

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



==== THE UNITED STATES ====

DEPARTMENT *of* JUSTICE

Ordinary Course Documents Show Sabre and Farelogix Competing

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

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



PX187 at 3

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PX452 at 1



PX452 at 1

Ordinary Course Documents Show Sabre and Farelogix Competing



PX316 at 5

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PX187 at 3

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PX452 at 1

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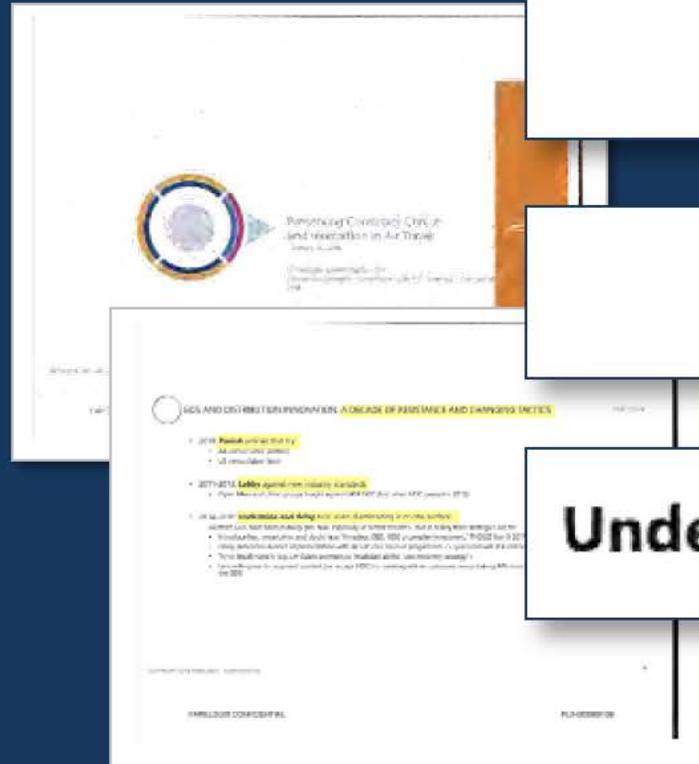
The Decades-Long Status Quo

