have the potential to harm competition by excluding an equally efficient rival, and thus risk harming competition? If the answer is "no," then no further inquiry is necessary because the conduct makes economic sense irrespective of its impact on competitors. If the answer is "yes," then the practice should not be condemned outright, but

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serve two sets of constituents, he fails to take this into account in his economic analysis of Sabre's practices and of outcomes in the marketplace.

[173] Carlton Report ¶8.

[174] Carlton Report ¶8.

should be subject to further analysis to understand whether, given the specific circumstances, it has the ability to harm competition. In particular, it is necessary to consider whether an unsuccessful rival has failed because it is not equally efficient, and not because of the practice.

150. Third, assuming that the answer to the first two questions is "yes" – the practice has the potential to be both pro- and anticompetitive – then the relevant economic question is whether its procompetitive features outweigh the potential for anticompetitive harm, and thus whether the conduct or practice can benefit consumers. To the extent that equally efficient competitors' sales were (or will be) reduced by the challenged conduct, does that reduction in sales result in harm to competition? In order to harm competition, any loss in sales by actual or potential rivals must be sufficient to alter the rival's competitive strength, and the change in the rival's competitive strength must be sufficient to reduce competition in the market as a whole. Thorough analysis and caution is essential, because condemning conduct likely to benefit consumers can chill procompetitive actions and thereby harm competition.

151. Applying this analytical framework makes clear that the Sabre practices that Professor Carlton claims prevented success of American's direct connect exist independently of any ability exclude, so the answer to the first question above is "yes." "Full content" was encouraged by regulators before GDSs were spun off from airlines, it prevailed in the industry before American tried to market direct connect and is used by smaller industry participants. The full content requirement and other practices responded to the needs of Sabre's agency customers, a need that those customers continue to express.

152. Examined in context, it is clear that the answer to the second question – whether Sabre's practices could exclude direct connect if it were equally efficient – is no, as my analysis of Sabre's agency agreements and the parity clauses in Sabre's contract with American demonstrates. If American's direct connect were equally efficient, then Sabre's agency agreements would not prevent American from competing to supply direct connect. But agency response and American's demands makes clear that direct connect is *not* equally efficient, depending for its potential adoption on denying American's content to agencies unless they

adopt direct connect[175] and forcing Sabre (through this lawsuit) to provide agencies with services that compensate for direct connect's deficiencies.

153. In his report, Professor Carlton attempts to circumvent the required analysis of whether "Sabre's challenged practices ... inhibited the emergence of American's new Direct Connect technology" and thereby harmed competition by relying on economically invalid characterizations of Sabre's policies and motivation and their impact on competition. Reduced to its essential elements, Professor Carlton claims that (1) Sabre has monopoly power in a relevant market, (2) Sabre engaged in certain practices that eliminated or restrained competition and enhanced and protected Sabre's monopoly power in that market which (3) harmed consumers. In all these claims, Professor Carlton's analysis is misleading, incorrect and uninformative.

A. Professor Carlton's Discussion of Market Definition and Market Power and its Application in Evaluating American's Allegations is Improper

1. Flaws in his market definition methodology

154. Professor Carlton begins his analysis by proposing to define a relevant market and determine whether Sabre has market power. He claims that business travelers "typically rely on brick-and-mortar travel agencies...to book airline travel."[176] Despite acknowledging that "the available information does not allow me to identify 'business' travelers," and that the evidence he does possess is limited to the subset of business travelers most likely to book through brick-and-mortar agencies (those employed by companies that have entered into a corporate agreement with American), he concludes that "[c]lose to ██ percent of American's corporate revenue is booked through brick-and-mortar agencies."[177]

155. Professor Carlton then explains that "GDSs currently are integral to the services that brick-and-mortar travel agencies provide corporate travelers,"[178] noting that "[t]ravel agencies perform a variety of services for corporate travelers in addition to booking tickets... [including] assisting with the creation and administration of corporate travel policies; negotiating with

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[175] See C. Berg (TCiy) (AA) Deposition Ex. 7.
[176] Carlton Report ¶11.
[177] Carlton Report ¶13.
[178] Carlton Report ¶15.

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suppliers for corporate rates; and twenty-four hour availability."[179] He concludes from this that "American's and other airlines' dependence on GDSs to reach corporate travelers means that the relevant product market is no broader than all current U.S. GDS service providers."[180] In other words, because (1) corporate travelers use brick and mortar agencies; (2) brick and mortar agencies use GDSs and (3) by using GDSs brick and mortar agencies provide corporations and their employees with services that they value, "GDSs are gatekeepers for access to corporate customers."[181]

156. As a matter of economics, Professor Carlton's analysis is incomplete and incorrect. For example, one cannot, as Professor Carlton has done, focus on a subset of customers (in this case corporate customers and/or brick and mortar agencies) since pricing is restrained by the ability of customers generally to substitute and not just the ability of one subset of customers to substitute. In addition, it is the combined constraints provided by all of the means in ways customers can switch that constrains pricing.

157. This characterization of the industry is the basis on which Professor Carlton defines two relevant markets. The first is a market "no broader than GDS services,"[182] a relevant market that he also refers to as the "GDS services to brick-and-mortar travel agencies market."[183] It is not clear whether he intends to distinguish GDS services generally from GDS services provided to brick-and-mortar agencies; neither is a meaningful relevant market and indeed, as I discuss below, when he calculates "market shares" he uses a measure of output in this alleged relevant market that corresponds to neither of these definitions. Second, he says the evidence indicates that "over a period at least as long as that covered by the relevant evidence and under the market conditions during that time," Sabre "provided services in a product market more narrow than all GDS services provided to brick-and-mortar travel agencies."[184] Neither of Professor Carlton's proposed relevant markets captures the competitive forces relevant to analyzing American's claims.

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[179] Carlton Report ¶12.
[180] Carlton Report ¶31.
[181] Carlton Report ¶13.
[182] Carlton Report ¶29.
[183] Carlton Report, heading III.B.2, and ¶39.
[184] Carlton Report ¶ 50.

