

Anticipated acquisition by Sabre Corporation of Farelogix Inc.

Final report

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The Competition and Markets Authority has excluded from this published version of the report information which the Inquiry Group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

Contents

	<i>Page</i>
Summary	6
Merchandising solutions	18
Findings	32
1. The reference	32
2. The Parties	33
Sabre	33
Farelogix	33
3. The industry	34
4. The Merger and rationale	50
The Merger	50
Events leading to up the Merger	50
Rationale	51
Sabre's rationale for the Merger	51
Farelogix/Sandler's rationale for the Merger	53
Deal valuation	54
5. Jurisdiction	55
Enterprises ceasing to be distinct	55
Turnover test	56
The share of supply test	57
Conclusion on the creation of a relevant merger situation	85
6. Market definition	86
Introduction	86
Product market	87
Merchandising	87
Distribution	90
Geographic market	103
Conclusion on relevant market definitions	104
7. The nature of competition	105
Parameters of competition	105
Merchandising	105
Distribution	106
Ongoing changes in airline business models	108
Changes in airlines' demand in response to passengers' requirements	108
Suppliers responses to meet airline demands	110
Theories of harm for assessing this Merger	114
Structure of the assessment	115
8. Evidence on current suppliers	117
Overview of suppliers' capabilities and customers	117
GDS providers	118
IT providers	120
Other suppliers of merchandising and distribution solutions	126
Suppliers of merchandising and distribution solutions to major airlines	129
Current suppliers of merchandising solutions and NDC API	129
Airlines' current usage of different distribution channels	131
Analysis of bidding data and market shares	133
Merchandising	134
Distribution	142
Summary of evidence on current suppliers	149

Merchandising	149
Distribution.....	150
9. Evidence from the Parties internal documents.....	152
Introduction	152
Use of internal document evidence.....	152
Overview	153
Sabre’s investments into NDC solutions.....	158
Meaning of ‘NGR and NGD’ within the context of Sabre’s strategy	159
Development of Sabre’s NGR/NGD strategy.....	160
Sabre’s investment into GDS-passthrough and NDC APIs	161
Merchandising solutions	161
The Parties’ submissions.....	162
Sabre’s internal documents	163
Farelogix’s internal documents	180
Summary of Parties’ evidence on merchandising solutions.....	183
Distribution solutions.....	184
The Parties’ submissions.....	184
Sabre’s internal documents	194
Farelogix’s internal documents	202
Farelogix’s growth	208
Sabre’s valuation model	210
Summary of Parties’ evidence on distribution solutions.....	212
10. Evidence from third parties	214
Evidence from competitors	214
Evidence from competitors on merchandising	215
Evidence from competitors on distribution	224
Competitors’ views of the Merger	234
Evidence from airlines.....	237
Airlines’ adoption of the NDC standard and related NDC-compatible solutions	238
Evidence from airlines relating to merchandising	239
Evidence from airlines relating to distribution	245
Preference for a channel-agnostic provider of merchandising and/or distribution solutions	256
Airlines’ views on the Merger.....	257
The Parties’ submissions specific to airline evidence and our response	259
Summary of airline evidence	262
Evidence from travel agents	263
Current use of GDS bypass.....	264
Travel agent views on differences between GDS vs GDS bypass	266
Costs to establish GDS bypass	267
Future use of GDS bypass	267
Travel agent views on travellers using airline.com	270
Views on accessing NDC content.....	270
Travel agents’ views on the Merger.....	272
The Parties’ submissions relating to travel agent evidence	272
Summary of travel agent evidence	274
11. Our assessment of the Merger	276
Introduction to our assessment.....	276
The context of the Merger	276
How we have considered the evidence in this inquiry	278

Relevance of the merger to the UK	286
Assessment of the counterfactual	286
Merchandising	287
Distribution.....	291
Assessment of the competitive effects of the merger.....	293
Merchandising	293
Distribution.....	305
12. Countervailing factors	318
13. Conclusions	346
14. Remedies.....	347
Introduction	347
Framework for the assessment of remedies	347
Overview of remedies options.....	349
Prohibition.....	350
Description.....	350
Views of the Parties and third parties	351
CMA assessment of effectiveness of prohibition	352
Partial divestiture	353
Description of remedy.....	353
Views of the Parties and third parties	353
CMA assessment of effectiveness of partial divestiture.....	353
Behavioural remedies	354
Introduction to behavioural remedies.....	354
Description of the Behavioural Remedies Proposal.....	354
Views of the Parties.....	356
Views of third parties	357
Our assessment of the Behavioural Remedy Proposal	359
Summary of assessment on effectiveness of the Behavioural Remedy Proposal	370
Conclusions on remedy effectiveness.....	372
Relevant customer benefits (RCBs).....	372
Framework for assessment of RCBs	373
Parties' and third parties' views on RCBs	374
Our assessment of RCBs	377
Conclusion on RCBs	380
The proportionality of effective remedies	380
Framework for assessment of proportionality of merger remedies	380
Views of the parties	381
Assessment of proportionality.....	382
Remedy implementation	384
Decision on remedies	385

Appendices

- A: Terms of reference and conduct of the inquiry
- B: Industry background
- C: Transaction background and valuation
- D: Evidence from the Parties
- E: Competitor evidence
- F: Airline evidence

G: Travel agent evidence
H: Bidding and market shares

Glossary

Summary

1. The Competition and Markets Authority (CMA) has found that the anticipated acquisition by Sabre Corporation (Sabre) of Farelogix Inc (Farelogix) (the Merger) may be expected to result in a substantial lessening of competition (SLC) within the supply of merchandising solutions on a worldwide basis and the supply of distribution solutions on a worldwide basis.
2. The CMA has decided to prohibit the Merger in its entirety.
3. On 2 September 2019 the CMA referred the Merger for further investigation and report by a group of CMA panel members (the Inquiry Group) following a phase 1 review. Its terms of reference said that the Inquiry Group must decide:
 - (a) Whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that situation may be expected to result in an SLC within any market or markets in the UK for goods or services.
4. In its phase 1 investigation the CMA found that it is or may be the case that the Merger may be expected to result in an SLC in the supply of merchandising modules on a worldwide basis and distribution services on a worldwide basis. The Inquiry Group therefore focussed on these areas in our inquiry.
5. We were required to come to, and report on, our final decision by 12 April 2020.

The Parties

6. Sabre is a US technology and software provider to the global travel industry. Sabre provides technology solutions to airlines and travel agents. Of relevance to our inquiry, Sabre provides core and non-core Passenger Service System (PSS) IT modules to airlines and operates a Global Distribution System (GDS) which distributes airline content to travel agents for the purpose of booking airline tickets. Sabre's global turnover in 2018 was approximately £2.8 billion.
7. Farelogix is a US technology and software provider that supplies technology solutions for airlines, including non-core PSS modules (with a merchandising module as its main product) and airline content distribution solutions.

8. Farelogix is owned by Sandler Capital Management (Sandler), a private equity fund.

The industry

9. Our inquiry centres on IT solutions for airlines provided as a part of the global booking systems for airlines. For Sabre, supply of access to a booking system platform to travel agents is also relevant although there is no overlap between the Parties in direct supply to travel agents.
10. The main stages in the supply chain to airlines comprise of a retailing function that packages relevant content so that a ticket can be sold to a passenger; the distribution of airline content to travel agents and passengers; and a reservation being made and the booking fulfilled. The Merger pertains to aspects of the retailing function (specifically merchandising solutions) and to the distribution of airline content (ie information on the fare, availability, schedule and other aspects of the airlines' offer to passengers via travel agents).
11. Airlines use IT solutions within their booking system IT stack (the PSS). The PSS is a complex set of systems that manage various tasks in the booking process (eg pricing or determining availability of seats on a flight). This IT system can be broken down into two parts: (i) Core PSS modules and (ii) non-core PSS modules.
12. Core PSS modules are used for central reservation, inventory and departure control, and they are usually bundled together. Non-core PSS modules enable airlines to offer services that are ancillary to the core PSS as well as helping airlines to manage their operations. The modules can, for example, provide IT solutions for data analytics, flight and personnel scheduling, and airline revenue management. Sabre supplies core PSS modules whereas Farelogix does not. Both Parties supply non-core PSS modules.

Merchandising solutions

13. Merchandising modules (or merchandising solutions) are a subset of non-core PSS modules. They allow airlines to create offers for passengers to be able to choose from a range of ancillary services such as extra luggage allowance, the option to upgrade their seat, in-flight purchases, airport parking or meal options. For an airline to sell tickets and ancillary services, the core and non-core PSS need to work with each other. Currently, Sabre's merchandising solutions can only work with Sabre's PSS (ie they are PSS-dependent),

whereas Farelogix's merchandising solutions can work with any PSS (ie they are PSS-agnostic).

Distribution solutions

14. Airlines distribute content directly to passengers via call centres or their own website (referred to as the direct channel and, in the case of websites, airline.com), or indirectly via travel agents (referred to as the indirect channel). Airlines today generally have greater flexibility in offering passengers choices over aspects of their travel experience via the direct channel than the indirect channel. For example, they can allow the passenger to select optional ancillaries. In addition, the airline can make dynamic price changes across any of these optional ancillaries or the seat.
15. The Parties overlap in distribution solutions in the indirect channel. Within this channel, airlines can distribute content to travel agents via a GDS or use technology solutions to bypass a GDS, as described below. Approximately 90% of indirect channel airline bookings are made via a GDS.

GDS

16. The three largest GDSs are Sabre, Amadeus and Travelport, which together account for almost all (85-95%) GDS bookings worldwide.
17. GDSs are two-sided platforms serving both airlines and travel agents. A GDS receives content from an airline's PSS and from third parties (fare and flight schedule information). It then aggregates content across airlines and distributes it to travel agents. Offer creation is the packaging of different aspects of travel including the route, type of seat, schedule, availability and price, so that a ticket can be sold to a passenger. In the indirect channel, when offers are made through a GDS, the GDS (rather than the airlines) are responsible for creating the offer. Airlines have limited visibility over the package offered to the passenger when the offer is created by the GDS.

Direct connect, GDS bypass and GDS pass-through

18. Although the large majority of booking volumes from travel agents are via a GDS, not all booking volumes are. Airlines can distribute content to travel agents outside GDSs in different ways. They can establish 'direct connects', which are one-to-one connections between an airline and a travel agent, using an application programming interface (API). They can also establish connections using the API with an aggregator, which combines content across airlines and distributes it to travel agents. Both types of connections are

sometimes referred to as 'GDS bypass'. GDS bypass gives airlines more control over the offer creation process but provides fewer post-booking fulfilment functions to both airlines and travel agents (eg amending or rebooking tickets) than the GDSs. In 2018 bookings made via GDS bypass accounted for fewer than 5% of worldwide passenger bookings and represented around 5-10% of bookings in the indirect channel.

19. Using an API, airlines can also distribute content via a GDS but without requiring offer creation from the GDS. The Parties refer to this as 'GDS pass-through'. The use of GDS pass-through has been limited to date.
20. Some airlines build and manage APIs in-house, while others use third-party solutions such as those provided by Farelogix, Amadeus, OpenJaw and Datalex.

New Distribution Capability and the future of the industry

21. The airline industry is undergoing a period of lengthy and complex technological changes. Today GDSs still distribute most content using a messaging standard which is decades old and has substantial limitations in its ability to handle rich digital content.
22. In 2012, the International Air Transport Association (IATA) – a trade association for airlines – launched the New Distribution Capability (NDC) standard to address the industry's current limitations. The NDC standard is a computer messaging standard. Farelogix, among others, was instrumental in its development. Retailing and distribution solutions compatible with the NDC standard (NDC solutions) allow for dynamic, personalised offers to be created by airlines and for this rich content to be communicated and accessed by travel agents in real-time.
23. Airlines' business strategies show that they wish to exercise greater control over their offers. We have been told in our inquiry that airlines wish to differentiate their offers in response to passenger demands for more choice, and to competition from other airlines. NDC solutions provide airlines with the means to do so. By having the means to price flights in real time and to update flight schedules in real time, in addition to the capacity to create bundles of offers across a range of passenger choices, airlines will be able to undertake the offer creation function themselves rather than to rely on GDSs (who in turn need to rely on other third parties for fare and schedule information). The result of adopting the NDC standard will be that many more passengers who book via a travel agent will be able to personalise their own travel experience to a greater extent than they can today.

24. The majority of airlines told us that they have a strategy to adopt the NDC standard and to use NDC solutions (although progress in doing so varies), with merchandising capabilities considered to be particularly important. This has given rise to demand for suppliers with technologies and business models which provide an alternative to the GDSs', as well as competitive responses from GDSs. Each of Sabre, Amadeus and Travelport are now working on developing the requisite capabilities to use the NDC standard in their businesses. Given the implementation of the NDC standard is still relatively nascent, this process appears to have much further to evolve in the future.

Jurisdiction

25. We have found that arrangements are in progress or in contemplation which, if carried into effect, will lead to enterprises ceasing to be distinct.
26. The turnover test in section 23(1)(b) of the Act is not met. We have therefore considered the share of supply test. The share of supply test is satisfied if the merging enterprises both either supply or acquire goods or services of a particular description, and will, after the merger, supply or acquire 25% or more of those goods or services in the UK.
27. The Parties submitted that the CMA does not have jurisdiction over the Merger as the share of supply test has not been met.

Supply of goods or services of a particular description

28. We consider that the Parties both supply IT solutions to UK airlines for the purpose of airlines providing travel services information to travel agents, to enable travel agents to make bookings (the Relevant Description of Services). Sabre supplies the Relevant Description of Services through the provision of its GDS to UK airlines. Farelogix supplies the Relevant Description of Services through its FLX Open Connect (FLX OC) and FLX NDC API (collectively referred to as the FLX Services) to one UK airline, British Airways, in respect of one type of itinerary, interline segments. We consider that the Farelogix supply of the FLX Services to British Airways is underpinned by three commercial arrangements:
- (a) The existing service agreement between Farelogix and American Airlines, under which Farelogix supplies the FLX Services to American Airlines, and must support and facilitate itineraries with American Airlines' interline partners (the Direct Connect Services Agreement);
 - (b) the interline arrangement between American Airlines and British Airways which functions in the context of the joint revenue and cost sharing

agreement with American Airlines which, in turn, prompted British Airways to take steps to enable the sale of its interline segments through the FLX Services; and

- (c) the existing 'FLX Interline Distribution Agreement' between Farelogix and British Airways entered into by British Airways to enable British Airways to use and receive supply of the FLX Services with respect to interline segments (the British Airways Agreement).
- 29. We consider that British Airways uses and receives supply of the FLX Services in order to enable British Airways to market interline segments in the context of its interline arrangement with American Airlines.
- 30. The British Airways Agreement provides for the creation of a technical connection to enable communication between British Airways' PSS and Farelogix. We consider that this technical connection enables British Airways to provide travel services information and to market its interline segments through the FLX Services in the context of its interline arrangement with American Airlines and, thereby, to use and receive supply of the FLX Services. It also shows Farelogix's and British Airways' intentions respectively, to supply and receive supply of the FLX Services with regard to interline segments in the context of the interline arrangement with American Airlines. We consider that the British Airways Agreement and supporting contemporaneous documents provide clear evidence that British Airways took active and conscious steps, and made a deliberate choice, to use and receive supply of the FLX Services. Therefore, British Airways effectively made a procurement choice in favour of the FLX Services for its interline segments.
- 31. We consider that:
 - (a) The Direct Connect Services Agreement contemplates and is intended to operate in the context of interline arrangements (including the American Airlines' interline arrangement with British Airways).
 - (b) The interline arrangement in place between American Airlines and British Airways is necessary context to British Airways taking steps to enable the sale of its flights through the FLX Services.
 - (c) The terms of the British Airways Agreement and associated documents show a clear and active choice by British Airways to enable it to use and receive supply of the FLX Services to be able to market interline segments in the context of its interline arrangement with American Airlines and that British Airways had regard to its competitive alternatives in doing so.

32. We therefore consider that Farelogix directly supplies the Relevant Description of Services to British Airways.

Supply 25% or more of those goods or services in the UK

33. We consider that the 25% threshold is met on the basis that Sabre's share alone exceeds 25% of revenue from the provision of the Relevant Description of Services to UK Airlines, and we have identified some increment from Farelogix's supply of the Relevant Description of Services to UK Airlines.
34. In this case, we consider that both parties derive value from the supply of the Relevant Description of Services to UK Airlines. For the purposes of the share of supply test, we have measured the value derived from the supply of the Relevant Description of Services to UK Airlines by considering revenues received and receivable for all providers of such services.
35. We have identified two possible indicators of such value regarding supply of the FLX Services by Farelogix to British Airways, namely part of the fee received by Farelogix from American Airlines which is intended to cover the FLX Services provided in relation to British Airways Interline Segments, and the fee receivable directly from British Airways under the British Airways Agreement. In 2018 only a small number of tickets including a British Airways interline segment were processed through the FLX Services and the revenues received and receivable from these bookings is therefore small. However, the Act does not require a minimum increment.

Conclusion on jurisdiction

36. We have found that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

Market definition

Merchandising

37. We have found that a relevant market to assess the impact of the Merger is the supply of merchandising solutions to airlines on a worldwide basis. Merchandising and non-merchandising modules are not demand-side substitutes, as they serve distinct purposes. There is no supply-side substitutability between merchandising and other functions. A PSS supplier that is not active in merchandising cannot readily extend its capability in other non-core PSS modules to start supplying merchandising functions to airlines quickly.

38. In the competitive assessment, we have regard to the similarities and differences between the solutions of the Parties and their competitors and, in light of airlines' evolving business needs and suppliers' ongoing plans to meet these, how their offerings might change in the future.

Distribution

39. The Parties are active in the supply of distribution solutions to airlines. While they each operate different business models using different technologies, they both facilitate the distribution of airline content to travel agents and passengers.
40. We have found that GDSs compete with distribution solutions that enable GDS bypass (eg those based on the NDC API provided by Farelogix) in the same product market. Evidence from airlines indicates that while GDSs will remain a significant distribution channel, there is a growing degree of adoption of GDS bypass and reducing use of GDSs generally. Documents from distribution solution suppliers show that GDS bypass is expected to grow and is seen as a threat to the GDSs. An important factor is that GDS bypass allows airlines to take greater control of their offer creation and distribution strategies.
41. However, we found that the suitability of GDSs and GDS bypass is influenced by the type of travel agents consuming the content and, related to this, the complexity of passenger requirements. The evidence indicates that GDS bypass is mainly used for distribution of content to online travel agents (OTAs) who typically serve passengers with simpler itinerary and fulfilment requirements. It is also used by some TMCs and traditional bricks-and-mortar (B&M) travel agents, but to a significantly lesser degree currently.
42. Although it is a direct (rather than an indirect) channel, we consider that airline.com is an important part of an airline's distribution strategy alongside GDS (and increasingly GDS bypass), and that it exercises a constraint on the GDS. However, we found that it plays a different role to GDS bypass in competing with the GDSs. On balance, our view is that it is appropriate to assess the direct and the indirect channels in the same product market, but we further consider the differentiation between these channels in the competitive assessment.
43. On the basis of the above, we have concluded that a relevant product market for assessing this Merger is the supply of distribution solutions to airlines on a worldwide basis. This market includes the services provided by GDSs, distribution solutions based on NDC API (including GDS bypass) and

airline.com, for the sale of tickets and ancillary content through travel agents and/or to passengers.

Nature of competition

Merchandising

44. Airlines traditionally procure merchandising solutions either as part of a bundle with its core PSS, or as a separate module from a third-party provider and integrate it into the core PSS. Procurement typically takes place through a bidding process, although this is not always the case. Airlines also procure merchandising solutions through bilateral negotiations with suppliers. Suppliers of merchandising solutions compete for airlines by offering higher quality products and more favourable commercial terms (eg price) generally and, in part, by building on existing reputation (track record) and/or relationships.

Distribution

45. In the supply of distribution solutions, competition takes place in multiple forms reflecting differentiated business models in the marketplace. GDSs are two-sided platforms connecting airlines with travel agents. Price is a parameter of competition on both sides, and a GDS' revenue is determined by the difference between the booking fees they receive from airlines and the incentives they pay travel agents. GDSs set booking fees and incentives to balance the demands of the two sides.
46. GDSs face pricing pressure from other channels including GDS bypass and airline.com and the option of switching volumes to these non-GDS channels are used by airlines as levers in negotiations. GDSs compete with one another for travel agents on price (by offering higher incentives), on quality of the content available on the GDS (eg by providing more favourable air fares and wider range of offers) and more generally on the level of services.
47. While Sabre and other GDSs compete for both airlines and travel agents, Farelogix and other suppliers of distribution solutions based on the NDC API compete on the airline side only. Airlines decide how to use these solutions to connect to travel agents and passengers and these suppliers compete with GDSs, and with one another, by offering reliable innovative technology and lower booking fees to reduce airlines' distribution costs.

48. Airline.com allows airlines to distribute content to passengers directly, rather than through a platform or technology, to travel agents and then indirectly to passengers.

Theories of harm

49. Theories of harm describe the possible ways in which an SLC could arise as a result of a merger. A theory of harm provides the framework for our analysis of the competitive effects of a merger.
50. In this case we have assessed whether the Merger gives rise to an SLC (i) in the supply of merchandising solutions, and (ii) in the supply of distribution solutions, both on a worldwide basis. These are our two theories of harm and are categorised as horizontal unilateral effects.
51. Our assessment considered whether the Merger would lead to slower rates of innovation and product development, reduced product range or quality (compared to the situation without the merger), and in particular innovation in merchandising and/or distribution solutions compatible with the NDC standard. We also considered whether the Merger would be likely to lead to higher prices and/or worse terms for airlines purchasing existing merchandising and distribution products.

Assessment of the competitive effects of the merger

The relevance of the Merger to the UK

52. The Parties operate at a global level. The UK has major airline, travel agency and passenger activity and we consider that the Merger may have a significant impact on airlines operating in the UK, and therefore on the price, quality and range of services they provide to UK passengers. This is because the Merger could potentially reduce the availability of, and pace of ongoing innovation in, NDC merchandising solutions and NDC distribution solutions. This would affect the supply options available to all airlines (including UK airlines), and the scope for UK passengers to have greater choice in and control over their travel experiences.
53. The scale of the services supplied by the Parties in the UK, and therefore the scope for a UK impact of the Merger, is indicated by the fact that:
- (a) Sabre was responsible for millions of bookings via travel agents in the UK in 2018;

- (b) Farelogix provides merchandising and/or distribution solutions to a number of major airlines flying large numbers of passengers in and out of the UK; and
- (c) UK airlines paid booking fees of around £170 million in the indirect channel in 2018.

The counterfactual

- 54. The counterfactual is an analytical tool used to help answer the question of whether a merger may be expected to result in an SLC. It does this by providing the basis for a comparison of the competitive situation in the market with the merger against the most likely future competitive situation in the market absent the merger.
- 55. We note that the effects of the Coronavirus (COVID-19) will likely create significant uncertainties that will be felt across the travel industry as a whole. The Parties have not made representations on how this may impact the assessment, nor have they submitted that either Sabre or Farelogix will exit the markets, or become substantially weakened competitors relative to their rivals as a result. We have seen no evidence that there will be a disproportionate impact on Sabre or Farelogix relative to the rest of the industry. It is important to preserve competition in markets and we considered that despite the significant disruption that Coronavirus (COVID-19) will create to the travel industry, it does not change our assessment of the consequences of the Merger for competition.

Merchandising solutions counterfactual

- 56. We have considered Sabre's strategy documents which show that it has a plan to become a stronger merchandising provider than it is currently. It has a strategic incentive to enhance its merchandising capabilities, in particular through the development of a standalone, NDC-compatible and PSS-agnostic merchandising solution to enable it to sell to all airlines irrespective of whether they use Sabre's core PSS.
- 57. We assessed whether it is likely that Sabre would have developed an NDC-compatible and PSS-agnostic merchandising solution absent the Merger. We have considered evidence on Sabre's intention, incentive and ability including when this development would likely have taken place.
- 58. Sabre's strong incentive and intention to develop an NDC enabled, PSS agnostic merchandising product is established by the following evidence.

- (a) First, Sabre has confirmed its need and intention to improve its merchandising capabilities. It told us that its Next Generation Retailing and Next Generation Distribution strategy (which includes a merchandising solution) would be PSS-agnostic and that its intention is to supply a PSS-agnostic merchandising solution.
 - (b) Second, we have found that a key driver for Sabre to develop new retailing capabilities including merchandising is to retain some of the value of its GDS which might be at risk as offer creation functions shift away from it to airlines. With the emergence of new retailing models in an environment based on the NDC standard, airlines are increasingly able to undertake the offer creation function themselves. This represents a threat to Sabre to which it is likely to respond.
 - (c) Third, developing merchandising capabilities would strengthen Sabre's core PSS and non-core PSS business. It would mitigate the risk of it losing PSS business to its competitors with a stronger merchandising component, particularly given that an effective merchandising offering is of growing importance when competing for broader NDC retailing bundles. Sabre would be able to compete to supply merchandising solutions to airlines which do not use Sabre's core PSS, which represent the majority of the market.
 - (d) Fourth, Sabre highlighted the importance of having PSS-agnostic merchandising capability in its announcements to investors and analysts on the rationale for the Merger
59. We believe that Sabre would have had the ability to realise its intentions and develop a credible PSS-agnostic merchandising solution within three to five years absent the Merger. Sabre's internal documents, and submissions to us, show that it has already made progress in developing its NDC-enabled next-generation retailing offer, which is intended to include a PSS-agnostic merchandising solution.
60. We have therefore concluded that, absent the Merger, Sabre had the clear intention, incentive and ability to introduce an NDC-compatible PSS-agnostic merchandising product and would have been likely to do so in the next three to five years.
61. Farelogix is an established provider that continues to be successful in bidding for, and retaining, merchandising opportunities. It has recently won or renewed, or has been negotiating, significant contracts with airlines. Farelogix

marketing materials show that it continues to invest in improving its merchandising capabilities.

62. We have concluded that absent the Merger Farelogix would continue to be a strong provider of merchandising solutions and would have continued to make product improvements and compete effectively for new customers.

Distribution solutions counterfactual

63. The evidence we have assessed shows that Sabre's competitive position relative to the other GDSs has remained broadly unchanged in the past few years.
64. We have found that Sabre's strategy documents also show that it plans to develop distribution capabilities that are compatible with the NDC standard in response to the threat to the value of its GDS business. We consider that Sabre has the ability to implement its strategy and has already made progress in developing its NDC distribution solutions.
65. As a result, we consider that absent the Merger Sabre would likely continue its investment plans in NDC distribution solutions, including GDS pass-through and NDC API solutions. It would be likely to remain one of the three major GDS providers and, as such, one of the three major distributors of airline content.
66. Our analysis of the most recent bidding and customer data showed that Farelogix continues to compete for NDC distribution solutions, and that it has won or renewed significant contracts with airlines.
67. We have considered that absent the Merger, Farelogix would have continued to be a leading provider and developer of NDC distribution solutions.

Our assessment of the competitive effects of the merger

Merchandising solutions

68. Sabre is not a significant provider of merchandising solutions today and has not been competing closely with Farelogix in the provision of these services. Sabre's existing merchandising solutions are only available to its core PSS customers and for use on airline.com, whereas Farelogix offers a PSS-agnostic solution that can be integrated into any airline's IT systems. Sabre has a low market share in merchandising as a result.

69. However, we consider that Sabre's current position does not reflect its competitive strength in merchandising in the absence of the Merger. As set out in our findings on the counterfactual above, we consider that Sabre would be likely to become a significant competitor absent the Merger. There are a number of factors that inform its ability to do this, including its ability to integrate its merchandising solution with its core PSS, its relationship with over 400 airlines through its GDS service, its significant resources, deep industry knowledge and global sales force and operational support.
70. Farelogix is a strong established provider of merchandising solutions. Its effectiveness as a competitor is enhanced by the fact that:
- (a) It has a proven track record of delivering merchandising solutions at scale to a range of large and smaller airlines across all tiers, and experience in integrating with all major PSSs;
 - (b) it has a strong reputation throughout the industry, being widely perceived by Sabre, other competitors and airlines to be the leading provider of merchandising solutions in terms of functionality and innovation;
 - (c) it is one of only very few suppliers that currently offer a PSS-agnostic and standalone solution, commercially independent of a GDS and PSS, focuses on serving airlines without having to also consider the impact on any GDS/PSS business, and with this distinct market positioning valued by many airlines; and
 - (d) it offers its merchandising solution alongside a suite of retailing and distribution solutions, so it can engage in cross-selling to its customers.
71. In terms of other competitors, Amadeus is likely to continue to be a strong provider of merchandising solutions. It has a large established customer base, in part reflecting its position in core PSS, and it has been successful in winning recent contracts. Most competitors, including the Parties, monitor and identify it as a main competitive threat, and nearly all airlines consider it to be one of the leading providers of merchandising solutions. It also continues to invest in making product improvements.
72. The remaining providers currently exert some constraint, but are much weaker competitors than Farelogix. They have a limited track record based on their smaller existing customer base, and less well-established reputations. The most significant of these competitors, Datalex, has been facing significant financial challenges that were publicised in 2019, which are affecting its ability to compete.

73. While some of these competitors have intentions to expand, we have material doubts over the likelihood of these suppliers competing to the same extent as Sabre. None has the combination of a clear intention, a strong incentive and the ability to expand, which we have found for Sabre.
74. We have also considered the evidence that many airlines have expressed concerns about the Merger's impact on competition and innovation in merchandising.
75. We therefore have found that should the Merger proceed it is likely that the merged firm and Amadeus would be the two most significant competitors in merchandising while, absent the Merger, Sabre would become a third significant competitor alongside Amadeus and Farelogix. When considered in aggregate, we do not consider that the constraint from other suppliers over time will be sufficient to prevent a substantial loss of competition arising from the Merger as a result of the removal of Sabre. We also consider the Merger would likely lead to some further loss of competition as a result of Farelogix no longer being independent from a GDS/PSS.
76. We have therefore found that the Merger may be expected to result in an SLC in the supply of merchandising solutions, subject to any countervailing factors.
77. This SLC would be likely to manifest itself through a loss of innovation in merchandising solutions, resulting in reduced customer choice, fewer new features and upgrades being released more slowly. This loss of competition may also result in higher prices as a result of the loss of a significant competitor in merchandising procurement processes, as Sabre and Farelogix would no longer compete independently against each other.

Distribution solutions

78. The Parties submitted that they are not close substitutes and do not compete in the same markets. Farelogix competes for NDC APIs; Sabre competes in the GDS space. Moreover, the Parties said that Farelogix is not a significant constraint given its small current market share. They told us that Farelogix is unlikely to grow its GDP bypass volumes significantly because it is prohibitively expensive to travel agents to implement GDS bypass solutions.
79. We consider that Farelogix is a differentiated competitor to the GDSs. It is focussed solely on serving airlines, enabling them to control how to distribute NDC content, in contrast with the GDSs' two-sided model which balances the demands of airlines and travel agents. We recognise this differentiation means that the GDS bypass solution Farelogix provides is not a perfect substitute for the GDSs, as many travel agents value the GDSs' wider

functionality such as the ability to handle complex itineraries involving multiple airlines and support comparison shopping.

80. We have considered travel agent evidence, which does not support the Parties' view that GDS bypass is 'prohibitively expensive' to travel agents. We found that GDS bypass offerings, including those provided by Farelogix, appear to be well-suited to reaching OTAs and other travel agents who have high technological capability, including some TMCs and larger B&M agents for some of the volumes currently handled by GDSs. Collectively these represent a substantial share of Sabre's travel agent bookings.
81. While GDSs will continue to play an important role for travel agents, we consider that GDS bypass is an effective alternative to GDSs for a substantial part of their airline customer base and provides airlines with a credible outside option as leverage in negotiating commercial terms, including fees, with the GDSs.
82. To mitigate the threat of losing revenue to GDS bypass, GDSs have responded by developing new capabilities (eg NDC API or GDS pass-through) to allow airlines to control offer creation and distribute content. Therefore, any loss of competition between GDSs and GDS bypass distribution is likely to have a material impact on competition.
83. We recognise that Farelogix's current market share is much smaller than those of Sabre, other GDS providers and airline.com. However, we consider that the importance of the competitive constraint imposed by Farelogix is better demonstrated by its role in driving the GDSs to enhance their offering to airlines, in particular by adopting NDC and enabling GDS pass-through.
84. The evidence we have seen shows that, even if GDS bypass were to remain a relatively small part of the distribution market (as we expect), this would only be because it has played a significant role in pushing the GDSs themselves to improve services such as GDS pass-through so as to prevent the loss of bookings to other channels. We expect Farelogix would continue to perform this role absent the Merger. Without Farelogix, the ability of airlines to pressure the GDSs to innovate and develop in this sphere would be diminished.
85. Moreover, as the leading provider of NDC API, Farelogix is well placed to capture a significant share of any increased GDS bypass volumes that are forecast. Specifically, we have found that Farelogix:
 - (a) Has more NDC API customers than any of its non-GDS rivals;

- (b) supplies a range of airlines, including some of the largest network carriers operating in the UK and in the world; and is the most successful supplier to the IATA's NDC Leaderboard who are industry leaders in migrating to NDC solutions;
 - (c) has a reputation among airlines of offering a high quality NDC API product;
 - (d) has shown it can rapidly grow its share of passenger volumes for airlines which have already adopted its technology;
 - (e) is expected to grow by both Farelogix itself and Sabre.
86. In addition, in our view the competitive strength of Farelogix, its ability to grow further and its market influence, should not only be assessed in terms of measures such as current volumes and customer numbers, but in the light of other evidence as well. Through its wider commercial activities, Farelogix has existing customer relationships, a track record of delivering to large airlines, and a reputation as an innovator in the airline industry. We found that both existing and potential customers of Farelogix and competitors (including Sabre) all considered these to be important and to strengthen Farelogix's position as a competitor. We consider that Farelogix's independence from the GDSs, valued by the airlines, also acts as a factor in the competitive constraint Farelogix places on the GDSs.
87. We have also taken into account the fact that in our view – as reflected in the Parties' documents – the threat Farelogix poses to Sabre in distribution is enhanced by its strong position in merchandising. The use of Farelogix's merchandising solution drives a need for NDC-compatible distribution. It therefore influences changes in the airlines' preferences over distribution channels and increases the risk that they may move some volumes away from Sabre, which has limited ability to distribute this NDC content, and towards GDS bypass options, which do have this ability. Much of this business at risk could go to Farelogix's own distribution solution, particularly for airlines who may value its ability to offer this alongside its merchandising solution.
88. We found that Amadeus, another GDS, is currently the most significant other competitor. Travelport was the first GDS to manage the booking of flights by a travel agent using the NDC standard, but it does not currently supply NDC API. Other non-GDS competitors, including OpenJaw and Datalex, offer some, but not all, of the attributes offered by Farelogix. We have also found that other competitors offer a much weaker constraint. These are IBS, RAMAX, DXC and NDC Exchange.

89. Our assessment is that competitors are at varying stages of their development of NDC-compatible distribution solutions. We have assessed whether the expansion of these competitors would be timely, likely and sufficient to offset any loss of competition as a result of the removal of Farelogix. Of the competitors with a stated intention to continue investing in NDC distribution capability Amadeus is the most advanced, while Travelport will likely continue its position as a GDS, including the development of NDC distribution using GDS pass-through. Of the other non-GDS competitors, we have considered internal documents and other evidence relating to Datalex, OpenJaw, ITA, Travelfusion and PROS. We do not think it is likely that any of these will expand in NDC distribution solutions to the point of providing a strong competitive constraint on the merged entity and Amadeus.
90. We have found that self-supply by airlines of NDC APIs imposes some constraint on the Parties. We recognise that several large or mid-size airlines do self-supply, but some other large airlines instead choose to outsource because of the significant costs involved, or the lack of financial resources and expertise to self-supply. Self-supply is unlikely to be an option for smaller airlines. In any event, even if self-supply would protect some larger airlines from price increases post-merger, the fact that prices are individually negotiated means this would not protect the significant number of other airlines who do not have this option.
91. We have found that the market share and airline evidence confirms that airline.com plays an important role in airlines' overall distribution strategies. However, we considered that airline.com plays a different role to GDS bypass in competing with the GDSs for the following reasons:
- (a) airline.com is a less effective alternative for airlines to distribute content to passengers with complex requirements (particularly the more sophisticated corporate travellers who use TMCs), which are primarily served by GDSs.
 - (b) airline.com share of bookings has been stable at around 50% on a global level. Its penetration may have reached full potential for some airlines. While some other airlines may be able to continue to grow airline.com, their ability to do so does not protect other airlines that have exhausted this option.
 - (c) Airlines told us that they increasingly wish to make differentiated and personalised offers available across all sales channels, including within the indirect one, and the ability to do this using Farelogix's solutions cannot be replaced with airline.com.