A DECADE OF RESISTANCE AND CHANGING TACTICS

Punish airlines that try

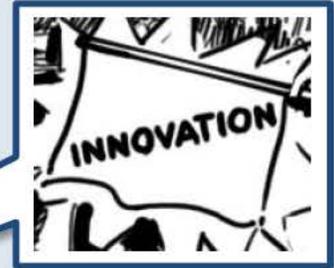
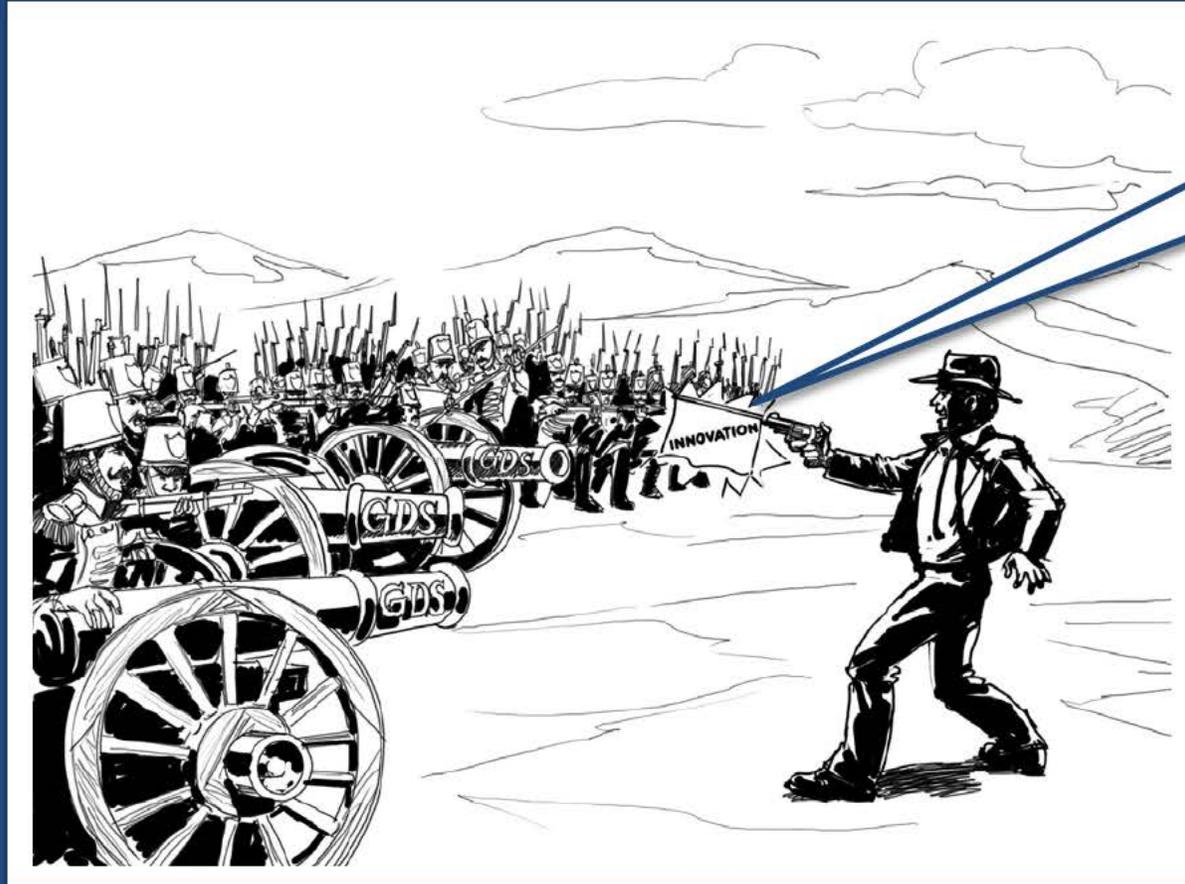
Lobby against new industry standards

Undermine and delay NDC even if embracing it on the surface



Farelogix Disrupts the Status Quo

FARELOGIX on *Sabre*



PX090 at 1

Sabre is Threatened by Farelogix

Sabre on **FARELOGIX**

The competition

amadeus



Datalex



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SABR-002633968

Ordinary Course Documents Illustrate Market Reality

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

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

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

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



Firms Can Compete In More than One Market

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

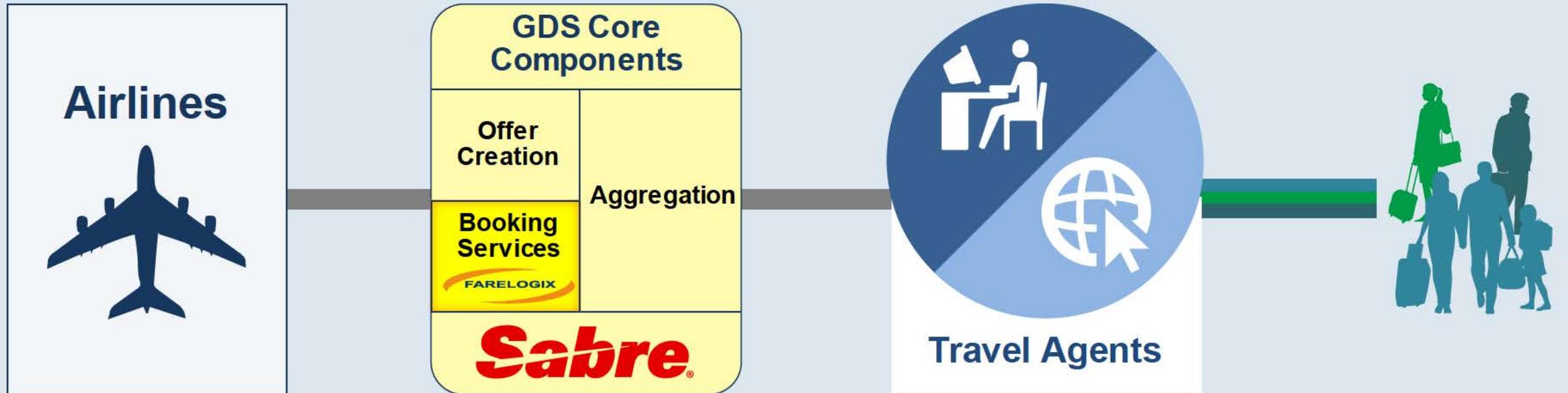
United States v. Energy Sols., Inc., 265 F. Supp. 3d 415, 439 (D. Del. 2017)