158. Professor Carlton then calculates Sabre's share of his broader alleged relevant market, which he presents in Table 2 of his report titled "American's Corporate Brick-and-Mortar Revenue by GDS." He uses the calculations in this table to support his claim that "[t]he structural evidence on shares and entry shows that Sabre has market power in a market no broader than GDS services."[185] However, these calculations demonstrate no such thing. Rather, these shares are based on a denominator (and presumed relevant market) that includes only American's sales under its own corporate contracts through brick-and-mortar agencies, a denominator that excludes other airlines' sales through brick-and-mortar agencies and sales through all other channels that make use of GDSs or that bypass the GDS. It ignores sales to customers without corporate agreements through brick-and-mortar travel agencies, and evidence that business travelers use a variety of different channels other than brick-and-mortar agencies to search and book travel.[186] It also disregards the fact that the booking fees charged to American are not specific to the set of sales he includes in his claimed relevant market and that as a result the ability of those other sales to move to competitors constrains Sabre's pricing to the corporate customers he includes in his "market."

159. Professor Carlton then presents calculations to show that Sabre's share of his "narrower" proposed relevant market are even higher – "about 80 percent" based on calculations in his Table 7 (he also incorrectly concludes that Sabre's share is "stable," ignoring the decline from 86.6 percent in 2007 to 78.6 percent in 2012). However, he improperly bases his calculations on a market limited to (1) a single GDS airline customer (American) and (2) American's sales only to air travelers that purchase under a specific type of contract (American's corporate contracts) through (3) a specific type of distributor (brick-and-mortar travel agencies) that uses (4) a particular GDS (Sabre).

160. Data provided by Professor Carlton show that he has excluded the bulk of American's business travelers when he calculates Sabre's market share. He claims that in 2011 American's total sales from U.S. point of sales were [redacted] segments with revenue of [redacted][187] yet the "corporate" travel he captures in his "relevant market" accounted for [redacted] percent of

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[185] Carlton Report ¶32.
[186] PhoCusWright, "U.S. Business Traveler: Managed, Unmanaged, and Rogue," April 11, 2012 (SBR-25986034) pp. 26, 28.
[187] Carlton Report, fn. 8.

segments and [redacted] percent of American's revenue,[188] a much smaller fraction than commonly accepted as the business share for major network carriers.[189]

161. A proper analysis of competition must take into account the impact of pricing decisions on all affected customers in order to correctly assess the impact on profits and other outcomes. In particular, to the extent that changes in booking fees and travel agency incentives affect customers outside Professor Carlton's proposed relevant market, a relevant market limited to a narrow customer group, such as that he proposes, cannot capture the actual competitive effects. This is quantitatively important, because Professor Carlton's market share analysis includes only about 29 percent of American's bookings through Sabre,[190] even though an increase in booking fees would give American an incentive to shift all of its business away from Sabre. Even if the analysis is limited to brick-and-mortar agencies, the business of the corporate travelers that Professor Carlton analyzes accounts for only [redacted] percent of American's brick-and-mortar agency bookings through Sabre.[191] Given that Sabre's pricing is constrained by American's ability to shift its broader business away from Sabre, Professor Carlton's analysis is improper.

2. Professor Carlton's market definition does not reflect the competitive constraints on booking fees

162. Professor Carlton stresses the fact that Sabre represents an important channel through which American reaches business travelers, from which he concludes that Sabre has monopoly power. However, he ignores the fact that Sabre is highly dependent on American in order to retain the business of those same customers, so one must consider the value flowing from

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[188] Carlton Report, fn. 8.

[189] Evidence suggests that more than 40 percent of U.S. air travel is for business purposes. For example in 2001, results from the "National Household Travel Survey" by the U.S. Bureau of Transportation Statistics suggested that about 41 percent of air travel is for business ("AirTravelPurposes.xls" downloaded from https://ntl.custhelp.com/app/answers/detail/a_id/252/~/percentage-of-air-travel-for-business-vs-other-purposes). *See also* "Airlines still looking for business travelers," October 21, 2009, http://www.msnbc.msn.com/id/33418849/ns/travel-business_travel/t/airlines-still-looking-business-travelers ("Southwest has said that in good times, at least 40 percent of its customers are business travelers. It may be higher at other airlines. Alukos [airline analyst at Morningstar] estimates that a little more than half of U.S. passengers are traveling on business.")

[190] According to American's MIRS data, in 2011 American's U.S. bookings on Sabre totaled about [redacted] of which roughly [redacted] were made through brick-and-mortar agencies, and of which roughly [redacted] were made by corporate customers under contracts with American. [redacted] out of [redacted] is about [redacted]

[191] Ibid.

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American to Sabre in order to understand the economic determinants of pricing. As shown in Exhibit 16, by withdrawing from the GDS or withholding content, American can impose substantial costs on Sabre. Sabre's dependence on American is also evidenced by the booking fee reductions that American was able to win in 2006 by threatening to withhold content, shift business to direct connect, and shift business away from Sabre by providing financial incentives for agencies to move business away from Sabre. Sabre's need to negotiate an agreement with American makes a one-sided analysis of the potential costs only to American of not reaching an agreement uninformative.

163 As I stressed above, the economics of the relationship between GDSs and airlines does not fit a model in which Sabre exercises market power. Sabre and American each provides value to the other, and the prices and other terms that they negotiated reflect the values that each provides. Exhibit 16 shows how the two sides of the market are linked; by providing less content to Sabre or pulling out altogether in response to Sabre's demanding an unreasonable booking fee, American would cause Sabre to lose so many bookings that Sabre would be harmed. This effect constrains Sabre from imposing supracompetitive fees on American. A one-sided analysis such as that provided by Professor Carlton is at odds with historical experience (as I point out below), and provides a misleading analysis of the competitive effects of the challenged conduct.