- (d) Although airline.com offers some constraint on GDSs via its impact on OTA bookings (incentivising GDSs to make sure they can offer relevant airline content to OTAs), the option of GDS bypass as a choice for OTAs adds to that pressure. Thus, competition from airline.com may drive OTAs to adopt GDS bypass, which in turn may drive GDS pass-through. We consider that the Merger would remove one option (ie Farelogix) for travel agents to obtain content outside the GDS to compete against airline.com.
92. Airlines can use private channel arrangements to distribute some content to some travel agents that is not widely available to other travel agents, thereby differentiating content by travel agents. While we acknowledge that this can exercise some pressure on Sabre for those few airlines that have used this arrangement, we note that the airlines that have agreed private channel arrangements with Sabre also use GDS bypass. We consider the option of GDS bypass may in turn provide additional pressure for GDSs to agree to a private channel agreement with an airline.
93. Many airlines expressed concerns about the Merger's impact on distribution. In particular, airlines noted that the Merger would remove a successful and growing innovator that has been an alternative to the GDSs, and as a result increase Sabre's (and other GDS) market power and set back progress in developing NDC solutions. Travel agents were on the whole less concerned; a small number expressed a concern, some told us that it could be positive while most others were neutral.
94. On the basis of the evidence considered above, we have found that the Parties face a limited number of constraints, in particular from other GDSs, and to some extent from a few NDC API suppliers and airline.com, in the market for the supply of distribution solutions.
95. We consider that as Farelogix is differentiated from the GDSs and airline.com, it has played and is likely to continue to play a significant role in the market for distribution solutions that is valued by airlines and which has driven the GDSs to invest in NDC distribution capabilities including GDS pass-through. In particular, Farelogix's independence from the GDSs acts as a factor in the competitive constraint Farelogix places on the GDSs. We also take into account the fact that in our view the threat Farelogix poses to Sabre in distribution is enhanced by its strong position in merchandising. We expect that, absent the Merger, Farelogix would continue to play a significant role in constraining the GDSs and other competitors, and its loss would result in a substantial lessening of competition which would not be prevented by the presence of other suppliers or types of constraint.

96. We have therefore concluded that the Merger may be expected to result in an SLC in the supply of distribution solutions to airlines, subject to any countervailing factors.
97. This loss of competition would be likely to lead to a reduction in innovation in distribution solutions, particularly in terms of the development of GDS pass-through capabilities, to the detriment of all airlines and travel agents across the sector. In the short term, it may also result in the GDSs charging higher prices than they otherwise would do to some airlines, due to a reduction in airlines' ability to redirect volumes away from the GDSs to Farelogix's GDS bypass as an alternative channel, particularly because one of the reasons for airlines to adopt GDS bypass is to reduce their distribution costs.

Countervailing measures

Efficiencies

98. The Parties submitted that the Merger would result in rivalry-enhancing efficiencies which would offset any potential competition concerns.
99. They submitted that, by offering a PSS-agnostic merchandising module, the Merger would allow Sabre to offer a more compelling solution to airlines which use another provider's core PSS. The merged entity could therefore compete more strongly than can Sabre currently, especially against Amadeus. The Parties also submitted that the merged entity could compete in NDC retailing more strongly as Sabre's acquisition of Farelogix's merchandising would improve the offerings of both Sabre and Farelogix.
100. We consider that, absent the Merger, Sabre would have a strong commercial incentive, and the ability, to develop its own PSS-agnostic merchandising module and the Merger is not the only means through which Sabre would be able to offer a PSS-agnostic merchandising module as part of its overall offer to airlines.
101. Moreover, we do not consider that the Merger is likely to enhance rivalry since airline customers are currently able to procure Farelogix's merchandising solution irrespective of who supplies their core PSS and would, absent the Merger, be able to procure Sabre's own NDC merchandising solutions.
102. The Parties submitted that the Merger would accelerate the delivery of NDC content through the GDS, increasing competition amongst GDSs and competition amongst airlines.
103. The evidence submitted by the Parties provides insufficient support that these changes would be expected to result in an increase in rivalry compared to the

counterfactual, or that potential efficiencies are merger-specific and timely, likely and sufficient to prevent the SLCs that we have identified from arising.

Countervailing buyer power

104. Neither the Parties nor third parties made submissions that airlines have countervailing buyer power as relates to merchandising solutions.
105. In distribution solutions, the Parties told us that airlines have a significant degree of countervailing buyer power as a result of their ability to use one or both of GDS and NDC solutions depending upon which solution is best to reach their travel agents; to divert volume to the direct channel to be distributed directly to travellers; and to develop their own in-house products to compete if they are not satisfied with the options available to them.
106. We have found in our competitive assessment that some airlines value the option of direct connects and that Farelogix is a significant provider in these. We consider that Sabre's ownership of Farelogix is likely to result in a reduction in airlines' options.
107. We have found that, although airline.com plays an important role in airlines' overall distribution strategy and imposes competitive pressure on the GDS, its constraint on the merged entity is likely to be limited. While we recognise that airline.com provides some leverage for airlines, we do not consider that the use of airline.com is sufficient to afford airlines countervailing buyer power, such as to offset the impact of the Merger, with respect to distribution solutions.
108. In terms of airlines' ability to self-supply, we have found that some but not all large airlines have developed, or are developing, their own NDC APIs. However, some airlines self-supplying will not protect other airline customers from the adverse effects of the Merger. We found that self-supply in distribution is an unlikely option for small airlines which may find the technical challenges and costs prohibitive.
109. We have concluded that there is insufficient countervailing buyer power to prevent the SLCs that we have identified.

Barriers to entry and expansion

Merchandising solutions

110. The Parties submitted that there are relatively low barriers to entry in the supply of non-core PSS merchandising modules and that these products can be developed by any IT company.

111. They submitted that there are a number of providers currently in the market for merchandising modules, including Amadeus, Datalex, ITA, OpenJaw, PROS and that IATA was continually certifying and adding IT providers to its registry as order management capable. We have assessed these providers including their expansion ambitions in our competitive assessment.
112. Third party views expressed to us regarding development timescales indicate that new entry is unlikely to be timely, likely and sufficient to prevent either of the SLCs in this case.
113. Competitors to the Parties consistently told us that the importance of merchandising modules to airlines means that airlines are unlikely to switch to providers that do not have a proven track record and the ability to demonstrate the reliability of their solutions.
114. In our view, the high costs and lengthy development processes described by third parties demonstrate that there are significant challenges in developing a merchandising module and becoming a credible provider of merchandising solutions. These challenges are likely to be most significant for new entrants, even those that are well resourced, and particularly significant for any provider seeking to enter from another industry.
115. The evidence shows that customer perceptions of service providers are an important consideration in their decision-making process when awarding contracts. In our view, it is reasonable to expect that it would take a new entrant, or an existing smaller supplier, time to build its reputation and record for reliability, and that the obstacle of gaining a first major airline customer, and a track record in supporting that customer, is likely to represent a significant barrier.
116. However, even if a rival could enter or expand in competition to the merged entity, customers of the Parties have told us that switching providers is a complex and expensive task. We note, however, that some airlines have changed providers in the recent past. The evidence indicates that the cost of switching can be overcome but may represent a challenge for certain providers, and for new entrants in particular, which have yet to establish relationships with large airlines and have yet to build a reputation for reliability. On that basis, we consider that the cost of switching merchandising provider might further reduce the timeliness, likelihood and sufficiency of new entry and/or expansion to prevent an SLC from arising

Distribution solutions

117. The Parties submitted that barriers to entry and expansion in distribution solutions are low and that it is relatively simple to build an NDC API which can

be used to distribute airline content. The Parties told us that, while GDSs benefit from significant network efforts, there were no specific or general technology barriers which must be overcome in order to compete for the provision of NDC API connections.

118. The Parties also told us that the supply of NDC APIs was becoming increasingly commoditised and submitted that this was clear from the large number of firms on the IATA registry of firms that are capable of creating an NDC API.
119. We consider that the evidence suggests that the introduction of the NDC standard has lowered barriers to entry in the supply of NDC APIs but that the development of competitive capabilities nonetheless requires specialist expertise and can require significant upfront investment. While these barriers are not insurmountable, we note the limited success of third party suppliers in winning significant contracts to date.
120. Competitors told us that the investment required to develop NDC APIs was significant.
121. The large majority of airlines cited difficulties in building NDC APIs. This indicates that, while barriers may be lower than in the past, there remain difficulties in developing solutions to compete effectively with the market leaders. All airlines that responded to our questionnaires (including those airlines that have developed, or are developing, their own NDC APIs) told us that building NDC APIs is a complex process involving significant challenges, costs and requires specific expertise. Most suppliers indicated that the competitive constraint from self-supply is limited.
122. Several airlines also told us that incentive payments to travel agents and parity clauses in GDS contracts acted as significant barriers to entry for providers seeking to distribute content directly to travel agents via NDC APIs. This is because such clauses may place restrictions on incentivising or promoting the use of non-GDS distribution channels, restricting the ability of new entrants and expansion candidates to grow, and make it more difficult for entrants and expansion candidates to compete on content with GDS providers. In our view, the prevalence of contractual parity clauses represents a significant challenge that may be difficult for any new entrant or expansion candidate to overcome in order for it to effectively constrain the merged entity.

Conclusion on barriers to entry and expansion

123. We have found that the markets for airline merchandising and distribution solutions are characterised by high barriers to entry and expansion.

Conclusions on SLC assessments

124. We have concluded that the anticipated acquisition by Sabre of Farelogix, if carried into effect, will result in the creation of a relevant merger situation.
125. We have concluded that the Merger may be expected to result in an SLC in the supply of merchandising solutions to airlines on a worldwide basis including in the UK.
126. This SLC would manifest itself through a loss of innovation in merchandising solutions, resulting in reduced customer choice, fewer new features and upgrades being released more slowly. While the nature of innovation means that these effects may take some time to emerge in full, it also means they are likely to have a particularly substantial and long-lasting detrimental impact on customers. Moreover, there would be a much more rapid and immediate impact on the competitive process – namely the ongoing rivalry between firms driving each other's day to day investment decisions. Sabre would immediately abandon its independent effort to develop its merchandising solution, which would in turn reduce the competitive threat faced by rivals (who monitor each other closely) and who would likely cut back their own innovation efforts as a result. This loss of competition will also likely result in higher prices as a result of the loss of a significant competitor in merchandising procurement processes, as Sabre and Farelogix would not compete against each other independently.
127. We have concluded that the Merger may be expected to result in an SLC in the supply of distribution solutions to airlines on a worldwide basis including in the UK.
128. This loss of competition would lead to a reduction in innovation in distribution solutions, particularly in terms of the development of GDS pass-through capabilities by the GDSs, to the detriment of all airlines and travel agents across the sector. In the short term, it may also result in the GDSs charging higher prices than they otherwise would do to some airlines, due to a reduction in airlines' ability to redirect volumes away from the GDSs to Farelogix GDS bypass as an alternative channel, particularly because one of the reasons for airlines to adopt GDS bypass is to reduce their distribution costs.

Remedies

129. The CMA must have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLCs and any adverse effects resulting from these. To this end, the CMA will seek remedies

that are effective in addressing the SLCs and their resulting adverse effects and will select the least costly and intrusive remedy that it considers to be effective. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLCs and their adverse effects.

130. Structural remedies are generally one-off interventions that seek to restore or maintain the competitive structure of the market. Behavioural remedies are generally enabling or controlling measures that are designed to regulate the behaviour of the merging parties on an ongoing basis. The CMA has a preference for structural remedies because they are more likely to deal with an SLC directly and comprehensively at source, with less ongoing monitoring and regulation of companies' conduct.
131. We have assessed two structural remedies: prohibition of the merger; and partial divestiture.
132. Prohibition would comprehensively address all aspects of each SLC that we have identified (and consequently any resulting adverse effects) as it maintains the rivalry that is likely to exist between Sabre and Farelogix.
133. We have found that a partial divestiture would unlikely be an effective remedy since it would be difficult to identify the staff and assets needed to be divested for each SLC finding any partial divestiture of Sabre may risk breaking the synergies between its business units that we consider to be important to future competition.
134. The Parties have not proposed a partial divestiture or licensing remedy. We did not receive any submission or evidence from third parties that would suggest that a partial divestment or licensing remedy would be an effective alternative to prohibition in this case.
135. Our conclusion is that partial divestiture or licensing of software/Intellectual Property rights would not be an effective remedy to the SLCs we have found.
136. We have assessed the behavioural remedy proposed by the Parties for each of the merchandising solutions and distribution solutions SLC finding.
137. In merchandising solutions, the Parties proposed to offer and support FLX M on a PSS agnostic basis in addition to other commitments regarding how it would offer the FLX M product.
138. We have concluded that the merchandising remedy proposal does not address the loss of dynamic competition arising from the development of Sabre's PSS-agnostic, NDC-compatible merchandising solution that has been spurred, in part, by competition with Farelogix. The proposal therefore does

not address our concern about the loss of a new merchandising solution from Sabre that would otherwise have competed with Farelogix (and with other competitors) absent the Merger.

139. As a result, we have found that the behavioural remedy proposal is insufficient to comprehensively address the merchandising solutions SLC we have found.
140. In distribution solutions, the main elements of the Parties' proposal were:
 - (a) To make Farelogix's NDC APIs and FLX OC available at the same or lower prices to those today, and provide at least the current level of support (or more) for these capabilities for a period of time to be mutually agreed upon;
 - (b) to offer all current Sabre GDS customers and all current FLX OC customers the opportunity to extend their existing contract on the same terms for a period of at least three years past the current termination date;
 - (c) to continue to invest in the development of Farelogix's NDC API and FLX OC capabilities at levels no less than current levels for a period of time to be mutually agreed upon; and
 - (d) to continue to offer and support Farelogix's NDC API and FLX OC capabilities to any third parties and all outlets that wish to use them to connect to Sabre, other GDSs, other distribution partners, or directly to travel agents on an agnostic basis for a period of time to be mutually agreed upon.
141. We have concluded that the Parties' proposal does not adequately address the removal of the incentive an independent Farelogix has to compete to meet airlines' evolving needs with respect to NDC content absent the Merger. It also does not address the rivalry that would, in the absence of the Merger, drive Sabre to develop its GDS pass-through solution.
142. We have found that the behavioural remedy proposal is insufficient to comprehensively address the merchandising solutions SLC we have found.
143. We did not find any RCBs arising as a result of the Merger.
144. We have concluded that prohibition of the merger represents the only effective remedy to the SLCs that we have found. We have also found that this remedy is proportionate in relation to the SLCs and their adverse effects.

Findings

1. The reference

- 1.1 On 2 September 2019, the CMA, in exercise of its duty under section 33 of the Enterprise Act 2002 (the Act), referred the anticipated acquisition by Sabre of Farelogix for further investigation and report by a group of CMA panel members (the Inquiry Group).
- 1.2 In exercise of its duty under section 36(1) of the Act, the CMA must decide:
- (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.
- 1.3 We are required to publish a final report by 12 April 2020.
- 1.4 Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A. The terms of reference state that the CMA's Phase 1 competition concerns were in:
- (a) the supply of non-core passenger service systems merchandising modules; and
 - (b) the supply of services that facilitate the indirect distribution of airline content.
- 1.5 This document, together with its appendices, constitutes the Inquiry Group's findings published and notified to Sabre and Farelogix in line with the CMA's rules of procedure.¹ Further information, including a non-commercially-sensitive version of the Parties' response to the Phase 1 Decision and Provisional Findings, can be found on our webpage.²

¹ Rules of procedure for merger, market and special reference groups (CMA17), paragraphs 11.1–11.7.

² Sabre/Farelogix merger inquiry webpage

2. The Parties

Sabre

- 2.1 Sabre, headquartered in Southlake, Texas, USA is a technology and software provider to the global travel industry. Sabre provides technology solutions to airlines and travel agents. Of relevance to our inquiry, Sabre provides core and non-core PSS services to airlines and operates a GDS which distributes airline content to travel agents (these are explained in chapter 3) for the purpose of booking airline tickets. Sabre's turnover in 2018 was approximately £2.8 billion worldwide and approximately £[REDACTED] million in the UK.
- 2.2 Internally Sabre has two key divisions:
- (a) Sabre Travel Network (TN), which operates Sabre's business-to-business marketplace and consists primarily of Sabre's GDS activities; and
 - (b) Sabre Airline Solutions (AS), amongst other activities this business unit is responsible for core and non-core PSS solutions for airlines.
- 2.3 In its latest Annual Report, Sabre announced the creation of the Travel Solutions organization, which consists of Travel Network and Airline Solutions. The report said that the new structure reinforces Sabre's focus on the next generation of retailing, distribution and fulfilment.³

Farelogix

- 2.4 Farelogix, headquartered in Miami, Florida, USA, is a technology and software provider that supplies technology solutions for airlines, including non-core PSS modules and airline content distribution services using the NDC standard. Farelogix's turnover in 2018 was approximately £[REDACTED] million worldwide with no material turnover in the UK.⁴
- 2.5 Farelogix is owned by Sandler Capital Management (Sandler), a private equity fund. Sandler is the vendor in the Merger.

³ Sabre SEC filing form 10-K 2018, page 1.

⁴ We note that there is some revenue received and/or receivable in respect of the services provided to British Airways. See chapter 5, Jurisdiction.

3. The industry

Introduction

- 3.1 Our inquiry centres on some of the IT solutions which are provided as a part of the global booking systems for airlines. Airlines use IT solutions within their booking system IT stack (the PSS). Airline content (ie information on the fare, availability, schedule and other aspects of the airlines' offer to passenger) is distributed to passengers directly and via travel agents. The main participants in this supply chain of how airlines sell their offers to passengers include GDSs, direct connects, aggregators and travel agents.
- 3.2 The creation, distribution and sale of airline content can be broken down into three stages:
- (a) Retailing: enables information on a number of aspects including the travel route, type of seat, schedule, availability and price, to be packaged so that a ticket can be sold to a passenger. This is also referred to as 'offer creation'.
 - (b) Distribution: transfers the offer to the passenger or travel agent in a way which allows the passenger or travel agent to assess that offer.
 - (c) Fulfilment: this refers to a booking being made with an airline but in the case of bookings via travel agents can refer to a number of associated post-booking services including travel agent back-office accounting and reporting, quality assurance, duty of care management, corporate policy compliance and reservation management in the event of a travel disruption.
- 3.3 These three stages are currently facilitated by a variety of technological solutions and involve a number of different parties. The following section describes the current supply chain and solutions, how these developed, the Parties' role in this and future industry development. We start by describing the airlines' booking system which is relevant for the retailing function. We then discuss the distribution of airline content including the role of the GDSs, alternatives to GDS distribution and the role of travel agents. Finally, we look forward to future industry developments which have substantial implications for all three functions of retailing, distribution and fulfilment.

The airline booking system IT stack

- 3.4 Both Parties provide airline IT solutions. The heart of an airline's IT system is the PSS, which is a complex set of IT systems that manage various tasks in the booking process and other key functions. An airline's PSS contains and

manages certain information needed for the retailing function of the air travel booking process. This IT booking system can be broken down into two broad constituent parts: (i) core PSS modules and (ii) non-core PSS modules.

- 3.5 The following PSS modules are generally considered to constitute an airline's core PSS and are usually bundled together:
- (a) The airline reservation system or central reservation system, which controls the sale of seats, scheduling, passenger name records and the issuance of tickets.
 - (b) The airline inventory system, which provides information on available seats.
 - (c) The departure control system, which is used to check in passengers at the airport.
- 3.6 It is the PSS that enables key information on flight schedules, seat availability and pricing to be distributed to travel agents, passengers and intermediaries (as described below).
- 3.7 Sabre supplies core PSS solutions. Farelogix does not. Both Parties supply non-core PSS modules.
- 3.8 Non-core PSS modules enable airlines to offer services that are ancillary to the core PSS offer as well as helping airlines to manage their operations. The modules can, for example, provide IT solutions for data analytics and airline revenue management. Although these modules are ancillary to the core PSS they can be of critical importance to the effective and efficient management and operation of the airline.
- 3.9 There are many core and non-core PSS modules for the airlines to choose from. For example, Sabre offers over a hundred non-core PSS modules. Farelogix offers a narrower range of non-core PSS modules than Sabre.
- 3.10 Merchandising modules (or merchandising solutions) allow airlines to create offers with ancillary services such as extra luggage allowance, the option for passengers to upgrade their seat, in-flight purchases, airport parking or meal options.
- 3.11 In order for an airline to sell tickets and offer various ancillary services, the core and non-core PSS components of the IT booking system need to work with each other. In some instances, airlines procure their core and non-core PSS from the same provider, in other instances they are supplied by different providers. Moreover, sometimes a non-core PSS module can be used in conjunction with a third party's core PSS module (a PSS-agnostic solution)

but in other instances the non-core PSS offered by a core PSS provider cannot be used with a third party's core PSS (a PSS-dependent solution). Therefore, how PSS agnostic a provider's non-core PSS solution is will be relevant for the competitive dynamic between providers for some solutions. Sabre's merchandising modules are PSS-dependent and can today only connect with Sabre's PSS whereas Farelogix's modules are agnostic and can connect to many PSSs (including Sabre's).

The distribution of airline content

- 3.12 Airline content refers to fare, schedule and availability of flights, and any other information relating to flight and ancillaries which an airline wishes to make available to travel agents and passengers in order to sell a ticket and make a booking. In order for a passenger or travel agent to book a seat on a flight (and in some instances together with any ancillary services that the passenger may wish to buy) the relevant content from the airline must be distributed to the passenger or travel agent. This includes flights with complex itineraries which may involve code share arrangements between airlines and interline services which are marketed and operated separately by two or more airlines but sold under a single ticket.⁵
- 3.13 Airlines can deliver their content and sell tickets and services directly to passengers via their own call centre or website (referred to as the direct channel)⁶ or indirectly via travel agents (referred to as the indirect channel). Airlines typically can offer passengers greater choice when selling tickets via their own websites or call centres compared to selling tickets via travel agents. For example, they can allow the passenger to select specific aspects of their flight and can make dynamic price changes.
- 3.14 Although it varies across airlines, in total approximately 50% of global airline bookings were made via the direct channel in 2018 and 50% via the indirect channel.
- 3.15 Within the indirect channel, the distribution of content from an airline to a travel agent could be via a GDS or directly to a travel agent through what is known as a direct connect.⁷ Content may also be distributed to travel agents

⁵ Code sharing is an arrangement between airlines in which two or more airlines market the same flight and sell tickets for it under their own airline code.

⁶ Passengers can also book directly with some airlines via the airline call centre or kiosk.

⁷ The Parties told us that in Sabre's internal documents "Direct Connect" refers to an airline's connection to a TA without going via the GDS, which is distinguished from GDS pass-through or the supply of that information to the airline's own website. Farelogix's internal use of the term "direct connect" is much broader and may at times refer to the products through which an airline customer can connect to all three of those sales channels (i.e. GDS

using a direct connect that goes via an aggregator (which also aggregates content from multiple airlines). 90% of airline bookings from the indirect channel are made via a GDS.⁸

- 3.16 The key provider types in the supply chain – GDS, direct connects, aggregators and travel agents – are discussed next.

GDS

- 3.17 The three largest GDSs are Sabre, Amadeus and Travelport, which together account for almost all GDS bookings worldwide (approximately 85%-95%).⁹

Services offered by GDSs and how they work

- 3.18 GDSs facilitate transactions between different travel services providers (airlines, hotels and car rental operators) and travel agents. They are therefore two-sided platforms with sellers of travel services on the one side of the platform and travel agents on the other. Our inquiry is not concerned with the hotel, car rental and other travel services not related to airlines aspects of the GDS business.
- 3.19 GDSs receive information from airlines' PSS on flight schedules and availability. The fare (pricing) information comes from a third party, the Airline Tariff Publishing Company (ATPCO).¹⁰ Of these pieces of information, only flight availability is available to the GDS in real time. GDSs receive this information from many airlines across the world.
- 3.20 The GDS consolidates this information about a specific airline with similar information on other airlines and distributes the information to travel agents in an aggregated display. This allows travel agents to compare information across airlines and book tickets.¹¹ GDSs also manage some aspects of

pass-through, Direct Connect (in the Sabre context) and sale of tickets via the direct channel). See Footnote 28, Merger Notice.

⁸ Excluding bookings through local GDS in China, Russia and Japan, see Chapter 8 Analysis of bidding and market shares, Distribution for full breakdown

⁹ Excluding passengers booked through local GDSs in Russia, Japan, and China (eg Travelsky, Axess, Infini). [36] estimates that the three major GDSs together account for 95% of worldwide GDS bookings (2019 Global Distribution System (GDS) & airline IT primer; from volume to value).

¹⁰ ATPCO is an airline-owned central clearing house for distribution of fare information. ATPCO collects fares and fare-related information from airlines and consolidates them into a single data file, which is distributed to the market every hour. Airlines use ATPCO to standardise fare and fare-related data, allowing this information to be provided to the market uniformly (which is important eg for interline or code-share flights, where more than one airline will form part of a single booking). Fares filed with ATPCO are referred to as 'static' fares, as they are only updated once the airline provides new fare data, rather than in response to individual booking queries.

¹¹ GDSs who operate in the European Union (EU) are subject to the Computerised Reservation Systems Code of Conduct (Regulation (EC) No 80/2009) which ensures that air services by all airlines are displayed in a non-

fulfilment including travel agent back-office accounting and reporting, quality assurance, duty of care management, corporate policy compliance and reservation management in the event of a travel disruption.

- 3.21 GDSs have access to data from a large number of airlines which facilitates large scale comparison shopping by travel agencies. Sabre's GDS, for example, gives travel agents access to more than 400 airlines and processes approximately 1.1 trillion messages and 700 billion transactions every year.¹²
- 3.22 It is important to note that under existing GDS arrangements it is the GDSs, and not the airlines, that are responsible for creating the offer which the passenger receives via the travel agent in response to a travel query. The airlines themselves only have limited visibility over the package offered to the end-customer and little information about the customers themselves, preventing airlines from tracking customer data and adapting to their preferences. For example, airlines do not see what searches were undertaken before a booking is made, which is information that may help airlines hone and improve their services. Looking forward to being able to offer NDC solutions, Sabre's marketing material notes that under existing GDS arrangements 'Fares are mainly constructed with no visibility into who is making the request, meaning that the ability to offer the right person the right fare at the right time is non-existent. Past shopping behaviour, consumer preferences and the possibility to sell additional products and services are unavailable to the airline, and the airline seat once again becomes a commodity'.¹³

Use of GDSs by airlines and travel agents

- 3.23 The GDS serves both the airline and travel agent. The airline is served by having its content widely distributed and therefore making it more likely to be sold to passengers. The travel agent is served by having access to content from a number of airlines which it can compare and present to passengers. The GDS benefits from indirect network effects. The value of a GDS to airlines is greater the more widely used it is by travel agents. Similarly, the value of a GDS to travel agents is greater the more airlines that connect to it.

discriminatory way on the travel agencies' computer screens. We are not aware of what, if anything, will replace this code once the transition period of the UK's exit of the EU is over.

¹² Parties' Merger Notice, paragraphs 3.76 and 3.77.

¹³ [NDC to the power of Sabre: end-to-end personalized retailing and distribution](#)

- 3.24 The Parties submitted that many travel agents multi-home and can readily switch between GDSs,¹⁴ whilst many of the travel agents we heard from indicated that across their group they did use two or three GDS but there was a substantial proportion who indicated that they only used one GDS, or, if they contracted with multiple GDSs, they often used only one system and/or one GDS per region/corporate customer.¹⁵ This means that, for airlines to provide their offering to the largest number of travel agents, airlines need to contract with each of Sabre, Amadeus and Travelport and most airlines do this.
- 3.25 With regard to remuneration for GDS services, three payment models exist today:
- (a) Under the traditional revenue model, the airline pays the GDS a fee for each travel segment. The GDS in turn pays a fee to the travel agent that made the booking (referred to as an ‘incentive fee’). The GDS receives the net amount which is the difference between the two. This model accounted for the vast majority of Sabre’s GDS revenue from airlines in 2018.¹⁶
 - (b) Under the wholesale model, the airline pays the travel agent directly and the travel agent in turn pays a technology fee to the GDS.¹⁷ In 2018, approximately [REDACTED] of Sabre’s bookings were made under the wholesale model, most of which were with [REDACTED].
 - (c) Under the private channel model, which Sabre has hosted for some airlines since 2017, airlines may provide different content to participating travel agents than to non-participating travel agents. Airlines incentivise travel agents to join a private channel by (i) imposing on them a surcharge on fees for content distributed outside of the private channel, and/or (ii) providing access to unique content that is not available outside the private channel. However, travel agents receive lower or no incentive payments from the GDS in the private channel. Currently private channels represent less than [REDACTED] of Sabre’s share of bookings and revenue.¹⁸ The Bank of America Report notes that the impact of the private channel for the GDSs has been ‘to see lower revenue and higher gross [...] It seems as though the net impact on gross profit is limited.’¹⁹

¹⁴ The parties further included in their response to our Provisional Findings (Paragraph 5.88) evidence from the Delaware proceedings where CWT CEO suggested the TMC could switch GDS if Sabre lost content.

¹⁵ Based on responses to % of bookings by channel just focusing on GDS bookings: [REDACTED].

¹⁶ [REDACTED]

¹⁷ [REDACTED].

¹⁸ [REDACTED]

¹⁹ 2019 Global Distribution System (GDS) & airline IT Primer: From Volume to Value, Bank of America Merrill Lynch, 26 September 2019, p22

Sabre's approach in pricing and contract negotiation with airlines and travel agents

- 3.26 Sabre's GDS charges airlines a fee (and pays travel agents an incentive fee) per booking (segment).²⁰ For example, a return ticket booked through a GDS will incur a fee charged to the airline for both the outward and return segments.²¹
- 3.27 Prices for GDS bookings are negotiated with each airline independently.²² As starting points for these negotiations, Sabre uses 'rack rates' which are published prices for participation in the Sabre GDS.²³ Sabre sets differentiated GDS booking fees based on several attributes. The rack rate varies with the point of sale location between home country (\$[redacted]), home region (\$[redacted]) and rest of world (\$[redacted]).²⁴ For home country bookings, higher value tickets incur higher fees ([redacted]).²⁵ In 2018, Sabre on average received \$[redacted] from airlines and paid out \$[redacted] in incentive fees to travel agents per segment.²⁶
- 3.28 Sabre told us that a range of factors may affect the negotiated fee levels. They include [redacted].²⁷
- 3.29 Parity clauses are widely used in the industry between GDSs and airlines. Although parity clauses cover different degrees of restrictiveness, they all ensure that airlines provide the same content to all of the GDSs with whom they have an agreement. The scope of parity agreement between Sabre and an airline is an important determinant of the level of fees. In general, airlines that prefer more flexibility to make separate content available outside Sabre pay higher booking fees to Sabre.²⁸

Direct connect, GDS bypass and GDS pass-through

- 3.30 Airlines can distribute content to travel agents outside the structure of a GDS in several ways.²⁹ They can establish 'direct connects' which are one-to-one connections between an airline and a third party (eg a travel agent). To do so, an airline has to provide the third party with access to parts of its IT system with an API (application programming interface). Some airlines have built and

²⁰ In addition, Sabre (and other GDS) also charge for passive bookings as well as cancellation and ticketing fees.

²¹ With regards to [redacted].

²² [redacted]

²³ [redacted]

²⁴ [redacted]

²⁵ Ibid.

²⁶ [redacted]. Numbers based on total bookings, revenue and incentives paid in 2018.

²⁷ [redacted]

²⁸ [redacted]. Booking fees are generally higher under parity clauses that allow airlines the freedom to offer better fare and content in non-GDS channels. [redacted].

²⁹ An application programming interface (API) is a protocol used to retrieve information from a server in a standardized format. See [redacted].

manage APIs in-house, but others use third-party providers of such solutions (such as Farelogix). Airlines generally pay these providers set-up and maintenance fees, as well as per-transaction fees. Direct connect offers airlines more control over the offer creation process, but direct connect providers generally facilitate more limited post-booking fulfilment functions than GDSs (eg back-office accounting functionality).

- 3.31 Airlines can also establish connections using the API with an aggregator (that is not a GDS), which – like GDSs – then combine content across airlines before distributing it to travel agents. An aggregator facilitates comparison shopping for travel agents. Examples of such aggregators include Travelfusion and TPConnects.
- 3.32 These connections using the API via direct connects to the travel agent or via aggregators are sometimes referred to as ‘GDS bypass’. GDS bypass accounts for around [0-5]% [✂] of total bookings worldwide.³⁰
- 3.33 Using an API, airlines can also distribute content via an existing GDS platform without requiring offer creation or other services from the GDS. The Parties refer to this as ‘GDS pass-through’. This can be used to connect to GDSs as a means of delivering NDC content (explained further below). The use of GDS pass-through is a relatively recent, small but growing feature in the industry. [✂].³¹
- 3.34 The main third party providers of direct connect distribution solutions to help airlines build and manage APIs are Farelogix, OpenJaw, Datalex and Amadeus.

Remuneration models of direct connects

- 3.35 As with GDSs, a number of different remuneration models between airlines and travel agents exist in relation to distribution using direct connects. Airlines may pay travel agents directly per booking made through direct connect. To incentivise the use of direct connect, airlines may impose on travel agents a surcharge on tickets booked through the GDSs. However, the GDSs dispute the legality of these surcharges and Sabre, for example, is currently engaged in litigation with Lufthansa in connection with a surcharge that the Lufthansa Group imposed on GDS ticket sales.³²

³⁰ See Chapter 8, Bidding and market shares, Distribution

³¹ Parties initial submission, paragraph 2.8.

³² Sabre SEC filing form 10-K 2018, page 5.

- 3.36 In relation to connections via an aggregator, it is typical that aggregators charge travel agents a booking fee.³³
- 3.37 Farelogix typically charges airlines on a [X]. It often also charges airlines [X] and, although [X], the product and services provided are also different in some respects.³⁴ In 2018 Farelogix on average earned around [X] booking fee per transaction.³⁵ Unlike GDSs Farelogix makes no payment to travel agents, it is for the airlines to decide what, if any, payment is to be made to travel agents where content is supplied using a direct connect.

Travel agents

- 3.38 Travel agents offer services for passengers to search and book flights and provide a variety of aftercare services to manage the booking.
- 3.39 We consider three categories of travel agents in our report:
- (a) Online Travel Agents (OTAs) which primarily (but not exclusively) target leisure customers with sales via the internet.³⁶
 - (b) Bricks and mortar travel agents (B&Ms) who are further segmented by:
 - (i) Travel Management Companies (TMCs) which primarily target corporate customers with a full-service offering. TMCs often provide an online booking tool for their corporate users (this may be built in-house or by a third-party such as SAP Concur). Bookings can be made online (most common), by phone, or email.
 - (ii) Other B&Ms, which typically focus on leisure customers or unmanaged business travel. This category is less concentrated and more geographically spread compared to OTAs and TMCs. They can sell via physical outlets, call centres or online.
- 3.40 The proportion of bookings for Sabre by type of travel agents are: OTAs ([X]), TMCs ([X]) and other B&M travel agents ([X]).³⁷ While TMCs account

³³ [X]

³⁴ For example, Farelogix does not provide a two-sided platform which gives airlines ready access to travel agents and Farelogix does not aggregate content across airlines which would allow travel agents to comparison shop.

³⁵ [X]

³⁶ OTA groups may have smaller TMCs or offline businesses, but these typically account for a small proportion of their overall business.

³⁷ [X]

for the smallest proportion of bookings, they are the most profitable segment for GDSs. A Bank of America Merrill Lynch report estimated that TMCs account for the highest share of GDS industry gross profit (54%), followed by B&M (27%) and OTAs (19%).³⁸

- 3.41 The services provided to a passenger by a travel agent will vary based on the category of agents, however in most cases the core air travel-related function of the agent will be to:
- (a) offer a range of itineraries to the passenger based on the availability of flights (and accommodation if applicable), which may include complex flight itineraries including multiple airlines;
 - (b) assist the passenger in selecting the best option;
 - (c) enable the booking of an itinerary including flights and accommodation in one place; and
 - (d) assist the traveller in finding alternative travel arrangements in the event of cancellations and emergencies.
- 3.42 In addition, TMCs play a role in helping corporate customers to fulfil their duty of care obligations to their employees and others and enforce their travel policies (for example as to authorised class of travel) through the provision of management information and other services.³⁹

Factors in travel agents choosing a GDS or alternative distribution channel

- 3.43 The Parties submitted that travel agents need the GDS to service their customers' broader needs,⁴⁰ in particular: mid-and back-office processing and support; comprehensive reservation management; 24-hour travel agency support; automation, scripting and other agency support functionality; and duty of care and reporting.
- 3.44 This is generally confirmed by travel agents' responses, with a number of TMCs and an OTA highlighting the ability of the system to help them manage

³⁸ 2019 Global Distribution System (GDS) & airline IT Primer: From Volume to Value, Bank of America Merrill Lynch, 26 September 2019, Chart 46.

³⁹ We approached 16 large corporates [redacted] to understand more about the way they purchase corporate air travel for their staff. We received responses from four corporates with combined spend on airline tickets over US\$1bn. All four corporates told us that they used a travel management company (TMC) with an online booking tool. They indicated that the reason for using the TMC was to fulfil their duty of care obligation. This was primarily in providing a data feed which allowed the corporate to track any incidents affecting their travellers. One corporate said that the TMC also allows them to ensure staff are only directed to services which are safe and secure and ensure bookings are in line with corporate policy.

⁴⁰ Para 1.26 Initial phase 2 submission

bookings post-sale is a reason why they use their current service provider (GDS).⁴¹

- 3.45 Another consideration is the level of incentive payments they receive for making bookings (as discussed in the GDS section above). Of the travel agents which gave us a breakdown of their revenues, based on a simple average, around 18% of travel agent revenue is earned from GDS incentive payments and 25% from airlines.⁴² [REDACTED].⁴³ Incentive payments are therefore a significant consideration in which channel, and which GDS, is used by travel agents.
- 3.46 In response to our Provisional Findings the Parties submitted that the importance of incentive payments to travel agents should not be overstated and highlighted evidence from the Delaware proceedings where an OTA stated that “GDSs reduced incentives will not keep us from doing business” and in any case that “GDS incentives are still relatively small compared to the overall revenue we [REDACTED] take”.⁴⁴
- 3.47 In addition to commercial considerations, the technical quality of the service e.g. the speed, reliability and innovation of the technology was highlighted as being a factor in deciding on a supplier. One OTA told us that it evaluates each provider on the basis of technical capability, commercial terms and inventory made available through that connectivity.⁴⁵
- 3.48 Another key factor for many travel agents’ is their requirement to access all available content from multiple airlines including the best available fares.
- 3.49 Travel agents appear to have a preference for accessing content through their GDS with many highlighting drawbacks with direct connects, including the impact on the agent’s workflow if they have to undertake multiple searches.⁴⁶ Nevertheless some travel agents do appear willing to access content through direct connects if not available through the GDS.