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

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



Indirect Distribution of Airline Tickets



Market Definition Is a Pragmatic Determination

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

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

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

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

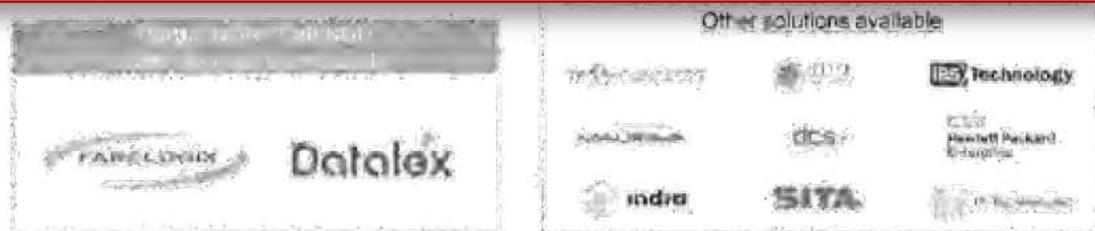


Section 7 Guards Against Lessening of Competition

Sabre on **FARELOGIX**

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

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

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

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

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

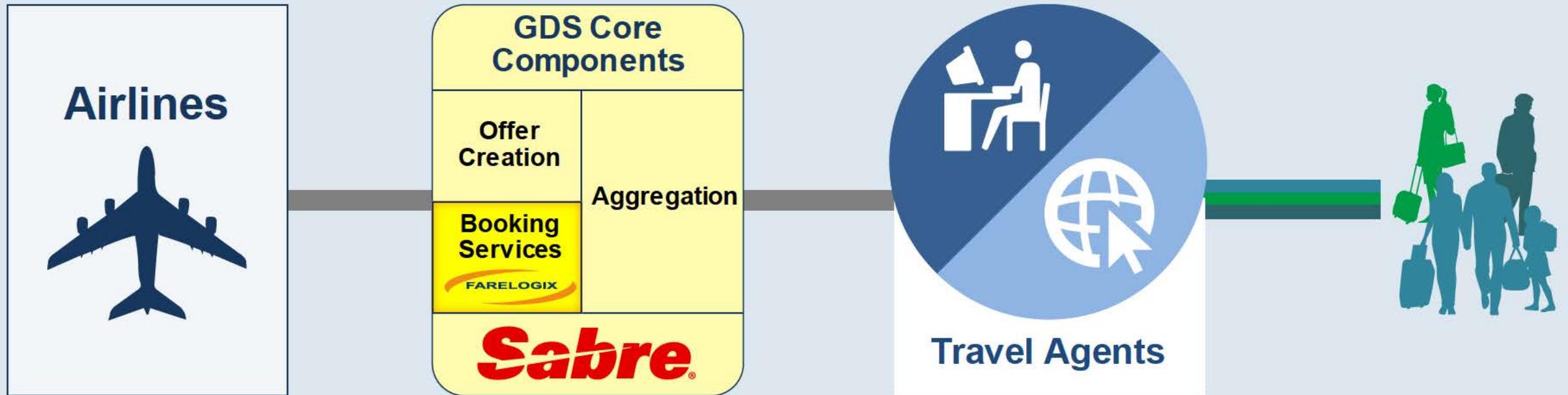
- **Other types of evidence can establish a *prima facie* case**

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

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



Indirect Distribution of Airline Tickets



Sabre and Farelogix Both Provide Booking Services

Traditional GDS Distribution

Airlines



Offer Creation Sabre.	Booking Services Sabre.	Aggregation Sabre.
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Travel Agents