3. Professor Carlton's market definition does not reflect competition from outside brick-and-mortar travel agencies

164 Relevant market definition can be a tool for understanding whether a firm's conduct has the potential to injure competition, but Professor Carlton misuses this economic tool in his analysis. If the firm has only a small share of a relevant market, then the likelihood that it has monopoly power is so remote that no further inquiry into claims of unilateral anticompetitive conduct is warranted. However, the opposite does not imply that a firm has monopoly power, because further analysis may show that, despite a large share, the firm lacks the ability to harm competition.

165 The goal of market definition is to identify and evaluate the market factors that constrain the pricing and competitive conduct of firms. The alternative relevant markets defined by Professor Carlton – "GDS services," "GDS services to brick-and-mortar travel agencies," or (as he calculated Sabre's share) GDS services for sale of tickets on American to employees of

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companies with corporate agreements with American who purchase through brick-and-mortar agencies served by Sabre – are uninformative in evaluating whether Sabre's challenged practices harm competition since they do not capture the competition to Sabre and other GDSs for booking services.[192] In particular, they ignore the ability of travelers to book directly and airlines to reach customers through those channels and the ability of other travelers (outside his putative relevant market) to switch away from Sabre. The substantial growth in direct bookings through airline websites is strong evidence that travelers substitute on this margin, and thus that travel agencies and the GDSs that serve them are constrained by travelers' ability to book directly.

166 The fees Sabre charges are limited by the ability of customers to move to direct purchase. For business travelers, this could be done by their agent – e.g., the corporate travel office could encourage employees to purchase directly from airline websites or could do so on their behalf.[193] Travel agencies and their GDSs would lose business if, for example, employees are encouraged to book travel on their favorite airline directly when they do not need the fare and schedule comparison services provided by the agency (e.g., if they fly frequently between New York and Chicago and want to accumulate frequent flyer miles on United). Moreover, the economics of competition is clear that even if only some customers are willing to substitute, they can provide an effective constraint on pricing. The basis for Professor Carlton's conclusions about relevant market and his conclusion that Sabre has monopoly power is the alleged "'stickiness' of a corporate traveler to a particular travel agency, combined with the 'stickiness' of a travel agency to a particular GDS to service that corporate traveler,"[194] yet the evidence I presented above shows that he greatly exaggerates both the degree of stickiness and its implications for competition.

[192] Even in 2004, the U.S. Department of Transportation recognized that "[t]he airlines' control over access to their webfares, the discounted fares originally offered only through individual airline websites, has enabled them to obtain lower fees from two of the systems." Department of Transportation Office of the Secretary 14 CFR Part 225, Computer Reservation Systems (CRS) Regulation, Final Rule, 2004, p. 977.

[193] Increased cost of booking through travel agencies – which some corporations prefer because it helps them enforce corporate travel policies – also could create incentives for them to require greater discounts from American in their corporate agreements with the airline to offset the higher agency cost. This would reduce any expected savings that American might expect to receive from reducing its booking fees.

[194] Carlton Report ¶40.

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4. Professor Carlton's relevant market analysis does not capture some of the most important factors in explaining American's booking fee

167. The value of the market structure/market share analysis on which Professor Carlton relies is best measured by its ability to explain market outcomes. It is clear that his analysis cannot explain the booking fee American pays Sabre.

168. First, as I discussed above, in the mid-2000s, American negotiated a substantial decline in the booking fee paid to Sabre. As shown in Exhibit 4, American's effective booking fee declined from [redacted] in 2002 to [redacted] in 2005 and [redacted] in 2008. This nearly 50 percent decline in its nominal booking fee in a six-year period (a 57 percent real decline) occurred despite the fact that (according to Professor Carlton) there was no change in market structure and no entry into his proposed relevant markets. A relevant market definition and analysis of market power that does not explain such large changes in price cannot provide a useful basis for evaluating whether a firm has monopoly power and whether its conduct is anticompetitive.

169. Second, Professor Carlton's analysis ignores many of the forces that led to the booking-fee decline. Threats to withhold web-fares and to switch away from GDSs to other alternatives (including American's direct connect) were major forces leading to lower GDS booking fees, but these alternatives are not included in Professor Carlton's relevant market.

170. Third, Professor Carlton cannot explain the variation in the booking fees paid by the major U.S. network carriers between 2005 and 2010, again as shown in Exhibit 4. In 2008, American's booking fee was [redacted] while US Airways paid [redacted]. Professor Carlton's analysis does not explain why, among major U.S. carriers, Sabre's U.S. booking fee for American in 2010 was the *lowest* when Sabre's share of GDS bookings at American was the *highest*.[195]

171. Fourth, there is no correlation between Sabre's share across geographic areas and the booking fee paid by American. Professor Carlton claims that Sabre has an 80 percent share of the narrow relevant market and over 70 percent of the broader relevant market for U.S. sales. However, outside the United States, Sabre has a much smaller share of GDS bookings, and thus likely a smaller share of American's corporate revenue (and thus would not have "monopoly" power according to Professor Carlton's criteria). Yet, American's booking fee paid to Sabre

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[195] According to MIDT data, Sabre's 2010 U.S. GDS share at American was [redacted] percent. Sabre's shares at DL/NW, UA, CO, and US were, respectively, [redacted] percent, [redacted] percent, [redacted] percent, and [redacted] percent.

outside the United States was almost three times its Sabre booking fee in the United States ([redacted] in 2010 outside the United States, compared with [redacted] in the United States).[196] Sabre collects much lower booking fees where it has alleged monopoly power than where it does not, which undermines his market share presumption.

