

***United States of America***  
***v.***  
***Sabre Corporation, Sabre GBL 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.”

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[illegible]

# PX316 at 5

# 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

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PX316 at 5

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PX187 at 3

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PX452 at 1

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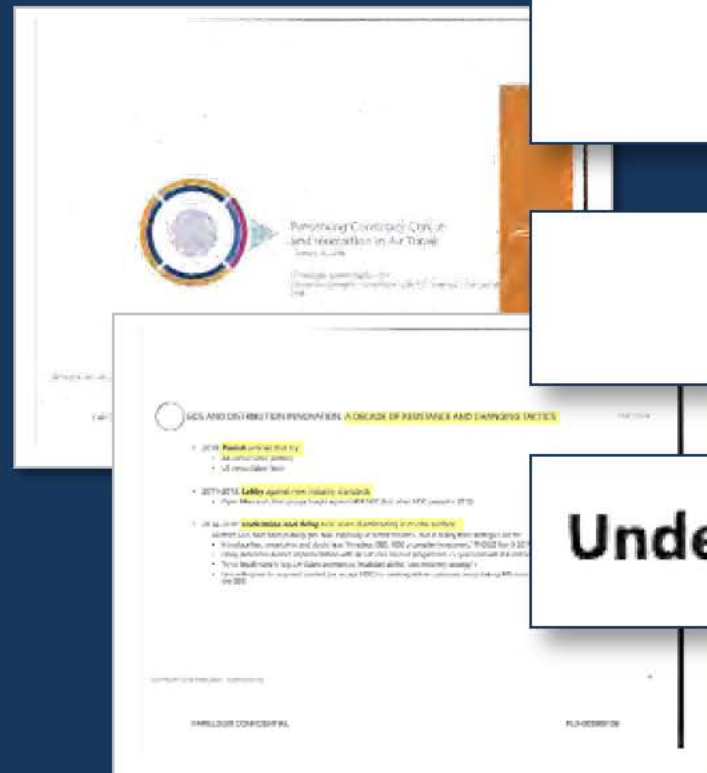
# The Decades-Long Status Quo

A DECADE OF RESISTANCE AND CHANGING TACTICS

**Punish** airlines that try

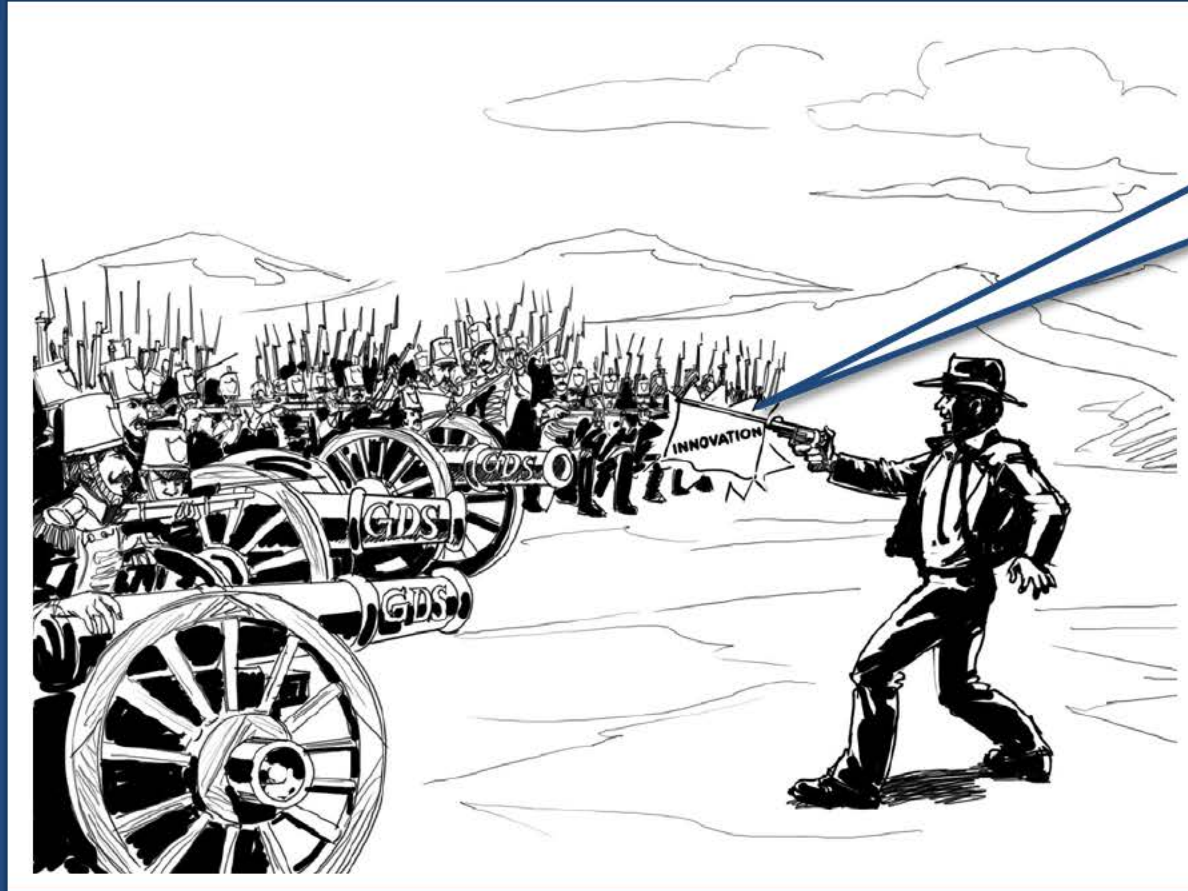
**Lobby** against new industry standards