Airlines



Offer Creation



NDC Distribution

GDS Bypass	Booking Services FARELOGIX
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Sabre and Farelogix Both Provide Booking Services

Traditional GDS Distribution

Airlines



Offer Creation Sabre	Booking Services Sabre	Aggregation Sabre
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Travel Agents



NDC Distribution

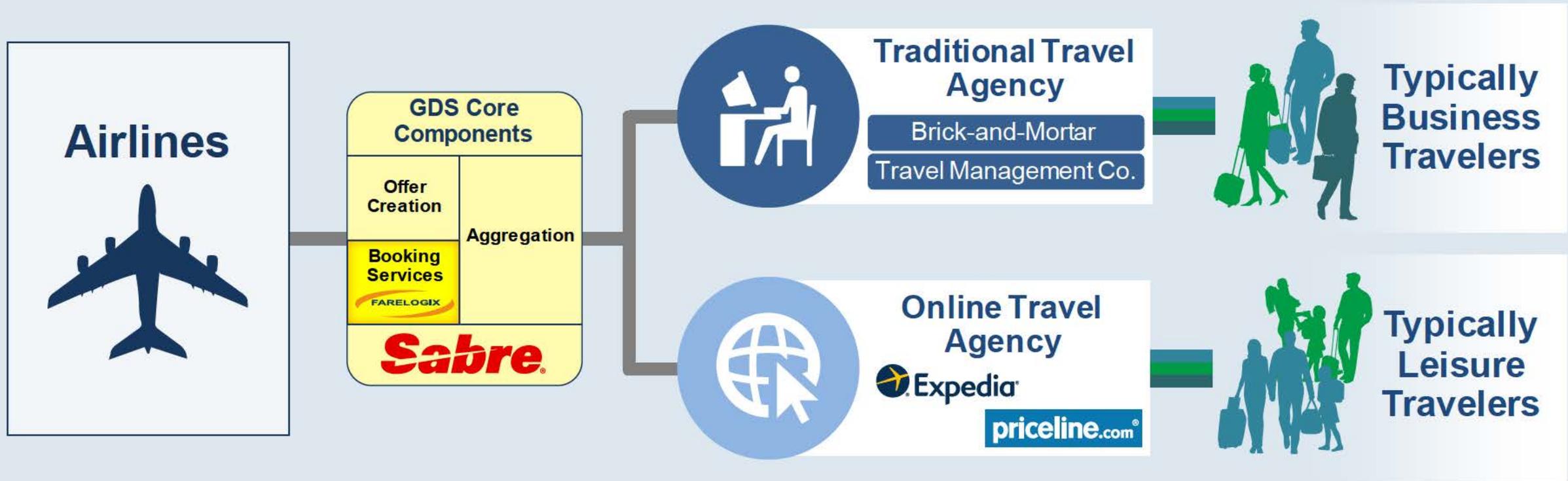
Airlines



Offer Creation

GDS Bypass	Booking Services FARELOGIX	
	Booking Services FARELOGIX	Non-GDS Aggregator
	Booking Services FARELOGIX	GDS Aggregator Sabre
GDS Pass-Through		