172. Fifth, Professor Carlton cannot explain the increase in booking fee charged to American after negotiations between Sabre and American over a new agreement broke down. A fundamental economic principle is that a monopolist prices in the elastic portion of its demand curve – at a price where any further increase in price is unprofitable because it results in too great a decline in quantity.[197] But, according to Professor Carlton, Sabre's monopoly power was demonstrated by its ability to raise price to American without constraint ("American was unable to induce the level of switching that would defeat the price increase"[198]). An implication of Professor Carlton's analysis is that Sabre behaved irrationally by charging the lower fee over a five-year period – why would a monopolist charge a per-segment booking fee of [redacted] when it could charge [redacted] without losing any volume? Indeed, according to Professor Carlton, Sabre profitably could charge a much higher fee; he says that when Sabre considered doubling the booking fee charged to American in January 2011, "Sabre estimated that the doubled fee would result in an additional [redacted] in earnings for January through August 2011."[199] Yet, according to Professor Carlton's logic, Sabre voluntarily forwent the ability to earn these profits during the five-year term of its expired Sabre agreement.[200]

173. Sixth, Professor Carlton's analysis does not explain why Sabre's booking fees, both gross and net, have generally been lower than those of competing GDSs (see Exhibits 17 and 18) that

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[196] Calculated using Sabre data ("US Majors_01-11_Upd Doc21_DS_Excl MCA prms.xlsx"). Professor Carlton acknowledges that "[t]he booking fees that Sabre charges American are uniform throughout the United States, but are substantially different from the booking fees that Sabre and other GDSs charge outside the United States" (Carlton Report ¶30), but he fails to point out that the rate is higher outside the United States.

[197] *See*, Dennis W. Carlton and Jeffrey M. Perloff, *Modern Industrial Organization* 4th ed. (2004), p. 94: "a monopoly never operates on the inelastic portion of its demand curve. If a monopoly were operating in the inelastic portion of its demand curve, it could increase its profits by raising its prices until it was operating in the elastic portion of its demand curve."

[198] Carlton Report ¶47.

[199] Carlton Report ¶45.

[200] Professor Carlton also ignores the fact that the increase in booking fee was part of a short-term agreement that will expire two weeks after the state court trial (*See* AA-SABBI-001889545-547 (Amended Sabre PCA Extension, Effective September 1, 2011)). It is common for prices in short-term agreements to be higher than parties would agree to if they entered into a long-term agreement.

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according to Professor Carlton's analysis should have less market power because of their lower market shares. Indeed, the evidence on GDS pricing contradicts both Professor Carlton's market power analysis and Dr. Perryman's profitability analysis since it implies that Sabre's pricing is lower not higher than that of its competitors, that according to their analyses would lack the market power to extract supracompetitive prices.

174. In contrast to Professor Carlton's analysis, the fees charged by Sabre are well explained by an analysis that focuses on the broader set of restraints on Sabre's pricing, in particular, the ability of American and other airlines to shift business to other GDSs and other ways of booking travel through the use of incentive payments and/or withholding content. American is able to negotiate discounts when it is willing to agree to a long-term contract because of the potential costs that the loss of its business would impose on Sabre. Given the time it takes for such a shift of business to occur, these costs will be greater in the long run than the short run. This explains why, even if Sabre could gain additional revenues by raising booking fees in the short-run, it agreed as part of its negotiated agreements with American (and other airlines) to substantially lower fees. It is this competition and the fees negotiated through such agreements that provide the most accurate picture of competition.

5. Professor Carlton's Monopoly Power Conclusion for His "Narrow Market" is Independent of Sabre's Size

175. Professor Carlton concludes that Sabre has monopoly power because it has 80 percent of the relevant market of corporate travel on American booked through brick-and-mortar agencies that use Sabre. But he would reach the same "monopoly power" conclusion if there were a GDS competitor that served only a small number of brick-and-mortar agencies, but served them exclusively. The "monopoly power" conclusion derives from his assumption that corporations and agencies are "sticky," and so even a GDS that serves a single agency has monopoly power over that agency's customers. A relevant market approach that would reach such a conclusion makes no economic sense.

6. Professor Carlton's Market Definition Does not Consider the Relevant Economic Price of GDS Services

176. Professor Carlton's proposed market definition does not take into account that the relevant economic price charged by Sabre is the net price for its services after paying incentives

to agencies. He focuses only on conditions on the selling side of the alleged market, not conditions on the buying side, but both are relevant in a two-sided market. The net price is the key economic concept, because it represents the amount ultimately charged to consumers for the services Sabre provides. Increases in the booking fee charged to airlines offset by increased incentives to travel agencies do not increase the full amount charged to final consumers of air travel. Understanding the net amount retained by Sabre requires evaluation of GDS competition for travel agencies, which is a critical component of competition in the marketplace. As I discussed above, this competition results in GDSs providing incentives to agencies, as they pass through a large fraction of booking fees collected from airlines and other suppliers.

B. A Properly Defined Relevant Market Is Much Broader than the Market Defined by Professor Carlton

177. The key to defining a relevant market is to capture the factors that constrain pricing – in this case, the net price charged by Sabre. American's threat to withhold web fares and other content and to implement direct connect demonstrates that it had alternatives to Sabre and to GDSs for distributing tickets to travelers.

178. The range of booking options available (airline websites, OTAs, brick-and-mortar agencies) means that travelers have choices of how to book their travel and indirectly which GDS is used to do so. Travelers that currently use travel agencies can switch to booking directly through airline websites.[201] The success of carriers like Southwest, which largely relies on bookings through its own website and does not sell through OTAs or metasearch engines or offer full content outside its website,[202] demonstrates this ability to switch. These alternatives are in addition to the ability of travel agencies to book outside the GDS with which they have

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[201] "The volume and types of travel Web sites – online travel agencies, supplier Web sites, and nontransactional sites that provide a range of travel content (traveler reviews, destination information, professional travel guide content, trip planning, metasearch) – continue to grow and innovate as more travelers do more of their travel planning, shopping and booking online. The shift to online booking has benefited consumers with significant improvements in pricing transparency, shopping convenience and relevance of content." "The Role and Value of the Global Distribution Systems in Travel Distribution," PhoCusWright, 2009, p. 27. According to PhoCusWright, in 2010, supplier websites accounted for 68 percent of airline online revenue, with OTAs accounting for 32 percent on online revenue (PhoCusWright, *U.S. Online Travel Overview*, 11th edition (November 2011), Figure 1.19) (SBR-25986320).