⁴¹ [REDACTED] For example, one large TMC said their supplier ‘facilitates highly efficient access to after-booking services and other important services such as sanctions compliance, data security, disaster recovery back-up systems, service level commitments, and duty of care support’.

⁴² Based on 9 responses from question in detailed questionnaire asking for: Sources of revenue in air travel (e.g. incentive payments from airlines, GDS providers, fees charged to travellers, etc – please specify and estimate proportions) and 4 responses from our online questionnaire which asked for % of revenue earned from airlines and % of revenue earned from other intermediaries e.g. GDS. For the detailed questionnaire some agents responded with one number for airline and GDS incentives. These numbers have been excluded.

⁴³ [REDACTED]

⁴⁴ Parties response to Provisional Findings paragraph 4.13 i(). The ‘Delaware Proceedings’ refer to the trial in the US where the US Department of Justice sued to block the Merger.

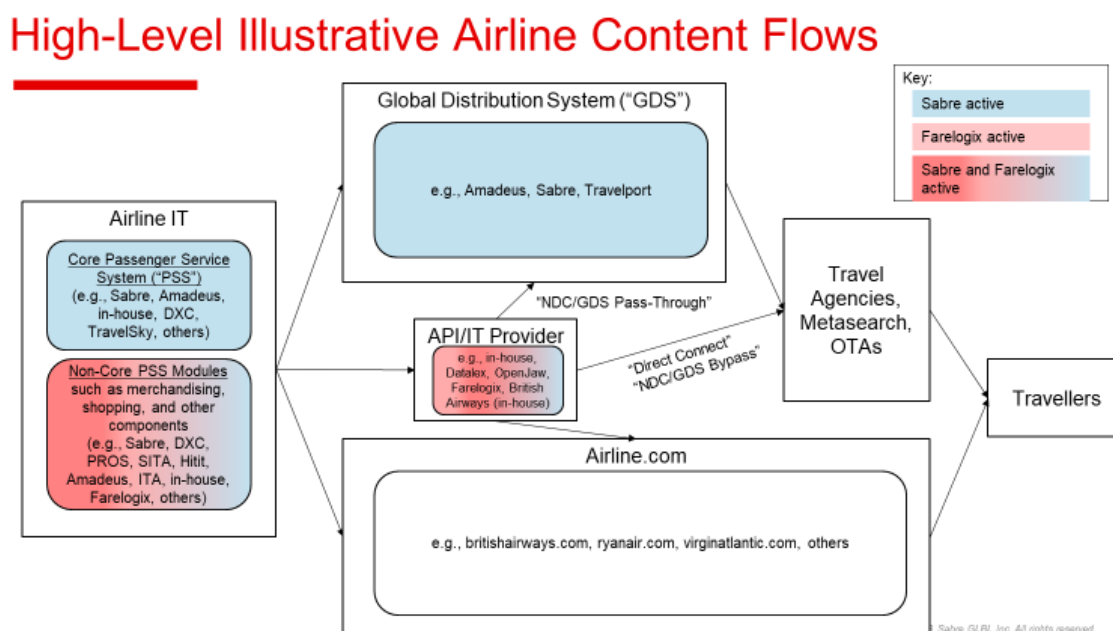
⁴⁵ [REDACTED]

⁴⁶ [REDACTED]

3.50 In that context, accessing content from direct connects can involve different technological solutions for different travel agents. Travel agents with their own technology can integrate additional content sources into their front-end solution with some investment.⁴⁷ For other travel agents, which either have less technological capability, or whose systems are more integrated with their primary GDS provider, accessing content from direct connects may require carrying out multiple searches using different tools.⁴⁸ Another option is to use third-party aggregators (eg Travefusion) or third-party online booking tools (eg SAP Concur).

3.51 Figure 3.1 below shows the information flows which enable airline content to be distributed to end-customers. The diagram shows how airline content reaches end-customers through both the direct channel and the indirect channel.

Figure 3.1: distribution of airline content



⁴⁷Most OTAs indicated they use property technology for searches [X] as well as some TMCs. For example, one TMC [X] said 'We use a proprietary system which pulls in content from the GDS and Non-GDS aggregators. All agents use this system for their bookings, and it enables them to fully service the client in one place' An OTA [X] said 'We have created a proprietary algorithm that simultaneously searches all of the providers we are connected to searching for a) lowest fare; b) with "bookability"; c) with the fastest response time. The role of any one provider is the same unless the content is only available through a direct connection then our search will default to searching and booking via that direct connection'.

⁴⁸ For example, one TMC [X] said that: 'GDS is primary due to majority of content. other sources only used if content not available. This is to reduce the number of connections that need to be managed, and ensure consultants only need to use one interface wherever possible. it is extremely time consuming and inefficient to have to use multiple interfaces or manage and maintain multiple connections.'

New Distribution Capability (NDC) and the future of the industry

- 3.52 The airline content collected by GDSs is typically communicated using the Electronic Data Interchange for Administration, Commerce and Transport (EDIFACT) messaging standard. The EDIFACT standard is decades old and was created to handle high transaction volumes while requiring only limited bandwidth. EDIFACT has substantial limitations in its ability to handle rich digital content and has not kept pace with the technology or product offerings of airlines. EDIFACT is limited to displaying basic information (eg fares and schedules)
- 3.53 GDSs currently have limited capabilities to distribute content provided using a different messaging standard).⁴⁹ Even where a GDS does have the capability to distribute content using a different messaging standard (eg XML), non-EDIFACT based content (typically ancillaries) must still be provided to the GDS by airlines via ATPCO. This means that the content cannot be dynamically adapted depending on individual booking queries in real time.
- 3.54 The limitations of the messaging technology used by GDSs means that most airlines currently have limited ability to distribute dynamic, personalised offers (including ancillary products) in the indirect channel using GDSs, despite growing demand to do so. Further, and as mentioned above, airlines do not receive search data and only receive passenger data once a booking has been completed making it impossible or difficult to personalise content and offers.
- 3.55 In 2012, the International Air Transport Association (IATA) – a trade association of airlines - launched the NDC standard to address the industry's current distribution limitations.⁵⁰ The NDC standard is an XML-based computer messaging standard which originated from a messaging protocol developed by Farelogix and which was donated to (and subsequently developed by) IATA.⁵¹ The NDC standard enhances the capability of (and standardises) communications between industry participants and allows for dynamic and personalised offers to be created by airlines (instead of the GDS) and accessed by travel agents.⁵²

⁴⁹ This is changing as is apparent in the chapters that follow. Sabre has been investing in NDC technology and the transition away from mainframe computing, which is discussed in detail in chapter 9. Chapters 8 and 10 discuss how the other main GDSs, Amadeus and Travelport, have also been investing in NDC capabilities albeit via different approaches.

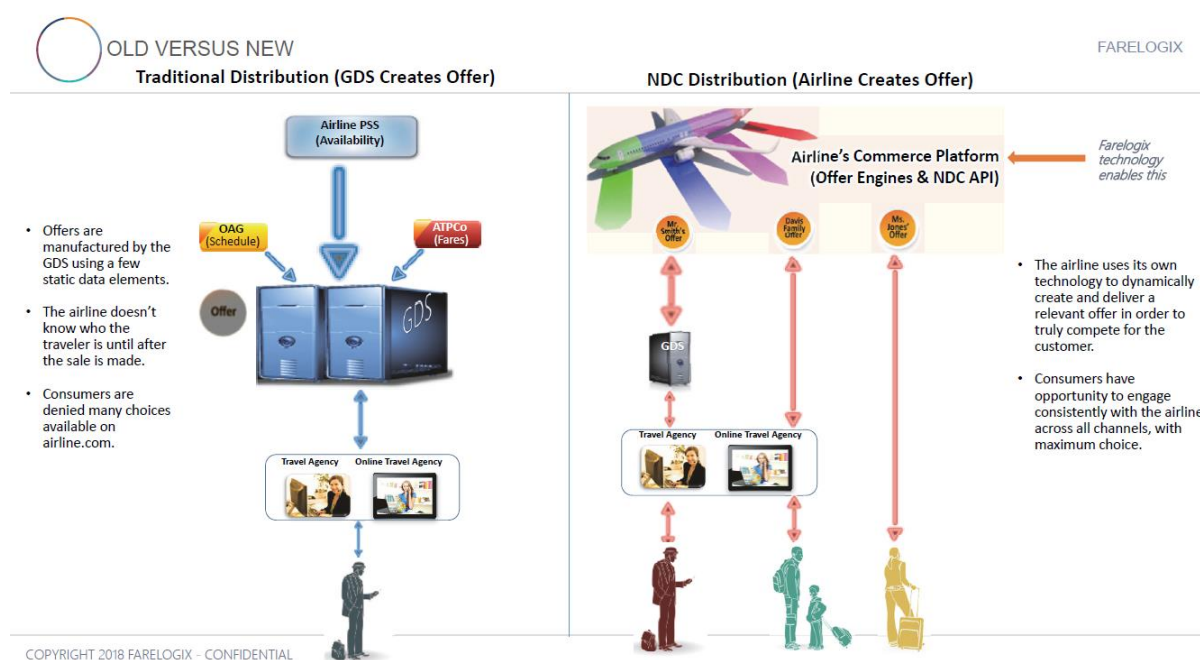
⁵⁰ [IATA website: New Distribution Capability](#).

⁵¹ Which is not to say that Farelogix has been the only firm innovating in this area. Amadeus submitted that it has been committed to NDC development for some years (starting investing in its own NDC merchandising solutions programme in 2013) and has achieved the highest certification currently available both as an IT provider and as an aggregator.

⁵² [IATA website: About NDC](#).

3.56 Under the traditional GDS distribution model, booking queries from travel agencies are received by the GDS. The GDS then constructs an offer based on schedule and fare information filed with OAG and ATPCO respectively, before checking availability with the airlines and communicating the offer back to the travel agent. Under an NDC distribution model, offer requests are received by the airlines themselves (potentially via an aggregator, or directly from the travel agency). The airline then creates an offer for the travel agent in real time, without filing fares with third party information providers such as ATPCO and OAG. In short, the NDC standard aims to give airlines similar capabilities to construct more dynamic offers in the indirect distribution channel as those that are available through airline.com, but to do it across channels. This capability will negate the need for airlines to rely on the GDSs to undertake this service on their behalf. Figure 3.2 below from Farelogix diagrammatically presents the industry participants which have migrated to using the NDC distribution standard.

Figure 3.2- Traditional versus NDC distribution models



Source: Farelogix (Preserving Consumer Choice and Innovation in Air Travel, 17 January 2018)

3.57 For distribution of content compatible with the NDC standard (NDC content), airlines require an NDC API through which to connect to third parties. As with other APIs, the NDC API can either be developed by the airline in-house or by using a third-party technology provider such as Farelogix. Connections are subsequently established between airlines and travel agents or aggregators to transmit the NDC content.

- 3.58 The majority of airlines submitted that they have a strategy to adopt the NDC standard (although progress varies). IATA's 'NDC Leaderboard' airlines⁵³ have committed to having 20% of their tickets distributed via an NDC API by the end of 2020 (although the evidence we have suggests that progress towards this target varies by airline).
- 3.59 Some airlines can use NDC API to connect and transmit content to GDSs. However, currently, GDSs are not yet fully able to consume and manage NDC content, meaning that GDS pass-through arrangements to date do not allow airlines to distribute fully dynamic offers in the same way as on their websites or using direct connects.
- 3.60 To date, travel agents have generally expressed an interest in consuming NDC content through their existing GDS although currently more consume NDC content through direct connects.⁵⁴
- 3.61 We understand that Sabre, Amadeus and Travelport are each working on developing their capabilities to consume and distribute NDC content through their GDS. Most travel agents responding to our questionnaire indicated that in the next 12 months they expected to be able to access NDC content through their GDS provider (ie using GDS pass-through).⁵⁵
- 3.62 Other technology providers have also developed IT solutions that are compatible with the NDC standard, focusing on various parts of the airline value chain (retailing, distribution, including aggregation, and fulfilment). For example, while some providers have developed or expanded their aggregation technology to allow travel agents to compare offers from several airlines' APIs (eg Travelfusion), others have focussed on developing shopping engines for airlines (eg ITA).

NDC and the future of the industry

- 3.63 It appears that the adoption of the NDC standard is a first step towards further significant industry changes in the coming years. The main features that we have found in our inquiry are listed below.
- (a) The development of NDC solutions encompassing elements currently forming part of an airline's PSS and its distribution technology (a so-called

⁵³ See [NDC Leaderboard information pack](#). IATA invited airlines which want to grow their NDC volumes rapidly to join a group called the 'NDC Leaderboard'. It consists of 22 airlines (belonging to 17 airline groups): Aeroflot, Air Canada, Air France KLM, American Airlines, Lufthansa, IAG, Cathay Pacific, China Southern, Finnair, JetBlue, Olympic, Qantas, Qatar, SAS, Singapore, Sun Express, United Airlines.

⁵⁴ Chapter 10, Evidence from travel agents, Views on accessing NDC content.

⁵⁵ [REDACTED]

- Offer and Order Management System). The adoption of the NDC standard will allow airlines to create dynamic, personalised offers fully using the NDC standard which can then be distributed (and managed) across all distribution channels using one provider.⁵⁶ Crucially, the airlines will be responsible for offer creation, not the GDS.
- (b) Airlines will also get access to search and purchasing data generated by passengers which will help them further improve their services.
 - (c) Travel agents and passengers will be able to search for more complex bundles of products and services.
 - (d) Content will be displayed to travel agents and passengers using images, pictures and videos which will allow them to better understand and compare offers between airlines.
 - (e) The distinct components of the airlines' booking system IT stack which generate information for the GDSs on schedules, availability and fares will be replaced by a broader offer creation and management system.
 - (f) Given that the offer creation function will move from GDS to airlines and involve a wider portfolio of services, retailing solutions, especially merchandising solutions, are likely to become even more valuable to airlines than they are today.
 - (g) The IATA ONE Order initiative. This is an 'industry-led initiative intended to replace the multiple rigid and paper-based booking and ticketing records [...] by combining the contents into a single and flexible order record.'⁵⁷ IATA's website explains that ONE Order complements NDC and 'is extending the capability of the Order Management system.'⁵⁸

3.64 We have been acutely mindful of these industry dynamics in making our assessment of the Merger, as discussed further in Chapter 7.

⁵⁶ Personalised offers can mean personalised pricing, offers of 'add-ons' and notification of new offers.

⁵⁷ <https://www.iata.org/whatwedo/airline-distribution/one-order/Pages/index.aspx> (accessed on 16 August 2019).

⁵⁸ <https://www.iata.org/whatwedo/airline-distribution/one-order/Pages/index.aspx> (accessed on 16 August 2019).

4. The Merger and rationale

The Merger

- 4.1 On 14 November 2018, Sabre entered into an agreement⁵⁹ (the Merger Agreement) to acquire the whole of the issued share capital of Farelogix for approximately \$360 million.^{60, 61} The Merger Agreement was announced publicly on the same day.⁶² [REDACTED]⁶³ and [REDACTED].⁶⁴[REDACTED].⁶⁵ Since the Phase 2 reference, section 78 of the Act prevents completion without the Inquiry Group's consent.
- 4.2 The Parties notified the proposed acquisition of Farelogix by Sabre to the US Department of Justice (DOJ) on 6 December 2018. On 20 August 2019, the DOJ filed a complaint in US Federal Court, seeking a permanent injunction to prevent Sabre from acquiring Farelogix. The DOJ alleged that the proposed acquisition was likely to substantially lessen competition in violation of federal antitrust law.⁶⁶ On 7 April the US Court cleared the Merger.
- 4.3 [REDACTED].
- 4.4 [REDACTED].

Events leading to up the Merger

- 4.5 Farelogix is majority owned by Sandler Capital Management (Sandler), a private equity fund which holds [REDACTED] of the issued share capital of Farelogix.⁶⁷ [REDACTED].⁶⁸ [REDACTED].⁶⁹
- 4.6 In this context, since 2015 Farelogix has [REDACTED].⁷⁰ [REDACTED]. Details of previous expressions of interest and bids for Farelogix are discussed in Appendix C.

⁵⁹ [REDACTED].

⁶⁰ [REDACTED].

⁶¹ Note all dollar figures quotes in this report are in US dollars.

⁶² [Sabre announcement](#) (14 November 2018).

⁶³ [REDACTED].

⁶⁴ [REDACTED].

⁶⁵ The parties confirmed this in phase 1.

⁶⁶ Sabre entered into an agreement with the DOJ and committed not to close the acquisition whilst DOJ litigation is ongoing (Sabre's Response to First Day Letter dated 10 September 2019).

⁶⁷ [REDACTED].

⁶⁸ [REDACTED]. See Appendix C for further details.

⁶⁹ [REDACTED].

⁷⁰ [REDACTED].

- 4.7 The Parties told us that [REDACTED].⁷¹ The Parties told us that, [REDACTED].⁷² Following further discussions and initial due diligence, [REDACTED].⁷³
- 4.8 Sabre told us that it was [REDACTED].⁷⁴ In October 2018, Sabre [REDACTED].⁷⁵ Further details regarding the 2018 sales process and the valuation of Farelogix are set out in Appendix C.
- 4.9 Sabre's Board approved the signing of the finalised transaction agreement on 10 November 2018 and Farelogix's Board of Directors approved the transaction agreement on 12 November 2018. On 13 November 2018, a majority of Farelogix's shareholders approved the proposed transaction by written consent.⁷⁶

Rationale

Sabre's rationale for the Merger

- 4.10 Sabre's announced rationale for entering into the agreement to acquire Farelogix was 'to accelerate delivery of [Sabre's] end-to-end NDC-enabled retailing, distribution and fulfilment solutions'.⁷⁷
- 4.11 In a presentation for investors on the day that the acquisition was announced, Sabre stated that the Merger was expected to accelerate its 'NDC-enabled strategy' by:⁷⁸
- (a) speeding up delivery of 'more powerful and tightly integrated PSS and GDS-agnostic, end-to-end NDC-enabled' solutions;
 - (b) expanding Sabre's 'pool of travel technology talent, driving faster innovation'; and
 - (c) increasing the 'breadth of customers in NDC and next-gen retailing'.⁷⁹
- 4.12 In its call with equity analysts discussing the proposed acquisition, Sabre described Farelogix as a 'recognised innovator in the travel technology space

⁷¹ [REDACTED].

⁷² [REDACTED].

⁷³ [REDACTED].

⁷⁴ [REDACTED]. See also [REDACTED].

⁷⁵ [REDACTED].

⁷⁶ [REDACTED].

⁷⁷ [Sabre announcement](#) (14 November 2018).

⁷⁸ Sabre investor presentation: [Sabre to acquire Farelogix](#), 14 November 2018.

⁷⁹ Sabre's plans to develop end-to-end NDC solutions consist of 'Next Generation Retailing' and 'Next Generation Distribution'. See chapter 9 for a description of these plans.

with advanced offer management and NDC order capabilities'.⁸⁰ Sabre noted that, in 2018, Farelogix had grown its revenues by approximately 25% versus the previous year and that Farelogix generated gross margins of approximately 85% and 2018 EBITDA⁸¹ of around \$4 million. Sabre added that:⁸²

- (a) it expected strong growth for Farelogix in 2019;
- (b) Farelogix's capabilities were built on a 'high scalable and interoperable SaaS⁸³ platform';
- (c) Farelogix's solutions were used by many of the world's largest airlines;
- (d) Farelogix was currently implementing NDC integrations with every global GDS;
- (e) it considered that Farelogix was 'very well-positioned for a continued rapid growth', as a result of a revenue model which combined highly recurring subscription revenue and transaction-based revenue.

4.13 A presentation made to the Sabre Board on 10 November 2018 (when the acquisition was recommended to the Board) explained in the speaking notes that Farelogix had [REDACTED].⁸⁴

- (a) FLX M: [REDACTED]. Sabre stated that Farelogix was [REDACTED] and the [REDACTED].
- (b) FLX OC including the NDC API, which has [REDACTED]. Sabre stated that Farelogix had [REDACTED], and that [REDACTED].

4.14 The presentation to the Sabre Board noted in the speaking notes that Farelogix had developed all of its technology to work with all PSS and GDS platforms and that Sabre intended to maintain this agnostic approach.⁸⁵

4.15 Sabre submitted to us that the acquisition would enable it to develop integrated solutions that allow airlines to distribute NDC-compliant offers via

⁸⁰ [REDACTED].

⁸¹ Earnings before interest, tax, depreciation and amortisation.

⁸² [REDACTED].

⁸³ Software as a Service.

⁸⁴ [REDACTED].

⁸⁵ [REDACTED].

Sabre's GDS (as well as other direct and indirect distribution channels)⁸⁶ and that it [REDACTED].⁸⁷ Sabre told us that the Merger was the [REDACTED] for it to [REDACTED].⁸⁸

4.16 Sabre told us that, while it will maintain and continue to offer FLX OC to airlines, this technology was 'not the key reason' for the acquisition. Rather, Sabre told us that it considered the value of the Merger to be in 'Farelogix's strength in merchandising which will plug a gap in Sabre's current capabilities and accelerate Sabre's development of NDC solutions'.⁸⁹

4.17 Sabre submitted that its own merchandising product was [REDACTED].⁹⁰ Sabre told us that its merchandising offer is fully integrated with its core PSS (ie it is "PSS-dependent" and incapable of being sold separately for use with other core PSSs)⁹¹ and that acquiring a merchandising module that is PSS-agnostic would enable it to compete for non-Sabre core PSS airlines.⁹² Sabre told us that it requires a PSS-agnostic merchandising module because:

(a) core PSS opportunities are rare because of long term contracts; and

(b) growth opportunities are primarily in the sale of non-core PSS modules which can be purchased outside of the PSS contracting cycle.⁹³

4.18 Sabre told us that, absent the Merger, it would take [REDACTED], to 'organically develop a PSS-agnostic merchandising module comparable to the industry-leading solutions'. Sabre added that, [REDACTED].⁹⁴

Farelogix/Sandler's rationale for the Merger

4.19 As described in paragraph 4.5 above, Sandler told us that [REDACTED]. Sandler submitted that, [REDACTED].⁹⁵ However, Sandler also told us that [REDACTED].⁹⁶

4.20 Sandler submitted that it had considered [REDACTED] alternatives to the proposed sale of Farelogix to Sabre [REDACTED].⁹⁷ Details of these proposals [REDACTED] are set out in Appendix C.

⁸⁶ [REDACTED].
⁸⁷ [REDACTED].
⁸⁸ [REDACTED].
⁸⁹ [REDACTED].
⁹⁰ [REDACTED].
⁹¹ [REDACTED].
⁹² [REDACTED].
⁹³ [REDACTED].
⁹⁴ [REDACTED].
⁹⁵ [REDACTED].
⁹⁶ [REDACTED].
⁹⁷ [REDACTED].

4.21 [REDACTED].⁹⁸

Deal valuation

4.22 Our review of Sabre's valuation model and supporting documents shows that, despite [REDACTED],⁹⁹ the agreed purchase price appeared to be justified by a commercial valuation exercise and calculations of synergies associated with the Merger. It also reflects assumptions about Farelogix's continued growth and does not indicate an intention to shut down Farelogix. We set out further details of the valuation evidence in Appendix C and consider its implication on the Merger impact assessment in chapters 9 and 11.

⁹⁸ [REDACTED].

⁹⁹ An internal Sabre document calculated that [REDACTED]. The document shows that [REDACTED]. [REDACTED].

5. Jurisdiction

- 5.1 An anticipated merger must meet the following two criteria to constitute a relevant merger situation (RMS) for the purposes of the Act:¹⁰⁰
- a. First, the arrangements in progress or in contemplation will, if carried into effect, lead to enterprises ceasing to be distinct; and
 - b. Second, either:
 - (i) the UK turnover associated with the enterprise which is being acquired exceeds £70 million (known as ‘the turnover test’),¹⁰¹ or
 - (ii) the enterprises which cease to be distinct supply or acquire goods or services of any description and, after the merger, together supply or acquire at least 25% of all those particular goods or services of that kind supplied in the UK or in a substantial part of it. The merger must also result in an increment to the share of supply or acquisition (‘the share of supply test’).¹⁰²
- 5.2 The second limb of the jurisdictional test seeks to establish that the transaction has sufficient connection with the UK on the basis of the turnover test or share of supply test.

Enterprises ceasing to be distinct

Arrangements are in progress or in contemplation

- 5.3 As explained in paragraph 4.1 above, on 14 November 2018, Sabre and Farelogix entered into the Merger Agreement.
- 5.4 On that factual basis, we consider that the requirements of section 36(1)(a) of the Act regarding “arrangements (...) in progress or in contemplation” are satisfied, given the Parties have entered into a binding agreement, have announced their intentions publicly, and are engaging with the DOJ and the CMA merger review process.

¹⁰⁰ Section 23 of the Act. See also the [Merger’s Guidance on the CMA’s jurisdiction and procedure](#), para 4.3.

¹⁰¹ See Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003, according to Article 2(b) ‘applicable turnover’ typically means the turnover of an enterprise in the preceding business year; see also paragraph 4.51 of the [Merger’s Guidance on the CMA’s jurisdiction and procedure](#).

¹⁰² See also paragraph 4.53 of the [Merger’s Guidance on the CMA’s jurisdiction and procedure](#), which provides that the ‘share of supply test’ is satisfied if the merged enterprises both either supply or acquire goods or services of a particular description, and will, after the merger, supply or acquire 25 % or more of those goods or services, in the UK as a whole or in a substantial part of it.

Enterprises ceasing to be distinct

The concept of ‘enterprise’

- 5.5 The Act in section 129(1) defines an “enterprise” as “the activities or part of the activities of a business”. A “business” “includes a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge”. Our Merger Guidance¹⁰³ (the Guidance) also makes it clear that the enterprise in question need not be a separate legal entity.¹⁰⁴
- 5.6 A company that owns a business operating as a going concern with the necessary assets, employees and customer contracts would satisfy the factual requirements of ‘an enterprise’ for the purposes of the Act.
- 5.7 Our view is that each of Sabre and Farelogix constitute an “enterprise” as defined under the Act.

The concept of “ceasing to be distinct”

- 5.8 The concept of “ceasing to be distinct” is described in section 26 of the Act. This provides that any two enterprises cease to be distinct if they are brought under common ownership or common control. “Control” is not limited to the acquisition of outright voting control but may include situations falling short of outright voting control. Section 26 of the Act distinguishes three levels of interest (in ascending order): (i) material influence (ii) de facto control, and (iii) a controlling interest (also known as “de jure”, or “legal” control). The Transaction is an acquisition of a controlling interest.
- 5.9 In light of the Merger Agreement (described above) our view is that in the present case there are arrangements in progress or in contemplation which, if carried into effect, will lead to two enterprises ceasing to be distinct. We consider that the first limb of the jurisdictional test is therefore met.

Turnover test

- 5.10 The turnover test is satisfied where the value of the turnover in the UK of the enterprise acquired exceeds £70 million.

¹⁰³ [Merger's Guidance on the CMA's jurisdiction and procedure](#), January 2014, CMA2, paragraph 4.6.

¹⁰⁴ Nor is there a requirement that the transferred activities generate a profit or dividend for shareholders: indeed, the transferred activities may be loss making or conducted on a not-for-profit basis.

5.11 Section 28 of the Act provides a mechanism for determining what must be taken into account in determining the turnover of the “enterprise being taken over”. In particular, the turnover test is applied to the turnover of the enterprise being acquired that was generated from the sale of goods or services to customers in the UK in the business year preceding the date of completion of the merger.¹⁰⁵

5.12 In 2018, the turnover test in section 23(1)(b) was not satisfied.

The share of supply test

5.13 The share of supply test is satisfied if the merging enterprises both either supply or acquire goods or services of a particular description, and will, after the merger, supply or acquire 25% or more of those goods or services in the UK.¹⁰⁶

5.14 The Parties submitted that the CMA does not have jurisdiction over the Merger as the share of supply test has not been met.

5.15 In considering whether the share of supply test has been met, we have considered the following three key elements:

- (a) A product/service element: whether Sabre and Farelogix both supply or acquire goods or services of a particular description;
- (b) a geographic element: whether that supply or acquisition is made in the UK or a substantial part of the UK; and
- (c) a quantitative element: whether Sabre and Farelogix would, as a result of the merger, supply or acquire 25% or more of those goods or services.

5.16 Sabre supplies its GDS to airlines, including many UK airlines (ie airlines which hold a Type A Civil Aviation Authority (CAA) operating licence) (UK

¹⁰⁵ After the deduction of sales rebates, VAT and other taxes directly related to turnover (SI 2003/1370, as amended).

¹⁰⁶ Section 23 of the Act, and [Merger’s Guidance on the CMA’s jurisdiction and procedure](#), paragraph 4.53.

Airlines)¹⁰⁷ in respect of a range of itineraries.¹⁰⁸ Farelogix has an agreement with one UK Airline, British Airways, which enables it to use Farelogix's FLX OC and FLX NDC API (collectively referred to as the FLX Services) in respect of one type of itinerary, Interline Segments (as defined in Part A of Appendix B) in the context of its interline arrangement with American Airlines.¹⁰⁹ The effect of this agreement, when considered in the context of a number of other related arrangements, is that British Airways receives the supply of the FLX Services for the purpose of marketing its Interline Segments.¹¹⁰ We therefore consider that both Sabre (through its GDS) and Farelogix (through the FLX Services) supply services of a particular description, namely IT solutions to UK Airlines for the purpose of airlines providing travel services information¹¹¹ to travel agents to enable travel agents to make bookings (see paragraph 5.28 below).

5.17 We consider that Sabre's share (by revenue) of the supply of this service is above 25% and that the Merger results in an increment.

5.18 Therefore, we consider that the share of supply test is satisfied.

Relevant background

5.19 As set out in Chapter 3, Sabre supplies its GDS to airlines on a worldwide basis, including many UK Airlines. Sabre enters into direct agreements with UK Airlines for the provision of its GDS. Sabre's services include the provision of IT solutions to airlines for the purpose of airlines providing travel services information to travel agents to enable travel agents to make bookings.

¹⁰⁷ A Type A Operating Licence is required by operators of aircraft with 20 or more seats (www.caa.co.uk/Commercial-industry/Airlines/Licensing/Licence-types/Operating-licences). The CAA's 'Licensing Airlines in the UK: the framework and criteria for granting Operating Licences, Route Licences and Air Transport Licences' includes comprehensive guidance about the framework and criteria for granting Operating Licences. In 2018, the UK Airlines were British Airways plc; Virgin Atlantic Airways Ltd; Virgin Atlantic International Ltd; EasyJet UK Limited; Flybe Ltd; Ryanair UK Ltd ([REDACTED]); Wizz Air UK Limited; Air Kilroe Ltd (trading as Eastern Airways); Air Tanker Services Ltd; BA Cityflyer Ltd; British Midland Regional Ltd (which ceased activities in 2019); CargoLogicAir Ltd; DHL Air Ltd; Jet2.com Ltd; Loganair Ltd; Norwegian Air UK Ltd; Thomas Cook Airlines Ltd (which ceased activities in 2019); TUI Airways Ltd; and Titan Airways Ltd. For consistency with the approach adopted by the Parties, the UK Airlines list excludes small charter airlines (ie 2Excel Aviation Limited, Bae Systems (Corporate Air Travel) Limited, Jota Aviation Limited, and RVL Aviation Limited), one helicopter operator (ie Bristow Helicopters Limited), and an airline based in Switzerland ([REDACTED]) (TAG Aviation (UK) Limited) ([REDACTED]). The Parties included two airlines based in the Channel Islands holding a CAA air transport licence (ie [REDACTED]) within the definition of UK Airlines. [REDACTED]. However, we have excluded these two airlines from the definition of UK Airlines as these airlines do not hold a CAA operating licence. [REDACTED].

¹⁰⁸ For example, single airline bookings, codeshare bookings and interline bookings.

¹⁰⁹ See Part A of Appendix B for a description of interlining.

¹¹⁰ The term 'market' in this Chapter is used in the sense that, pursuant to the interline arrangement with American Airlines, British Airways is the marketing carrier of the Interline Segment. British Airways' flight code is used for the Interline Segment. American Airlines collects the entire fare from the customer via the travel agent and remits to British Airways the amount due for the British Airways Interline Segment based on existing commercial arrangements. British Airways in practice sells its Interline Segments through the FLX Services.

¹¹¹ Information on, eg, flight availability, schedules, fares, and ancillary offerings.

5.20 As also set out in Chapter 3, the FLX Services also include the provision of IT solutions of this description to one UK Airline. In this context, Farelogix has an agreement with British Airways which enables British Airways to use the FLX Services to provide travel services information and market Interline Segments through travel agents. British Airways accordingly receives the supply of the FLX Services for the purposes of marketing its Interline Segments. This service provision is underpinned by three commercial arrangements:

- (a) The existing service agreement between Farelogix and American Airlines under which Farelogix supplies the FLX Services to American Airlines and must support and facilitate itineraries with American Airlines' interline partners (the Direct Connect Services Agreement);¹¹²
- (b) the interline arrangement between American Airlines and British Airways which functions in the context of the joint revenue and cost sharing agreement with American Airlines which, in turn, prompted British Airways to take steps to enable the sale of its flights (Interline Segments) through the FLX Services; and
- (c) the existing 'FLX Interline Distribution Agreement' between Farelogix and British Airways entered into by British Airways to enable British Airways to use and receive supply of the FLX Services with respect to Interline Segments and [redacted] (the British Airways Agreement).¹¹³

5.21 We provide further detail on each of these commercial arrangements in Part A of Appendix B.

Assessment of the product/service element of the share of supply test

5.22 With regard to the product/service element of the share of supply test, the Act confers on the CMA a broad discretion to describe a specific category of goods or services supplied or procured by the merging parties. In particular, section 23(8) of the Act states that 'the criteria for deciding when goods or services can be treated, for the purposes of this section, as goods or services of a separate description shall be such as in any particular case the decision-making authority considers appropriate in the circumstances of that case'.

5.23 The Guidance identifies a number of considerations to which the CMA will have regard when describing the category.¹¹⁴ In particular, the Guidance provides that the share of supply test is not an economic assessment of the

¹¹² [redacted].

¹¹³ Agreement dated 26 April 2011.

¹¹⁴ [Merger's Guidance on the CMA's jurisdiction and procedure](#), paragraph 4.56.

type used in the CMA's substantive assessment and need not amount to a relevant economic market. Rather, the Guidance states that the CMA will have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met.¹¹⁵ Therefore, it is not necessary that the description of services for the purposes of the share of supply test aligns with our market definition analysis for the purposes of our substantive assessment.

- 5.24 The CMA's well-established approach in carrying out its statutory duties in relation to merger control is to consider the commercial realities and results of transactions, focussing on the substance rather than the legal form of the relevant arrangements.¹¹⁶ Markets (including, in particular, digital and technology markets) can be characterised by a variety of different business models and the ways in which firms interact with their customers can vary significantly.

Supply of IT solutions to airlines for the purpose of airlines providing travel services information to travel agents to enable travel agents to make bookings

- 5.25 As explained in Chapter 3, airlines provide passengers with access to travel services information and the ability to make bookings either directly (via their website or call centres) or indirectly (via travel agents (including online travel agents and travel management companies)).
- 5.26 There are a number of different IT solutions that third-parties provide to airlines for the purpose of airlines providing travel services information to travel agents to enable travel agents to make bookings.¹¹⁷ The most common is a GDS. But over recent years Direct Connect services providers and non-GDS aggregators have been providing alternative IT solutions for airlines to provide travel services information to travel agents for the purpose of making bookings. These IT solutions operate in different ways but they all ultimately allow travel agents to access relevant flight information and make bookings on behalf of passengers.¹¹⁸

¹¹⁵ [Merger's Guidance on the CMA's jurisdiction and procedure](#), paragraph 4.56.

¹¹⁶ [Merger's Guidance on the CMA's jurisdiction and procedure](#), paragraphs 4.7 and 4.21.

¹¹⁷ We note that airlines can also self-supply these connections in-house. For the purposes of the share of supply test we are considering services supplied to airlines by third-parties.

¹¹⁸ As explained in Chapter 3. Within the indirect distribution channel, the distribution of content from an airline to a travel agent could be via a GDS or via a direct connect. Content may also be distributed using a direct connect that goes via a non-GDS aggregator (which then aggregates content from multiple airlines so that the travel agent can compare offers). Non-GDS aggregators cannot distribute content without the support of direct connects and therefore we consider the inclusion of non-GDS aggregators in our assessment for the purposes of the share of supply test to be conservative.

5.27 In assessing whether we are able to identify a reasonable description of goods or services that includes both Sabre and Farelogix, we have first considered the services supplied by each of the parties:

- (a) Sabre provides a GDS, ie an IT solution that connects airlines with a point of sale operated by a third-party retailer (such as travel agents and travel management companies). This connection enables airlines to transfer travel services information to the GDS (which subsequently consolidates and provides the travel services information to travel agents), and to sell tickets to passengers through travel agents.
- (b) Farelogix (via the FLX Services) provides an IT solution that enables airlines to connect to a third party (including travel agents, non-GDS aggregators, and GDSs) or their own website. To do so, Farelogix builds an Application Programming Interface (API) that, upon the request of the airline, is exposed to third parties (eg the travel agent) to allow that third party to build a connection to the airlines systems. Occasionally, to allow the airline's interline partners to market Interline Segments to passengers through travel agents, via the FLX Services, Farelogix also sets up a technical connection between the airline and certain of its interline partners (where such technical connection is required). The creation of this connection is a necessary component for the interline partner to use and receive supply of the FLX Services in the context of interline bookings as it enables the interline partner to use the FLX Services to provide travel services information and market Interline Segments through travel agents. Thus, both the airline and its interline partner benefit from the creation of the technical connection.