**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**



**Travelport**   
Redefining travel commerce

**Datalex** 

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SABR-002633968

PX246 at 15



# 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.”

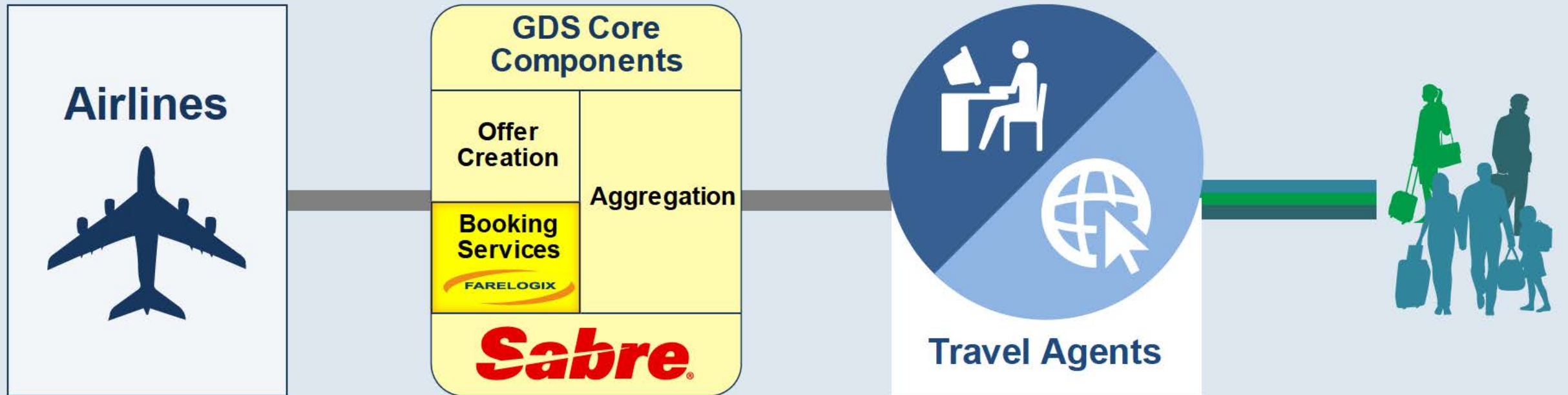
*United States v. Energy Sols., Inc.*, 265 F. Supp. 3d 415, 439 (D. Del. 2017)

“[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)