[202] Southwest "strictly controls online distribution, with Southwest.com the only online venue where consumers can access Southwest inventory" (http://www.tnooz.com/2010/11/03/news/southwest-ties-into-travelport-api-for-live-availability/), visited 12/19/11.

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contracted, or to change GDSs (some agencies can switch at any time because they have no or very low minimum volume requirements and no shortfall charges (e.g., [203,204])). Others can switch when their contracts expire or if another GDS is willing to compensate the agency for any remaining obligations it has to its incumbent GDS.

179. The economic analysis that I presented above takes account of the demands of both airlines and agencies, and explains the key features of the market in which GDSs supply their services and the constraints on their pricing. Agencies and corporations move between GDS and use the threat to move to obtain greater incentives, which demonstrates that Sabre competes with other GDSs, and that this competition constrains its ability to retain a noncompetitive share of booking fees. The combined effects of losing business to other GDSs and of losing business to non-GDS alternatives constrains Sabre's pricing.[205]

180. As the 2003 and 2006 negotiations demonstrate, American's threat to move business away from Sabre toward other booking channels including its own website represents one of the primary constraints on Sabre's pricing. A proper market definition starts with the products to which customers would turn if the price of the product in question were increased. In both the 2003 and 2006 negotiations, the ability to withhold content and to use that withholding to induce customers to move away from Sabre (and toward other channels such as direct booking on AA.com or direct connect), or (in 2006) to impose cost penalties on travel agencies that booked American through Sabre, helped American negotiate lower prices. The fact that some competitive forces operate at the level of "competition for the contract" and others operate at the level of "competition against the contract" does not mean that both are not important for constraining pricing and therefore must be considered in a proper market definition exercise. Given that the goal of market definition is to determine the substitution possibilities that

constrain pricing, it makes no sense to limit the relevant market to GDSs or to Sabre as Professor Carlton has done.

181. The central role of non-GDS alternatives in the negotiations that resulted in agreement on American's booking fee demonstrates that a more appropriate market share for assessing the constraints on Sabre's pricing would include both GDS and non-GDS substitute that travelers can use to book travel. In such a market, Sabre's share of overall bookings provides a reasonable measure of market share. Since less than 50 percent of U.S. air travel is booked through GDSs[206] and Sabre accounts for less than 60 percent of U.S. GDS bookings,[207] its share is less than 30 percent of airline bookings, which is far below levels associated with monopoly power.[208]

C. Professor Carlton's "No Economic Sense" Test of Market Power Makes No Economic Sense

182. Professor Carlton justifies his "view that Sabre has market power in a relevant market,"[209] and presumably in the relevant market(s) he defined, by arguing that "Sabre's sacrifice of short-term products is economically irrational unless it preserves Sabre's market power in the future."[210] He says that Sabre "took actions that sacrificed its short-term profits to punish American for its behavior," including biasing displays against American and increasing American's booking fees. He claims that "[t]his combination of actions cannot be profit maximizing if only raising the booking fees would have increased Sabre's profits,"[211] presumably because he claims that biasing reduced the volume of bookings over which Sabre earned the higher booking fee. But Professor Carlton's understanding of the conduct at issue is factually wrong, since the terms of the unwind provision in the parties' agreement required Sabre to bias before American could pull content which then allowed Sabre, under the contract, to raise American's booking fee.

[206] OTAs plus brick-and-mortar travel agencies account for 49 percent of U.S. Travel Market Gross Bookings in 2008 (PhoCusWright, *The Role and Value of the Global Distribution Systems in Travel Distribution*, 2009, Figure 13).

[207] According to MIDT data, in 2011 Sabre accounted for 56 percent of U.S. GDS bookings.

[208] However, for all the reasons I point out above, a focus on market structure analysis is still inferior to a direct examination of the competitive constraints on Sabre and the impact of the challenged conduct. For example, Sabre's competition to win [REDACTED] business increased Sabre's market share from 46 percent in 2006 to 57 percent in 2008, but it is hard to see how that reflected a reduction in competition.

[209] Carlton Report heading III.D.

[210] Carlton Report heading III.D.2.

[211] Carlton Report ¶59.

183. Professor Carlton also wrongly assumes that any sacrifice of short-term profits for long-term profits reflects anticompetitive conduct. Rather, basic economics shows that whenever long-term demand is more elastic than short-run demand (which it is in this case), all profit maximizing firms will sacrifice short-run profits in order to maximize their long-run returns. A firm may lower price today, even though it thereby earns less on current sales, because doing so attracts new customers (and helps retain existing customers) that provide additional revenues over the long term. The key question under a proper application of the "no economic sense" test is whether an action would make no economic sense *absent a loss of competition*. But, as explained above, Sabre's actions made immediate economic sense absent any reduction in competition and thus Sabre's conduct passes rather than fails the test.

184. Professor Carlton also claims that Sabre sacrificed short-term profits by not trying "to gain business at the expense of Travelport" when Travelport was in a dispute with American. However, this alleged "economically irrational" conduct – that Sabre allegedly chose not to pursue Travelport's international business when American and Travelport were in a dispute over American's international booking fees – cannot be interpreted as either profit sacrifice or an effort to preserve market power. Professor Carlton offers no evidence that an attempt to gain this business would have been profitable in the short run (presumably, Sabre would have incurred costs to do so); that it would have been successful[212] or that Sabre (a private company with no pressure to maximize short-term earnings) did not make an economically rational decision to pursue long-term profits by providing no encouragement to American for its direct connect model. Sabre's Chris Kroeger and Jay Jones explained that Sabre did not consider this a profitable opportunity to expand its business because "we looked at it and said we could be next. And so for credibility with our customers or potential customers, we're not going to go say something and then be in the same exact situation."[213] It is not "profit sacrifice" for Sabre to conclude that the long-run harm to its customer relationships from promising a price discount

[212] His argument is internally inconsistent, since he claims that agencies are "sticky," in which case they would not have moved to Sabre even if Sabre had tried to convince them do so.
[213] C. Kroeger (TCty) (Sabre) Deposition at 212:23-213:3 and Ex. 294 (also 213:13-213:19; 216:11-216:24); *see also* E. Jones (TCty) (Sabre) Deposition at 196:19-197:1, 257:21-24 and Ex. 153.