5.28 Accordingly, both Sabre (via its GDS) and Farelogix (via the FLX Services) supply IT solutions to airlines for the purpose of airlines providing travel services information to travel agents to enable travel agents to make bookings.¹¹⁹ Therefore, we have identified the supply of 'an IT solution to airlines for the purpose of airlines providing travel services information to travel agents to enable travel agents to make bookings' as the relevant description of services (the Relevant Description of Services) for the purposes of determining whether the share of supply test is met.

5.29 We consider that other providers of these services are the other main GDSs (Amadeus and Travelport), smaller GDSs (eg Host Direct),¹²⁰ other Direct

¹¹⁹ Both Sabre and Farelogix are third party service providers (ie they provide their IT solutions to airlines who wish to avail of their services).

¹²⁰ Other GDSs (eg Host Direct) are similar to GDSs but are focused on certain geographic areas.

Connect providers (including NDC Direct Connect and Non-NDC/XML direct connects),¹²¹ and non-GDS aggregators.¹²²

Reasonableness of the Relevant Description of Services

- 5.30 The Parties submitted that the Relevant Description of Services is inadequate and unreasonable for use in the share of supply test.¹²³
- 5.31 The Parties submitted that the Relevant Description of Services is lengthy, complex, involves a large degree of economic analysis, and has required nearly a year to crystallise.¹²⁴ However, we do not consider that these factors, individually or collectively, are determinative of, and nor do they constrain, the application of the share of supply test. We consider the Relevant Description of Services reasonably reflects the outcome of a comprehensive investigation by the CMA to engage with extensive and detailed submissions made by the Parties regarding the highly technical nature of the services they provide and to understand the commercial reality underlying such services.
- 5.32 The Parties also submitted that the Relevant Description of Services does not correspond to how competition takes place, or any recognised commercial or industry standard.¹²⁵ However, we consider that the Relevant Description of Services reflects the commercial reality of how tickets are distributed through the indirect channel. In any event, whilst the factors identified by the Parties may inform our assessment of the commercial reality underlying the nature of the services provided by the Parties, we consider they are not determinative of the appropriateness and reasonableness of the Relevant Description of Services.¹²⁶
- 5.33 Accordingly, and having carefully considered the Parties' submissions, we consider that the Relevant Description of Services is reasonable and appropriate in the circumstances of this case.

¹²¹ No UK Airlines listed spend with third party direct connects (whether NDC or otherwise) in 2018.

¹²² As indicated in footnote 119 above, we have included non-GDS aggregators in our assessment for the purposes of the share of supply test on a conservative basis. Non-GDS aggregators are providers of IT solutions that aggregate airline content from multiple airlines and transfer that content to a travel agent. In that sense, their functions are very similar to a GDS and therefore we consider it appropriate to include them in the Relevant Description of Services. We do not think that the fact that they do not necessarily connect directly to an airline affects our view as they are still a necessary and important component to the transfer of airline content to the travel agent.

¹²³ Provisional Findings response (paragraphs 2.6 - 2.8).

¹²⁴ Provisional Findings response.

¹²⁵ The Parties also submitted that business and commercial people do not use the Relevant Description of Services. Provisional Findings response (paragraph 2.10) and [§].

¹²⁶ There is no statutory requirement to take these factors into account ([Merger's Guidance on the CMA's jurisdiction and procedure](#), para. 4.56).

Services included in the Relevant Description of Services

- 5.34 The Parties submitted that, even if the Relevant Description of Services is appropriate and reasonable, the CMA has erred in determining which service providers fall in and out of its scope. In particular, the Parties submitted that there are two main flaws in the CMA's approach.¹²⁷
- 5.35 First, the Parties submitted that Farelogix does not provide a service that meets the Relevant Description of Services to UK Airlines. The Parties submitted that the services provided by Farelogix are not comparable to the services provided by a GDS on the basis of the CMA's own Provisional Finding that the services provided by Farelogix and the services provided by GDSs are complementary (rather than substitutable) from a travel agent's perspective.¹²⁸ However, we consider that the Parties have overstated the CMA's position, and misconstrued evidence of the preferences of travel agents as a finding of complementarity. In any event, we consider that complementary services may in any event be of the same description as each other. As explained in paragraph 5.3 above, our Relevant Description of Services does not rely on market definition or an assessment of substitutability.¹²⁹
- 5.36 Second, the Parties submitted that the Relevant Description of Services excludes a wide range of service providers that meet the description.¹³⁰ In particular, the Parties challenged the exclusion of:
- (a) *Metasearch engines*: The Parties submitted that metasearch engines (eg Google Flights) do a similar job to aggregators (ie they aggregate and compare content from multiple airlines, whilst not directly connecting to an airline). However, we consider that there is a clear distinction between non-GDS aggregators and metasearch engines. Non-GDS aggregators are an IT solution provided to airlines which enables travel agents to access travel services information and to make bookings (in conjunction with, e.g., a

¹²⁷ Provisional Findings response, paragraph 2.14.

¹²⁸ The Parties referred to the CMA's Provisional Findings statement that '*Travel agents appear to have a preference for accessing content through their GDSs...Nevertheless, travel agents do appear willing to access content through direct connects if not available through the GDS*' (paragraph 3.48 Provisional Findings), Provisional Findings response (paragraph 2.15). The Parties also submitted, in response to the CMA's assessment of the competitive effects of the Merger, that Sabre and Farelogix are not competitors, in part, because a GDS can offer so much more than a direct connect. We have rejected this argument about competition between the Parties (see Chapter 11).

¹²⁹ The Parties also argued that, even if the FLX Services fell under the Relevant Description of Services, Farelogix does not provide the Relevant Description of Services to any UK Airline (Provisional Findings response, paragraph 2.16). We address this point in paragraphs 5.38 – 5.58 below.

¹³⁰ Provisional Findings response (paragraphs 2.24-2.32); Annex 4 to the Provisional Findings response; [§].

- GDS or direct connect). Metasearch engines are not an IT solution provided to airlines but consumer facing sites.
- (b) *Non-VITOs*: We address this point in paragraph 5.68 below.
- (c) *NDC Exchange*: The Parties submitted that NDC Exchange is an NDC API provider which provides NDC API connectivity to customers and, therefore, a direct competitor to Farelogix. We disagree that NDC Exchange is an NDC API. The evidence received shows that NDC Exchange is a partnership between ATPCO and SITA which provides NDC translation technology and does not provide an NDC API for airlines.¹³¹
- (d) *ATPCO*¹³²: The Parties submitted that ATPCO's services of collecting and supplying airline data are a necessary and important component for the overwhelming majority of bookings in the indirect channel. However, we consider that ATPCO is not an IT solution provided to airlines but an information tool that collects fare and fare-related data for the airline and travel industry and distributes that information to third parties (eg non-GDS aggregators).¹³³
- (e) *Other providers*: The Parties submitted that the Relevant Description of Services should include suppliers that facilitate interline bookings (ARINC, SITA); IT companies that create airline travel agency portals for travel agencies; and IT companies that build airline websites. We consider that, providers of messaging technologies (eg ARINC) provide communication services to airlines which do not, on their own, enable airlines to provide travel services information to travel agents or enable travel agents to make bookings. The evidence available does not indicate that airline travel agency portal builders provide an IT solution to airlines which, on their own, enable the transfer of travel services information to travel agents and the making of bookings by travel agents.¹³⁴ In addition, we consider that IT companies that build airline websites do not provide an IT solution to

¹³¹ ATPCO's Chief Strategy Officer testified in the US proceedings that NDC Exchange does not compete with any products offered by Sabre or Farelogix (United States of America vs Sabre Corporate, day seven, Bench Trial transcript Day Seven, page 1693); [REDACTED] and [REDACTED]. In addition, even if it were to be included, it has been confirmed by SITA that NDC Exchange [REDACTED] in 2018 and UK Airlines have not listed NDC Exchange as a distribution channel.

¹³² ATPCO stands for Airline Tariff Publishing Company.

¹³³ For similar reasons, the Relevant Description of Services also excludes other data providers identified by the Parties (eg Innovata and OAG).

¹³⁴ This is supported by the evidence received by a provider of agency portals who told us that their services are more comparable to services provided by PSS providers and to products such as SAP Hybris than to services provided by GDSs and Direct Connects ([REDACTED]). In addition, no UK Airlines identified any of these suppliers as a distribution channel. Even if travel agent portals were included in the Relevant Description of Services, the revenues data available suggests that their inclusion would have a limited impact on our share of supply calculations.

airlines that enable travel agents to access travel services information and make bookings.¹³⁵

5.37 In light of the above, we consider that we have included all providers which provide services falling within the scope of the Relevant Description of Services. In particular, we consider that we have included:

- (a) All relevant third-party services providers (ie excluding self-supply) involved in the travel agent/travel management company channel (an important airline distribution channel);
- (b) IT solutions that allow airlines to connect to travel agents – ie GDSs, or APIs for connection with travel agents through direct connect or non-GDS aggregators;¹³⁶ and
- (c) third-party services actually used and identified by UK Airlines to allow travel agents to access travel services information and make bookings.¹³⁷

Supply of the Relevant Description of Services to UK Airlines

¹³⁵ The Relevant Description of Services also excludes the following services identified by the Parties: (i) airline.com (it is not an IT solution provided to airlines (each airline has its own airline.com), it is generally accessed by travellers directly, and bookings under airline.com are made by travellers directly); (ii) suppliers of communications networks (e.g. Openreach) (as such suppliers do not provide an IT solution to airlines); (iii) EDIFACT (it is a messaging standard used within the aviation industry rather than an IT solution provided to airlines); (iv) PSS providers (as such suppliers do not, on their own, provide travel services information to travel agents or enable travel agents to make bookings); (v) airline revenue accounting services (eg Maureva) (as such suppliers do not allow the transfer of travel services information to travel agents or enable travel agents to make bookings); and (vi) providers of shopping and pricing non-core PSS modules (eg Google/IAT) (as such suppliers they do not, on their own, provide travel services information to travel agents or enable travel agents to make bookings).

¹³⁶ Though we note that we have not, and are not required to, undertake a formal substitutability analysis as might be undertaken in a market definition exercise on the basis that the share of supply test is not an economic assessment of the type used in the CMA's substantive assessment and need not amount to a relevant economic market.

¹³⁷ The Parties have argued that the CMA did not put the Relevant Description of Services to airlines and therefore cannot rely on the data they provided for this purpose (paragraph 2.11 of the Provisional Findings response). However, we consider that the line of questioning included in our questionnaires sent to UK Airlines was appropriate to obtain a comprehensive overview of the distribution channels used by UK Airlines, by including definitions of the main distribution channels and giving UK Airlines the opportunity to identify other distribution channels (including indirect distribution channels) in addition to those explicitly identified in our questionnaire. In particular, our questionnaire sent to UK Airlines asked them to provide 2018 booking estimates through the following distribution channels: (i) GDS services; (ii) Direct Connect (GDS bypass); (iii) NDC enabled GDS pass-through; (iv) airlines content aggregation services (non-GDS), eg Travelfusion or similar; and (v) Other content distribution services (please specify). Under the 'other' category, Jet2 and TUI identified their internal tour operators. However, as it is further explained below, Jet2 and TUI are vertically-integrated tour operators which the Parties excluded from their calculations. The Parties submitted that this constitutes a conservative approach to reflect that the majority of bookings made by vertically-integrated tour operators are for its own airline such that they might be considered as relating to the direct channel ([§]). Therefore, the CMA excluded Jet2 and TUI's internal tour-operators from the indirect distribution channel. Under the 'other' category, LoganAir identified [§] but they later confirmed these were not indirect distribution channels. Also Jet2 listed payments to Expedia which we have been excluded as they are a travel agent. The only providers identified by the UK Airlines to distribute their content through the indirect channel are the ones captured in the Relevant Description of Services.

- 5.38 Consistent with the share of supply test framework, we have considered whether the Parties overlap in the supply of the Relevant Description of Services to UK Airlines.
- 5.39 Sabre supplies its GDS to airlines on a worldwide basis, including many UK Airlines. Therefore, we consider that Sabre supplies the Relevant Description of Services in the UK to UK Airlines.
- 5.40 As further explained below, we consider that Farelogix supplies the Relevant Description of Services in the UK to British Airways. In particular, we consider that British Airways uses and receives supply of the FLX Services in order to enable British Airways to market Interline Segments (as defined in Part A of Appendix B) under the interline arrangement with American Airlines.

Representations of the Parties

5.41 The Parties submitted that it is not appropriate for the CMA to consider that Farelogix supplies the Relevant Description of Services to UK Airlines (and to British Airways, in particular), either directly or indirectly. In particular, they submitted that:

- (a) Farelogix only supplies the FLX Services directly to non-UK airlines (eg American Airlines). It is not appropriate to treat British Airways as a customer of Farelogix as British Airways did not make a procurement decision for the FLX Services (the procurement decision was made by American Airlines in the United States);¹³⁸
- (b) The Direct Connect Services Agreement cannot be construed or interpreted as Farelogix providing the FLX Services to British Airways for the following key reasons:
- (i) [REDACTED];
- (ii) [REDACTED]; and
- (iii) [REDACTED].¹³⁹
- (c) [REDACTED];¹⁴⁰
- (d) [REDACTED];¹⁴¹

¹³⁸ [REDACTED]; Provisional Findings response (paragraph 2.16); [REDACTED].

¹³⁹ [REDACTED].

¹⁴⁰ Provisional Findings response, paragraph 2.18; [REDACTED].

¹⁴¹ [REDACTED].

- (e) The British Airways Agreement merely concerns the establishment of an incidental technical communications between Farelogix and British Airways PSS (via a third-party provider)¹⁴². To the extent Farelogix provided a service at all under the British Airways Agreement, it is not of the Relevant Description of Services;¹⁴³
- (f) Farelogix did not intend to supply the FLX Services to British Airways – it only intended to supply the FLX Services to the customer with whom it contracted under the Direct Connect Services Agreement (ie American Airlines). If Farelogix intended to supply its FLX Services to British Airways, the overwhelming likelihood is that British Airways would have been added as a party to the Direct Connect Services Agreement;¹⁴⁴
- (g) To the extent British Airways does use the FLX Services, British Airways intended to receive the relevant services from American Airlines, not from Farelogix. If British Airways had intended to receive the FLX Services from Farelogix, then British Airways would have been added as a party to the Direct Connect Services Agreement. All that British Airways intended to receive from Farelogix under the British Airways Agreement [REDACTED];¹⁴⁵
- (h) Any services supplied by Farelogix to British Airways pursuant to the British Airways Agreement [REDACTED];¹⁴⁶
- (i) [REDACTED];¹⁴⁷
- (j) [REDACTED] would indicate that British Airways cannot have made a relevant procurement decision and accordingly cannot be a customer of Farelogix;¹⁴⁸ and
- (k) Farelogix [REDACTED] and that such arrangement cannot speak to any supply relationship that Farelogix may or may not have with British Airways.¹⁴⁹

5.42 We have carefully considered the Parties' representations and further elaborate below on why Farelogix provides the FLX Services to British Airways with respect to its Interlining Segments in the context of its interlining arrangement with American Airlines.

¹⁴² [REDACTED] This has been confirmed by [REDACTED]. [REDACTED].

¹⁴³ [REDACTED]; Provisional Findings response, paragraph 2.18; [REDACTED].

¹⁴⁴ Provisional Findings Response, paragraph 2.20; [REDACTED].

¹⁴⁵ Provisional Findings response (paragraph 2.21) and [REDACTED].

¹⁴⁶ Provisional Findings response (paragraph 2.17); [REDACTED]. Farelogix also submitted that [REDACTED]. By way of analogy, the Parties argued that a builder who tarmacked a driveway in 2011 did not provide a service in 2019 by virtue of the fact that a car continues to be parked on that driveway (Provisional Findings response, paragraph 2.17; [REDACTED]).

¹⁴⁷ [REDACTED].

¹⁴⁸ [REDACTED].

¹⁴⁹ [REDACTED].

Farelogix directly supplies the Relevant Description of Services to British Airways on the facts of this case

- 5.43 As further explained below, we consider that Farelogix supplies the Relevant Description of Services to British Airways.
- 5.44 Our finding that Farelogix supplies the Relevant Description of Services to British Airways takes into account the commercial reality of the existing relationships between Farelogix, American Airlines, and British Airways. We have had particular regard to the fact that interactions between firms and their customers in the Parties' areas of activity might not be reduced to single (formal) 'procurement' decisions giving rise to direct contractual relationships, and that it is necessary to consider the significance of commercial relationships in the round and having regard to all of their various component parts.
- 5.45 Whilst Farelogix has not entered into a Direct Connect services agreement with British Airways for the provision of the FLX Services, when the relevant commercial arrangements are understood in the round, we do not consider that is determinative of whether Farelogix supplies the FLX Services to British Airways with respect to its Interlining Segments under its interlining arrangement with American Airlines. To understand the nature and effect of those arrangements, it is necessary to consider three commercial arrangements: the Direct Connect Services Agreement in place between Farelogix and American Airlines; the interline arrangement in place between American Airlines and British Airways; and the British Airways Agreement.
- 5.46 When assessing this evidence in the round we consider that Farelogix intends to, and does, supply FLX Services to British Airways in respect of its Interline Segments and that British Airways made a relevant procurement decision, in the UK, to receive supply, and still receives supply, of the FLX Services in respect of its Interline Segments.

The Direct Connect Services Agreement

5.47 We acknowledge that the Direct Connect Services Agreement primarily governs the supply of the FLX Services to American Airlines.¹⁵⁰ However, we consider that:

- The Direct Connect Services Agreement contemplates and is intended to operate in the context of interline arrangements (including the American Airlines' interline arrangement with British Airways).
- The service specifications include requirements for Farelogix to support itineraries with other airlines.¹⁵¹ The Direct Connect Services Agreement accordingly establishes a framework pursuant to which American Airlines' interline partners (including British Airways) may use and receive the benefit of the FLX Services (subject to the establishment of any required technical connections between American Airlines and its interline partners).¹⁵²
- American Airlines requested British Airways to take steps to allow its Interline Segments to be marketed through the FLX Services.¹⁵³
- The Fee (as defined in Part A of Appendix B) paid by American Airlines under the agreement covers the distribution cost of the Interline Segment when the FLX Services are used to reserve the flights of interline partners.¹⁵⁴

The interline arrangement between American Airlines and British Airways

¹⁵⁰ As indicated in Appendix B, the original agreement between Farelogix and American Airlines was entered into on [REDACTED]. This original agreement was further amended on [REDACTED] and on [REDACTED]. The [REDACTED] amendment resulted in the Direct Connect Services Agreement under which Farelogix started supplying the FLX Services to American Airlines ([REDACTED]). However, the services provided under the original agreement are broadly consistent with the services provided today ([REDACTED]).

¹⁵¹ When such itineraries are constructed in combination with American Airlines and provided that the booking is e-ticketed on American Airlines' stock. This is supported by [REDACTED]. We consider that the fact that American Airlines issues the ticket including the Interline Segment does not affect our conclusion that the FLX Services are used to provide travel services information and make bookings in respect of American Airlines' interline partners' flights.

¹⁵² This is supported by [REDACTED]. Farelogix submitted that it does not accept our interpretation of the provisions of the Direct Connect Services Agreement ([REDACTED]). Farelogix submitted that the Direct Connect Services Agreement ([REDACTED]) does not envisage the provision of the FLX Services to American Airlines' interline partners [REDACTED]. However, we do not contend that the Direct Connect Services Agreement has as its primary purpose the supply of the FLX Services to American Airlines' interline partners but that the FLX Services are used to provide travel services information and make bookings in respect of American Airlines' interline partners' flights.

¹⁵³ This is supported by evidence received from [REDACTED]. American Airlines told us that the request to British Airways was driven by the implementation of the AJB Agreement ([REDACTED]).

¹⁵⁴ This is supported by [REDACTED], [REDACTED]. The Parties submitted that the Fee [REDACTED] and is not therefore indicative of the indirect value received by British Airways in relation to its Interline Segments ([REDACTED]). However, we consider that the fact that American Airlines [REDACTED] has no bearing on whether part of the fee is attributable to the services provided in relation to the British Airways Interline Segment where there is such a segment.

- 5.48 As described in Part A of Appendix B, there is an interline arrangement in place between British Airways and American Airlines which enables British Airways (the marketing carrier of the Interline Segments) to market Interline Segments using American Airlines' distribution channels, and enables American Airlines to issue tickets with a British Airways Interline Segment through its distribution channels.¹⁵⁵ This contrasts with a code sharing arrangement (which is outside the scope of the British Airways Agreement) in which American Airlines is the marketing carrier for the segment operated by British Airways. Thus, under the interline arrangement, American Airlines is a mere intermediary for the sale of a British Airways Interline Segment. The interline arrangement is of particular significance from a commercial perspective for British Airways given the joint revenues and cost sharing arrangement under the AJB Agreement with American Airlines covering all transatlantic services of both airlines.
- 5.49 As an interline partner of American Airlines, British Airways derives commercial value from the marketing of its Interline Segments using the FLX Services. The FLX Services enable travel agents to access travel services information for British Airways Interline Segments and the booking of such flights facilitate.¹⁵⁶

The British Airways Agreement

- 5.50 The British Airways Agreement¹⁵⁷ provides for the creation of a technical connection to enable the communication between British Airways' PSS and Farelogix. We consider that this technical connection enables British Airways to provide travel services information and to market its Interline Segments through the FLX Services in the context of its interline arrangement with American Airlines¹⁵⁸ and, thereby, to use and receive supply of the FLX Services.¹⁵⁹ It also shows Farelogix's and British Airways' intentions, respectively, to supply and receive supply of the FLX Services with regard to

¹⁵⁵ In some cases, additional technical steps are required to give effect to interline arrangements through particular channels, as demonstrated by the fact British Airways first entered into the British Airways Agreement to establish the necessary technical bridge, before its Interline Segments could be marketed through the FLX Services.

¹⁵⁶ As set out in paragraph 5.47 above, we consider that the Fee paid by American Airlines to Farelogix covers the distribution costs of the British Airways Interline Segments.

¹⁵⁷ The British Airways Agreement was entered into when a prior version of the Direct Connect Services Agreement was in place (as stated in footnote 150, the original agreement between Farelogix and American Airlines was entered into on [REDACTED]).

¹⁵⁸ [REDACTED].

[REDACTED].

¹⁵⁹ Farelogix submitted that [REDACTED]. However, we consider that the technical connection under the British Airways Agreement also enables the transfer of information concerning British Airways Interline Segments from British Airways PSS to Farelogix ([REDACTED]).

Interline Segments in the context of the interline arrangement with American Airlines (as explained below).

5.51 We consider that the British Airways Agreement and supporting contemporaneous documents provide clear evidence that British Airways took active and conscious steps, and made a deliberate choice, to use and receive supply of the FLX Services for its Interline Segments in the context of its interline arrangement with American Airlines. Therefore, British Airways effectively made a procurement choice in favour of the FLX Services for its Interline Segments.¹⁶⁰ This is demonstrated by the following key evidence:

- (a) Prior to the British Airways Agreement, the GDS channel was used by American Airlines to issue tickets with a British Airways Interline Segment. British Airways told us that, at the time of entering into the British Airways Agreement, [REDACTED].¹⁶¹ This shows that British Airways considered the competitive options available to market Interline Segments in the context of its interline arrangement with American Airlines, sought to reduce reliance on the GDS, and actively chose to use and receive supply of the FLX Services to be able to market Interline Segments through the FLX Services.¹⁶²
- (b) British Airways signed an internal contract approval form on the same date as the British Airways Agreement was entered into.¹⁶³ The completed contract approval form shows that British Airways considered a number of issues relating to the use of the FLX Platform¹⁶⁴ (eg value and costs) to market its Interline Segments [REDACTED].¹⁶⁵ This further demonstrates that British Airways considered other competitive options to market its Interline Segments and actively chose to use and receive supply of the FLX Services to be able to market Interline Segments through the FLX Services. The Parties submitted that British Airways did not have a choice between competing providers.¹⁶⁶ However, we consider that British Airways could

¹⁶⁰ [REDACTED]. The Parties submitted that [REDACTED]. However, we consider that to the extent that British Airways' choice to enter into the British Airways Agreement enabled British Airways to market Interline Segments through the FLX Services ([REDACTED]), British Airways could express a commercial incentive to enter into the British Airways Agreement and, therefore, to activate the use the FLX Services for its Interline Segments. We also consider that the fact that American Airlines is responsible for issuing tickets with British Airways Interline Segments, and British Airways is unable to unilaterally increase the volumes of Interline Segments marketed through the FLX Services, is irrelevant for the purposes of establishing that a service is being provided to British Airways.

¹⁶¹ [REDACTED].

¹⁶² Farelogix submitted that [REDACTED]. However, our contention is not that British Airways entered into the British Airways Agreement as part of its future GDS by-pass strategy for non-Interline Segments but as part of its strategy at the time to use the FLX Service to market Interline Segments.

¹⁶³ *Id.*, 26 April 2011.

¹⁶⁴ See the definition of FLX Platform in Part A of Appendix B.

¹⁶⁵ [REDACTED].

¹⁶⁶ Farelogix submitted that [REDACTED].

have chosen not to enable the Farelogix connection and instead continued only to utilise other channels (eg GDSs and airline.com) for its Interline Segments.¹⁶⁷ As explained below, most of American Airlines' interline partners did not enter into arrangements equivalent to the British Airways Agreement and, therefore, do not market their Interline Segments through the FLX Services.

- (c) British Airways also provided us with a [REDACTED].¹⁶⁸ [REDACTED].¹⁶⁹ As with the contract approval form, we consider this to be positive evidence that British Airways made an active decision to establish a commercial relationship with Farelogix regarding the distribution of its interline content, with express regard to its commercial alternatives.

- (d) The recitals to the British Airways Agreement show that British Airways wanted to provide interline travel services information for its Interline Segments to travel agents and to market its Interline Segments through the FLX Services (not only via American Airlines but also via other airlines).¹⁷⁰ The Parties submitted that when the recitals are read in harmony with the operative terms of the British Airways Agreement,¹⁷¹ it is clear that it is only the [REDACTED]¹⁷² who actually have the ability to use the FLX Services. However, we consider that the commercial intent is clear from the recitals themselves. Given that the Parties' interpretation of the recitals relies on words that should be 'read in' to the recitals (as opposed to their exact wording), we have not placed any weight on such interpretation.

- (e) The British Airways Agreement specifies a fee payable by British Airways to Farelogix in respect of any Interline Segments marketed by British Airways which are included in a ticket issued by American Airlines through the FLX Services (which is distinct from the Fee paid by American Airlines for tickets issued through the FLX Services) (see Part A of Appendix B).¹⁷³ [REDACTED].¹⁷⁴ [REDACTED]. Therefore, we consider that this fee structure further emphasises that the commercial terms were influenced by reference to competitive (GDS) alternatives.

¹⁶⁷ American Airlines confirmed that prior to the British Airways Agreement, the GDS channel was used by American Airlines to issue tickets including a British Airways Interline Segment and that American Airlines continues to use the GDS channel for agents/booking channels which are not connected to the FLX Services ([REDACTED]).

¹⁶⁸ [REDACTED].

¹⁶⁹ [REDACTED].

¹⁷⁰ See Part A of Appendix B.

¹⁷¹ [REDACTED].

¹⁷² [REDACTED].

¹⁷³ Farelogix told us that [REDACTED]. We consider that this is not determinative for the purposes of establishing a supply relationship between Farelogix and British Airways.

¹⁷⁴ An Interline Segment which a travel agent sells in the UK.

(f) American Airlines told us that it has interline relationships with ‘hundreds’ of airlines (other than British Airways) but only a limited number of interline partners market Interline Segments through the FLX Service. American Airlines told us that this was in part due to the effort and costs required on the part of the interline partner and therefore an unwillingness of the interline partner to take the necessary steps to market its Interline Segments through the FLX Services (and therefore it tends just to be the bigger/most significant partners that decide to do so).¹⁷⁵ However, British Airways, by entering into the British Airways Agreement, took the necessary steps to market its Interline Segments through the FLX Services. We consider that this supports an active choice by British Airways to procure a solution to enable it to market the Interline Segments through the FLX Services.

5.52 Although the Parties take the view that the British Airways Agreement was ‘historic’,¹⁷⁶ we consider that, under the contract, the British Airways Agreement enabled, and continues to enable, British Airways to use and receive supply of the FLX Services from Farelogix.¹⁷⁷ If the British Airways Agreement was terminated, we understand that the supply of FLX Services to British Airways would cease and, therefore, the FLX Services could not be used to market British Airways Interline Segments in the context of the interline arrangement with American Airlines.¹⁷⁸

5.53 We recognise that British Airways does not receive the entire package of services that American Airlines receives from Farelogix, and that the services which British Airways receives are directed specifically at facilitating the sale of British Airways flights as Interline Segments. The fact that British Airways only uses the FLX Services to this extent and for this purpose does not undermine our view that it is in receipt of the Relevant Description of Services from Farelogix.

Combined effect of these arrangements

5.54 In light of the above, we consider that:

¹⁷⁵ [REDACTED]. Farelogix confirmed that [REDACTED].

¹⁷⁶ [REDACTED].

¹⁷⁷ This is supported by the fact that [REDACTED] British Airways Interline Segments were marketed through the FLX Services pursuant to the British Airways Agreement; Farelogix’s current entitlement to receive a fee; and the terms of the British Airways Agreement (eg, clause 12.1 [REDACTED]).

¹⁷⁸ This is supported by evidence from American Airlines. American Airlines said that, pre-April 2011, American Airlines issued tickets including British Airways interline segments through GDSs as it could not use the FLX Services to issue these tickets. They also told us that they cannot issue tickets including an Interline Segment using the FLX Services where the interline partner did not take the necessary technical steps ([REDACTED]).

- (a) The Direct Connect Services Agreement contemplates and is intended to operate in the context of interline arrangements (including the American Airlines' interline arrangement with British Airways) ;
- (b) the interline arrangement in place between American Airlines and British Airways is necessary context to British Airways taking steps to enable the sale of its flights through the FLX Services; and
- (c) the terms of the British Airways Agreement and associated documents show a clear and active choice by British Airways to enable it to use and receive supply of the FLX Services to be able to market Interline Segments in the context of its interline arrangement with American Airlines and that British Airways had regard to its competitive alternatives in doing so.¹⁷⁹

- 5.55 We therefore consider that Farelogix directly supplies the Relevant Description of Services to British Airways in the context of interline bookings in partnership with American Airlines.
- 5.56 We consider that the extent to which Farelogix [REDACTED], is not determinative for the purposes of establishing a supply relationship between Farelogix and British Airways.¹⁸⁰
- 5.57 We also consider that the maintenance of records by [REDACTED] of each instance in which a ticket including a British Airways Interline Segment is issued through the FLX Services (as opposed to another channel such as GDSs) is not determinative for the purposes of establishing a supply relationship between Farelogix and British Airways.¹⁸¹ It is more relevant that [REDACTED] knows that [REDACTED] travel services information for Interline Segments is made available to travel agents through the FLX Services and that [REDACTED] can market its Interline Segments through the FLX Services. [REDACTED].
- 5.58 Finally, we consider that the fact that British Airways has not chosen to directly contract with Farelogix for the provision of the FLX Services in respect of other itineraries does not have any bearing on a finding that Farelogix supplies the Relevant Description of Services to British Airways in the context of interline bookings in partnership with American Airlines. We consider that it is possible for a company to have several suppliers of the same service with one of those suppliers accounting for the bulk of supply and the others accounting for a very small proportion and, as described above, we consider

¹⁷⁹ In addition to the evidence referred to above, our finding that British Airways is a customer of Farelogix for the FLX Services is supported by [REDACTED].

¹⁸⁰ [REDACTED]. [REDACTED].

¹⁸¹ [REDACTED].

the supply relationship between Farelogix and British Airways is underpinned by the commercial agreements discussed above.

Geographic element

The Parties supply the Relevant Description of Services in the UK

- 5.59 With regard to the geographic element, the Act does not provide specific rules on determining whether, and to what extent, an enterprise's activities should be deemed to be in the UK for the purposes of the share of supply test. The Guidance states that, as a general rule, goods or services are deemed to be supplied in the UK if customers are located in the UK. The Guidance also states that the CMA will apply this general rule in a flexible and purposive way, with regard to all relevant factors, including where relevant procurement decisions are likely to be taken and where, in turn, any competition between suppliers takes place, although our assessment is not constrained to consider only these factors.¹⁸²
- 5.60 The Parties do not dispute that Sabre provides its GDS in the UK. However, the Parties contend that Farelogix does not supply the FLX Services to any airline customers in the UK.¹⁸³ The Parties submitted that the relevant procurement decision was taken by American Airlines, not British Airways and, accordingly, there is no UK nexus in the present case.¹⁸⁴
- 5.61 We acknowledge that the existence and/or location of a formal procurement decision is generally a relevant indicator to determine where the supply is taking place. As explained in paragraph 5.51 above, we consider that British Airways considered other competitive options and exercised an active choice to enter into the British Airways Agreement to enable it to use and receive supply of the FLX Services (and therefore to incur any associated costs) for the purpose of providing travel services information for its Interline Segments to travel agents and marketing its Interline Segments. British Airways is a UK Airline and there is therefore a relevant UK nexus. We therefore consider that Farelogix supplies the Relevant Description of Services in the UK.

Quantitative element

The 25% threshold

¹⁸² [Merger's Guidance on the CMA's jurisdiction and procedure](#), paragraph 4.58.

¹⁸³ In particular, the Parties submitted that the relevant procurement decisions for the FLX Services took place outside the UK by American Airlines and competition takes place for the direct customer (ie American Airlines).

¹⁸⁴ [REDACTED].

- 5.62 The Act gives a wide discretion to the CMA to apply whatever measure (eg value, cost, price, quantity, capacity, number of workers employed), or combination or measures, it considers appropriate to calculate the merging parties' share of supply or procurement and to determine whether the 25% threshold is satisfied.¹⁸⁵
- 5.63 In this case, we consider that the Parties both derive value from the supply of the Relevant Description of Services to UK Airlines.
- 5.64 As set out in paragraph 5.16 above, Sabre has commercial relationships with many UK Airlines, to which it supplies its GDS. Farelogix has a commercial relationship with one UK Airline, British Airways, to enable it to use and receive supply of the FLX Services in respect of its Interline Segments. Through this commercial relationship Farelogix supports the sale of certain tickets that it otherwise would not be able to (namely American Airlines tickets that include a British Airways Interline Segment). Farelogix is entitled to receive a fee from British Airways for each British Airways Interline Segment that is marketed through the FLX Services. In our view there is value to Farelogix in the enhanced functionality created by the British Airways Agreement more generally, because it improves the utility and scope of application of the FLX Services. This enhanced functionality is likely to lead to increased revenues in the form of sales made using the FLX Services which would not otherwise be realised (for instance, bookings which depend on a segment which can only be provided by British Airways as an interline partner). We take this broader commercial context into account when interpreting the evidence on share of supply.
- 5.65 For the purposes of the share of supply test in this case, we have measured the value derived from the supply of the Relevant Description of Services to UK Airlines by considering revenues received and receivable for all providers of such services.¹⁸⁶ We consider that revenue received is a reasonable measure of value as it represents payment to the Parties (and others) for the supply of the Relevant Description of Services. Similarly, we consider revenue that a party is contractually entitled to receive, but has chosen not to do so for administrative or other reasons, as an additional indicator of the value of the

¹⁸⁵ Section 23(5) of the Act.

¹⁸⁶ The term 'revenues receivable' is not used in a technical accounting sense, but rather as a short-hand label to describe any fee that a supplier is contractually entitled to receive for the provision of the Relevant Description of Services to UK Airlines. Farelogix is entitled to receive a fee under the British Airways Agreement. As explained in Part B of Appendix B, we have not seen any evidence to suggest the revenue figures provided by the other suppliers of the Relevant Description of Services exclude receivable revenues similar to Farelogix. Even if this was the case, we do not consider this would materially impact our share of supply calculations.

service provided and, therefore, a further relevant factor to measure such value.

- 5.66 Based on the data available from both the Parties and third parties, we consider that the share of supply test is satisfied by annual revenue (received and receivable) for the supply of the Relevant Description of Services to UK Airlines.
- 5.67 The Parties provided 2018 revenue data for Sabre and estimates for each of Amadeus, Travelport, Other GDSs (Host Direct),¹⁸⁷ Direct Connect (excluding Farelogix), and Tour Operators (TOs).¹⁸⁸
- 5.68 We performed a number of checks and adjustments on the data submitted by the Parties to devise a robust set of revenue estimates:
- (a) *Exclusion of TOs:* As further explained in Part B of Appendix B, we consider that the activities of TOs (including non-VITOs) are not comparable to those performed by the Parties (and the other suppliers of similar services identified by the Parties) and should therefore be entirely excluded from the share of supply calculations.
- (b) *Reliance on Amadeus and Travelport actual figures:* We have separately gathered 2018 revenue data, directly from Amadeus and Travelport, to represent the value of the relevant services provided by each of Amadeus and Travelport. We have relied on actual revenue data provided by each of Amadeus and Travelport, rather than the parties' estimates for the revenues of Amadeus and Travelport.
- (c) *Improvements to the Direct Connect/ other GDS (Host Direct) services estimates based on airline data:* As further explained in Part B of Appendix B, we have gathered expenditure data from UK Airlines to estimate revenues for third-party Direct Connect (excluding Farelogix)¹⁸⁹. We

¹⁸⁷ Other GDSs (Host Direct) are GDSs whose operations are focused on certain geographic areas. They primarily distribute content of their home countries' major airlines as well as, but to a smaller extent, content of foreign airlines for flights to and from their home countries. As no Host Direct provider is based in the UK, as a conservative approach, Sabre estimated that no UK carrier would use any Host Direct services (Sabre's response to RF12).