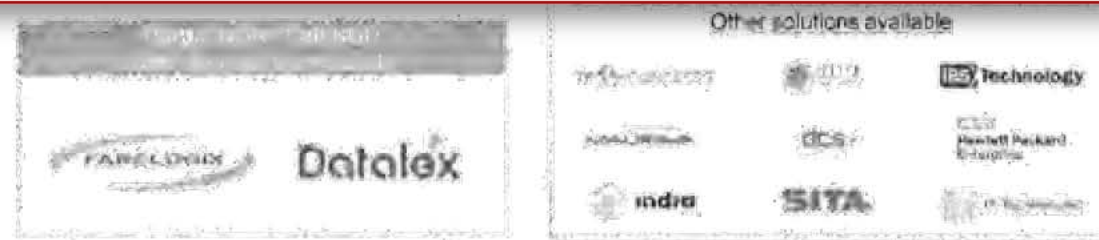


# Section 7 Guards Against Lessening of Competition

**Sabre** on **FARELOGIX**

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

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SABR-000110913

# 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))

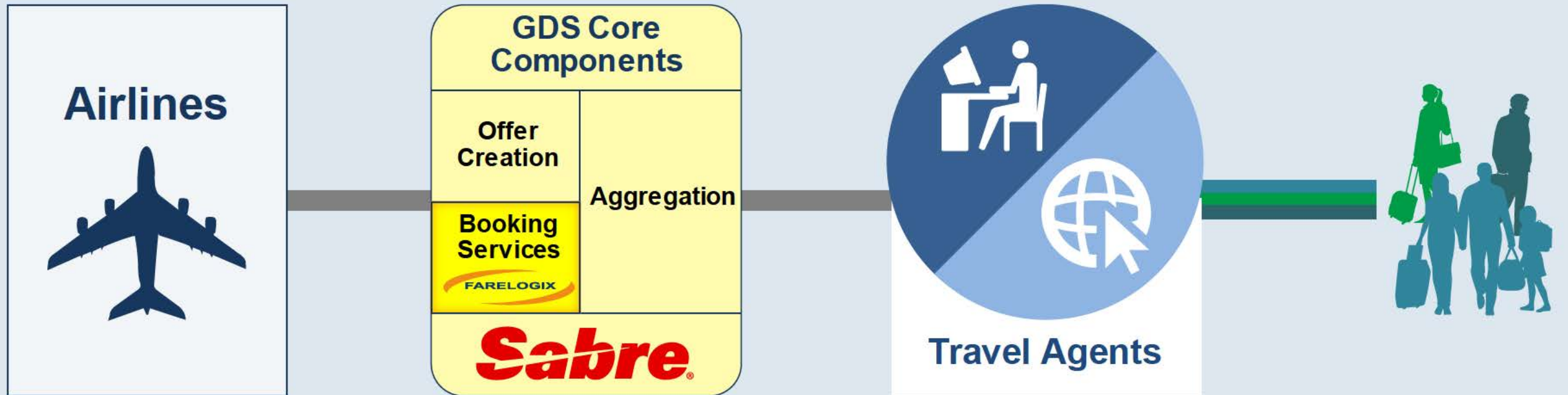
- **Other types of evidence can establish a *prima facie* case**

“ . . . [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)