Indirect Distribution of Airline Tickets



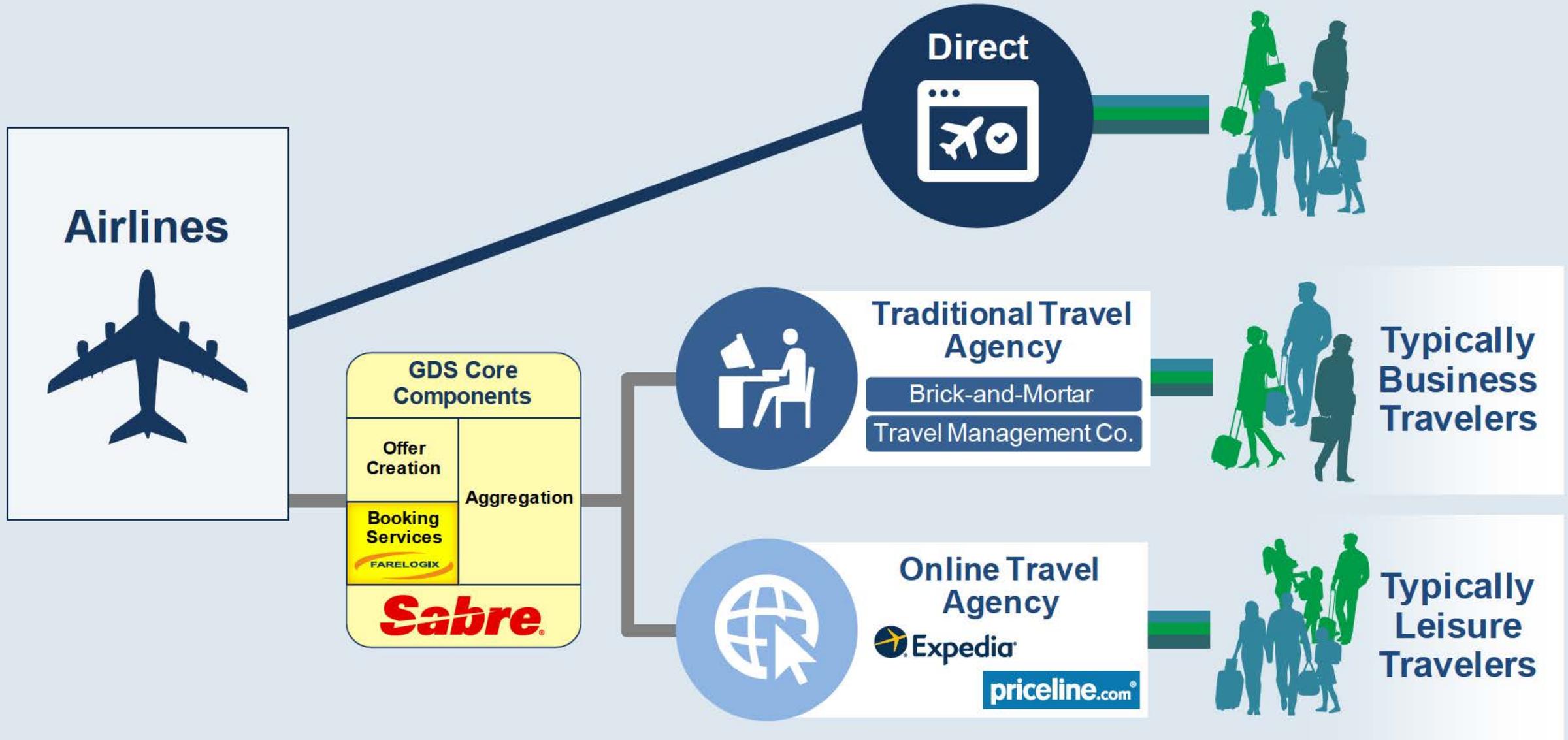
Hypothetical Monopolist Test

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

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



Indirect and Direct Distribution are Not Substitutes



Market Shares Establish a Presumption of Harm

Online Travel Agency

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

Traditional Travel Agency

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

Farelogix Deleverages the Power of the GDSs

Two Distribution Paths Give Airlines Maximum Control and Leverage

Deleverages the traditional GDS-Airline commercial relationship



Airline-Controlled Dual NDC API Delivery Paths for Maximum Value Distribution

Two Distribution Paths Give Airlines Maximum Control and Leverage

NDC technology and UX Open Contracts allow the airline to control the distribution path to a single NDC API, with the ability to deliver it over 2 or more distinct delivery paths.