¹⁸⁸ The Parties' market share calculations exclude vertically integrated TOs (VITOs) (ie TOs that operate an airline, such as TUI and Jet2) (Sabre's response to RF12). The Parties submitted that this constitutes a conservative approach to reflect that the majority of bookings made by a VITO are for its own airline such that they might be considered as relating to the direct channel. In contrast, the Parties' market share calculations include non-vertically integrated TOs (non-VITOs) (ie TOs that do not operate an airline). The Parties submitted that non-VITOs aggregate content from several airlines by making such bookings and reselling them to the customer, essentially creating a separate indirect channel for content distribution (Sabre's response to RF12).

¹⁸⁹ Our estimates exclude expenditure derived from the in-house provision of direct connect (ie from an airline's own API) as we consider that only third-party suppliers fall within the definition of the Relevant Description of Services and should be considered as part of the test (see paragraph 5.37 above).

consider that the expenditure data from UK Airlines is more reliable than the estimates for Direct Connect revenues submitted by the Parties because the Parties' estimate had a material risk of error.¹⁹⁰ We have also constructed (and relied on) our own estimate for other GDSs (Host Direct) revenues based on the expenditure data received from the UK Airlines.

(d) *Inclusion of non-GDS aggregators revenues:* As indicated in footnotes 119 and 122 above, we have included non-GDS aggregators in our calculations on a conservative basis. As further explained in Part B of Appendix B, we have relied on expenditure data from UK Airlines to estimate revenues for non-GDS aggregators (eg Travelfusion). However, we understand that non-GDS aggregators require the use of a direct connect or GDS to provide the data and could, therefore, be considered to fall outside the Relevant Description of Services.¹⁹¹ Therefore, we have also calculated market shares excluding non-GDS aggregators in Part B of Appendix B. The inclusion or exclusion of non-GDS aggregators does not have a material impact on our calculations.

5.69 The actions above adjusted the total UK revenue size of the Relevant Description of Services. The Parties' data estimated the total size of the Relevant Description of Services (by UK revenues) at [X]. Our estimate for total UK revenues is substantially smaller at [X]. The difference between the Parties' and our estimates is mostly driven by the Parties' higher estimates of Amadeus and Travelport revenues.

5.70 On the basis of our 2018 revenues dataset which takes into account the adjustments explained in paragraph 5.68 above, the Parties' combined share of supply exceeds the 25% threshold on the basis of revenue (as illustrated in Table 5.1 below).

¹⁹⁰ The Parties estimate relies on an estimate of bookings made through direct connect at a global level which according to the source (T2RL) is 'purely estimated' due to airlines rarely publishing data in this area. It also relies on an assumption that there is a similar distribution mix at a UK level as globally and then further assumes all direct connect provides charge similar fees to Farelogix. Most significantly the parties estimate includes direct connect bookings delivered through in-house technology. It also does not include revenues for Non-GDS aggregators.

¹⁹¹ This is supported by evidence provided by one airline.

Table 5.1 – Shares of supply for IT solutions to airlines for the purpose of airlines providing travel services information to travel agents to enable travel agents to make bookings based on data from Sabre, Amadeus and Travelport and airline submissions (excluding non-VITOs)

Vendor	Revenues (\$)	Share of Supply
Sabre ¹⁹²	[REDACTED]	[30-40]%
Farelogix	[REDACTED] ¹⁹³	[0-10]%
Amadeus ¹⁹⁴	[REDACTED]	[40-50]%
Travelport	[REDACTED]	[20-30]%
Other GDS (Host Direct) ¹⁹⁵	[REDACTED]	[0-10]%
Direct Connect (excluding Farelogix)	[REDACTED]	[0-5]%
Non GDS Aggregators ¹⁹⁶	[REDACTED]	[0-10]%
Total ¹⁹⁷	[REDACTED]	100%

Source: Sabre, Amadeus and Travelport revenue submissions and airline expenditure submissions

5.71 Whilst we consider that, on the above basis, the share of supply test is met, we have also considered certain sensitivities to our analysis based on the submissions that have been made to us by the Parties (see Part B of Appendix B).

The Merger results in an increment

5.72 The merger must result in an increment to the share of supply or acquisition.¹⁹⁸ The Act does not prescribe a minimum increment and the Guidance explicitly recognises that where an enterprise already supplies or

¹⁹² [REDACTED].

¹⁹³ The Farelogix revenue is discussed in paragraphs 5.74 –5.82 below.

¹⁹⁴ [REDACTED].

¹⁹⁵ Based on responses covering 95% of the market by bookings. This covers all but two of the CAA Type-A licensed airlines (ie Midland Regional Ltd and Thomas Cook) who both ceased trading in 2019. As these two airlines are not long-haul carriers, we have assumed there would not be any bookings through Host Direct.

¹⁹⁶ The revenue calculations exclude in-house supply and are based on responses covering 95% of total bookings. This covers all but two of the CAA Type-A licensed airlines (ie Midland Regional Ltd and Thomas Cook) who both ceased trading in 2019. We note there is a possibility that Thomas Cook or Midland Regional Ltd may have had expenditure on third party direct connect providers or non GDS aggregators. However, based on responses from other UK airlines this seems unlikely (only two other UK airlines had such expenditure through [REDACTED]). Even if we were to make the assumption that all of the [REDACTED] bookings for Thomas Cook and Midland Regional were made through this channel charging a similar fee per booking as Farelogix, the outcome of the test would not change, with the Parties' share remaining above 25%. As Thomas Cook was a vertically integrated tour operator, most bookings would likely be excluded, and a significant proportion would also be direct channel bookings.

¹⁹⁷ We have included our estimate for Farelogix revenues ([REDACTED]) in the total revenue figure and the denominator of our share calculations.

¹⁹⁸ [Merger's Guidance on the CMA's jurisdiction and procedure](#), paragraph 4.54.

acquires 25% of any particular goods or services, the test is satisfied so long as its share is increased as a result of the merger, regardless of the size of the increment.¹⁹⁹

- 5.73 As explained in paragraph 5.64 above, we consider that Sabre derives value from the supply of the Relevant Description of Services to UK Airlines, and such value can be measured by revenues received from the supply of its GDS to UK Airlines. As illustrated in Table 5.1 above, we consider that Sabre has a share of supply by revenue of [30-40]% resulting from the supply of the Relevant Description of Services to UK Airlines and that this estimate is robust having considered the various sensitivities described in Part B of Appendix B. Accordingly, any increment to Sabre's share of supply by Farelogix would satisfy the share of supply test.
- 5.74 The Parties submitted that the Merger does not result in an increment on a revenue share basis.²⁰⁰ However, as explained in paragraph 5.64 above, we consider that Farelogix derives value from the supply of the Relevant Description of Services to British Airways (which can be measured by revenues received or receivable, or both), and the Merger therefore results in an increment. We understand that [§] British Airways interline bookings were made through the FLX Services in 2018²⁰¹, and in order to measure the value derived by Farelogix we have used these sales as a basis to estimate the revenues received or receivable by Farelogix for supplying the FLX Services to British Airways regarding the applicable Interline Segments. In particular, we have considered:
- (a) the Fee payable by American Airlines to Farelogix under the Direct Connect Services Agreement (ie a source of received revenue);²⁰² and
 - (b) Farelogix's right to payment under the British Airways Agreement (ie a source of receivable revenue).²⁰³

The Fee mechanism

¹⁹⁹ [Merger's Guidance on the CMA's jurisdiction and procedure](#), paragraph 4.54. This was illustrated in *Tesco/Spar* where the OFT considered that the share of supply test was met in circumstances where Tesco acquired a single store on the basis that this store would increase Tesco's share, even though the increase would be very substantially below 0.1%. Similarly, in *Carpentryright/Allied Carpet*, the OFT noted that the merger satisfied the share of supply test based on an increment resulting from the acquisition of a single store.

²⁰⁰ Provisional Findings response, paragraphs 2.34 and 2.35.

²⁰¹ [§].

²⁰² See paragraph 5.47 and Part A of Appendix B.

²⁰³ See paragraph 5.50 and Part A of Appendix B.

5.75 [REDACTED]. Therefore, the Parties submitted that Farelogix did not receive any revenue in the UK.²⁰⁴

5.76 With regard to the Fee mechanism, the Parties submitted that:²⁰⁵

(a) The Fee cannot be treated as money paid by British Airways to Farelogix because the money was not paid by American Airlines on behalf of British Airways, and Farelogix has no recourse against British Airways in respect of such sums.

(b) [REDACTED].

(c) Neither Farelogix nor presumably American Airlines will have prepared their accounts or tax filings on the basis that part of the sums paid by American Airlines was actually attributable to British Airways as British Airways was not party to the Direct Connect Services Agreement.

5.77 However, we consider that it is appropriate to consider the Fee mechanism as one indicator of the value derived by Farelogix from supplying the FLX Services to British Airways with respect to the applicable Interlining Segments, and to identify revenue received for the following main reasons:

(a) The fact that British Airways did not pay the Fee and that Farelogix has no recourse against British Airways in respect of the Fee does not undermine a finding that some value is derived by Farelogix from the supply of the Relevant Description of Services to British Airways. Therefore, we consider that this is not determinative for the purposes of identifying revenues received.

(b) The fact that American Airlines pays the [REDACTED] Fee [REDACTED] has no bearing on whether part of the fee is attributable to the services provided in relation to the British Airways Interline Segment where there is such a segment. As explained in paragraph 5.47 above, American Airlines paid the Fee for tickets which incorporated and included a British Airways Interline Segment. Farelogix was only able to derive value from those tickets because the British Airways Agreement facilitated the incorporation of the British Airways Interline Segment. Therefore, we consider that some proportion of the value derived by Farelogix under the Direct Connect

²⁰⁴ Provisional Findings response, paragraph 2.36.

²⁰⁵ [REDACTED]; Provisional Findings response (paragraph 2.36); and [REDACTED].

Services Agreement is referable to the British Airways Agreement. [REDACTED]²⁰⁶
[REDACTED] (see paragraph 5.47 above).²⁰⁷

- (c) As indicated in paragraph 5.62 above, the share of supply test is flexible and its application need not align with tax and accounting laws (in the same way as the Relevant Description of Services does need not align with the economic market).

5.78 In addition, the cost sharing arrangement under the AJB Agreement described in Part A of Appendix B includes the Fee paid by American Airlines to Farelogix for any American Airlines transatlantic ticket issued through the FLX Services (including tickets with a British Airways Interline Segment).²⁰⁸ Therefore, British Airways does in practice share part of the costs associated with the Fee.²⁰⁹

5.79 Therefore, we consider it appropriate to conclude that Farelogix derives value from the part of the Fee attributable to Interline Segments, and therefore that this is an appropriate measure of revenue received for providing the FLX Services to British Airways regarding its Interline Segments.

Farelogix's right to payment under the British Airways Agreement

5.80 As explained in paragraph 5.51 above and Part A of Appendix B, Farelogix is entitled to charge British Airways a fee of [REDACTED] per ticket with a British Airways Interline Segment issued using the FLX Services.

5.81 The Parties submitted that:

- (a) [REDACTED]²¹⁰ and, therefore, has not generated any revenue or value from the small number of tickets issued by American Airlines through the FLX Services which included a British Airways Interline Segment.²¹¹

²⁰⁶ [REDACTED].

²⁰⁷ This approach is consistent with the payment mechanism applied by the main GDSs in the context of interline arrangements. To the extent that GDSs typically [REDACTED].

²⁰⁸ [REDACTED].

²⁰⁹ [REDACTED]. This is supported by [REDACTED].

²¹⁰ The Parties submitted that Farelogix did not collect any revenue for British Airways Interline Segments because of the administrative resources necessary to collect these receivables would have exceeded any potential amount formally owned to Farelogix (Provisional Findings response, paragraph 2.38). The Parties submitted that sums that a firm does not bother to collect are too trivial to form the basis for a decision on jurisdiction ([REDACTED]).

²¹¹ [REDACTED]; Provisional Findings response (paragraphs 2.12 and 2.38); [REDACTED]. The Parties submitted that, in line with standard accounting principles, Farelogix would have recognised profits had there been any prospect of collecting the claims against British Airways at some point in the future (Provisional Findings response, paragraph 2.38 and [REDACTED]).

- (b) Even if Farelogix [REDACTED], it would have amounted to a minimal percentage of Sabre's revenue and an even smaller percentage of the total market revenue.²¹²
- (c) The CMA has never previously used revenue receivable for the share of supply purposes and it would not be appropriate to do so for the first time in this case.²¹³
- (d) To the extent that the fee under the British Airways Agreement is for the creation of infrastructure and performing set-up services to create a messaging interface to send messages (as opposed to the FLX Services), it is not appropriate to include such fee in the share of supply calculations.²¹⁴

5.82 However, we consider that it would be appropriate to take into account revenue receivable for the provision of the Relevant Description of Services to British Airways by virtue of the payment right in the British Airways Agreement for the following key reasons:

- (a) The right to receive an agreed measure of revenue is a quantitative measure of value attributable to the service.
- (b) The fact that [REDACTED], in our view, does not undermine the value derived from the supply of the Relevant Description of Services to British Airways which we consider appropriate to take into account when assessing whether the share of supply test is met on the basis of revenue received or receivable from providing the Relevant Description of Services to UK Airlines. The fact that the commercial opportunity did not develop in the way envisaged by Farelogix does not change the fact that value is provided.
- (c) The size of the increment is irrelevant for the purposes of the share of supply test (see paragraph 5.72 above).
- (d) The absence of precedent is not binding in this case and each case must be considered on its own merits having regard to the particular circumstances.
- (e) We consider the fee reflects payment for British Airways receiving the FLX Services and, therefore, it is appropriate to include such fee in the share of supply calculations.

²¹² Provisional Findings response, paragraph 2.12.

²¹³ Provisional Findings response, paragraph 2.37.

²¹⁴ Provisional Findings response, paragraph 2.40.

No need to specify the increment

- 5.83 In this case, we do not consider it necessary to specify precisely how much revenue is received or receivable for the supply of the FLX Services by Farelogix to British Airways (either by identifying an appropriate portion of the Fee or by specifying the precise fees that would be payable under the British Airways Agreement). This is because the 25% share of supply threshold is met on the basis of Sabre's share alone and it is sufficient that we can identify some increment for Farelogix's supply of the Relevant Description of Services.
- 5.84 As explained above, we consider there are two indicators of, and therefore possible ways of measuring value for of the Farelogix's supply of the Relevant Description of Services to British Airways: by virtue of the revenues received from the Fee under the Direct Connect Services Agreement, or the revenues receivable from the right to payment under the British Airways Agreement (or taking both indicators together).
- 5.85 To estimate Farelogix's revenue for illustrative purposes in Table 5.1 above, we have used revenue receivable and multiplied the number of British Airways' interline tickets issued through FLX (ie [X]) by the [X] fee under the British Airways Agreement. This calculation results in a [X] revenue figure. We consider this to be an appropriate estimate of Farelogix's revenue as we note that other possible approaches (eg identifying revenue received (by attributing part of the [X] Fee paid by American Airlines) or making adjustments on the basis that some fees paid under the British Airways Agreement would be at the [X] rate) would also fall within the [X] range.
- 5.86 These are indicative calculations, however, we consider that they are probative that there is an increment to Sabre's share of supply by revenue.
- 5.87 Farelogix also submitted that relying on the Fee to allocate UK revenue to Farelogix would be at odds with the rules set out in Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003²¹⁵ (the Determination of Turnover Order) and the provisions of the Guidance (and section C(V) of the European Commission's Consolidated Jurisdictional Notice²¹⁶ (the Consolidated Jurisdictional Notice) dealing with UK allocation of turnover.²¹⁷

²¹⁵ SI 2003/1370.

²¹⁶ 2008C 95/01.

²¹⁷ [Merger's Guidance on the CMA's jurisdiction and procedure](#), paragraphs 4.51 and footnote 68; paragraph 172; and paragraph 196.

- 5.88 However, we consider that the Determination of Turnover Order applies to determine the UK turnover for the purposes of applying the turnover test set out in section 23 of the Act.²¹⁸ The turnover test is clearly different from the share of supply test and does not allow the same statutory flexibility. Furthermore, the CMA's ability to rely on a broad range of measures²¹⁹ which would not involve a strict application of turnover calculation rules means that such rules are not applicable to the revenue calculations.
- 5.89 As explained in paragraph 5.74 above, in this case we consider that both Parties derive value from the supply of the Relevant Description of Services to UK Airlines and, as regards Farelogix, we have identified two indicators of such value regarding supply of the FLX Services to British Airways, namely part of the Fee received by Farelogix and the fee receivable directly from British Airways under the British Airways Agreement.

Conclusion on the creation of a relevant merger situation

- 5.90 In light of the above, we find that the Merger will result in the creation of a relevant merger situation.

²¹⁸ Section 11 of the Order.

²¹⁹ Section 23(5) of the Act.

6. Market definition

Introduction

- 6.1 This chapter examines the relevant markets for the assessment of the Merger. The purpose of market definition is to provide a framework for the analysis of the competitive effects of a merger. The relevant market is the market in which a merger may give rise to an SLC, and contains the products and/or services that are the most significant competitive alternatives available to the customers of the merged companies.
- 6.2 Market definition is a useful analytical tool but is not an end in itself, and identifying the relevant market involves an element of judgment. The boundaries of the market do not determine the outcome of our analysis of the competitive effects of a merger in a mechanistic way. The CMA may, for example, also take into account constraints outside the relevant market, segmentations within the market, or other ways in which some constraints are more important than others.²²⁰
- 6.3 The relevant product market is identified primarily by considering the response of customers to an increase in the price of one of the products of the merger firms.²²¹ However, competition concerns may arise in non-price dimensions including the quality of products and services and the level of innovation and, in defining markets in such cases, it is important to have regard to evidence relating to non-price considerations rather than having an exclusive focus on customers who would be marginal to price changes.²²² Concerns about the level of innovation are an important feature of our assessment in this case.
- 6.4 It is also important to consider ongoing dynamics in defining markets where the competitive conditions are expected to evolve. A relevant market should capture the most significant competitive constraints currently as well as those expected in the future. Where customer demands are changing, or suppliers are developing new capabilities, historical evidence such as customer switching or characteristics of existing products should be considered with caution for defining markets for the assessment of the impact of a merger going forward.

²²⁰ [Merger Assessment Guidelines \(CC 2 Revised\)](#), paragraphs 5.2.1 and 5.2.2.

²²¹ [Merger Assessment Guidelines \(CC 2 Revised\)](#), paragraph 5.2.7.

²²² Paragraph 274, *Tobii AB v. Competition and Markets Authority*, Competition Appeal Tribunal, 10 January 2020.

- 6.5 Much of the evidence in determining the market definition is also relevant to the assessment of the competitive constraints between the Parties and their competitors. Where this is the case, we outline the relevant evidence in this section and cross refer to the competitive assessment evidence in Chapters 8 to 10 in which we provide further details.
- 6.6 In the remainder of this chapter, we first consider the relevant product market. We then discuss the relevant geographic market.

Product market

- 6.7 The Parties compete to serve airlines in several ways. They both supply merchandising solutions. They also both supply distribution solutions which allow airlines to distribute content to travel agents and travellers. More broadly, their products perform certain functions which allow airlines to create offers and distribute them to passengers.
- 6.8 In this section, we consider the appropriate scope of the relevant markets by reference to the Parties' overlaps in each of merchandising and distribution solutions respectively. In Chapter 7 where we discuss nature of competition, we consider the dynamics between merchandising and distribution solutions in light of the evolving nature of airline demands.

Merchandising

The Parties' products and services

- 6.9 The Parties overlap in the supply of merchandising solutions to airlines. Merchandising solutions refer to IT solutions that allow airlines to create and price flight offers with ancillaries (eg extra baggage, Wi-Fi and meal options). With more sophisticated merchandising solutions, airlines can create personalised and dynamic offers and sell a greater variety of ancillaries in a flexible way.²²³
- 6.10 Sabre supplies two merchandising modules. Its 'Dynamic Retailer' module allows dynamic and personalised product pricing and bundling of ancillaries for distribution through the direct channel, ie directly to passengers on airlines' websites, kiosks or call centres. Its 'Ancillary Services' module focuses on

²²³ A 2018 whitepaper by IATA (Dynamic Offer Creation) defines dynamic offer as 'provided in real time, in response to a one-time request'.

generating and managing the delivery of ancillaries.²²⁴ These modules are PSS-dependent, which means they are only compatible with Sabre's PSSs. Airlines that use the Sabre PSS are free to choose a third-party merchandising solution if they so wish. Sabre's merchandising modules are generally sold together.²²⁵ They are currently not compatible with the NDC standard,²²⁶ but Sabre has been investing in 'next generation retailing' capabilities including more sophisticated merchandising functions which allow airlines to sell ancillaries and customised offers in more flexible ways based on the NDC standard, as detailed in Chapter 9.

- 6.11 Farelogix supplies 'FLX M', a solution that allows airlines to create ancillary offers across multiple channels. This solution provides the functions of the two merchandising modules of Sabre described above as well as additional supporting features which allow airlines to sell merchandising offers flexibly.²²⁷ However, it differs from Sabre's modules in that FLX M is PSS-agnostic, which means it can be (and has successfully been) integrated with any airline's PSS, not just Sabre's. Moreover, Farelogix's merchandising solution is compatible with the NDC standard whilst Sabre's is not.

The Parties' submission

- 6.12 The Parties submitted that the appropriate market definition in relation to merchandising is the supply of non-core PSS merchandising modules. However, they said Sabre's Ancillary Services module should be distinguished from Farelogix's solution because the former is 'more focussed on fulfilment aspects where Farelogix is not present', and for this reason, the Parties said their overlap is 'restricted only to services which assist with the generation and pricing of airline ancillaries'.²²⁸ The Parties did not make representations on the relevant product market in the supply of merchandising solutions in their response to our Provisional Findings.

²²⁴ [REDACTED]. Sabre's Ancillary Services focuses on 'determining ancillary catalogue and inventory, basic distribution capability for ancillaries, generating separate tickets for ancillaries and managing actual delivery of the ancillary on day of the flight'.

²²⁵ [REDACTED].

²²⁶ [REDACTED].

²²⁷ [REDACTED]. The Parties told us that FLX M support specific features such as (a) pricing rules, (b) seasonality, (c) corporate policies, (d) traveller IDs, (e) traveller loyalty or frequent flyer status, (f) any other flight/date related rules or restrictions (e.g. origin and destination, length of flight, segment, departure airport, cabin, fare type, travel period, sale period, days before departure) and (g) seat attributes.

²²⁸ Paragraph 4.1, Parties' Response to Issues Statement.

Our assessment

- 6.13 We first consider whether the relevant product market should be wider than the supply of merchandising solutions to include non-merchandising modules.
- 6.14 Merchandising and non-merchandising modules are not demand-side substitutes, as they serve distinct purposes. An airline cannot use another module (say, availability calculator) to perform merchandising functions (ie to create an offer with ancillaries), although merchandising and non-merchandising modules can be procured together as well as individually.
- 6.15 There is no supply-side substitutability between merchandising and other functions either. A supplier that is not active in merchandising cannot readily extend its capability in other non-core PSS modules to start supplying merchandising functions to airlines. This is evident from the fact that Sabre, which currently supplies many non-merchandising modules, has had (or will have to) to make substantial additional investments to enhance its merchandising capabilities (and acquiring Farelogix's merchandising capability is a rationale for this Merger).²²⁹
- 6.16 We have not seen evidence to suggest that the market should be narrower than the supply of merchandising solutions. In any case, specific features within merchandising, eg different types of capability for airlines to create ancillaries or dynamic offers, are typically not supplied separately other than Sabre which offers two different modules. We also note that Sabre is investing in new retailing capabilities, including in merchandising; we considered it appropriate to assess Sabre's position in merchandising beyond the existing features of its Dynamic Retailer and Ancillary Services modules, as further detailed in Chapters 9 and 11. For this reason, it does not materially affect our conclusions whether or not Sabre's Ancillary Services module overlaps with Farelogix's FLX M.
- 6.17 On this basis, we have found that a relevant product market to assess the impact of the Merger is the supply of merchandising solutions to airlines. In the competitive assessment, we have regard to the similarities and differences between the solutions of the Parties and their competitors and, in light of airlines' evolving business needs and suppliers' ongoing plans to meet these, how their offerings might change in the future.

²²⁹ See chapter 4 for a detailed description of Sabre's rationale to acquire Farelogix.

Distribution

The Parties' products and services

- 6.18 The Parties are active in the supply of distribution solutions to airlines. While they operate different business models using different technologies, they both facilitate the distribution of airline content to travel agents and passengers.
- 6.19 Sabre currently provides distribution services to airlines through its GDS platform. Its distribution services take place in the indirect channel because it allows airlines to distribute to passengers through an intermediary (mainly travel agents).²³⁰ Like other GDSs, Sabre connects multiple airlines with multiple travel agents on the same platform globally. Sabre markets its GDS platform to both airlines and travel agents.
- 6.20 Sabre's GDS performs other functions in addition to distribution. It creates offers for airlines by consolidating information about flight schedule, availability, fare and ancillary services. It also aggregates content across multiple airlines and distributes them to travel agents, which can then search for these offers and make bookings on the GDS platform. Sabre's GDS also manages certain fulfilment functions for travel agents, such as accounting and reporting, or management of travel disruption.²³¹
- 6.21 In addition to the existing distribution functions performed by its GDS, Sabre is developing 'next generation distribution' solutions. These solutions, which will be compatible with the NDC standard, aim to allow airlines to distribute personalised and dynamic offers in any channel, and to give travel agents access to these offers on the GDS.²³² We discuss Sabre's plans in greater detail in Chapter 9.
- 6.22 Farelogix provides IT solutions that allow airlines to distribute content through any channel of their choice, including the direct and indirect channels. These solutions are known as FLX OC and FLX NDC API. Specifically, FLX OC integrates with an airline's PSS to enable content to be distributed to third parties, while NDC API is a programming interface that allows airlines to distribute content such as dynamic offers with ancillaries. FLX OC and FLX NDC API are typically provided together.²³³ Farelogix is agnostic to the

²³⁰ Chapter 3.

²³¹ [REDACTED]. See also Chapter 3.

²³² [REDACTED].

²³³ Paragraph 2.13, Parties' Initial Phase 2 Submissions.

distribution channels used by an airline and the fees it charges to airlines are not dependent on the channel used.²³⁴

- 6.23 Farelogix's distribution solutions are compatible with the NDC standard. As discussed in Chapter 3, they allow airlines to distribute NDC (or non-NDC) content to travel agents using four approaches: (i) 'direct connects' which are one-to-one connections between an airline and a travel agent; (ii) connections via an aggregator which then combines content from multiple airlines for distribution to travel agents; (iii) connection with a GDS platform (to the extent this is enabled by the GDS) from which travel agents can access such content; and (iv) through airline.com. Following the Parties' submission, we refer to the first two approaches as 'GDS bypass' and the third approach as 'GDS pass-through'.²³⁵
- 6.24 Farelogix markets its distribution solutions to airlines but not to travel agents. It is the airlines which negotiate with the travel agents to establish a connection. This contrasts with Sabre which markets its GDS to both airlines and travel agents. However, Farelogix provides an interface (SPRK) which allows travel agents to make bookings from airlines with which it has established direct connects.²³⁶

The Parties' submissions

- 6.25 The Parties submitted that the appropriate relevant product market must either be (i) GDS services, which exclude the provision of APIs used for the indirect distribution of airline content; or alternatively (ii) all airline content distribution services including the direct channel and the indirect channel.²³⁷
- 6.26 To support their contention for a 'GDS services' market, the Parties told us that there are material differences between GDS and direct connects which make them 'entirely non-substitutable'.²³⁸ They reasoned that:

²³⁴ Airlines who use Farelogix's distribution solutions pay both an annual licence fee and a per ticket fee. The levels of these fees do not depend on whether the content is distributed through direct connect, aggregator, or a GDS.

²³⁵

The Parties told us that in Sabre's internal documents "Direct Connect" refers to [REDACTED]. Farelogix's internal use of the term "direct connect" [REDACTED]. See [REDACTED].

²³⁶ Paragraph 2.13 (iii), Parties' Initial Phase 2 Submission.

²³⁷ Paragraph 5.1, Parties' response to the Issues Statement.

²³⁸ Paragraphs 5.2-5.5, Parties' Initial Phase 2 Submission; Paragraph 5.1, Parties' response to the provisional findings.

- (a) Direct connect is a one-to-one airline to travel agent connection and does not offer comparison shopping, while GDS is a two-sided platform with many-to-many connections on which comparison shopping can be done.
- (b) Direct connect does not offer 'critical' fulfilment services to travel agents, such as 'intelligence in itinerary creation', 'mid- and back-office support', or the ability to meet their 'duty of care to corporate travellers' that the GDSs offer.

6.27 In relation to the alternative candidate market proposed by the Parties to include both the direct and the indirect channels, they submitted that airline.com (the main form of distribution in the direct channel) competes with GDS for the following reasons:²³⁹

- (a) Passengers who might previously have booked through a traditional travel agent are instead increasingly booking online via a meta-search engine through an OTA or airline.com.
- (b) The majority of bookings which rely on Farelogix's solutions flow through OTAs and meta-search engines. According to the Parties, this means passengers who book such tickets are 'likely to be cost-conscious, internet-literate shoppers for whom airline.com is more substitutable than a traditional travel agent'.
- (c) The Parties said 'the leverage that airlines use in negotiation is the threat of pulling some content out of the GDS and offering it exclusively on airline.com or through the airline's GDS private channel', which will strengthen as airline.com 'continues to grow', and which 'has absolutely nothing to do with Farelogix'.²⁴⁰

6.28 The Parties did not comment on the relevant market in distribution solutions in response to the Provisional Findings, but they said they 'reserve their position' based on the view that GDS and direct connect are 'not substitutable with one another'.²⁴¹

Third-party submission

6.29 Amadeus submitted that 'GDSs compete in a market for airline ticket distribution that comprises all distribution channels'. It cited the following reasons to support its view: (i) structural shift in bookings from the indirect to

²³⁹ Paragraphs 5.6-5.9, Parties' Initial Phase 2 Submission.

²⁴⁰ Paragraph 5.35, Parties' Initial Phase 2 Submission.

²⁴¹ Paragraph 5.2, Parties' response to the provisional findings.

direct channel’; (ii) ‘surcharges and content withdrawals’ diverting sales from the indirect to the direct channel, and (iii) UK consumers are willing to book via airline.com or OTA. Amadeus agreed with the inclusion of direct connect in the relevant market for assessing this Merger,²⁴² and supported the ‘frame of reference’ used in the Provisional Findings, but contended that the CMA underestimated the degree of constraint exercised by the direct channel.²⁴³

6.30 We have not received representations specific to the market definition from other third parties. We incorporate other third-party evidence, where relevant, to our assessment of the relevant market below.

Our assessment

6.31 This section first considers whether the distribution solutions based on GDS (supplied by Sabre) and those based on NDC API (supplied by Farelogix) used for GDS bypass compete in the same product market. It then examines whether the direct channel (in particular airline.com) should be included in the same relevant market as indirect channel.

Competition between distribution solutions based on GDS and on NDC API

6.32 The extent to which GDSs compete with distribution solutions based on NDC API depends on: (i) whether a particular airline adopts (or intends to adopt) the NDC standard and distribution solutions based on the NDC API; and (ii) whether the airline uses these solutions as an alternative to GDS (ie GDS bypass) once it has adopted them.

6.33 In relation to (i), a large majority of the 29 airlines responding to our questionnaire said they have either adopted the NDC standard or planned to do so in the next few years.²⁴⁴ In particular, all major full service carriers serving UK consumers have made significant investments in distribution solutions based on the NDC API. For these airlines, competition between providers of GDS and NDC API solutions therefore occurs for bookings made through their respective channels (and the associated revenue).

6.34 To assess whether the degree of competitive constraint between GDS and GDS bypass is sufficiently strong to include them in the same product market, we consider the evidence on:

(a) Airlines’ distribution strategies;

²⁴² Amadeus’ key observation on Reference Decision, section 4.

²⁴³ Paragraphs 3.2, 6.2, Amadeus response to the provisional findings.

²⁴⁴ Chapter 10, Airlines’ adoption of the NDC standard and related NDC-compatible solutions.

- (b) internal documents of distribution solutions suppliers;
- (c) use of GDS and GDS bypass by different types of travel agent.

- *Airlines' distribution strategies*

- 6.35 We find that airlines typically use a mix of distribution channels. Evidence from airlines indicate a general trend for them to use a 'portfolio' or 'omni-channel' distribution strategy, with GDS (including GDS pass-through), GDS bypass and airline.com being the main components.²⁴⁵ We consider that the share of bookings taken by each of the different channels can change depending on choices made by airlines, travel agents, and the outcome of competitive interactions between those channels.
- 6.36 The airline evidence indicates that while GDS will remain a significant distribution channel, there is a growing degree of adoption of GDS bypass and reduced use of GDS generally. An important factor is that airlines have a desire to take greater control of their retailing and distribution strategies (away from the GDS), and that solutions based on NDC API allow them to do so.
- (a) The volume of content distributed through GDS bypass is relatively small compared to GDS currently.²⁴⁶ However, a large majority of the 29 airlines responding to our questionnaire said they plan to grow their usage of GDS bypass and reduce their usage of GDS. They generally reasoned that GDS bypass gives them more control and flexibility over the distribution of content outside GDSs, to ensure consistent passenger experience across all channels. Nearly all airlines note that GDS will continue to play an important role.²⁴⁷
 - (b) Internal documents by several airlines indicate they expected to reduce dependency on the GDSs and save costs by using GDS bypass.
 - (i) A large US airline noted that it [REDACTED];²⁴⁸
 - (ii) another US airline noted specifically that [REDACTED];²⁴⁹
 - (iii) a major European airline group highlighted that the move to NDC connections would 'result in lower distribution costs in the long-term

²⁴⁵ Chapter 7, paragraph 7.12 and Chapter 10, paragraphs 10.95 - 10.99.

²⁴⁶ Chapter 8, paragraphs 8.59 and Table 8.3.

²⁴⁷ See Chapter 10, Airlines' submissions on expected usage of various distribution channels.

²⁴⁸ [REDACTED].

²⁴⁹ [REDACTED].

with greater airline control and faster innovation’ and noted that ‘NDC [API] ... [REDACTED].²⁵⁰

- (c) 13 of 22 responding airlines which have renegotiated their contracts with a GDS in the past three years told us that they have used the threat of using direct connect as a lever in negotiation.²⁵¹ This is comparable to the number of airlines (14) which told us they have used airline.com as a lever.²⁵² Specifically in relation to Farelogix’s GDS bypass solution, a document from a US airline stated that ‘partnering with Farelogix improved its position in contract negotiations with the ‘big three (Sabre, Amadeus, Travelport)’;²⁵³ while [REDACTED]²⁵⁴
- (d) Farelogix told us that it expects ‘a portfolio [of distribution channels] to exist’. It estimates that the use of GDS pass-through and GDS bypass will be broadly in the proportion of 80 to 20, in favour of the GDS-passthrough due to its ‘efficiencies’.²⁵⁵
- (e) The Parties submitted to the US DOJ that [REDACTED], as explained in paragraph 6.39(e) below.

- *Internal documents of distribution solutions suppliers*

6.37 Documents from distribution solution suppliers show that GDS bypass is expected to grow and is seen as a threat to the GDS.

- (a) Sabre documents frequently refer to airlines’ use of direct connect as a [REDACTED].²⁵⁶ This is also reflected in Sabre’s 2018 annual report which describes direct connect as a risk factor (alongside airline.com), allowing airlines to ‘apply pricing pressure’ and ‘negotiate travel distribution arrangements that are less favourable’ to its GDS business.²⁵⁷
- (b) The threat of GDS bypass to Amadeus’ GDS business is also evident from its documents, as further explained in Chapter 10.

²⁵⁰ [REDACTED].

²⁵¹ Chapter 10, paragraph 10.101.

²⁵² Chapter 10, paragraph 10.101.

²⁵³ [REDACTED].

²⁵⁴ [REDACTED].

²⁵⁵ Main Party Hearing, Farelogix. (Mr Jim Davidson): ‘I expect a portfolio to exist. [...] I expect bypass will be around for as long as we are. [...] I think it is going to be whatever, 80/20 [pass-through to bypass], just because I think there is so much more efficiencies by connecting and having the airline get that content down through there. [...] but I would suspect they will keep bypasses’.

²⁵⁶ Chapter 9, paragraphs 9.164 - **Error! Reference source not found.**

²⁵⁷ Sabre SEC filing form 10-K 2018, page 5.

(c) A 2019 study commissioned by Datalex predicted [REDACTED].²⁵⁸

- *Use of GDS and GDS bypass by different types of travel agent*

6.38 We find that the suitability of GDS and GDS bypass is in part influenced by the type of travel agents consuming the content and, related to this, the complexity of passenger requirements. It is also affected by the location of the travel agent.

6.39 The evidence indicates that GDS bypass is mainly used for distribution of content to OTAs who typically serve leisure passengers with simpler itinerary and fulfilment requirements. It is also used by some TMCs and traditional bricks-and-mortar travel agents, but to a significantly lesser degree currently.