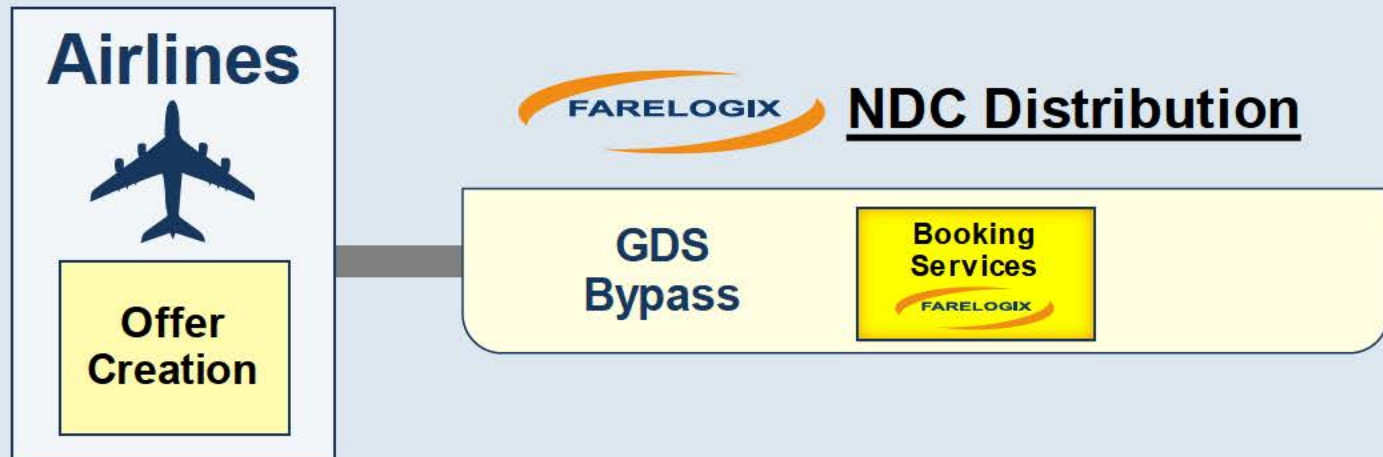
# Indirect Distribution of Airline Tickets