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and then quickly reneging on the offer exceeds any short-term gain from attracting that customer.[214]

185. Indeed, it is clear that Professor Carlton's framework cannot be used to ask such questions in this context. For example, according to the framework used by Professor Carlton, Sabre's decision to charge low fees to American under the last contract would make "no economic sense," since Sabre sacrificed profits by not raising prices (at least to the current level) and thereby exercising its alleged monopoly power and unilateral ability to charge much higher fees. The fact that this "profit sacrifice" is far greater (likely by orders of magnitude) than the loss (if any) from biasing or failing to take immediate advantage of a short-run dispute between Travelport and American tells us that Professor's Carlton's analysis is incomplete and unreliable.

D. Professor Carlton Wrongly Characterizes Some Sabre Actions as Exercise of Market Power that Demonstrate Sabre's Alleged "Ability to "Exclude American's Direct Connect Technology"

186. According to Professor Carlton, in addition to its contractual restrictions with American and travel agencies, "Sabre also has taken actions to harm American by imposing costs on American, apparently in response to American's attempts to compete with Sabre using its Direct Connect technology."[215] He uses terms like "retaliate," "punish," and "send a message"[216] to describe a variety of actions – some that reflect exercise of Sabre's contractual rights and others that I understand have been alleged by American but that are subject to dispute – that he claims reflect Sabre's alleged market power.

187. Professor Carlton claims that Sabre took the following actions which reflect exercise of its alleged market power: (1) Sabre's retaliatory actions against American taken in response to American attempting to compete with Sabre by introducing its "Direct Connect" technology; (2) a group boycott of American by travel agencies organized by Sabre; (3) a conspiracy between and among Sabre, Travelport and travel agencies using those GDSs to exclude American's Direct Connect technology and to retaliate against American; (4) actions taken by Sabre to

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[214] Applying Professor Carlton's test would condemn as "profit sacrifice" American's decision to terminate Orbitz's right to sell American's tickets, a decision that may have made sense for American strategically but almost certainly would have cost American some sales in the short run.

[215] Carlton TRO Report ¶6.

[216] *See, e.g.*, Carlton Report ¶¶ 6, 55, 56, 59, 73, 78, 82 and headings IV.B.1 and IV.B.2.

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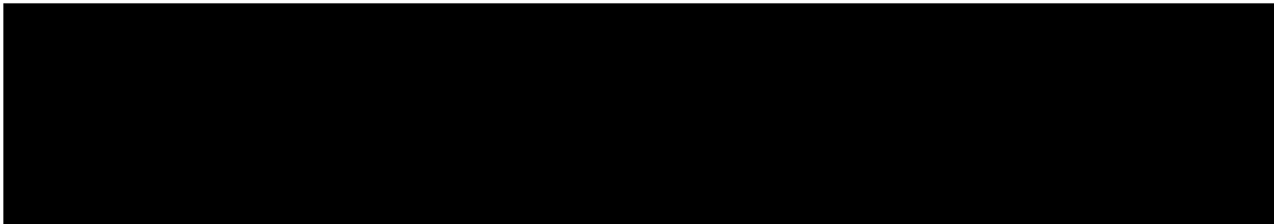
punish developers that helped American develop Direct Connect; and (5) a variety of other actions that increase the cost to American of developing and implementing Direct Connect. Professor Carlton has mischaracterized this conduct.

1. Professor Carlton Mischaracterizes the Economics of the Increase in Booking Fee and Display Bias

188. Every contract between willing parties under which each provides the other with advantages not available outside the contract has the feature that a party that fails to perform as it committed to do will not obtain the benefits of the agreement and even may incur penalties. This is not retaliation or punishment, but instead the consequence when one party chooses to behave in a way that triggers contingencies specified in the agreement. Even if there is a dispute about whether the parties took certain triggering actions under the Amended PCA, I understand that there is no dispute that the Amended PCA provided for an "unwind" and entitled both parties to take specified actions contingent upon actions of the other party.[217] Both biasing and higher booking fees were part of the contractual provisions to unwind the parties' agreement if American chose to initiate the process by publicly promoting direct connect.

189. Professor Carlton's characterization of Sabre's actions as imposing "harm" provides no insight into the reason for the contract provisions, the reason for Sabre exercising those provisions, or their effect on competition. Condemning the exercise of contractual rights as illegal based on speculation about the intent of the party exercising the rights would create bad incentives and substitute legal second guessing for voluntary market transactions.

190. One also cannot conclude that American has been harmed by agreeing to these provisions without knowing what other concessions American received under the contract for agreeing to these provisions (in particular, the lower booking fees it obtained). As an economic matter, one cannot evaluate individual contract terms in isolation to determine harm to a party to the contract, let alone harm to competition. To say that a party to a contract would profit from not



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having to abide by terms that it accepted in exchange for other consideration does not tell us that the party would be better off if that contractual restriction were not part of the negotiated deal, or whether consumers would be better off without that negotiated deal.