(a) In 2018, the majority of bookings [REDACTED] facilitated by Farelogix's NDC API were made on OTAs. A smaller, but non-negligible, proportion of such bookings were made on TMCs [REDACTED], and traditional bricks-and-mortar travel agents [REDACTED].²⁵⁹ GDSs serve a broad range of travel agents; the proportion of bookings for Sabre by type of travel agents are: OTAs [REDACTED], TMCs [REDACTED] and other B&M travel agents [REDACTED].²⁶⁰

(b) OTAs generally told us that they offer aggregation and comparison shopping services to passengers using their own IT capabilities, without having to rely on GDSs.²⁶¹ This means the lack of aggregation or comparison shopping functions provided by a supplier of GDS bypass solutions does not prevent OTAs from consuming content via this channel.

(c) Farelogix told us that an OTA is a 'fairly non complex transaction' where an airline can 'get more things down' with GDS bypass faster than a GDS, and where 'GDS bypass might stay'.²⁶²

(d) The use of direct connects by OTAs can grow rapidly. For example, the proportion of UK bookings made through direct connect on one [REDACTED] OTA [REDACTED] has grown from [REDACTED] in 2018 to [REDACTED] in 2019.²⁶³

(e) The Parties told the US DoJ that [REDACTED].²⁶⁴

²⁵⁸ [REDACTED].

²⁵⁹ Based on Farelogix data for top 100 travel agent users submitted in response to market questionnaire Annex 24.01. See also [REDACTED].

²⁶⁰ Chapter 3, paragraph 3.40.

²⁶¹ Chapter 3, Factors in travel agents choosing a GDS or alternative distribution channel

²⁶² [REDACTED].

²⁶³ Chapter 10, paragraph 10.134.

²⁶⁴ [REDACTED].

6.40 In contrast, TMCs typically offer more complex itineraries, comparison shopping and fulfilment services to business passengers, and GDSs (but not suppliers of NDC API) perform these functions on their behalf.²⁶⁵

(a) An IAG 2019 document on distribution strategy states that [REDACTED].²⁶⁶

(b) However, four of the ten responding TMCs told us that they have direct connects with airlines to obtain content which is unavailable on the GDSs.²⁶⁷

6.41 In addition, we find that the investments required in part explain why OTAs are better placed to use GDS bypass than smaller traditional bricks-and-mortar travel agents. OTAs are typically well-resourced global businesses and have already made investments to establish direct connects.

(a) Travel agents generally told us they need to make significant investments to establish direct connects and use GDS bypass, although these can be funded by the airlines.²⁶⁸

(b) Sabre estimated that although each travel agent would [REDACTED] direct airline connections to capture the majority of indirect volumes, the upfront investment costs required [REDACTED].²⁶⁹

(c) However, the Parties also told the US DOJ that [REDACTED].²⁷⁰

6.42 With regards to the location of travel agents, we recognise that GDSs are an important route for airlines to reach travel agents globally. However, airlines with a concentrated base of home country passengers can establish direct connects with home country travel agents to cover a large proportion of passengers. For example, Sabre submitted to the US DOJ that [REDACTED].²⁷¹

6.43 In summary, while Sabre's GDS performs wider functions and provides wider geographic coverage than Farelogix's NDC API, such differences matter less when airlines wish to distribute to OTAs or to home country travel agents. We consider that for these groups of travel agents (along with a material proportion of TMCs and B&M travel agents) airlines have a choice between

²⁶⁵ Chapter 3, Travel agents paragraph 3.42 and Current use of GDS Bypass, Chapter 10, paragraphs 10.126 - 10.127.

²⁶⁶ IAG, [REDACTED].

²⁶⁷ Chapter 10, paragraphs 10.1242.

²⁶⁸ Chapter 10, Costs to establish GDS bypass, paragraph 10.13130

²⁶⁹ [REDACTED].

²⁷⁰ [REDACTED].

²⁷¹ [REDACTED].

using a GDS and using GDS bypass in order to distribute at least a material part of their content.

- *Assessment on relevant market for distribution solutions based on GDS and on NDC API*

6.44 Overall, the evidence does not support the Parties' view that GDS and direct connects services are 'entirely non-substitutable'. We have found that distribution solutions based on NDC API, which enable GDS bypass, are a competitive threat to Sabre and to other GDSs. Both solutions facilitate distribution of content to travel agents rather than directly to travellers. Although the current volume of airline content distributed through GDS bypass is much smaller than through GDS, it is appropriate to take into account the likely growth of GDS bypass. We recognise there are differences which mean GDS bypass is less effective than GDS in serving travel agents with complex requirements (eg many, but not all, TMCs), but such differences have not impeded the growth of GDS bypass in some other travel agent segments (eg OTAs).

6.45 We also note the two-sided nature of Sabre's business model, which differs from Farelogix's 'channel-agnostic' model to supply distribution solutions to airlines and leave them to manage the travel agent relationship.²⁷² However, we consider that this difference is currently part of Farelogix's business proposition which allows airlines greater control of their distribution strategies, and which makes it an alternative to GDSs for them. Therefore, we disagree with the Parties' contention that their products constitute different markets simply because Sabre's business is two-sided and Farelogix's is not. Rather, we consider that competition between the Parties primarily occurs on the airline side and that the option that NDC APIs give airlines to directly manage the travel agent relationship, as an alternative to the GDS performing this role, is an important part of the competitive dynamic between these products.

6.46 Therefore, our view is that distribution solutions for airlines based on NDC API, including those supplied by Farelogix, compete with GDSs in the same product market.

Competition between direct channel (including airline.com) and indirect channel

6.47 This section examines whether direct channel should be included in the same product market as indirect channel (in which GDS and GDS bypass operate).

²⁷² As explained in paragraphs 6.22 above and discussed further in Chapter 10, paragraph 10.109.

- 6.48 As described in Chapter 3, direct channel refers to airlines' distribution of content to passengers directly. This can be done on an airline's own website or mobile app (airline.com), airline kiosks or call centres. Direct channel accounts for around 50% of global bookings in 2018, and the share has remained at around 49% to 51% in recent years,²⁷³ although the proportion varies by airline or by region.²⁷⁴ Within the direct channel, airline.com has grown in the past few years while call centres have declined. We focus on airline.com as it accounts for over 80% of volumes within the direct channel.
- 6.49 Airline.com and GDSs operate different models for airlines to distribute content to passengers. With airline.com, the airline distributes directly to passengers using an internet booking engine, which is typically built in-house and/or with other technology providers.²⁷⁵ With a GDS, an airline sells indirectly to passengers via travel agents using the GDS platform and technologies. Airline.com serves passengers further downstream (ie it is a 'B2C' service) whereas a GDS serves airlines and travel agents (ie it is a 'B2B' service).²⁷⁶
- 6.50 However, in principle airline.com can exercise a constraint on GDS. For example, an airline can use the threat of influencing bookings to airline.com to negotiate better terms with a GDS,²⁷⁷ which can be achieved for example by imposing a surcharge on, or withholding content from, the GDS. In turn this could encourage passengers to switch bookings from travel agents to airline.com, requiring GDSs to respond to sustain volumes and keep travel agents signed up. The more passengers switch between airline.com and travel agents that use GDSs, therefore, the more credible the constraint of airline.com on GDS would be.
- 6.51 To understand the degree of constraints from airline.com on GDS, we consider the evidence on usage trend in GDS, airline.com and other direct channels, and differences in the functions and passenger type between GDS and airline.com.

²⁷³ [REDACTED], based on T2RL data. See also Chapter 8, Table 8.9.

²⁷⁴ Amadeus submitted an analysis for [REDACTED] airlines which showed that in the EU and UK [REDACTED]. See paragraph 3.2, Amadeus' response to the Provisional Findings.

²⁷⁵ T2RL, *The Market for Airline Internet Booking Engines*, April 2019: 'The Internet Booking Engine [IBE] is the solution that most airlines tend to keep in-house as they prefer full control of their direct point of sale. Whereas the IBE is the relatively easier piece of technology to develop in-house, airlines tend to partner with other more specialised technology players in the area of shopping, pricing and merchandising to create a full online retailing solution.'

²⁷⁶ B2B stands for 'Business to business' and B2C stands for 'Business to consumer'.

²⁷⁷ And to GDS bypass as explained in the preceding section.

- *Usage trend in GDS, airline.com and other direct channels*

6.52 The evidence on the usage trend between airline.com and GDS is mixed. Airlines have used the option of distributing through airline.com to negotiate terms with GDSs, but other evidence indicates that the growth of airline.com appears to be slowing down in the recent past.

- (a) Airlines generally told us that airline.com is an important part of their distribution strategies. In addition, 14 of 22 responding airlines which have renegotiated their contracts with a GDS in the past three years told us they have used airline.com as a lever in negotiation. This is broadly comparable to the number of airlines (13) which said they have used GDS bypass as a lever.²⁷⁸
- (b) A presentation prepared for the Sabre Board in May 2017 stated that [redacted].²⁷⁹
- (c) A 2019 equity analyst report by Bank of America Merrill Lynch estimated that bookings have shifted from the three GDSs to airline.com at the average rate of c.3.4% per annum between 2009 and 2018, but 'this is likely to slow a bit going forward', especially outside emerging regions where 'bookings ripe for the switch (price sensitive leisure bookings in particular) have largely moved online already'.²⁸⁰
- (d) T2RL data shows that between 2015 and 2018, airline.com share of total bookings grew by 5pp (from 37% to 42%), while call centre share of bookings decreased by 4pp (from 12% to 8%) and the share of indirect channel decreased by 1pp (from 51% to 50%). This indicates that the growth of airline.com corresponded to the decline in call centres to a greater extent than to the decline in GDS.²⁸¹ While we recognise that this does not necessarily mean passengers have substituted between airline.com, call centres or GDSs (for example, each of these channels could have grown or declined for other reasons, and airline.com could have accounted for a larger proportion of the global growth), the share trend suggests that the competitive dynamics take place not solely between airline.com and the GDSs.²⁸²

²⁷⁸Chapter 10, paragraphs 10.99-10.101.

²⁷⁹ [redacted].

²⁸⁰ Global Travel IT Industry, 2019 Global Distribution System (GDS) & airline IT Primer: From Volume to Value, 26 September 2019, Bank of America Merrill Lynch, page 30.

²⁸¹ Table 8.9.

²⁸² The Parties hypothesised that 'some of these phone bookings have gone to the GDS channel and that the flow from bookings from GDS to airline.com is even greater', but we note that they did not put forward evidence to substantiate this hypothesis. See Parties' response to the provisional findings, paragraph 5.83.

(e) Our analysis of the distribution volumes for British Airways and Lufthansa shows that both airline.com and GDS bypass have gained share over GDS, after their introduction of surcharges on bookings on GDS and withdrawal of content from GDS respectively.^{283, 284}

(f) As study commissioned by Datalex in July 2019 projects [REDACTED].²⁸⁵

6.53 We note that low cost carriers distribute their content mainly through airline.com and they only use GDSs to a very limited degree.²⁸⁶ They also use APIs to distribute content but these are not based on the NDC standard used by full service carriers.

- *Differences in the functions and passenger type between GDS and airline.com*

6.54 Similar to distribution solutions based on NDC API discussed above, airline.com allows airlines to control offer creation and distribution away from the GDS, but does not offer the range of comparison shopping, complex itineraries and fulfilment services that GDSs do. These limitations mean airline.com primarily focuses on passengers with relatively straightforward travel needs, while GDSs also serve passengers with more sophisticated travel management requirements.

(a) A 2019 IAG distribution strategy document states that [REDACTED].²⁸⁷

(b) TMCs and corporate customers generally told us they either do not use airline.com or do so to a very limited extent.²⁸⁸

(c) An Amadeus document appears to show that, measured by the composition of the travel agents (OTA, TMC and B&M travel agent) and origins of passengers (ie whether they book online or offline), there is [REDACTED].²⁸⁹

(d) A 2019 equity analyst report by Bank of America Merrill Lynch states that in developed regions ‘airlines have worked hard to drive leisure travellers to

²⁸³ Chapter 10, paragraph 10.92.

²⁸⁴ Amadeus appeared to ascribe this to BA’s and Lufthansa’s strategy to push ‘direct distribution’ (paragraph 3.2(b), Amadeus’ response to the Provisional Findings). We note that BA and Lufthansa data shows that ‘direct distribution’ includes both direct channel (airline.com) and NDC-based direct connect or GDS bypass in the indirect channel.

²⁸⁵ [REDACTED]. See paragraph 6.52(f)

²⁸⁶ [REDACTED].

²⁸⁷ [REDACTED].

²⁸⁸ Chapter 10, paragraph 10.143 and Chapter 3, paragraphs 3.40 - 3.42.

²⁸⁹ [REDACTED].

the website, the GDS channel becomes more and more business dominated, where fees tend to be higher'.²⁹⁰

6.55 The above indicates that airline.com is likely an alternative channel to GDS in respect of passengers with straightforward needs, some of whom may otherwise book through an OTA (which in turn is served by GDS), but it is not an effective alternative for airlines to reach passengers with complex requirements (particularly the more sophisticated corporate travellers) served by TMCs.

- *Assessment of competition between direct and indirect channels*

6.56 We consider airline.com is an important part of an airline's distribution strategy alongside GDS (and GDS bypass),²⁹¹ and it exercises a constraint on GDS. However, airline.com plays a different role to GDS bypass in competing with the GDSs: (i) suppliers in the indirect channel compete for travel agents while airline.com competes primarily for passengers downstream directly, (ii) suppliers in the indirect channel (GDSs and to a lesser degree GDS bypass) serve a mix of passengers through OTAs, TMCs and other B&M travel agents which tend to have more sophisticated travel requirements,²⁹² while airline.com primarily serves passengers with straightforward needs that do not require services of a travel agents.

6.57 On balance, we consider it appropriate to assess direct and indirect channels in the same product market. However, it does not materially affect our conclusion in the merger assessment whether or not the direct channel is included in the relevant product market as explained in Chapter 11.

Conclusion on product market regarding distribution

6.58 We have concluded that a relevant product market for assessing this Merger is the supply of distribution solutions to airlines. This market includes the services provided by GDS, distribution solutions based on NDC API (including GDS bypass) and direct channel (primarily airline.com), for the sale of tickets and ancillary content through travel agents and/or to passengers. In the competitive assessment, we have regard to their differences, and how the roles of GDS, GDS bypass, and airline.com are expected to evolve as a result

²⁹⁰ Global Travel IT Industry, 2019 Global Distribution System (GDS) & airline IT Primer: From Volume to Value, 26 September 2019, Bank of America Merrill Lynch, pages 30 and 41.

²⁹¹ Except for low cost airlines which primarily use airline.com not GDS; see paragraph 6.53.

²⁹² Paragraph 6.43

of airlines' wider changing business models which aim to take greater control of their retailing and distribution strategies.

Geographic market

- 6.59 The Parties supply merchandising and distribution solutions to airlines globally. Airlines also typically procure these solutions from suppliers that are active globally.
- 6.60 However, we have heard from the Parties that local sales and engineering support and regional experience are relevant factors for customer choice of both solutions.²⁹³ We also note that a supplier's competitive position can vary by region (eg Sabre's GDS is stronger in the US than in Europe, and the reverse is true for Amadeus; OpenJaw's customer base is primarily in Asia).
- 6.61 Moreover, specific to distribution, we note that travel agents in China, Japan and Russia are largely served by 'local GDSs' (or 'host direct') which operate exclusively within these countries.²⁹⁴ Travelsky is a dominant platform in China. Local GDSs do not provide airlines access to travel agents globally, and therefore they do not compete with Sabre and the other global GDSs (Amadeus and Travelport) outside their home countries. Further, Farelogix does not compete with Sabre for business from travel agents, just airlines, and most international airlines have to do business with Sabre (and the other global GDSs) in order to have access to a broad network of travel agents. Industry reports typically analyse competition between three GDSs (Amadeus, Sabre and Travelport) and exclude local GDSs.²⁹⁵
- 6.62 The Parties submit that the relevant geographic scope for the supply of both merchandising and distribution solutions is worldwide.²⁹⁶
- 6.63 Overall, given the global nature of the Parties' businesses, we have concluded that the relevant geographic scope is worldwide for both product markets. In the competitive assessment, we take into account any regional differences in the competitive strengths of suppliers, noting in particular the fact that local GDSs are likely to exercise limited constraints on the Parties. We also take account of global competitive dynamics to the extent that they have competitive effects in the UK, both currently and in the future.

²⁹³ [REDACTED].

²⁹⁴ See paragraph 3.24 and footnote 112, Merger Notice. A few countries, including China, Russia, and Japan, are largely serviced by local GDSs (e.g. Travelsky, Infini, Axess).

²⁹⁵ See, for example, Global Travel IT Industry, 2019 Global Distribution System (GDS) & airline IT Primer: From Volume to Value, 26 September 2019, Bank of America Merrill Lynch, pp.26-27

²⁹⁶ [REDACTED].

Conclusion on relevant market definitions

6.64 We have concluded that the relevant markets for the assessment of the Merger are: (i) the supply of merchandising solutions to airlines worldwide, and (ii) the supply of distribution solutions to airlines worldwide.

7. The nature of competition

7.1 To assess the competitive effects of the Merger we must first understand how competition operates. This chapter examines the nature of competition and discusses the theory of harm and analytical framework.

- (a) We first briefly outline the main parameters of competition.
- (b) We then discuss the context of the industry, including the ongoing demand from airlines to take greater control of their retailing offers, and the emergence of differentiated business models and new technology to meet such demands.
- (c) On this basis, we set out the theories of harm to assess this Merger.
- (d) Finally, we outline the structure of the assessment.

Parameters of competition

Merchandising

- 7.2 Airlines traditionally procure merchandising solutions either as part of a bundle with their core PSS, or as a separate module (or modules) from a third-party provider and integrate it to the core PSS. More recently, some airlines procure merchandising solutions as part of a retailing platform or 'NDC solutions' separately from their core PSS. In all these cases, procurement typically takes place through a bidding process, where an airline issues a request for information (RFI) or request for proposal (RFP) to potential suppliers, identifies a shortlist of suppliers that are compliant with its requirements, evaluates them based on criteria such as their technical and functional capabilities, timing of developing these solutions, reputation and costs, and then chooses a winner on this basis.²⁹⁷ Airlines can also procure merchandising solutions or renew their arrangements through bilateral negotiations with suppliers without a bidding process.
- 7.3 The Parties take different approaches in pricing their merchandising products. Sabre told us that, as [REDACTED].²⁹⁸ Farelogix charges [REDACTED].
- 7.4 Suppliers of merchandising solutions compete for airlines by offering higher quality products (eg better product features, more advanced technical and

²⁹⁷ See Chapter 10 and Appendix F for evidence from airlines in relation to their RFPs.

²⁹⁸ [REDACTED].

functional capabilities, faster development of solutions etc) and more favourable commercial terms (eg price).

Distribution

- 7.5 In the supply of distribution solutions, competition takes place in multiple forms reflecting differentiated business models in the market. While the Parties' solutions allow airlines to ultimately distribute content to passengers, they operate different approaches which affect the ways in which they face constraints from each other and from other suppliers.
- 7.6 As described in Chapter 3, GDSs are two-sided platforms connecting airlines with travel agents. Price is a parameter of competition on both sides, and a GDS's revenue is determined by the difference between the fees they receive from airlines and the incentives they pay travel agents.
- (a) GDSs are remunerated by airlines with a fee per booking, which is subject to negotiations when an airline renews a contract with the GDS.
- (i) The GDS booking fee is typically differentiated by point of sale location (typically lower fees for bookings made in an airline's home country or region than for bookings made in the rest of the world), and in some cases a higher fee can be set for tickets of higher value.²⁹⁹
 - (ii) Parity clauses limit an airline's flexibility to differentiate content between GDSs and distribution channels and affect the level of booking fees charged. Airlines pay higher booking fees on the GDS if they want to flexibly distribute content on non-GDS channels.³⁰⁰ While in principle GDSs can compete for airlines by reducing booking fees, in practice parity clauses may reduce their incentives to do so because they would not be able to gain volumes this way.³⁰¹ At the time of our Final Report, Sabre and Amadeus are subject to an ongoing antitrust investigation by the European Commission, announced in November 2018, in relation to their agreements with airlines and travel agents.³⁰² A full analysis of any anti-competitive

²⁹⁹ See Chapter 3. For example, Sabre charges [REDACTED]. Amadeus told us that [REDACTED]. (paragraph 3.2, Amadeus' response to the provisional findings).

³⁰⁰ Chapter 3, paragraph 3.29; and [REDACTED].

³⁰¹ An airline cannot directly increase volumes of booking on a particular GDS even if the fee it pays is reduced. With parity clauses, for example, airlines cannot differentiate fares across GDSs, and cannot set lower fares on a particular GDS to attract travel agents.

³⁰² [European Commission press release, 23 November 2018](#)

effects or efficiencies of these agreements, and whether or not they infringe EU competition law, is beyond the scope of our inquiry.³⁰³

- (iii) GDSs face pricing pressure from other channels including GDS bypass or airline.com; the option of switching volumes to these non-GDS channels are used by airlines as levers in negotiations.³⁰⁴
- (b) GDSs offer an incentive to a travel agent for each booking made. This is funded by the booking fee from airlines. GDSs compete with one another for travel agents on price (by offering higher incentives), on quality of the content available on the GDS (eg by providing more favourable air fares and wider range of offers) and more generally on the level of services. The Parties estimated travel agent switching rates to be approximately [X] at the point of contract renewal.³⁰⁵
- (c) GDSs set booking fees and incentives to balance the demands of the two sides. While a higher incentive makes a GDS more attractive to travel agents, it creates upwards pressure on the booking fee which makes the GDS less attractive to an airline. Most airlines use all three GDSs (ie they ‘multi-home’) and do not normally switch from one GDS to another. Travel agents typically use one GDS (ie they ‘single-home’) although some larger travel agents multi-home (such as OTAs).³⁰⁶ The trend of these booking fees and incentives vary by region, type of airlines and travel agents.^{307, 308}
- (d) While travel agents choose the GDS or channel to make a booking on behalf of passengers, airlines can influence travel agents’ decisions. This can be done, for example, by withdrawing content from a GDS (eg Lufthansa) and/or by imposing a surcharge on a GDS booking (eg British Airways), provided that the parity clauses they agreed with the GDS allow

³⁰³ Amadeus submitted that ‘there has been no serious attempt in the PFs to engage with the complex and multi-faceted issues arising from these [full content parity] provisions, or the positive effects flowing from them’ (paragraph 5.6, Amadeus’ response to the provisional findings).

³⁰⁴ Chapter 10, paragraphs 10.100 et seq.

³⁰⁵ Paragraph 5.89, Parties’ response to the provisional findings; and Parties’ Response to the Issues Statement, Annex 11.

³⁰⁶ [X]. The BofA Merrill Lynch Report (2019) stated that: ‘While almost every TA will use a GDS, outside of the very largest (in particular the Online Travel Agencies, or OTAs) agencies typically single source and do not have multiple GDS providers. In contrast, travel providers such as big international airlines almost always multi-source, and show their ‘content’ (the flights they provide) on all three main GDSs.’

³⁰⁷ Amadeus submitted an analysis which showed that between 2013 and 2017 the average unit incentives paid by Amadeus to travel agents in the EU [X], and worldwide average booking fees for airline [X]. Reference decision Amadeus observations, Annex 1.

³⁰⁸ Bank of America Merrill Lynch estimated that for the three GDSs ‘prices have risen around 2% per annum globally over the last decade, Amadeus about 1% and Sabre a much stronger 4% CAGR’. It noted that ‘the US is a much lower priced than other regions (~half of European pricing) driven in part by higher US airline consolidation’ and ‘GDS bookings are very profitable where TAs are small and offline, while for large online TAs (‘OTAs’) the GDSs may pay up to 90% of their booking fee away as commission’ (See 2019 Bank of America Merrill Lynch Report, page 1 and 41).

them to do so, in order to encourage travel agents to switch to other channels to access additional content or avoid additional costs.³⁰⁹

- 7.7 While Sabre and other GDSs compete for both airlines and travel agents, Farelogix and other suppliers of distribution solutions based on the NDC API compete on the airline side only. Airlines decide how to use these solutions to connect to travel agents and passengers; these suppliers compete with GDSs and with one another by offering reliable innovative technology and lower booking fees to reduce airlines' distribution costs.³¹⁰
- 7.8 As discussed in Chapter 6, airline.com allows airlines to distribute content to passengers directly (B2C), unlike GDSs or GDS bypass where airlines distribute content to travel agents through a platform or technology (B2B). Airlines do not pay fees to sell on their own websites, but they incur other expenditure to market online.³¹¹

Ongoing changes in airline business models

- 7.9 This Merger takes place against the background of the airline industry changing the services they sell and the way they sell them to passengers. This has also been changing the ways in which suppliers facilitate airlines to sell with new capabilities.

Changes in airlines' demand in response to passengers' requirements

- 7.10 On the demand side, airlines are responding to passengers' requirements for differentiation and customisation of their travel experience. Full service carriers are also reacting to competition between one another, and with low cost carriers. The latter introduced a business model which unbundles a flight booking to a basic seat with optional extras, such as checked baggage, reserved seats and other ancillaries, being made available to passengers at additional cost. Many full service carriers have adopted this business model (to varying degrees).
- 7.11 Airlines' demands can be broadly summarised under the following four areas:
- (a) New revenue opportunities to create more personalised services and travel experiences with ancillaries;

³⁰⁹ Paragraph 3.25. See also paragraph 5.38, Parties' Response to Issues Statement.

³¹⁰ See also Chapter 10, Evidence from airlines negotiations with GDS and on pricing

³¹¹ Paragraphs 6.48 et seq.

- (b) greater use of dynamic (or flexible) pricing, as well as more personalised pricing, based on an understanding of individual customers' needs and willingness to pay;
- (c) greater control over their retailing offers, compared to what has been possible using the solutions provided by GDS and PSS traditionally; and
- (d) distribution of the offers they create consistently across all sales channels.

7.12 Internal documents of a range of full service carriers, including large network carriers and regional airlines, frequently describe their wish to enhance their retailing capabilities along the dimensions described above.³¹²

- (a) An IAG strategy document describes its vision as to [REDACTED].³¹³
- (b) Another airline strategy document highlights its intention to adopt the NDC standard in order [REDACTED]. It has strategic goals to [REDACTED].³¹⁴
- (c) An American Airlines document indicates that distribution through NDC API, where an airline creates its shopping offer to a customer, provides new data to airlines, which is no longer held by GDS.³¹⁵
- (d) A Lufthansa document [REDACTED].³¹⁶
- (e) A SAS document described its vision as 'full control' of retailing [REDACTED].³¹⁷
- (f) An Etihad document states that its aim is to develop its 'Retail Platform and Merchandising Engine', which 'drives ancillary revenues through personalization across all touchpoints of the customer journey.'³¹⁸
- (g) A LATAM document notes the changing way airlines market their products and customer demands for personalisation, which requires it to [REDACTED].³¹⁹

7.13 These business model changes require airlines to acquire new capabilities that allow them to create, manage and distribute personalised and flexible offers across all sales channels. There are many aspects to this transition, but adopting merchandising and distribution capabilities are important aspects, and which many airlines are already pursuing. The adoption of the NDC

³¹² These views are further explained in airlines' responses to our questionnaires as detailed in Appendix F.

³¹³ IAG [REDACTED], 2018

³¹⁴ [REDACTED], see Appendix F.

³¹⁵ [REDACTED]

³¹⁶ Lufthansa also submitted that '[REDACTED].'

³¹⁷ [REDACTED].

³¹⁸ [REDACTED].

³¹⁹ [REDACTED].

standard by airlines – allowing the same rich content to be created and distributed across multiple channels in the same format – has been an important driver of a process which is lengthy, complex and far reaching as explained in Chapter 3.

- 7.14 Farelogix told us that airlines’ implementation of these changes today is ‘probably not 20 per cent down the road of how that is going to look in five years from now’.³²⁰ Amadeus also set out for us the process of developing and adopting NDC solutions and showed adoption is at an early stage.³²¹ OpenJaw told us that although the development of NDC is at a relatively mature stage, the industry is only at the first step of adopting NDC distribution at scale and the future path is uncertain (ie between further innovations in new solutions or incumbents protecting their PSS/GDS models while inhibiting innovation).³²² Similarly, a 2019 Bank of America Merrill Lynch report on the GDS and the airline IT industry stated that ‘given the nature of the industry, which is highly collaborative and aggregated by GDSs among others, changing [airline retailing] is a slow process’.³²³

Suppliers responses to meet airline demands

- 7.15 Airline demands have driven changes on the supply side. Suppliers generally recognise the particular importance of merchandising capabilities. The Parties told us that ‘merchandising is just one of dozens of components that make up an airline’s broader retailing solution...nor is it a critical component for airlines’,³²⁴ but we found that merchandising capabilities allow airlines to realise new and growing revenue opportunities from ancillaries.

- (a) Farelogix estimated that airline ancillary revenue has grown from \$18 billion in 2011 to \$57 billion in 2017.³²⁵
- (b) Sabre told us that merchandising is [REDACTED].³²⁶ At a call with M&A analysts on the Merger rationale, [REDACTED] (CEO of Sabre) highlighted [REDACTED].³²⁷

³²⁰ [REDACTED].

³²¹ [Summary of CMA hearing held with Amadeus](#)

³²² [Summary of CMA hearing held with OpenJaw](#)

³²³ Global Travel IT Industry, 2019 Global Distribution System (GDS) & airline IT Primer: From Volume to Value, 26 September 2019, Bank of America Merrill Lynch, pages 3-4. This report identified three causes of these issues: ‘1. Legacy technology, 2. A changing airline industry, now focused on ancillaries, and 3. Misaligned incentives between GDSs, airlines and travel agencies.’

³²⁴ Parties’ response to the provisional findings report, paragraph 4.22.

³²⁵ Farelogix [REDACTED], June 2018, p.7

³²⁶ Sabre Hearing: “[REDACTED].”

³²⁷ SABR - Sabre Corp Enters Agreement to Acquire Farelogix - M&A Call: [REDACTED].”

- (c) A 2017 Amadeus document described the future of NDC as [REDACTED], and noted that the [REDACTED].³²⁸ Indeed, [REDACTED].³²⁹
- (d) A 2019 Bank of America/Merrill Lynch equity analyst report on the global travel IT industry states that ‘around 10% of airline revenues are from ancillaries, and that is clearly dragged down by the FSCs [full service carriers] [...] over time upselling is only going to increase’.³³⁰
- (e) A survey of IT providers commissioned by IATA in 2019 indicates that air ancillary services (merchandising) bring the most value to airlines, followed by personalisation and dynamic pricing.³³¹
- (f) A 2019 study on the ‘Airline Retailing Market’ commissioned by Datalex finds that ‘customer centricity is key...airlines looking to move business logic away from PSS to allow greater agility and higher level of innovation and independence from the PSS’.³³²

7.16 GDSs did not initially support the development of the NDC standard, and appear to have been slow to facilitate the distribution of NDC content on their platforms.

- (a) In a January 2018 presentation to the [REDACTED].³³³
- (b) In July 2018, Farelogix told [REDACTED].³³⁴
- (c) In 2013, Sabre urged the US Department of Transportation to block approval of the NDC standard.³³⁵ A Sabre representative said at a conference in 2012 that ‘we do not see how the proposed NDC approach would work in the real world without sacrificing fare transparency, limiting comparison shopping and compromising data privacy rights’.³³⁶
- (d) An Amadeus representative said at an industry conference in 2015 that ‘NDC has derailed industry discussion’, ‘ill conceived’, and ‘has not

³²⁸ [REDACTED].

³²⁹ See Chapter 10 and Appendix E for further details on Amadeus’ NDC strategy.

³³⁰ Global Travel IT Industry, 2019 Global Distribution System (GDS) & airline IT Primer: From Volume to Value, 26 September 2019, Bank of America Merrill Lynch, pages 15-16.

³³¹ NDC Solutions White Paper, 3rd Edition, Results of the study on IT solutions built around the NDC standard, January 2019, by Sia Partners/IATA.

³³² [REDACTED], July 2019.

³³³ [REDACTED].

³³⁴ [REDACTED].

³³⁵ Paragraph 6, DoJ Complaint, UNITED STATES OF AMERICA v. SABRE CORPORATION, SABRE GLOBAL INC., FARELOGIX, INC., and SANDLER CAPITAL PARTNERS V, L.P.

³³⁶ World Passenger Symposium 2012 in Abu Dhabi, <https://www.arabianindustry.com/design/news/2012/nov/11/iatas-ndc-wont-work-in-the-real-world-sabre-3417193/> (accessed on 16 August 2019).

contributed to the efficiency of the industry',³³⁷ but Amadeus subsequently clarified in a blog post that 'there have been inevitably bumps on the road for NDC [...] Amadeus has been engaged in NDC-XML discussions, and is fully committed to supporting IATA in the delivery of a workable standard for all industry players'.³³⁸ Amadeus told us that the primary causes of delay in NDC development have been the failure of IATA to involve all the relevant stakeholders in the standard setting process and the lack of standardisation in the industry.³³⁹

- (e) A 2012 press release of Travelport stated that 'much of the IATA NDC statement appears only conceptual in nature, based on high level principles that do not necessarily incorporate the input of all the critical components of the travel value chain from supplier to travel agent to consumer'.³⁴⁰

7.17 To realise the opportunities of NDC airlines have sought new technological solutions outside of the traditional PSS and GDS models, as set out in paragraph [7.13]. This has given rise to opportunities for other non-GDS/PSS suppliers to provide innovative solutions.

7.18 Farelogix has developed products compatible with the NDC standard which have enabled airlines to evolve their business models. An important aspect of Farelogix's merchandising solution is that it provides airlines with the means to control offer creation, independent of the GDS. Other providers such as Datalex operate a similar model, using the NDC standard and being independent of the GDSs.

- (a) Farelogix's market positioning highlights that it gives airlines greater flexibility to control their retail offers, to control the data to optimise such offers.³⁴¹ Farelogix provides a distribution solution (NDC API / OC) for airlines to distribute differentiated offers across multiple sale channels, including on, and outside, the GDS environment.

- (b) Farelogix also highlights its neutrality on how airlines use or distribute offers, its independence from the PSSs and GDSs and its lack of conflicts of interest as key selling points of its NDC solutions.³⁴²

³³⁷ CAPA World Aviation Summit 2015. <https://centreforaviation.com/news/amadeus-says-iatas-ndc-has-wasted-time-and-energy-489455> (accessed on 16 August 2019).

³³⁸ <https://amadeus.com/en/insights/blog/towards-a-richer-content-future-at-wps>. See also paragraph 4.8, Amadeus response to the provisional findings.

³³⁹ Amadeus' key observations on Reference Decision, section 5.

³⁴⁰ <http://ir.travelport.com/news-releases?item=854> (accessed on 16 August 2019).

³⁴¹ Chapter 9, How Farelogix markets itself to airlines.

³⁴² Chapter 9, How Farelogix markets itself to airlines.

(c) Farelogix considers the NDC standard to be ‘the bedrock of airline retailing innovation’ as it forces ‘a connection between airline systems/offer engines and retailing channels/ touchpoints’ and ‘enables airlines to make offers in response to customer requests, including in the indirect channel’.³⁴³ It is also investing [REDACTED].³⁴⁴

7.19 GDSs have responded to airlines’ demand to enable the creation and distribution of NDC content in more recent years. For example, Amadeus told us [REDACTED].³⁴⁵ Sabre has considered its ‘Beyond NDC’ strategy since 2017 as detailed in Chapter 9. Travelport was the first GDS to manage the booking of flights by a travel agent using the NDC standard (in October 2018).³⁴⁶ However, the evidence shows that these solutions are still in development and/or in some cases have been used to a limited extent to date.

(a) While each of Sabre, Amadeus and Travelport has hundreds of airlines distributing content on their traditional GDS platforms, only a limited number of airlines have distributed NDC content on these GDSs to date using GDS pass-through and/or implemented NDC API solutions supplied by the GDSs.³⁴⁷

(b) A 2019 Bank of America/Merrill Lynch equity analyst report explains that ‘the rise of low cost carriers and the resultant fragmentation of a previously bundled offer has led to the current situation where airlines want something the GDSs are struggling to provide’. It further notes the industry’s initial ‘scepticism on whether the GDSs would want to engage with NDC’; but that today ‘all three GDSs are working on NDC connectivity’ and have been Level 3 certified (allowing fully customisable offer and order management) since 2018 or 2019.³⁴⁸

(c) A 2018 Farelogix presentation [REDACTED].³⁴⁹

7.20 In summary, the industry today is undergoing lengthy, complex and far reaching changes as airlines are looking to take greater control of their retailing and distribution functions away from the GDSs. This has given rise to demand for suppliers with alternative technologies and business models, and

³⁴³ A Farelogix blog published on 18 November 2019 (<https://blog.farelogix.com/a-glimpse-into-the-airline-retailing-future>).

³⁴⁴ [REDACTED].

³⁴⁵ Amadeus response to the provisional findings, paragraph 4.7(b).

³⁴⁶ Chapter 8, paragraph 8.15.

³⁴⁷ See paragraph 8.8 for Sabre; paragraph 8.11 for Amadeus and paragraph 8.155 for Travelport in relation to their current or planned capabilities in the distribution of NDC content.

³⁴⁸ Global Travel IT Industry, 2019 Global Distribution System (GDS) & airline IT Primer: From Volume to Value, 26 September 2019, Bank of America Merrill Lynch, pages 11 and 15-16.

³⁴⁹ [REDACTED].

responses from traditional GDS suppliers, and the process appears to have much further to evolve in the future.