- NDC API Control: Airline-controlled distribution path to the NDC API, with the ability to deliver it over 2 or more distinct delivery paths.
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Farelogix is a Valuable Alternative for Customers

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

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PX087 at 1

Farelogix is a Valuable Alternative for Customers

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

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



PX367 at 1

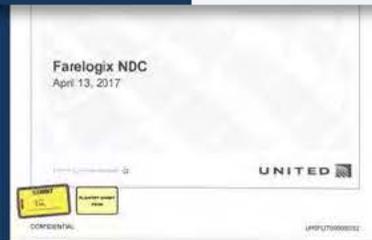
Farelogix is a Valuable Alternative for Customers

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“[P]artnering with Farelogix and deploying NDC services with third parties **improves United’s position** in those contract negotiations.”



PX300 at 2



PX300 at 2

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Farelogix is a Valuable Alternative for Customers



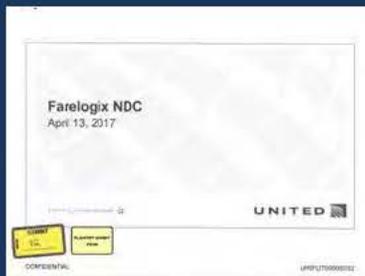
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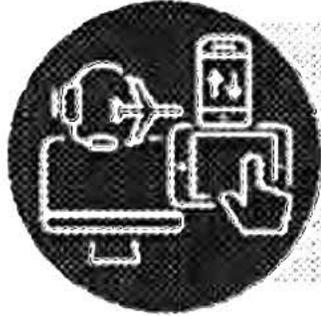
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PX300 at 2

“[P]artnering with Farelogix and deploying NDC services with third parties **improves United’s position** in those contract negotiations.”

New Technology Can Disintermediate Sabre



New technology¹ emerges at a much lower cost, disintermediating GDS

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



Farelogix is an Originator of NDC

Farelogix is

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

Farelogix's Innovations Benefit the Industry and Consumers

The image shows a screenshot of a press release from Farelogix. The title is "Untested, Unproven... Untrue!". There is a yellow box in the top right corner that says "PLANNED EXHIBIT PX090". The press release includes an illustration of a person pulling a cart. At the bottom, there is a logo for "A T COOPER" and the text "FARELOGIX CONFIDENTIAL" and "FY-0276072".

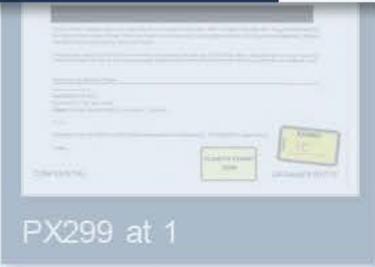
PX090 at 1

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

Farelogix's Innovations Benefit the Industry and Consumers



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



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Farelogix's Innovations Benefit the Industry and Consumers



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



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

Documents Showing Intent Are Probative

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

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

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

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



Sabre Expects to Benefit from Acquiring Farelogix

Drug/Device	Manufacturer	Product Name	Notes
Drug/Device	Manufacturer	Product Name	What is the source of FLX?
Device/Device	Manufacturer	Product Name	Fluoro
	Manufacturer	Product Name	Quin to card and Fluoro
	Manufacturer	Product Name	At the end of the year, the company is expected to be a good performer.
	Manufacturer	Product Name	Good
Drug/Device	Manufacturer	Product Name	Good
Device/Device	Manufacturer	Product Name	Good
	Manufacturer	Product Name	Highly likely to succeed
	Manufacturer	Product Name	Good
	Manufacturer	Product Name	Good
	Manufacturer	Product Name	Good
Drug/Device	Manufacturer	Product Name	Good
Device/Device	Manufacturer	Product Name	Good
Drug/Device	Manufacturer	Product Name	Good
Device/Device	Manufacturer	Product Name	Good
Drug/Device	Manufacturer	Product Name	Good
Device/Device	Manufacturer	Product Name	Good
Drug/Device	Manufacturer	Product Name	Good
Device/Device	Manufacturer	Product Name	Good

The FLX bill is going up big time

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CONFIDENTIAL

CONFIDENTIAL

Defendants Cannot Rebut Prima Facie Case

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

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

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

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



Entry Would Not Be Timely, Likely, or Sufficient

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

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

Alleged Efficiencies Cannot Rebut Anticompetitive Harm

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

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

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