# Sabre and Farelogix Both Provide Booking Services

## Traditional GDS Distribution



## NDC Distribution



GDS  
Bypass

Booking  
Services

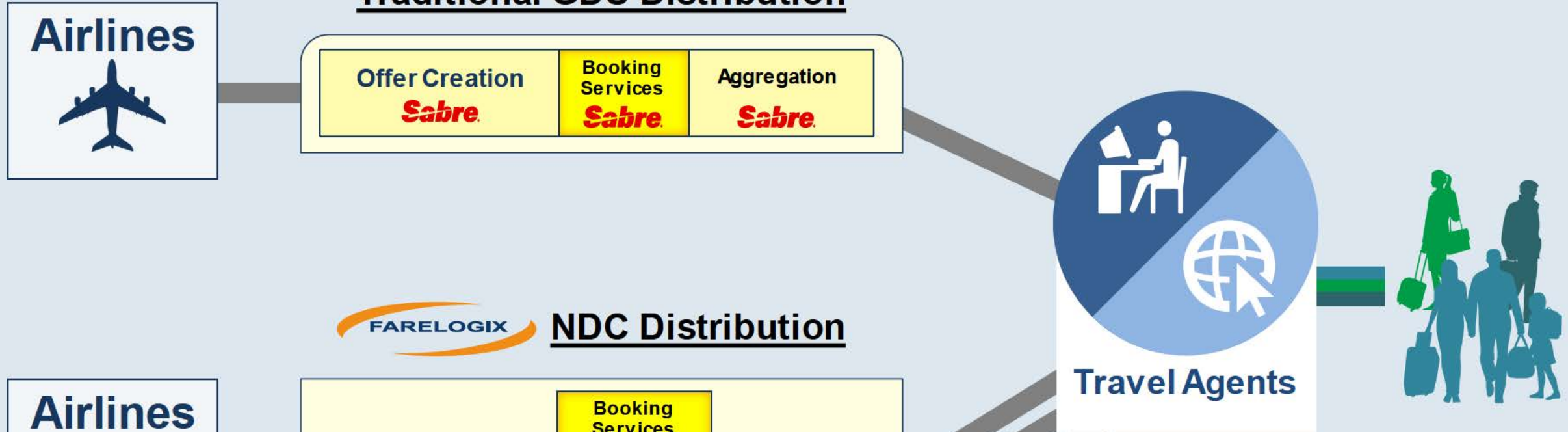
FARELOGIX

Travel Agents

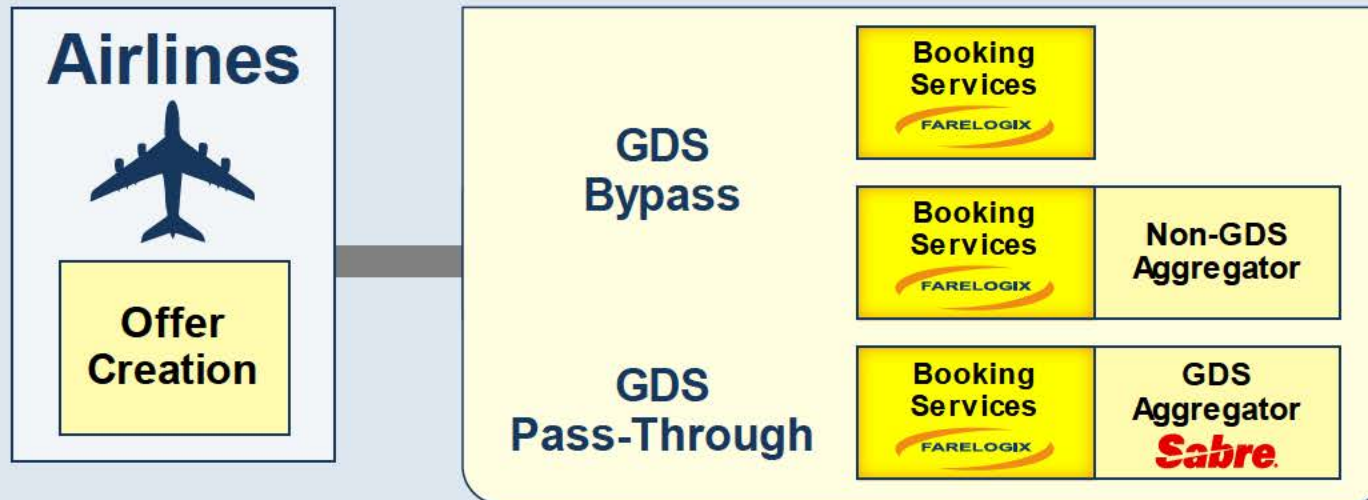


# Sabre and Farelogix Both Provide Booking Services

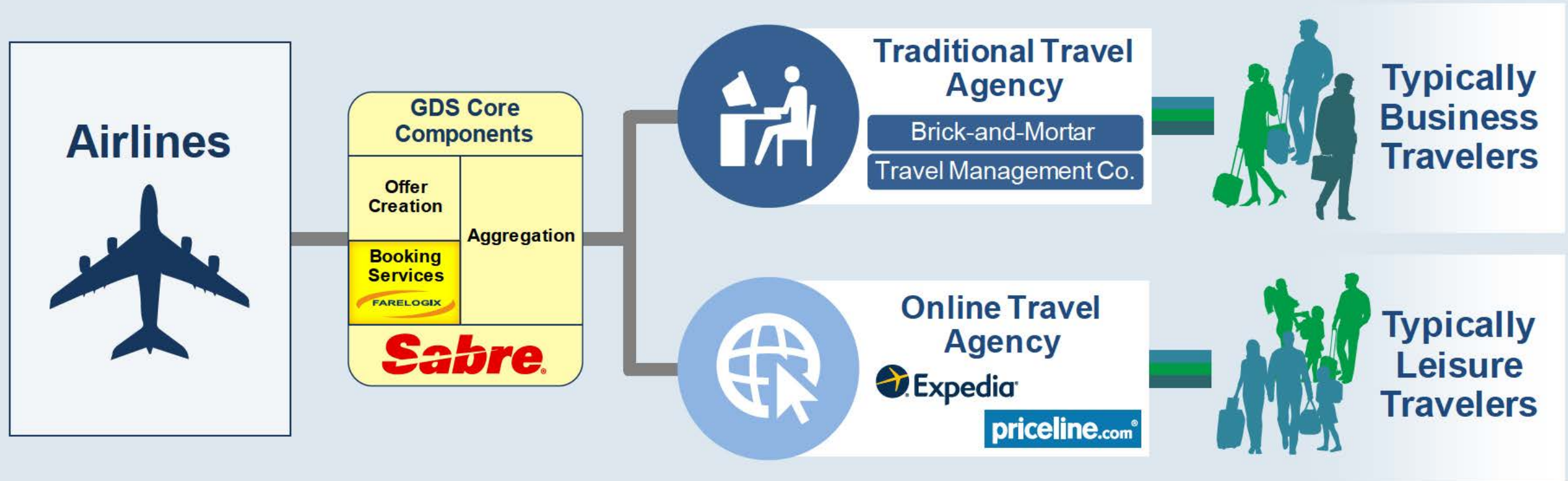
## Traditional GDS Distribution



## NDC Distribution



# Indirect Distribution of Airline