Theories of harm for assessing this Merger

- 7.21 The theory of harm describes the possible ways in which an SLC could arise as a result of a merger. The theory of harm provides the framework for our analysis of the competitive effects of a merger.
- 7.22 In this case we consider whether the Merger would give rise to an SLC (i) in the supply of merchandising solutions, and (ii) in the supply of distribution solutions, both on a worldwide basis. These are our two theories of harm and are categorised as horizontal unilateral effects. Unilateral effects can arise in a horizontal merger where one firm merges with a direct competitor that provides and/or is expected to provide a competitive constraint. Unilateral effects are more likely where the merger eliminates a significant competitive force or where customers have little choice of alternative suppliers.³⁵⁰
- 7.23 We consider that competition between suppliers occurs when merchandising suppliers compete against each other to win individual contracts (whether through bidding or bilateral negotiations with customers), and distribution suppliers seek to increase their share of distribution revenues.³⁵¹ Our assessment considered unilateral price effects, ie whether the Merger would be likely to lead to higher prices and/or worse terms for airlines purchasing existing merchandising and distribution products.³⁵²
- 7.24 In addition, given the market context, we are interested in the impact of the merger on innovation. We consider that, competition occurs over the longer term, where a key parameter is a supplier's ability to supply solutions that meet airlines' ongoing needs to exercise greater control of their offers and to respond to changing passenger needs.³⁵³ Our assessment therefore also considered unilateral innovation effects, ie whether, compared to the situation absent the Merger, the Merger would be likely to lead to reduced innovation or slower rates of innovation and product development, reduced product range or quality, and in particular innovation in NDC-compatible merchandising and/or distribution solutions.
- 7.25 Unilateral innovation effects may arise because a merger may reduce the incentive for the merged entity to innovate. Absent the merger, two suppliers

³⁵⁰ [Merger Assessment Guidelines](#), paragraph 5.4.12

³⁵¹ Paragraphs 7.2-7.8.

³⁵² Issues Statement, paragraph 50(a).

³⁵³ Issues Statement, paragraph 50(b).

may compete for customers by investing in new products or higher quality features independently, but with the merger the merged entity would no longer face the risk of losing business to the other merging party. This may result in the merged entity scaling back its product development efforts or undertaking less than each supplier would otherwise do so individually. This may also result in a lower degree of innovation in the wider market because of the reduced competitive threat faced by rivals. We note that a merger can cause both unilateral innovation effects and unilateral price effects.

7.26 We are mindful of the different business models of Farelogix and Sabre. In distribution, while Farelogix serves airlines and allows them to manage their relationship with travel agents, Sabre's GDS serves both airlines and travel agents and balances the demands between the two on a two-sided platform. Moreover, while Farelogix offers merchandising and distribution as separate products, these are often purchased together and together allow airlines to take control of the offer creation process away from the GDS and distribute content to travel agents and passengers in ways that have not been possible on the GDS in the past. Sabre's GDS (with which it supplies distribution and some offer creation functions) therefore faces dual threats from Farelogix's NDC API/FLX OC distribution solution on the one hand and from its FLX M solution on the other. Where appropriate, we consider the dynamics between these markets in assessing the theories of harm. In Phase 2 of the inquiry, we did not consider a conglomerate effect theory of harm, ie whether the Merger could result in the foreclosure of rivals through a tying or bundling strategy by the merged entity.³⁵⁴

Structure of the assessment

7.27 In the remainder of this Final Report, we have examined the evidence gathered during the course of our inquiry and provide our assessments of the Merger based on the two theories of harm described above. It is structured as follows:

- (a) evidence on current supply of merchandising solutions and distribution solutions (Chapter 8);
- (b) evidence from the Parties, in particular their internal documents (Chapter 9);
- (c) evidence from competitors, airlines and travel agents (Chapter 10);

³⁵⁴ See Merger Assessment Guidelines, 5.6.12-5.6.13. We considered this theory of harm in relation to core-PSS and non-core PSS in Phase 1; see paragraph 380-381 of the Phase 1 Decision.

- (d) our assessment of the Merger, including the relevant counterfactual and the competitive effects (Chapter 11);
- (e) our assessment of countervailing factors (Chapter 12).

8. Evidence on current suppliers

- 8.1 In chapter 7 we discussed changes in airline business models and how airline demand from their suppliers of IT solutions for booking systems is changing, as well as how the suppliers themselves are responding to the change in demands. That chapter set out our theories of harm.
- 8.2 This chapter provides evidence on suppliers to aid our decision on our theories of harm in merchandising and distribution by giving an overview of the capabilities and recent performance of the Parties and their rivals. We discuss the different suppliers, their capabilities, products and services and their customer bases. It does not evaluate expansion plans, investments in innovation and likely future growth of suppliers. The evidence for this is set out in chapter 10 and evaluated in chapter 11.
- 8.3 We first set out suppliers' existing capabilities qualitatively based on information that suppliers submitted and we present evidence on which suppliers supply merchandising solutions and distribution solutions to major airlines.
- 8.4 We then assess suppliers' existing capabilities using more quantitative measures. In particular, we use market shares, analysis of bid data, and in some instances contract renewals, as indicators of the relative strengths of suppliers. We are mindful that market shares do not take into account the heterogenous nature of airline demand and supplier capabilities and we are aware that not all merchandising and distribution solution contracts are put to tender. Moreover, we are conscious that contracts for both merchandising and distribution solutions are multi-year contracts (but there may be few in any one year), but within contract periods different suppliers become relatively stronger or weaker (as new products are developed, for example) so both market share and bidding data may not accurately portray the strengths of suppliers compared against each other. Our consideration of different evidence is discussed in chapter 11.

Overview of suppliers' capabilities and customers

- 8.5 This section provides an overview of the major suppliers of merchandising and distribution solutions to airlines and their customers. We have distinguished suppliers between GDS, IT providers, and other smaller suppliers (in terms of revenues and/or customer base) that are less frequently mentioned by airlines.

GDS providers

Sabre

- 8.6 Sabre today offers merchandising solutions through its AS division and global distribution solutions through its TN division.
- 8.7 Sabre's merchandising solutions (Ancillary Services and Dynamic Retailer) can only be sold to airlines that use Sabre's PSS.³⁵⁵ Ancillary Services has basic distribution capabilities and is focussed on fulfilment aspects (ie ancillaries' catalogue, inventory and ticketing). Dynamic Retailer performs personalised product pricing, bundling and ancillary distribution through the direct channel, but it has [REDACTED] (chapter 3). Sabre has [REDACTED] airline customers for Dynamic Retailer.³⁵⁶ Sabre's merchandising solutions are not NDC-compatible.
- 8.8 As regards distribution solutions, Sabre is one of the three major GDSs. It has not yet completed the build for NDC APIs for airlines but has been investing in solutions that allow airlines to distribute NDC content, as further detailed in chapter 9. Sabre is currently developing capabilities to build and manage NDC APIs for airlines. Regarding GDS pass-through, it has launched a pilot in April 2019 that allows United Airlines to connect to Sabre's GDS with United's NDC API which was built by Farelogix.³⁵⁷

Amadeus

- 8.9 Amadeus today provides a full suite of core and non-core PSS solutions, including merchandising solutions. It had €4.9 billion revenues in 2018.³⁵⁸ Amadeus runs two PSSs: "Altéa" and "New Skies" (the latter owned by Navitaire which was acquired by Amadeus in 2016). Altéa primarily targets full-service carriers whereas New Skies targets low cost carriers.³⁵⁹ Through Altéa, it supplies an NDC-compatible merchandising solution known as

³⁵⁵ [REDACTED].

³⁵⁶ Sabre's Dynamic Retailer customers: [REDACTED].

³⁵⁷ [REDACTED].

³⁵⁸ [Amadeus full year 2018 financial results](#).

³⁵⁹ [REDACTED].

'Amadeus Anytime Merchandising' (AAM) to [REDACTED] current customers.³⁶⁰
³⁶¹ Navitaire does not have an NDC-compatible merchandising solution.³⁶²

8.10 Amadeus' merchandising solutions are currently PSS-dependent. Amadeus submitted that:³⁶³

(a) [REDACTED];

(b) [REDACTED];³⁶⁴

(c) [REDACTED].³⁶⁵

8.11 Regarding distribution, Amadeus operates the largest GDS globally. In addition, Amadeus supplies the following NDC-compatible distribution solutions which enable GDS bypass or GDS pass-through:³⁶⁶

(a) GDS bypass: Amadeus provides and manages NDC APIs for [REDACTED] airlines ([REDACTED] in production and [REDACTED] under implementation) through the product 'Altéa NDC', and for [REDACTED] through the product 'Navitaire NDC Gateway'.³⁶⁷ These NDC APIs support direct connects to travel agents and connections to aggregation platforms (including MSEs).³⁶⁸ Amadeus submitted that its NDC API can be sold on a standalone basis to all airlines whether they use Amadeus PSS or not.³⁶⁹

(b) GDS pass-through: Amadeus told us it has introduced services to allow NDC content to be distributed through its GDS for a number of airlines: [REDACTED]^{370 371}

8.12 On 23 March 2020, Amadeus released a statement about the measures it is taking in response to the spread of the Covid-19 coronavirus and its effect on

³⁶⁰ AAM full suite customers (* denotes in implementation): Air Canada, Avianca, Finnair, Singapore Airlines, [REDACTED].

³⁶¹ [REDACTED].

³⁶² Amadeus submitted that it provides airlines' ancillary services and Fare Families to travel agents based on ATPCO fare filing (not NDC compatible). Including the airlines using those services ([REDACTED]), it has [REDACTED] (Altéa) [REDACTED] (Navitaire) merchandising customers.

³⁶³ [REDACTED].

³⁶⁴ [REDACTED].

³⁶⁵ [REDACTED].

³⁶⁶ In the attachment to Amadeus' email to the CMA on 31 January 2020, Amadeus submitted that [REDACTED].

³⁶⁷ Altéa NDC customers (* denotes in implementation): Finnair, Singapore Airlines, Cathay Pacific, [REDACTED] Corsair, Avianca, Saudia, [REDACTED].

³⁶⁸ [REDACTED].

³⁶⁹ [REDACTED].

³⁷⁰ [REDACTED].

³⁷¹ Amadeus submitted that, whenever an airline already has an NDC API in place, ie supplied by another provider, Amadeus plays the 'role of aggregator' and simply connects to such NDC API, without building another one [REDACTED]. When the NDC API provider is Amadeus itself, that NDC API is available to any other third party wishing to establish connections to it and whose implementation has been accepted by the corresponding airline. See Amadeus' response to follow up questions received 12 March 2020.

the global travel industry.³⁷² These measures were to increase its liquidity position, cancel a dividend payment and to reduce fixed costs equivalent to approximately €300 million over the year. Amadeus's statement said that it aimed to be well prepared to face a tough business context.

Travelport

- 8.13 Travelport is one of the three major GDSs although it is the smallest by global revenue, which was \$2.5 billion in 2018.³⁷³
- 8.14 Travelport does not actively market merchandising solutions to airlines. [REDACTED].³⁷⁴ [REDACTED].³⁷⁵
- 8.15 Concerning its capabilities in GDS pass-through, Travelport was the first GDS to manage the booking of flights by a travel agent using the NDC standard (in October 2018).³⁷⁶ [REDACTED].³⁷⁷ [REDACTED].³⁷⁸

IT providers

Farelogix

- 8.16 Farelogix today generates almost all of its revenue from [REDACTED], accounting for [REDACTED] and [REDACTED] of 2018 revenue respectively.³⁷⁹ Both solutions are NDC-compatible. As detailed in the following sections, Farelogix's merchandising solution is widely considered the best in the industry today and is second to Amadeus' by share. Unlike Amadeus' and Sabre's merchandising solutions, FLX M is PSS agnostic.

³⁷² [Amadeus Covid-19 statement](#)

³⁷³ [Travelport full year 2018 financial results](#).

³⁷⁴ [REDACTED].

³⁷⁵ [REDACTED].

³⁷⁶ [Travelport's website](#). See also [REDACTED].

³⁷⁷ [REDACTED].

³⁷⁸ [REDACTED].

³⁷⁹ [REDACTED].

8.17 Farelogix sells these solutions to a range of airlines, including major airlines in Europe (Lufthansa Group), in the Gulf (Emirates, Etihad, Qatar Airways) and in North America (American Airlines, United Airlines, Air Canada). It is also the most successful supplier to the IATA's NDC Leaderboard, which includes airlines who are industry leaders in migrating to NDC solutions. Table 8.1 below provides further detail: currently Farelogix has [REDACTED] merchandising customers ([REDACTED] of which are Tier 1 airlines)^{380, 381} and [REDACTED] NDC API/OC customers ([REDACTED] Tier 1 airlines)³⁸², and [REDACTED] of these customers use both solutions.³⁸³

³⁸⁰ According to T2RL definition, Tier 1 airlines are the ones boarding more than 25 million passengers per year.

³⁸¹ The Parties submitted that some of the FLX M users have limited licence. Our count includes the airlines that either generated revenues from FLX M or submitted that their merchandising provider is FLX (* denotes the ones that also use FLX NDC API): [REDACTED].

³⁸² FLX NDC API/OC customers: [REDACTED].

³⁸³ As detailed in Chapter 5, we note that Farelogix also supplies BA in relation to interline.

Table 8.1: Farelogix's current customers

	Airline	Distribution	Merchandising	Other
1.	[X]	[X]	[X]	
2.	[X]	[X]	[X]	
3.	[X]	[X]	[X]	[X]
4.	[X]	[X]	[X]	
5.	[X]	[X]	[X]	
6.	[X]	[X]	[X]	[X]
7.	[X]	[X]	[X]	
8.	[X]	[X]	[X]	[X]
9.	[X]	[X]	[X]	
10.	[X]	[X]		[X]
11.	[X]	[X]		
12.	[X]	[X]		
13.	[X]	[X]	[X]	
14.	[X] ³⁸⁴		[X]	[X]
15.	[X]		[X]	
16.	[X]		[X]	
17.	[X]		[X]	[X]
18.	[X]		[X]	
19.	[X]		[X]	
20.	[X]	[X]	[X]	

Source: Farelogix [X]

(L) = Limited usage license connected with FLX NDC Open Connect Only

8.18 In distribution, Farelogix also provides a travel agency interface tool (SPRK) for booking and servicing. The product offers limited mid and back office support, and aggregation is only possible within airlines in the same airline group.

8.19 Farelogix has a channel-agnostic business model, as it earns revenues on bookings made through the APIs it provides to airlines irrespective of the distribution channels or the PSS used by the airline.

8.20 Other than distribution and merchandising solutions, Farelogix provides retailing solutions including shopping and pricing engine (FLX S&P), availability calculator (FLX AC) and schedule builder (FLX SB). All these functions can be offered individually or as a full suite ('Airline Commerce Gateway').

³⁸⁴ Whilst Virgin Atlantic [X]. See [X].

Datalex

- 8.21 Datalex is a supplier of retailing and distribution solutions to airlines. It describes its market position as *'Travel-specific eCommerce systems, independent from PSS providers.'*³⁸⁵ Datalex totalled \$45 million revenue in 2018.³⁸⁶
- 8.22 Datalex supplies a merchandising solution through 'Datalex Digital Commerce' platform, which incorporates merchandising, pricing, shopping and payments services. Datalex submitted that its platform was initially built for airlines to sell in the direct channels and has been adjusted to suit the indirect channel with the growth of airlines' adoption of the NDC standard.³⁸⁷
- 8.23 Datalex's merchandising solution is compatible with the NDC standard. Two airlines use this solution: JetBlue (only for indirect channels) and SAS (in implementation, for indirect channels).³⁸⁸ In addition, Datalex provides merchandising services that are not compatible with the NDC standard to 13 other airlines (including six Chinese airlines), nine of which use it exclusively for airline.com but not for the indirect channel.³⁸⁹
- 8.24 Regarding distribution, Datalex provides and manages NDC APIs for two airlines, JetBlue and SAS (under implementation).³⁹⁰ It does not provide aggregation services. It submitted that it offers a *'rudimentary agency management interface which is not connected to the GDS's but allows airlines to manage agency accounts.'*³⁹¹
- 8.25 As explained in Appendix E, Datalex has been facing financial difficulties recently.³⁹² In early 2019, a series of accounting irregularities were identified, leading to the suspension of its trading on the Irish Stock Exchange in May 2019. In October 2019, [REDACTED].³⁹³ Datalex submitted that it disputes the legality of the termination notice received from Lufthansa in September 2019 and that it has commenced proceedings to achieve resolution of the matter.³⁹⁴ On 12 March 2020, Datalex released a statement saying that *'we expect the COVID-19 outbreak to have an adverse impact on the Group's financial*

³⁸⁵ [REDACTED].

³⁸⁶ [Datalex annual report 2018](#), page 9. The number \$45.1 million is the one recorded under 'as reported' revenue. Total revenue 'Before IFRS 15 adjustments' is \$44.3 million.

³⁸⁷ [REDACTED].

³⁸⁸ [REDACTED].

³⁸⁹ Datalex merchandising customers (* denotes the ones that use it exclusively for airline.com): [REDACTED]. Only JetBlue and SAS are using the NDC standard.

³⁹⁰ SAS submitted [REDACTED].

³⁹¹ [REDACTED]

³⁹² See Appendix E, paragraphs 72-74.

³⁹³ [REDACTED].

³⁹⁴ [REDACTED].

performance'.³⁹⁵ According to the bidding data that Datalex submitted, although Datalex have continued to bid for airline contracts, it has not won any new customers since these financial problems arose.³⁹⁶

OpenJaw

- 8.26 OpenJaw is a wholly-owned subsidiary of Travelsky, a state-owned PSS and enterprise in China, listed on the Hong Kong Stock Exchange, which provides a range of IT services to the Chinese travel industry including PSS and GDS. OpenJaw supplies 't-Retail Platform' which supports NDC API, merchandising, shopping and pricing functionalities for airlines. OpenJaw markets t-Retail Platform as a complete system.³⁹⁷
- 8.27 In merchandising, OpenJaw provides an NDC-compatible solution to [REDACTED] currently used to enable sales through NDC on a meta-search engine,³⁹⁸ and it is working to enable additional connections in the indirect channel.³⁹⁹ [REDACTED] is another co-supplier of merchandising solutions to [REDACTED]. OpenJaw submitted that it will provide NDC-compatible merchandising solutions as part of a bundled retailing platform [REDACTED] to ANA (a leading airline in Japan) and TAP (the Portuguese flag carrier; supplied jointly with [REDACTED]),⁴⁰⁰ and these will be used initially for the indirect channels. [REDACTED].⁴⁰¹
- 8.28 In addition, OpenJaw provides B2B merchandising solutions that are not NDC-compatible to [REDACTED] Chinese airlines through a licence of its platform to TravelSky.⁴⁰² It also supplies merchandising [REDACTED] for use on airline.com, as well as to other travel brands for the sale of hotel, car rental and loyalty products, for example to British Airways and Aeroplan Inc. (a subsidiary of Air Canada).⁴⁰³
- 8.29 In distribution, OpenJaw provides and manages NDC API for airlines as part of its t-Retail platform. The only airline '*currently making NDC bookings*' with this product is Cathay Pacific. OpenJaw submitted that it plans to implement

³⁹⁵ Datalex plc [Statement regarding COVID-19](#) dated 12 March 2020

³⁹⁶ See the analysis of bidding data in merchandising, paragraphs 8.66 et seq.

³⁹⁷ OpenJaw submitted that the t-Retail Platform can also be sold as a general ecommerce platform for some customers who do not require NDC functionality (eg for hotel customers, loyalty programmes etc). See [REDACTED].

³⁹⁸ [REDACTED].

³⁹⁹ OpenJaw submitted that '*there are technical and functional differences between merchandising services for airline.com versus indirect channels*' and that, in the case of its t-Retail platform, there is no NDC in the former. [REDACTED].

⁴⁰⁰ [REDACTED].

⁴⁰¹ [REDACTED].

⁴⁰² The Chinese airlines to which OpenJaw provides merchandising services via TravelSky are: [REDACTED].

⁴⁰³ OpenJaw provides a tool that allows the packaging of flights with hotels and car rental on airline.com to [REDACTED] and a flight, hotel and car redemption loyalty program to [REDACTED]. See [REDACTED].

NDC API solutions for ANA, TAP [REDACTED], and these will be used initially for the indirect channels.

PROS

- 8.30 PROS is software provider with core businesses in selling improvement, pricing, revenue management and optimisation products and services. It has expanded its capability to provide airline IT solutions through the acquisition of Vayant (a shopping, pricing and merchandising provider) in August 2017 and Traveleer (an eCommerce software company) in August 2019.
- 8.31 PROS told us that its merchandising solution is mainly aimed at powering airline.com. [REDACTED].⁴⁰⁴ [REDACTED].⁴⁰⁵ ⁴⁰⁶ PROS' merchandising solutions are compatible with the NDC standard.^{407, 408}
- 8.32 Currently, PROS does not supply NDC-compatible distribution solutions. It submitted that it is working to integrate the technology purchased through the Traveleer acquisition.⁴⁰⁹ [REDACTED].⁴¹⁰

ITA Software (ITA)

- 8.33 ITA is an IT provider with shopping and pricing solutions as its main product.⁴¹¹ It was acquired by Google in 2011.⁴¹²
- 8.34 ITA provides a merchandising solution to handle the sale of ancillaries, which currently has two customers [REDACTED].⁴¹³ [REDACTED].⁴¹⁴
- 8.35 In distribution, ITA supplies an API for airlines to connect to metasearch engines (not to travel agents), but this solution is not NDC compatible.⁴¹⁵ ITA

⁴⁰⁴ PROS told us that it had [REDACTED]. See [REDACTED].

⁴⁰⁵ PROS submitted that [REDACTED]. However, [REDACTED] submitted that it only purchases revenue management and pricing services from PROS and did not confirm any implementation going on for merchandising. [REDACTED].

⁴⁰⁶ In their response to the PFs, the Parties submitted that in 2020 PROS announced a collaboration with Turkish Airlines on a dynamic offer pilot. However, Turkish Airlines did not confirm any official collaboration with PROS on a dynamic offer pilot and submitted that, being PROS its revenue management provider, 'from time to time Turkish Airlines conducts some studies about RM [revenue management] together with PROS.' See [REDACTED].

⁴⁰⁷ [REDACTED].

⁴⁰⁸ [REDACTED].

⁴⁰⁹ [REDACTED].

⁴¹⁰ [REDACTED].

⁴¹¹ IATA defines Shopping as: 'A process whereby a requestor is able to request offers from the airlines (ie flight and ancillaries) based on its desired search criteria and receive offers corresponding to its request. There are various types of shopping, including, for example Personalized/Anonymous and Attribute/Affinity shopping types.'

⁴¹² Google also operates a meta-search engine which enables comparison shopping for travellers (Google Flight Search).

⁴¹³ See [ITA website](#).

⁴¹⁴ [REDACTED].

⁴¹⁵ [REDACTED].

told us that it is currently working on the development of an NDC-compatible solution that will support the distribution of shopping and merchandising.⁴¹⁶

Overall summary of current capabilities

8.36 In summary, five providers among the ones that were most frequently mentioned by airlines and by the Parties as relevant suppliers of merchandising and distribution solutions currently offer NDC-compatible merchandising solutions that are in use by airlines (ie Farelogix, Amadeus, OpenJaw, Datalex and ITA). Among these, four currently offer PSS-agnostic products, of which two are provided as standalone solutions (ie unbundled from other functionalities such as pricing, shopping, NDC APIs, etc).⁴¹⁷ Four providers currently offer NDC-compatible distribution solutions (ie Farelogix, Amadeus, OpenJaw, Datalex).⁴¹⁸

Other suppliers of merchandising and distribution solutions

8.37 Below we provide an overview of other competitors identified by the Parties but less frequently mentioned by airlines and/or in the Parties' and other third parties' internal documents.⁴¹⁹

Suppliers of both merchandising and distribution solutions

8.38 JR Technologies is an IT solutions provider specialised in airline retailing. It provides an NDC and One Order-compatible retailing platform [REDACTED]^{420, 421} JR Technologies told us that [REDACTED].⁴²² [REDACTED]. However, [REDACTED].⁴²³ From airline evidence, we know that JR Technology [REDACTED].⁴²⁴ [REDACTED].⁴²⁵

⁴¹⁶ See Chapter 10, Evidence from competitors, Competitors' strategy in developing NDC-compatible merchandising solutions.

⁴¹⁷ OpenJaw's NDC-compatible merchandising solution is not sold on a standalone basis but as part of its t-Retail platform, which also include NDC APIs; Datalex's merchandising functionality is sold as part of its Digital Commerce Platform, which also include pricing, shopping and payment services.

⁴¹⁸ PROS's merchandising solution is NDC-compatible [REDACTED]; Sabre does not offer NDC-compatible merchandising and has not completed the building of NDC APIs for airlines. It launched an NDC API product for United in partnership with Farelogix.

⁴¹⁹ Chapter 9, paragraphs 9.72 et seq and 9.104 et seq; chapter 10 paragraphs 10.5 et seq and 10.40 et seq.

⁴²⁰ [JR Technologies website](#).

⁴²¹ [REDACTED].

⁴²² [REDACTED].

⁴²³ [REDACTED].

⁴²⁴ See paragraph 8.53.

⁴²⁵ [REDACTED].

8.39 Interes is an IT provider of travel technology. [REDACTED]. It provides an NDC compatible offer and order management system, the ‘Airline Retail Engine’⁴²⁶ [REDACTED].⁴²⁷

8.40 SAP provides [REDACTED]. SAP told us that [REDACTED].⁴²⁸

8.41 IBS submitted that [REDACTED].⁴²⁹ [REDACTED].⁴³⁰

Suppliers of distribution or related aggregation solutions

8.42 Travelfusion is a content aggregator [REDACTED].⁴³¹ [REDACTED].⁴³² Travelfusion told us that [REDACTED].⁴³³

8.43 TPConnects is an IT provider of travel technology solutions and aggregator. [REDACTED].⁴³⁴ In February 2019, Oman Air partnered with TPConnects to integrate the Oman Air NDC API to its Travel Aggregator Platform.^{435, 436} However, the scope of such NDC solution is unclear.

8.44 NDC Exchange is a partnership between ATPCO and SITA,⁴³⁷ which provides an NDC format translation technology for airlines and travel sellers. SITA submitted that the product is ‘*capable of translating certain non-NDC APIs to NDC, but only in restricted cases. The airline must already have, or develop, the underlying API – NDC Exchange is only acting as a format translator in this respect*’ and that it is ‘*not aware of any direct competitor for this standalone service.*’⁴³⁸ ATPCO’s Chief Strategy Officer testified in the Delaware Proceedings that NDC Exchange does not directly compete with any products offered by Sabre or Farelogix.⁴³⁹ SITA submitted that NDC Exchange had relatively low revenues in its launch year 2018 [REDACTED] as ‘*a startup business with few connected customers and bookings*’ at that stage.^{440, 441}

⁴²⁶ [Interes’ website](#).

⁴²⁷ Interes submitted that [REDACTED].

⁴²⁸ [REDACTED].

⁴²⁹ [REDACTED].

⁴³⁰ IBS’ PSS customers [REDACTED].

⁴³¹ [REDACTED].

⁴³² [REDACTED].

⁴³³ [REDACTED].

⁴³⁴ See paragraph 10.85(i).

⁴³⁵ [Oman Air press release](#). Oman Air did not answer to our questions sent via email on

⁴³⁶ [TPConnects website](#). TPConnects did not answer to our questionnaire.

⁴³⁷ [REDACTED].

⁴³⁸ [REDACTED].

⁴³⁹ [REDACTED].

⁴⁴⁰ [REDACTED].

⁴⁴¹ [REDACTED].

- 8.45 Based on the IATA profile on DXC Technologies, we understand that DXC Technologies provides an orchestration and translation layer called NDC Adapter that *'narrows the NDC standard to a unified dialect across all platforms and systems.'*^{442, 443} One airline told us that DXC wanted to provide such translation layer for NDC but did not offer *'any Desktop Tools for travel agents, any back-office integration capabilities for agencies, and no travel agency implementation experience (which Farelogix has all of this).'*⁴⁴⁴ DXC told us that it currently has no plans to engage in the supply of either Merchandising solutions or NDC APIs in the UK and [REDACTED].⁴⁴⁵ DXC earned \$24.6 billion revenues in 2018.⁴⁴⁶ However, it is unclear how much of this is related to its airline business.
- 8.46 RAMAX Group is a Russian IT provider focussed on system integration and software development.⁴⁴⁷ As mentioned in chapter 10, RAMAX has partnered with Aeroflot for the building of an NDC API.^{448, 449} No other airlines mentioned RAMAX in their responses.
- 8.47 As detailed in chapter 9, the Parties submitted that 22 IT providers, other than Farelogix, are IATA NDC Level 4 capable and multiple technology providers could potentially enter the market for distribution solutions.⁴⁵⁰ While there are a number of other IT providers having an IATA Level 4 certification, we note that IATA certification is not a measure of the quality and capabilities of the NDC API which vary across suppliers.⁴⁵¹
- 8.48 We discuss self-supply of merchandising and distribution solutions by airlines when we consider evidence from airlines in chapter 10.

⁴⁴² [DXC Technologies IATA profile](#)

⁴⁴³ [REDACTED].

⁴⁴⁴ See [REDACTED].

⁴⁴⁵ [REDACTED].

⁴⁴⁶ [DXC 2018 annual report](#).

⁴⁴⁷ [RAMAX website](#).

⁴⁴⁸ [RAMAX press release](#).

⁴⁴⁹ [REDACTED].

⁴⁵⁰ Parties' response to the Provisional Findings, paragraphs 5.55-5.58 and paragraph 5.61. See also Chapter 9, paragraphs 9.130-9.132.

⁴⁵¹ Chapter 10, Evidence from airlines, 'Airlines' submitted views on strength of distribution solution suppliers (NDC API and GDS), including paragraph 10.104.

Suppliers of merchandising and distribution solutions to major airlines

8.49 This section describes the providers of merchandising and distribution solutions for major airlines. It also provides an overview of the use of different distribution channels by each airline.

Current suppliers of merchandising solutions and NDC API

8.50 Table 8.2 provides an overview of the suppliers of merchandising solutions and NDC API to major network airlines (top 20 airlines by global bookings).⁴⁵² Further details for other airlines can be found in Appendix F (Table F.1).

8.51 We have excluded low cost carriers⁴⁵³ because they use GDSs to a very limited extent, concentrating their sales through direct channels (airline.com in particular), and they do not use NDC APIs to distribute content.⁴⁵⁴ The largest UK low cost airlines, except for [REDACTED], do not use merchandising solutions.⁴⁵⁵

8.52 In relation to merchandising solutions, Farelogix supplies [REDACTED] airline groups in the top 20 largest airline groups: [REDACTED].⁴⁵⁶ Amadeus serves Air Canada,⁴⁵⁷ [REDACTED],^{458,459} while ITA serves [REDACTED]. OpenJaw supplies [REDACTED] and [REDACTED] NDC-compatible solution for ANA. Similarly, Datalex supplies [REDACTED] and supplies NDC-compatible solution for Jet Blue. [REDACTED]⁴⁶⁰ self-supplies their merchandising solutions, while [REDACTED]⁴⁶¹ self-supplies in combination with [REDACTED], and [REDACTED].

8.53 In terms of distribution solutions based on NDC API, five airlines self-supply ([REDACTED],⁴⁶² IAG, [REDACTED]). Farelogix supplies a range of large airlines across different geographies: [REDACTED]. Other suppliers mainly supply [REDACTED] within top 20 global airlines: OpenJaw serves [REDACTED] and ANA ([REDACTED]); Amadeus⁴⁶³ serves [REDACTED]), Datalex serves JetBlue, Ramax supplies Aeroflot and JR Technologies has [REDACTED]).

⁴⁵² The airlines include “Network Carriers” and exclude “Hybrid Carriers” and “Low-Cost Carriers”, as defined by T2RL.

⁴⁵³ Low cost and hybrid airlines that are excluded from the largest top 20 global airlines include: Southwest Airlines, Ryanair, Easyjet, AirAsia and IndiGo.

⁴⁵⁴ In particular, the largest low cost airlines operating in the UK, do not use GDSs to a material degree: [REDACTED]. Flybe had around [REDACTED]% of tickets distributed through GDS and [REDACTED], but it ceased operations in March 2020.

⁴⁵⁵ [REDACTED].

⁴⁵⁶ [REDACTED].

⁴⁵⁷ [REDACTED].

⁴⁵⁸ [REDACTED].

⁴⁵⁹ [REDACTED].

⁴⁶⁰ However, [REDACTED].

⁴⁶¹ [REDACTED], but has not been confirmed by the airline.

⁴⁶² [REDACTED], but has not been confirmed by the airline.

⁴⁶³ Note that Amadeus NDC API allows airline to do both, GDS bypass and GDS pass-through.

8.54 [REDACTED], although as noted above, [REDACTED].

8.55 Of the ten airlines that outsource their merchandising and NDC API solutions, seven (including [REDACTED]) purchase both from the same supplier, and only [REDACTED] purchase them from different suppliers.

Table 8.2: Supplier of merchandising and NDC API distribution solutions to top 20 airlines (by 2018 global bookings)

<i>Airline group</i>	<i>Main supplier of merchandising solution</i>	<i>Supplier of NDC API</i>
American Airlines*	[REDACTED]	[REDACTED]
Delta	[REDACTED]	[REDACTED]
China Southern Airlines Group*	[REDACTED]	[REDACTED]
United Airlines*	[REDACTED]	[REDACTED]
Lufthansa Group* (Lufthansa, Eurowings, Swiss Air, Austrian Airlines, Brussels Airlines)	[REDACTED]	[REDACTED]
Air China Group	[REDACTED]	[REDACTED]
China Eastern	[REDACTED]	[REDACTED]
Hainan Group	[REDACTED]	[REDACTED]
IAG * (British Airways, Iberia, Aer Lingus, Vueling)	[REDACTED]	[REDACTED]
Air France KLM Group*	[REDACTED]	[REDACTED]
Turkish Airlines	[REDACTED]	[REDACTED]
LATAM	[REDACTED]	[REDACTED]
ANA	[REDACTED]	[REDACTED]
Emirates	[REDACTED]	[REDACTED]
Air Canada*	[REDACTED]	[REDACTED]
Alaska	[REDACTED]	[REDACTED]
Japan Airlines	[REDACTED]	[REDACTED]
Jet Blue*	[REDACTED]	[REDACTED]
Norwegian	[REDACTED]	[REDACTED]
Aeroflot*	[REDACTED]	[REDACTED]

Source (providers): Airlines responses, Competitor responses, Farelogix and Sabre information; (booking data): T2RL.
(L) – [REDACTED]

* - indicates airlines in IATA's 'NDC Leaderboard'.

† - [REDACTED]

‡ - [REDACTED].

§ - indicates that solution is non-NDC enabled

Note that the table includes the airline's primary provider(s) of merchandising solutions, provided as full solution (ie it typically excludes occasions where a supplier only offers a partial solution, such as baggage only or promo codes).

8.56 We have considered the current suppliers of NDC API solutions to airlines in the NDC Leaderboard.

- (a) Farelogix supplies [REDACTED] out of 17 airline groups on the NDC Leaderboard,⁴⁶⁴ including [REDACTED]. These airlines represent around [REDACTED]% of the total airline bookings on the Leaderboard by passenger numbers.⁴⁶⁵ Farelogix also jointly supplies [REDACTED].⁴⁶⁶
- (b) Three airline groups self-supply: IAG, [REDACTED]. They account for around a third of the passengers on the Leaderboard.
- (c) Amadeus supplies to [REDACTED]. They account for [REDACTED]% of passenger numbers of the Leaderboard.
- (d) Datalex supplies [REDACTED] representing [REDACTED]% of the passengers on the Leaderboard.

8.57 In addition, Aeroflot has partnered with an IT provider RAMAX⁴⁶⁷ and Sun Express with IBS.⁴⁶⁸

8.58 The Parties submitted that looking at the Leaderboard airlines is not the relevant market to be assessed with many more airlines potentially in the market. The parties also state that the NDC leaderboard is a static metric that does not reflect ongoing developments in the market, is not a reliable indicator of competitive conditions, and is biased towards early movers, with the list of airlines being announced in April 2018.⁴⁶⁹ We acknowledge this is not the full market but we think this provides an illustration of each suppliers' strength among the airlines who are most advanced in the adoption of the NDC standard.

Airlines' current usage of different distribution channels

8.59 To understand the relative scale of each distribution channel across airlines, Table 8.3 provides an overview of the usage of airline.com, GDS, GDS bypass and GDS pass-through for each of the top 20 network carriers which responded to the CMA for illustration.⁴⁷⁰ Overall, we found that:

⁴⁶⁴ NDC Leaderboard consists of 22 airlines, we have counted airlines as part of the same group together. This includes: Air France and KLM being counted as one and Lufthansa, Austrian, Brussels, Swiss being counted together as Lufthansa group.

⁴⁶⁵ These numbers are total passenger numbers based on 2018 T2RL. Numbers do not reflect the extent to which airlines are making bookings through their NDC API but the maximum possible use for each airline. However, we note that the airlines supplied by Farelogix are typically the more advanced users of APIs.

⁴⁶⁶ Farelogix supplies [REDACTED].

⁴⁶⁷ <https://www.ramax.ru/en/company/press-center/press-releases/225/>

⁴⁶⁸ <https://www.t2rl.net/insight/display.asp?ID=450>

⁴⁶⁹ Parties' response to provisional findings 5.53

⁴⁷⁰ [REDACTED].