2. Professor Carlton Wrongly Claims that Sabre's Developer Policy and Actions Toward Farelogix Were Anticompetitive

191. Sabre permits authorized third parties to make use of its intellectual property, data and interface with its system under the terms of a developer agreement. For certain periods of time, Farelogix was an authorized developer under terms specified in Sabre's Developer Agreement. In 2009, Sabre terminated Farelogix Developer Agreement.[218]

192. American claims that Sabre terminated Farelogix because Farelogix was facilitating direct connections with airlines, and in particular American. According to American, "[i]n January 2009, however, as it became increasingly clear to Sabre that direct connect technology presented a serious potential competitive threat to the GDS model, Sabre abruptly terminated Farelogix's developer agreement. The only reason Sabre had for terminating Farelogix was that it was working to help airlines – and especially American – establish direct connections with travel agents." According to Professor Carlton, "[i]n January 2009, Sabre terminated Farelogix' developer agreement because Farelogix was working to help American establish direct connections with travel agencies. Similarly, Sabre told PASS Consulting, another third-party developer, that Sabre would terminate its developer agreement unless it stopped working with Farelogix. Such actions inhibit the entry of a competing product and thus harm competition."[219]

193. According to Professor Carlton, "[a] travel agency unrestricted by Sabre's current practices would be able to obtain fare information from American's Direct Connect if some of the Direct Connect fares were not available on Sabre. Indeed, that functionality is precisely what third-party developers such as Farelogix have attempted to offer to travel agencies."[220] Even if this is correct, it does not mean that limiting such "functionality" is anticompetitive. The economic goal of a cooperative relationship with Farelogix or other developer is to expand

[218] Letter from Charles Loop to Farelogix, January 29, 2009 (FLX-S-000144).
[219] Carlton Report ¶84.
[220] Carlton Report ¶108.

overall demand for the platform, not to transfer business from Sabre to a third party. Resources devoted to shifting demand between the Sabre platform and the developer are wasted.

194. One way to prevent such inefficient activities is to restrict developers from profiting from providing the same services the Sabre system already supplies. Indeed, Professor Carlton ignores the consideration likely critical to Sabre's determination to terminate Farelogix (and a condition of the agreement that Farelogix violated): that the functionality that Farelogix proposed to provide to travel agencies would enable them to obtain fare information from American's direct connect that was available on Sabre, and that the ability to do so was predicated on using the Sabre system. Even if, for a particular booking, the agency did not use Sabre – searching and booking only on direct connect – Farelogix' ability to provide its service was predicated on its direct relationship, or the agency's relationship, with Sabre. And that functionality was intended to deprive Sabre of a booking and of revenue that it otherwise would earn.

195. An implication of Professor Carlton's claim that Sabre "inhibit[ed] the entry of a competing product and thus harm[ed] competition" is that Sabre had an obligation to allow Farelogix unfettered rights to use Sabre's IP and data, and to interconnect or interface with Sabre's system, in any way that Farelogix desired, even if Farelogix' intention was to harm or destroy Sabre's GDS. However, competition is enhanced when a firm controls its property. A firm has an incentive to enter voluntarily into mutually beneficial agreements with third parties to permit use of its intellectual property, facilities etc. when doing so creates gains from trade that can be shared. These voluntary arrangements are most likely to occur when the third party is developing a complementary product or service that will increase demand for the combined product. Such output-expanding cooperative agreements will benefit the parties and consumers. An obligation to allow such access when the authorized party's intention is to reduce demand for the firm's product does not enhance competition, but it limits the incentives for the firm to create value in the first place, and it creates an incentive for the developer to shift rather than expand overall demand. A competitive firm will not enter into contracts that will make it worse off if it has the option not to do so; in other words, it will not contract with a would-be competitor, or a firm that is acting as an agent of a would-be competitor, whose only purpose is to harm the first firm.

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196. In a competitive industry, I expect to see several types of restrictions in agreements that grant third-parties access to a firm's platform, data and IP. First, I expect that there will be restrictions on the types of products and services that the third-party is permitted to develop, including restrictions that limit the developer's ability to produce and market products and services that harm the licensor. These types of restrictions prevent the developer from creating products and services that make use of the licensor's assets to inflict harm on the licensor. In general, these types of restrictions will encourage developer efforts to create complementary products and services that make the platform more attractive, but (absent sufficient compensation) will restrict development of substitutable products and services that will reduce demand for the firm's products. Here, the platform will have an incentive to prevent unauthorized use that creates direct substitution, as well as use that creates an externality that allows others to provide substitutes even if they do not need the platform directly. This in general enhances efficiency, since it pushes developers to focus on products and services that expand overall demand, which will benefits the suppliers and consumers. It also discourages the developer from devoting resources in an effort to redistributes the firm's return on investment to the developer.

197. Second, to preserve platform integrity and functionality, I expect to see restrictions on how the developer's products and service interface with the platform.

198. Third, I expect to see provisions for the developer to compensate the platform owner. The platform is a valuable asset (or the developer would not want to obtain access), and the platform owner will charge for access. However, pricing is often imperfect and firms may decline to provide certain types of services even when the buyer is willing to pay something for them.

199. Based on my review of Sabre's standard developer agreements, these are the types of restrictions that Sabre imposes on developers, including Farelogix (when it was licensed) and PASS. Sabre's 2007 agreement with Farelogix, which authorized Farelogix to develop a Multi-Source Rules Engine, contains a variety of restrictions on how that engine can be used. The agreement states that "[e]xcept as a natural result from the agreed Project Scope of a Developer Project, Developer shall not use its rights and access hereunder to create any Developer Project or other product or application that causes harm to Sabre's business"; absent such a general

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condition, Sabre would not have had an incentive to license Farelogix. The agreement also states that the Farelogix engine may not, "with the Developer's specific knowledge, route Sabre data to and/or receive Sabre data from any Unauthorized Application"; again, this is a reasonable restriction on unauthorized use by others of Sabre's platform, data and IP, and on potentially harmful interconnection. And the agreement provides for Sabre to receive compensation [redacted] – a payment that is based on the scope of the project that Farelogix was authorized to undertake.