Tickets



# Hypothetical Monopolist Test

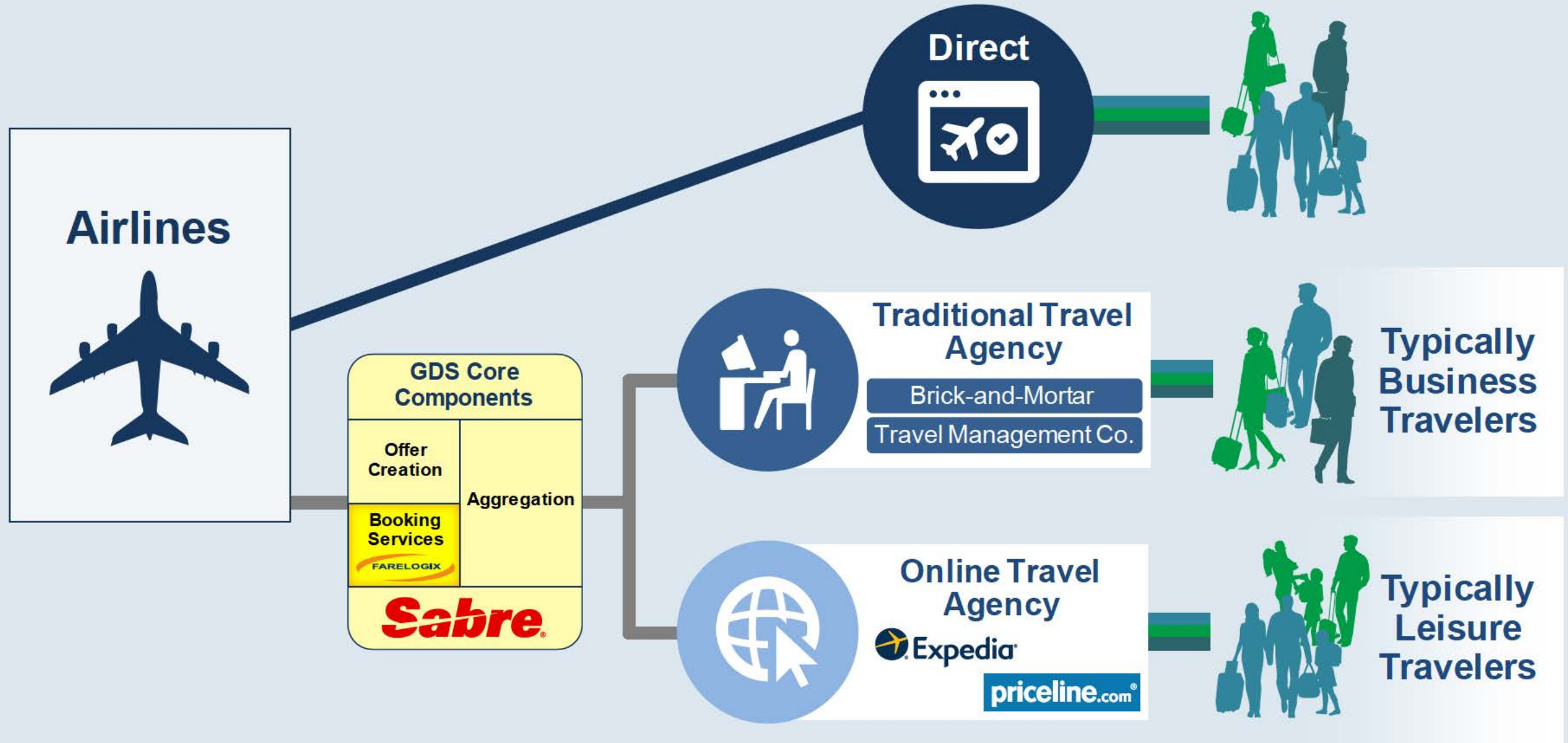
“A common method employed by courts and the FTC to determine the relevant [] market[s] is the hypothetical monopolist test. Under the *Horizontal Merger Guidelines* issued by the U.S. Department of Justice’s Antitrust Division and the FTC, if a hypothetical monopolist could impose a small but significant 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

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

## Traditional Travel Agency

	<b>Sabre</b> Projections for 2020
<b>Post-Merger HHI</b>	
Level	<b>4,085</b>
Above 2,500	✓
<b>Change in HHI</b>	
Change	<b>657</b>
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



# 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 Farelogixs of the world”



PX367 at 1



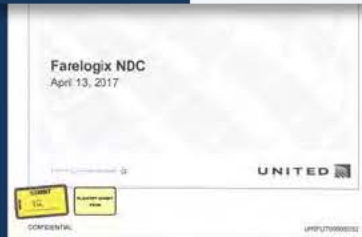
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PX300 at 2

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



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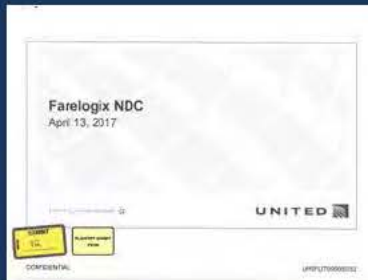
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PX367 at 1

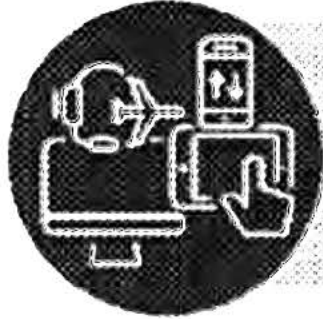
“there’s a **real alternative** to the GDSs. This is through the Farelogixs of the world”



PX300 at 2

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# New Technology Can Disintermediate Sabre



New technology<sup>1</sup> 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



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



PX299 at 1

“Farelogix also keeps GDSs  
**on their toes** relative to  
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PX299 at 1

# Farelogix's Innovations Benefit the Industry and Consumers



PX090 at 1

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



PX299 at 1

“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

## Mitigate risk from potential GDS bypass

[illegible]

# Sabre Expects to Benefit from Acquiring Farelogix

Project Name	Project Description	Project Status	Project Manager
Project Alpha	Develop new software for Project X.	Completed	John Doe
Project Beta	Implement new hardware for Project Y.	In Progress	Jane Smith
Project Gamma	Conduct research for Project Z.	On Hold	Mike Johnson
Project Delta	Design new architecture for Project A.	Planned	Sarah Lee
Project Epsilon	Test new software for Project B.	Completed	David Kim
Project Zeta	Develop new software for Project C.	In Progress	Emily White
Project Eta	Implement new hardware for Project D.	On Hold	Chris Brown
Project Theta	Conduct research for Project E.	Planned	Alex Green
Project Iota	Design new architecture for Project F.	Completed	Mia Black
Project Kappa	Test new software for Project G.	In Progress	Noah Grey
Project Lambda	Develop new software for Project H.	On Hold	Olivia Blue
Project Mu	Implement new hardware for Project I.	Planned	Peter Red
Project Nu	Conduct research for Project J.	Completed	Quinn Yellow
Project Xi	Design new architecture for Project K.	In Progress	Rachel Purple
Project Omicron	Test new software for Project L.	On Hold	Sam Green
Project Pi	Develop new software for Project M.	Planned	Tina Blue
Project Rho	Implement new hardware for Project N.	Completed	Uma Red
Project Sigma	Conduct research for Project O.	In Progress	Victor Yellow
Project Tau	Design new architecture for Project P.	On Hold	Wendy Purple
Project Upsilon	Test new software for Project Q.	Planned	Xavier Green
Project Phi	Develop new software for Project R.	Completed	Yara Blue
Project Chi	Implement new hardware for Project S.	In Progress	Zoe Red
Project Psi	Conduct research for Project T.	Planned	Adam Yellow
Project Omega	Design new architecture for Project U.	On Hold	Bella Purple

## The FLX bill is going up big time

# 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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