200. Sabre's developer agreements typically contain (1) a "like fare" provision that requires authorized users to book "like fares" in Sabre, (2) mandatory passive segment and usage fees when use of the developer's product results in a booking in Sabre, and (3) restrictions on interoperability with unauthorized applications. All three of these provisions are consistent with the types of procompetitive restrictions that create incentives for firms to enter into mutually beneficial output-expanding cooperative arrangements. In particular:

- The "like fare" provision prohibits a developer from facilitating booking away from Sabre. It requires that developers that use Sabre's property do not permit bookings to be done elsewhere if the same (or very similar) fare is available in Sabre. In other words, a developer that has made a fixed payment to Sabre – such as Farelogix' [redacted] annual fee – cannot facilitate others in reducing Sabre's booking revenue. Professor Carlton wrongly criticizes Sabre's provisions in some developer contracts that, he claims, limit developers from facilitating display of content available in Sabre if that content comes from another source, and from "providing tools that allow a travel agency to book travel through any source other than Sabre if a 'Like Fare' is available."[221]
- The passive segment and usage fee provisions insure that Sabre is compensated for use of its system. If a booking occurs outside Sabre (because there is no "like" fare), but the booking then is stored in Sabre, then Sabre's system is being used. Just as Sabre imposes passive and usage fees on its authorized agency users when bookings occur outside Sabre but reside in Sabre, payment for use of Sabre is required when Sabre otherwise would not receive compensation because of Farelogix' engine.

[221] Carlton Report ¶90.

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- The restriction on interoperability with unauthorized developers has at least three procompetitive benefits. First, it protects the integrity of the platform by prohibiting interconnections that could harm the platform. Second, it prevents indirect unauthorized use of the platform without compensation to Sabre. Third, it enables Sabre, not the licensed developer, to decide whether another application that uses Sabre's platform is in Sabre's interest, and allows Sabre to deny access if it is not.

201. Thus, all three restrictions have procompetitive benefits – they create incentives for Sabre to license third-party developers and for authorized developers to create output-expanding applications.

202. Finally, American claims that provisions that prevent Farelogix and others from aggregating content from Sabre with content from other sources are anticompetitive:

> For an alternative provider of airline booking services such as AA Direct Connect to be a practical substitute for use of a GDS from the perspective of a travel agent, the travel agent needs to be able to transfer information about tickets sold through that service to the software programs-called front, mid, and back office applications-that the agency uses for functions such as billing and quality assurance. In addition, many agencies will find an alternative booking channel to be viable only if they can aggregate and compare content from multiple suppliers, whether received through multiple direct connections or through a direct connection and a GDS. A number of technologies and technology providers exist that are capable of performing these interoperability and aggregation functions. One such technology provider, Farelogix, has worked with American and other airlines for several years to develop an efficient, flexible technology platform for airline direct connects.[illegible]

203. According to American, Sabre's termination of Farelogix was done to protect Sabre's monopoly power from being eroded by Farelogix' activities. However, to the extent that Farelogix' activities were making use of Sabre's property to "cause[] harm to Sabre's business," it is not anticompetitive for Sabre to limit such activities. Sabre provides a product to the market and Farelogix and American are free to produce competing products. Sabre's contracts do not restrict Farelogix activity as long as that activity is independent of Sabre. Thus, Farelogix and others are free to compete based on the value they provide to customers. However, it appears that American demands more than that. American contends that American, Farelogix and others should be able to use Sabre's intellectual property to produce products that compete with Sabre, which economics shows creates harmful incentive effects.

[illegible] Sixth Amended Petition ¶43.

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204. The fact that Farelogix and PASS want to access the Sabre system demonstrates that these firms were not providing an alternative to Sabre, but instead had a business model that made use of Sabre's success in the marketplace. Competition generally is strengthened by strong rivalry in the marketplace, including refusing to cooperate to facilitate entry. Arrangements among firms to cooperate in creating new products and services will occur through the marketplace when they will create value, but forcing a firm to share its property with others, especially a competitor, would both undermine the parties' incentives to reach voluntary agreements (a solution preferable to asking a court to mandate access terms, compensation and rights to innovations resulting from cooperation) and undermine their incentive to invest in such capabilities in the first place.

205. Many procompetitive provisions such as the enforcement of property rights "raise the cost" to others of competing, but cannot be regarded as anticompetitive on that basis.

3. Professor Carlton Provides no Economic Analysis of Sabre's Policy on Interfacing with Travel Agency Back Offices

206. Professor Carlton claims that "Sabre does not permit data from Direct Connect to integrate with its Trams back office system," even though another American expert has opined that such integration is "technologically possible."[223] As with all interconnection requests, there are reasonable commercial explanations why a company would want to restrict integration. But there is no need to evaluate the specifics of Sabre's reasons or whether it affected direct connect, because Professor Carlton's critique is based on a misunderstanding of the importance of Trams, and thus the ability of such a policy to affect adoption of direct connect or generate competitive harm. Trams is not used by *any* of the Global agencies that account for the majority of business travel booked through brick-and-mortar agencies, and is used by only some of Sabre's Premier agencies (it is designed only for mid-sized agencies).[224] Thus, even if Sabre had such a policy, it could not meaningfully affect adoption of direct connect.

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[223] Carlton Report ¶86.

[224] "TBO and CC % of US TTM Air Bkgs_v9.xlsx"

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4. Professor Carlton Wrongly Characterizes Sabre's Travel Agency Agreements as Exclusionary

207. Professor Carlton grossly mischaracterizes the contract terms of Sabre's travel agency agreements, and then goes further and claims that "[s]uch contract terms inhibited (and continue to inhibit) the use of Direct Connect by travel agencies,"[225] implying that these contract terms have had an impact on direct connect's adoption. However, he provides no evidence that any travel agency has been unwilling, or even reluctant, to adopt direct connect because of these contract provisions, rather than because of their concerns about the inefficiency and cost introduced by direct connect, American's insistence that agencies incur all the costs associated with that inefficiency, and the impact of higher costs on agencies' customers. The fact that similar incentive agreements were in place before American began developing and marketing direct connect is economic evidence that they arose in the marketplace without being directed at American.[226]

[225] Carlton Report ¶93.
[226] Carlton Report ¶85.