- (a) GDS and airline.com are the two main distribution channels for all airlines;
- (b) Airlines typically use all three GDS providers (Amadeus, Sabre and Travelport) to distribute content, ie. they 'multi-home'.⁴⁷¹ Each GDS's share varies significantly across airlines;⁴⁷²
- (c) the proportion of bookings each airline makes through airline.com varies across airlines and ranges from 8% (for [X]) to 54% for [X];
- (d) bookings through GDS bypass contributed to approximately 4% of all bookings (of which [X]% is direct connect and less than [X]% aggregators), typically ranging from 0% to [X]% across the top 20 responding airlines. [X] is the largest user with GDS bypass accounting for [X]% of its bookings,⁴⁷³ followed by IAG with GDS bypass accounting [X]; and
- (e) GDS pass-through has not been used materially, but several airlines have plans to develop it. For example, American Airlines is in a pilot mode.

8.60 Further details for other airlines are provided in Appendix F.⁴⁷⁴ We also consider global market shares later in this chapter.

⁴⁷¹ For example, one airline explained the following: 'each GDS has a strong presence in a specific region; (ii) the number of GDS's subscribers and their geographic location, as not all travel agents are multi-GDS. In order to have as an extensive coverage as possible, it needs to be involved with all the GDSs'. [X].

⁴⁷² See Table F.3 in Appendix F.

⁴⁷³ [X].

⁴⁷⁴ Appendix F, Table F.2.

- 8.63 Typically, to supply airlines with merchandising or distribution solutions, providers will go through a competitive tender, although this is not always the case. Therefore, analysis of bidding data provides a good insight to the extent Sabre and Farelogix have competed in the past, and the relative strengths of the Parties and their competitors. However, we note that this is not a pure bidding market and there are also examples of bilateral negotiations which may not be reflected in the analysis. Further, different airlines will have different requirements, some of which will suit some suppliers more than others.
- 8.64 We have examined the frequency with which each provider has won bids and the significance of the contracts won. We have also considered current market shares. Shares provide some indication of the extent to which suppliers have an established customer base and have won customers in the past and therefore may be able to attract customers in the future, as well as the size of those customers. However, as with bidding data we have been cautious in the weight we give to shares. For merchandising solutions, for example, Sabre and Amadeus do not compete against each other in unbundled bids and so market shares are likely to understate the degree of competition in the future as each develop PSS agnostic solutions.
- 8.65 The Parties submitted that analysis of the quantitative evidence in the bidding data shows that Farelogix has had fewer wins in recent years and is not a significant competitive constraint.⁴⁷⁵ As discussed below, do not think that Farelogix has become a weaker competitor in recent years but acknowledge that some competitors have recently won tenders despite having a more limited historical presence and market share and take this into account together with other evidence from these suppliers when assessing their likely ongoing strength. We also note that within each year there are few tenders and so we place little weight on year on year comparisons. We consider each piece of evidence including bidding and market shares as part of our competitive assessment in chapter 11.

Merchandising

- 8.66 In the supply of merchandising solutions, we note that the set of competitors considered by a particular airline will depend on its procurement approach.⁴⁷⁶
- (a) Sabre's merchandising solution today is PSS-dependent. It can compete for any airline that uses Sabre's PSS which is considering between Sabre or a third-party for its merchandising module. It can also compete as part of

⁴⁷⁵ Parties response to Provisional Findings paragraph 5.40

⁴⁷⁶ Chapter 7, paragraph 7.2.

a PSS bundle for airlines looking to procure core PSS. However, it cannot compete for airlines that use Amadeus' core PSS which are not planning to switch PSS. [✂]

- (b) Farelogix, or other suppliers that offer a PSS-agnostic merchandising solution, can be used by any airline PSS. They can compete for all opportunities where the airline unbundles merchandising from its core PSS and can therefore compete against Sabre and Amadeus where an airline is looking to add a merchandising module to its core PSS. Farelogix cannot compete against Sabre or Amadeus where an airline is seeking to acquire a core PSS and merchandising as a single bundle (as Farelogix does not supply a core PSS).⁴⁷⁷

8.67 Therefore, the number of suppliers in the overall market may overstate the number of suppliers available to an individual airline. Sabre and Amadeus historically have only competed against each other for airlines seeking merchandising as part of a core PSS bundle, they have not competed for airlines using the other's core PSS, which seek to unbundle their merchandising modules. This means that the number and value of the merchandising solutions provided by each of Sabre or Amadeus may well reflect their broader positions and relative strengths in core PSS (where merchandising is supplied as part of a bundle with core PSS), rather than in merchandising alone.

8.68 We take these points into account in interpreting the bidding analysis and market shares when we assess each supplier's position in the supply of merchandising solution.

Analysis of bidding data in merchandising

8.69 We have analysed the opportunities data for merchandising solutions covering the period from 2014 to September 2019. We think that analysing bidding data over a relatively long period of time is appropriate as airlines often procure merchandising solutions over a five year time period and limiting the analysis to only looking at the most recent year would result in a very small sample of airlines potentially not reflecting the breadth of different airlines. We also explore which competitors are winning in the most recent years.

⁴⁷⁷ We also note that some airlines will seek to procure as part of the same tender a merchandising solution together with other non-core modules and suppliers may seek to provide a broader retailing platform encompassing Merchandising and other tools.

- 8.70 To reflect airlines' different procurement approaches, our analysis considers two categories of bids: (i) merchandising bids unbundled from the core PSS, where Farelogix can compete with either Amadeus or Sabre and against other PSS-agnostic merchandising suppliers, and (ii) merchandising bids bundled with the core PSS, where Sabre and Amadeus can compete, but Farelogix cannot.
- 8.71 We briefly consider the Parties' view on the bidding data, before setting out our assessment.

The Parties' view on merchandising bidding analysis

8.72 The Parties submitted that that the CMA had placed insufficient weight on the quantitative evidence regarding the position of competitors in its overall analysis and highlighted with respect to this that:⁴⁷⁸

- (a) The Parties together won fewer than [REDACTED] of unbundled merchandising bids;
- (b) [REDACTED] on a weighted basis;
- (c) [REDACTED] appears to be Farelogix's closest competitor when looking at both number of bids and % wins;
- (d) OpenJaw and DXC have also won at least some opportunities placing them [REDACTED].

8.73 They also submitted:⁴⁷⁹

- (a) there is non-existent or negligible competitive interaction between the Parties;
- (b) Sabre is unable to compete for opportunities where Sabre is not the core-PSS provider which accounted for more than [REDACTED] of global Passengers Boarded in 2017;
- (c) for airlines that procure merchandising alongside the core PSS ("broad" opportunities), Farelogix cannot compete since it is not able to offer a core PSS module and [REDACTED];
- (d) Sabre has [REDACTED] in "narrow" opportunities. The Parties have suggested that [REDACTED],⁴⁸⁰ and

⁴⁷⁸ Parties' response to provisional findings – annex 5, paragraph 3.2

⁴⁷⁹ [REDACTED]

⁴⁸⁰ Parties' phase 2 response to issues statement- Annex 8, para 1.6

(e) the Parties serve different types of customers. Sabre is [REDACTED].

Our assessment

8.74 We note that to date Sabre has only been able to compete where it is the provider of the core PSS system. We also note that Farelogix is unable to compete for airlines that are looking to purchase merchandising as part of a core PSS bundle (in the same way as other providers of merchandising solutions who do not also provide core PSS modules are unable to compete in these circumstances). To reflect these circumstances, we have analysed the bid data accordingly.

- *Merchandising bids unbundled from core PSS*

8.75 Table 8.4 below sets out the number of times each supplier has won a bid in relation to merchandising solutions unbundled from the core PSS. For these opportunities, Farelogix can compete with the core PSS supplier of the airline (either Amadeus or Sabre) alongside other PSS-agnostic merchandising suppliers.

Table 8.4 – Winning bids for merchandising by competitor, for bids unbundled from core PSS, 2014 to September 2019

Known winner	Number of wins	Share of wins (%)	By number of passengers (%)	Number of wins by airline tier			
				Tier 1	Tier 2	Tier 3	Tier 4
Farelogix	[REDACTED]	[20-30] [REDACTED]	[30-40] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sabre	[REDACTED]	[5-10] [REDACTED]	[0-5] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Amadeus	[REDACTED]	[5-10] [REDACTED]	[5-10] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Datalex	[REDACTED]	[5-10] [REDACTED]	[10-20] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ITA	[REDACTED]	[0-5] [REDACTED]	[10-20] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] ⁴⁸¹	[REDACTED]	[0-5] [REDACTED]	[0-5] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PROS	[REDACTED]	[0-5] [REDACTED]	[0-5] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Self-Supply	[REDACTED]	[0-5] [REDACTED]	[5-10] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Unknown	[REDACTED]	[30-40] [REDACTED]	[10-20] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total closed opportunities	[REDACTED]	100%	100%	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Note: Tier 1 refers to airlines with over 25 million passengers, Tier 2 – between 10million and 25 million, tier 3 – 3million – 10 million and tier 4 less than 3 million⁴⁸²

Source: based on Sabre and Farelogix opportunities data excluding those opportunities in which Merchandising is bundled to core-PSS, adjustments made based on airline and competitor data if available. See Appendix H.

481 [REDACTED]

482 [REDACTED]

- 8.76 We have found that Farelogix has won [REDACTED] bids, three times the number of bids won by any other competitor. In particular, Farelogix won significant bids [REDACTED]. This includes most recently [REDACTED] recorded in 2019.⁴⁸³
- 8.77 Although several other competitors have also won notable airlines and one airline chose to self-supply, the number of times and the size of airlines won by each of them are less significant than those of Farelogix overall.
- (a) Amadeus recently won [REDACTED].⁴⁸⁴ [REDACTED].
 - (b) Datalex have won [REDACTED]
 - (c) ITA also won [REDACTED] .
 - (d) Sabre has won [REDACTED].
 - (e) [REDACTED]
- 8.78 There are [REDACTED] bids with unknown outcomes. This could be for a number of reasons. For example, it could reflect bids won by other suppliers, misclassified ongoing bids, tenders in which airlines have decided to withdraw or self-supply without notifying the bidders, or unidentified duplicates.⁴⁸⁵ Most of the unknown bids relate to Tier 2 and Tier 3 airlines although there is also one Tier 1 airline [REDACTED] included.⁴⁸⁶
- 8.79 Table 8.5 below shows how the winning bids for merchandising services (unbundled from core PSS) are distributed over time.

⁴⁸³ [REDACTED] [REDACTED]

⁴⁸⁴ [REDACTED]

⁴⁸⁵ For further details, see Appendix H.

⁴⁸⁶ [REDACTED]

Table 8.5 - Winning bids for merchandising solutions by competitor when bids are not bundled with core PSS over time, 2014 to September 2019⁴⁸⁷

Known Bidders	Airlines concerned					
	2014	2015	2016	2017	2018	2019 to date
Farelogix	[X]	[X]	[X]	[X]	[X]	[X]
Sabre	[X]	[X]	[X]	[X]	[X]	[X]
Amadeus	[X]	[X]	[X]	[X]	[X]	[X]
Datalex	[X]	[X]	[X]	[X]	[X]	[X]
Google/ITA	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]
PROS/Vayant	[X]	[X]	[X]	[X]	[X]	[X]
Self-supply	[X]	[X]	[X]	[X]	[X]	[X]

Source: based on Sabre and Farelogix opportunities data excluding those opportunities in which Merchandising is bundled to core-PSS, adjustments made based on airline and competitor data if available

- 8.80 Focussing on more recent bids recorded in 2018/2019 the above listed competitors with the exception of [X] have all won one new customer in line with [X], and [X] have won Tier 1 airlines.
- 8.81 We note that during this timeframe Farelogix has also continued negotiations with other Tier 1 airlines for example; [X]
- 8.82 We consider that the recent [X] and ongoing negotiations are consistent with Farelogix remaining a strong supplier of merchandising solutions going forwards and consider the strength of other suppliers in the round together with other evidence in Chapter 11.
- 8.83 We have also seen in airline RFPs that one element airlines look for is experience in connecting to the specific core PSS provider.⁴⁸⁸ Narrowing the bids down even further to examine unbundled bids just in relation to airlines using [X]. This suggests that for those airline’s using Sabre’s core PSS there appears to be less competition from other suppliers in merchandising.
- 8.84 We present further details on the frequency with which suppliers have bid against Sabre and Farelogix in Appendix H. The frequency of bids evidence is consistent with the evidence discussed previously with [X] bidding most frequently against Farelogix and Sabre, [X] also bidding against Farelogix but less frequently.
- 8.85 In chapter 11 we consider bidding data together with other pieces of evidence and discuss the relative weight we place on each to assess each competitors’ future ongoing strength in the round.

⁴⁸⁷ The date of bid is based on the date in the parties’ opportunity data rather than the date each win was confirmed.

⁴⁸⁸ See Appendix F, airline RFPs.

Market shares in merchandising

8.86 We briefly summarise the Parties' views on merchandising shares before setting out our analysis.

The Parties' view

8.87 The Parties submitted that there are a number of competitors with higher market shares relative to [REDACTED] on the basis of Passengers Boarded excluding self-supply including Amadeus, OpenJaw/Travelsky, Google/ITA and Datalex and that on the basis of revenue [REDACTED]. They also submitted that:⁴⁸⁹

- (a) the supply shares demonstrate that Sabre's market position [REDACTED];
- (b) the Parties face competition from a number of major players, including Amadeus, airline self-supply, ITA, OpenJaw/Travelsky and Datalex. [REDACTED], as is the tail of unknown providers;
- (c) self-supply accounts for a significant percentage and is similar in size to Farelogix and Amadeus, and accordingly the competitive constraint posed by in-house supply must be credible;
- (d) to the extent that the market shares seek to attribute 100% of passengers boarded to airlines that [REDACTED], this will materially overstate Farelogix's share.

- *Our assessment*

8.88 The Parties' data shows that [REDACTED].⁴⁹⁰ We obtained additional data from airlines and competitors to improve upon the Parties' estimates.⁴⁹¹ The number of unknowns is reduced to 20% with no unknowns for the top [REDACTED] airlines.⁴⁹² Table 8.6 presents the results.

⁴⁸⁹ [REDACTED].

⁴⁹⁰ Annex 6, Parties' response to issues statement.

⁴⁹¹ See Appendix H.

⁴⁹² [REDACTED]

Table 8.6 – Share of customers for the supply of merchandising for global airlines by passengers boarded⁴⁹³

Supplier	2017 PBs (millions)	Share	Share excluding self-supply	Share excluding self-supply and unknown
Farelogix	[X]	[10-20] [X]	[10-20] [X]	[10-20] [X]
Farelogix/Amadeus ⁴⁹⁴	[X]	[5-10] [X]	[5-10] [X]	[0-10] [X]
Sabre	[X]	[0-5] [X]	[0-5] [X]	[0-5] [X]
Amadeus ⁴⁹⁵	[X]	[20-30] [X]	[20-30] [X]	[30-40] [X]
OpenJaw ⁴⁹⁶	[X]	[0-5] [X]	[5-10] [X]	[5-10] [X]
[X] ⁴⁹⁷	[X]	[0-5] [X]	[0-5] [X]	[0-5] [X]
OpenJaw / In House ⁴⁹⁸	[X]	[0-5] [X]	[0-5] [X]	[0-5] [X]
ITA ⁴⁹⁹	[X]	[5-10] [X]	[5-10] [X]	[5-10] [X]
Datalex	[X]	[0-5] [X]	[5-10] [X]	[5-10] [X]
Other	[X]	[5-10] [X]	[5-10] [X]	[5-10] [X]
Unknown	[X]	[10-20] [X]	[10-20] [X]	
Self-supply	[X]	[10-20] [X]		
Total	[X]	100%	100%	100%

Source: Farelogix annex 54, competitor submissions, Parties submission, submissions from airlines.

8.89 When we consider this overall market position and exclude self-supply and the smaller unknown airlines, we find that:

- (a) Amadeus is the most significant competitor with [30-40] [X] of customers passengers boarded, in addition to the [X] [5-10]% they supply jointly with Farelogix. As noted in the bidding data, many of these customers will be acquired as part of a bundle with the core PSS;
- (b) Farelogix has [X]⁵⁰⁰
- (c) Sabre has a limited share today. [X]; and
- (d) there are a number of other competitors including OpenJaw, ITA and Datalex, who each have less than 10%.

⁴⁹³ To reflect a forward-looking picture numbers are based on the most recent intelligence gained during the inquiry – responses from the parties, competitors and airlines received 2019H2

⁴⁹⁴ [X]

⁴⁹⁵ We include in Amadeus share all merchandising customers even when the service is part of a product integrated with their Core PSS.

⁴⁹⁶ [X]

⁴⁹⁷ [X]

⁴⁹⁸ [X]

⁴⁹⁹ [X]

⁵⁰⁰ Airlines can use different suppliers for different channels. In some instances, airlines indicated they used Farelogix for Merchandising but [X] In these cases, we list them together with the other supplier listed [X]. We follow a similar approach for [X]. We do not attempt to allocate bookings between the two suppliers but note that the Farelogix full licence share is likely a lower bound.

- 8.90 We also note that a proportion of the airlines currently self-supply. We further discuss evidence on airline self-supply in Chapter 10.⁵⁰¹
- 8.91 As a further check, we have considered 2018 revenue data received from the competitors and found that it shows a similar picture as the market share above.⁵⁰² It shows that Farelogix and Amadeus have the largest merchandising revenues (\$[redacted] million and \$[redacted] million respectively) with ITA (\$[redacted] million) and OpenJaw (\$[redacted] million) having substantially less.⁵⁰³ Sabre also has a relatively weak position on this measure based on their Dynamic Retailer product (\$[redacted] million) although we note that [redacted].⁵⁰⁴

Distribution

Analysis of bidding data in NDC API

- 8.92 We examine the opportunities data provided by Farelogix for NDC API solutions covering the period 2014 to July 2019. We think that analysing bidding data over a relatively long period of time is appropriate as airlines often procure NDC APIs over a five year time period and limiting the analysis to only looking at the most recent year would result in a very small sample of airlines potentially not reflecting the breadth of different airlines. We also explore which competitors are winning in the most recent years.
- 8.93 We focus on occasions when Farelogix has bid and supplement the data with additional information provided by airlines and competitors. Sabre does not currently offer an NDC API. As airlines typically contract with all GDS on an ongoing basis, there is not equivalent bidding data to examine the supply of GDS.
- 8.94 We briefly summarise the Parties' views on the bidding data before setting out our own analysis focussing on the extent each supplier has won bids.

The Parties' view

- 8.95 In response to our Provisional Findings the Parties did not make representations in relation to the results or calculations of the bidding analysis looking at NDC API but did submit that the CMA's analysis shows that:

⁵⁰¹ Paragraphs 10.87 et seq.

⁵⁰² [redacted].

⁵⁰³ Based on submissions from the parties, [redacted].

⁵⁰⁴ [redacted].

- (a) The [REDACTED] by count of airlines and [REDACTED] by passengers boarded) of airlines procuring an NDC API since 2014 have used a provider other than Farelogix;
- (b) multiple suppliers (Amadeus, Datalex, OpenJaw) have each won tenders with multiple major airlines;
- (c) Amadeus and OpenJaw win share is similar [REDACTED];
- (d) multiple major airlines have built in-house solutions;
- (e) Farelogix has [REDACTED] NDC API opportunity [REDACTED];
- (f) this data alone is sufficient to disprove any theory of harm resting on Farelogix playing a unique role in building NDI solutions or facilitating GDS bypass.

8.96 The Parties also previously submitted in response to our working paper in relation to the bidding analysis of NDC APIs that:⁵⁰⁵

- (a) What matters is the competitive situation now, not when Farelogix first began selling NDC APIs. Bidding data is a much better tool to assess this than historic market shares (based on early-adopter airlines) or historic internal documents;
- (b) the bidding data shows most NDC APIs are not built by Farelogix and that there are a range of alternative suppliers (including Amadeus, OpenJaw, Datalex as well as the option for airlines to develop an in-house solution);
- (c) Farelogix's winning frequency has declined over time, consistent with other NDC API providers being a growing constraint. [REDACTED];
- (d) measuring Farelogix's recent performance using passengers boarded (PB) weighted measures distorts the findings – this places undue weight on a single Farelogix customer [REDACTED] which did not represent a new customer win but a contract renewal in which Farelogix faced [REDACTED]; and
- (e) third-party suppliers and in-house solutions are competitive across the carrier landscape and have won contracts, often beating Farelogix, to supply prominent airlines [REDACTED] with NDC APIs.

⁵⁰⁵ [REDACTED].

Our assessment

8.97 We note that other competitors, including Amadeus, OpenJaw and Datalex, are actively bidding to supply NDC APIs to airlines. We consider their positions relative to Farelogix in our analysis below. In addition, we consider that retaining existing customers (in particular significant airlines such as [redacted]) and increasing volume through these, is relevant for the assessment of Farelogix’s strength. Similarly, we consider that passengers boarded provides a better measure (compared to, say, a simple airline count) as it reflects the potential use of an NPC API which charge on a per ticket basis.

8.98 We analysed [redacted] bids from Farelogix’s opportunity dataset in relation to NDC APIs.⁵⁰⁶ Of these, Farelogix bid for [redacted] opportunities that have been closed. Table 8.7 sets out the number of times each supplier has won these bids.

Table 8.7 – Winning bids for NDC API solutions by competitor, 2014 to September 2019

<i>Known winner</i>	<i>Number of wins</i>	<i>Share of wins (%)</i>	<i>% by boarded passengers</i>	<i>Number of bids in each airline tier</i>			
				Tier 1	Tier 2	Tier 3	Tier 4
Farelogix	[redacted]	[10-20] [redacted]	[20-30] [redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Amadeus	[redacted]	[10-20] [redacted]	[10-20] [redacted]	[redacted]	[redacted]	[redacted]	[redacted]
OpenJaw	[redacted]	[10-20] [redacted]	[10-20] [redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Self-Supply	[redacted]	[5-10] [redacted]	[10-20] [redacted]	[redacted]	[redacted]	[redacted]	[redacted]
JR Technologies	[redacted]	[0-5] [redacted]	[5-10] [redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Datalex	[redacted]	[0-5] [redacted]	[0-5] [redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Unknown	[redacted]	[50-60] [redacted]	[40-50] [redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total closed opportunity	[redacted]	100%	100%	[redacted]	[redacted]	[redacted]	[redacted]

Source: based on Farelogix opportunities data in NDC API, adjustments made based on airline and competitor data if available

8.99 It shows that:

- (a) Farelogix has won [redacted] bids [redacted]. Together, these airlines account for the largest number of passengers boarded compared to the customers won by each of the other suppliers;⁵⁰⁷
- (b) Amadeus has [redacted] won [redacted] bids [redacted].⁵⁰⁸ [redacted]
- (c) OpenJaw won [redacted] bids, [redacted].⁵⁰⁹ [redacted];
- (d) Datalex won [redacted];

⁵⁰⁶ See Appendix H for a description of the methodology.

⁵⁰⁷ [redacted]

⁵⁰⁸ [redacted]

⁵⁰⁹ [redacted]

- (e) JR Technologies [REDACTED]
- (f) Other potential rivals ([REDACTED]) were not reported to have won any bids;
- (g) [REDACTED] bids had unknown outcomes, these unknown outcomes could reflect:⁵¹⁰ bids won by other suppliers, misclassified ongoing bids, tenders in which airlines have decided to withdraw or self-supply without notifying the bidders, or unidentified duplicates.⁵¹¹

8.100 Table 8.8 shows the winning bids for NDC APIs over time.

Table 8.8 - Winning bids for NDC API solutions by competitor over time, 2014 to September 2019⁵¹²

Known Bidders	Airlines concerned				
	2015	2016	2017	2018	2019 to date
Farelogix	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Amadeus	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
OpenJaw	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Self-supply	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Datalex	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
JR Technologies	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: based on Farelogix opportunities data in NDC API, adjustments made based on airline and competitor data if available

8.101 Looking at bids recorded in 2019 we find that Farelogix has won [REDACTED], Amadeus has [REDACTED] and JR Technologies [REDACTED], Amadeus, OpenJaw and Datalex also [REDACTED]. Given the small number of closed bids in the period it is difficult to draw firm conclusions from this, but Farelogix's recent [REDACTED] combined with other evidence of renewals of large customers such as [REDACTED] as well as ongoing negotiation with [REDACTED] is consistent with Farelogix remaining a strong ongoing competitor in NDC APIs.⁵¹³

8.102 Appendix H sets out further analysis on the frequency of bidders competing against Farelogix, which provides another indicator of the extent it faces competition from other suppliers. Amadeus and OpenJaw appear to have bid most frequently against Farelogix ([40-50]% of bids made) with other competitors bidding against Farelogix less than 10% of the time and over 40% of bids Farelogix being the only recorded participant.

⁵¹⁰ For further details see Appendix H.

⁵¹¹ E.g. an opportunity which was recorded in multiple years in Farelogix/Sabre's opportunities, but which were kept as separate bids as it was not clear they related to the same tender.

⁵¹² The date of bid is based on the date in the parties' opportunity data rather than the date each win was confirmed.

⁵¹³ [REDACTED]

8.103 In Chapter 11 we consider bidding data together with other pieces of evidence in the round.

Market shares in distribution

8.104 This section provides an overview of the market shares in the supply of distribution solutions to airlines. This helps to provide context for the current scale of GDS bypass compared with the GDS as well as the extent to which airlines use direct and indirect channels.

- *The Parties' view*

8.105 In response to our working paper, the Parties submitted that:⁵¹⁴

- (a) Direct connect has been in the market for over a decade and has never gained significant market share. It has existed since before NDC and before Farelogix;
- (b) Farelogix is still a very small player – [redacted] share by indirect bookings globally and only [redacted] of total GDS bookings. These shares would be considerably lower still if airline.com is included in the denominator;
- (c) unlike Direct Connect, airline.com has constantly been a competitive constraint on the GDSs and has historically taken up a large [redacted] and growing proportion of airlines' annual bookings; and
- (d) the T2RL data shows that we have not reached "peak airline.com": [redacted] of the bookings for Farelogix airline customers were made through airline.com implying large room for growth. In fact, data shows that the use of airline.com across FLX OC users has increased by [redacted] since 2015.
- (e) the Transaction results in only a negligible increase in share of between [redacted].
- (f) the CMA's analysis of the trend in airline.com slowing is based on a single year and ignores the growth in previous years.
- (g) there is no evidence to suggest the growth of airline.com has been at the expense of call centres

[redacted]

⁵¹⁴ Parties response to Current competition in Distribution working paper – executive summary and [slide 23](#), 29 and 30

Our assessment

8.106 We first look at the evolution of shares between direct and indirect channels, before looking at the breakdown by channel/supplier for the most recent year. We use the data provided by the Parties and supplement this with data from the other GDS providers.

8.107 Table 8.9 shows the relative share of bookings between direct and indirect distribution in 2015 to 2018. It shows that around half of all global airline bookings were made via the direct channel in 2018. Within this channel, bookings via airline.com have been growing, over the same period there has been a similar decline in the share of other direct channels –ie call centres.

8.108 The parties submitted in response to our Provisional Findings that the increase in airline.com almost perfectly mirrors the decrease in share of bookings made through the GDS.⁵¹⁵ [REDACTED]

8.109 We do not dispute that airline.com usage has increased or that some of the increased usage may have come from consumers who in the past may have used indirect channels, although we note that in absolute terms GDS have continued to grow whilst call centre bookings have declined and some of the growth in airline.com may be explained by consumers switching from call centre (direct) to airline.com (direct). The total relative share of indirect and direct bookings remained relatively stable over the last four years, although the direct channel has had a slightly higher compound annual growth rate.⁵¹⁶ Overall, we are cautious in placing too much weight on these global trends as it masks significant variation across airlines, this is demonstrated Table 8.3 and in Appendix F and also discussed in chapter 6.

Table 8.9 – Relative global share of booking for bookings in the direct and indirect channels

Channel	2015	2016	2017	2018
Indirect channel	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Direct channel - Call centre	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Direct channel - Airline.com	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: T2RL for direct, indirect Parties submission based on Parties sales data, MIDT and T2RL

8.110 Table 8.10 shows estimates for the share of bookings by distribution channel and by supplier on a global basis. The three main GDSs make up [REDACTED] of all

⁵¹⁵ Parties' response to provisional findings paragraph 5.83

⁵¹⁶ [REDACTED]

bookings in the indirect channel. Amadeus had the largest share followed by Sabre and Travelport.

8.111 There are also local GDSs (host direct) in China, Japan and Russia, which [X] of all bookings in the indirect channel due to the large size of these countries, but they do not compete for travel agents outside of their home territories.

Table 8.10 - Global airline passenger bookings by booking channel/vendor 2018

<i>Supplier/channel</i>	<i>Bookings (millions)</i>	<i>% share including direct</i>	<i>% share including direct excluding host direct</i>	<i>% share indirect</i>	<i>% share indirect excluding host direct</i>
Sabre	[X]	[10-20] [X]	[10-20] [X]	[20-30] [X]	[30-35] [X]
Farelogix	[X]	[0-5] [X]	[0-5] [X]	[0-5] [X]	[0-5] [X]
Amadeus	[X]	[10-20] [X]	[10-20] [X]	[20-30] [X]	[30-40] [X]
Travelport	[X]	[0-10] [X]	[5-10] [X]	[10-20] [X]	[10-20] [X]
Host Direct ⁵¹⁷	[X]	[10-20] [X]		[30-40] [X]	
Direct connect (excluding Farelogix) ⁵¹⁸	[X]	[0-5] [X]	[0-5] [X]	[0-5] [X]	[5-10] [X]
Direct channel (airline.com and airline call centres)	[X]	[40-50] [X]	[50-60] [X]		
Total	[X]	100%	100%	100%	100%

Source: Parties submission; Parties sales data for Parties estimates, MIDT for Amadeus and Travelport, T2RL for other channels.

8.112 Given the large majority of bookings in the indirect channel take place on GDS, we have considered the relative positions between the three GDS suppliers, and their recent trends within this segment. ⁵¹⁹ Sabre's share has been growing over the last 4 years from [X] in 2015 to [X] in 2018, alongside Amadeus whose share has remained stable at around [X] globally. Over the same period Travelport has seen a relative decline from [X] in 2015 to [X] share in 2018.

8.113 Direct connect was estimated to account for [0-5] [X]% of all booking volumes [X] in 2018. The Parties submit that this demonstrates how small a player Farelogix is within Direct Connect. ⁵²⁰ We note that there is some degree of uncertainty in relation to the estimate for total direct connect bookings. T2RL does not estimate the breakdown by individual suppliers of

⁵¹⁷ Axess (Japan), Infini (Japan), Sirena (Russia) and Travelsky. (China)

⁵¹⁸ Direct Connect share relies on an estimate calculated by T2RL. T2RL calculate direct connect based on the remainder of bookings unallocated to other channels, this includes in house solutions and predominantly for low cost carriers.

⁵¹⁹ Based on the parties' submissions for Amadeus, Sabre and Travelport global bookings from 2015-2018 – see Table H.13 in appendix H

⁵²⁰ Parties response to Provisional Findings

direct connects, but it notes that these are ‘mainly used by low cost carriers to connect to OTAs’.⁵²¹

8.114 Low cost carriers have historically been users of (non-NDC) direct connects, and less reliant on GDS for distribution via travel agents and so less likely to be affected by the merger. This is in contrast to full service carriers which are both served by the GDS and more recently begun to be supplied for NDC content through NDC APIs like Farelogix. For full service carriers, Farelogix, self-supply, Amadeus and to a lesser degree OpenJaw are currently the main suppliers of NDC APIs (see Table 8.2). Looking at the revenues Farelogix earned from its GDS bypass tickets shows that amongst the providers competing with Farelogix, Farelogix appears to have the most significant revenues for direct connects.⁵²²

8.115 Finally, we note that although Farelogix has been in the market for some years, there are recent and ongoing changes to the market including the move of airlines to adopt the NDC standard, and the commitments of the NDC leaderboard airlines, as discussed in Chapter 7. These mean Farelogix’s current market share does not fully reflect its competitive impact or potential. We discuss this further, along with our view on the constraint of airline.com, in Chapter 11.

Summary of evidence on current suppliers

Merchandising

8.116 Based on the evidence on current suppliers’ capabilities, the number and size of airline customers, number of bids won and market shares, we consider that Farelogix is the most prominent and successful provider of merchandising solutions to date and remains a strong competitor with ongoing negotiations and a recent win. It is followed by Amadeus and, to a lesser extent Datalex. We also see some airlines self-supply.

- (a) Among the main merchandising providers that were most frequently mentioned by airlines and competitors,⁵²³ Farelogix, Amadeus, Datalex, OpenJaw and ITA are the only suppliers who currently offer NDC-

⁵²¹ Data provider T2RL in their methodology note relating to this data notes that ‘These are mainly used by LCCs to connect to Online Travel Agencies’. There is also some uncertainty as to the accuracy of this overall figure as they note that: ‘Airlines very rarely publish figures in this area and so data here is purely estimated. T2RL estimate the number of PBs being sold by the Direct Connect channel as those that are leftover when all other sources have been deducted from the total.’

⁵²² [§]

⁵²³ See Chapter 10 for evidence from airlines and from competitors.

- compatible merchandising solutions. Sabre's merchandising solutions are not NDC-compatible and, as Amadeus', are not PSS-agnostic.
- (b) Considering suppliers of merchandising solutions to the largest network carriers, Farelogix is the most successful; Amadeus, OpenJaw, ITA and Datalex have fewer customers in comparison. Currently, Sabre does not supply any major airlines.
 - (c) Our analysis shows that Farelogix has been the most successful provider when bidding for merchandising contracts over the last five years. After Farelogix and Amadeus, and Datalex have won some but fewer contracts than Farelogix. Sabre won only for very small airlines for which it was already the core-PSS provider.
 - (d) Farelogix continues to be a strong competitor in recent bids, winning a contract with [X] and continuing negotiations with [X].
 - (e) Finally, looking at market shares, Amadeus is the most significant provider (which in part reflects its core PSS position), followed by Farelogix. OpenJaw, ITA, Datalex and Sabre have lower shares.

Distribution

8.117 Based on the evidence on current suppliers' capabilities, the number and size of airline customers, number of bids won and market shares, we consider that Farelogix is the most prominent and successful provider of NDC-compatible distribution solutions followed by Amadeus and, to a lesser extent OpenJaw. These providers are in turn followed by Datalex, JR Tech and PROS.

- (a) Among the main distribution solution providers that were most frequently mentioned by airlines and competitors, only Farelogix, Amadeus, Datalex and OpenJaw currently offer NDC APIs. Currently, Sabre does not have the capability to build market viable NDC APIs.
- (b) Considering suppliers of NDC APIs solutions to the largest network carriers, Farelogix is the most successful; Amadeus, OpenJaw and Datalex have fewer customers in comparison. Similarly, for airlines on IATA's NDC Leaderboard, Farelogix is the most successful supplier followed by Amadeus and Datalex. Several large airlines self-supply.
- (c) Our analysis shows that Farelogix has won the greatest number of bids for NDC APIs joint with Amadeus. OpenJaw has also had some success. PROS and Datalex have been less successful.

- (d) Farelogix continues to be a strong competitor in recent bids, winning a contract with [REDACTED], renewing major contracts such as [REDACTED] and continuing negotiations with [REDACTED].

8.118 Based on global market shares in the supply of distribution solutions including the direct and the indirect channels, we have found that:

- (a) Amadeus and Sabre are the largest providers by some distance. Travelport has a lower share than these two providers although its share is nevertheless far greater than any of the non-GDS distributors;
- (b) Direct connects (NDC or non-NDC) accounted for 3% of bookings, with Farelogix accounting for less than [REDACTED]; and
- (c) Direct channel accounts for half of the bookings. The channel's share remains relatively stable over time, but within this, airline.com has grown at the expense of call centres.

9. Evidence from the Parties internal documents

Introduction

- 9.1 Our theories of harm are set out in chapter 7 – we have investigated whether the Merger would be likely to lead to higher prices and/or worse terms for airlines purchasing existing merchandising and distribution solutions. We are also interested in the impact of the Merger on innovation.
- 9.2 To help us explore these for both merchandising solutions and distribution solutions we have considered the evidence submitted by the Parties regarding their respective rationales for their business plans, business strategies for the future, investment documents and their perspectives of the competitive constraints that they face. In addition, we have assessed emails of the senior management team, external statements to investors and shareholders, transcripts of depositions conducted by the US DOJ as part of its investigation into the Merger and its litigation with the Parties, as well transcripts of the US trial, and other representations to us (eg from our hearings).
- 9.3 Our assessment of the Parties' internal document evidence is structured as follows :
- (a) First, we discuss how we have used internal documents in our inquiry, given the importance of internal documents as an insight into the business decisions of the Parties and the factors that they take into account in their decision making.
 - (b) Second, we discuss the internal document evidence relating to merchandising solutions, including the extent of the Parties' plans and the competitive threats that have been driving these.
 - (c) Third, we discuss the internal document evidence relating to distribution solutions, and in addition to the constraints faced by the Parties we also consider evidence on Farelogix's scalability and evidence from Sabre's valuation model.

Use of internal document evidence

- 9.4 We have set out our use of internal document evidence in five steps:
- (a) first, we provide an overview of our approach;
 - (b) second, we provide background on Sabre's investments into NDC solutions, which are the basis of many of its internal documents;

- (c) third, we explain the meaning of the terms ‘NGR’ and ‘NGD’ in these documents within the context of Sabre’s strategy;
- (d) fourth, we summarise the development of Sabre’s NGR/NGD strategy; and
- (e) finally, we provide context on Sabre’s investments into GDS-passthrough and NDC APIs.

Overview

- 9.5 We have taken into account the evidence from the Parties’ internal documents in several different respects. We consider that documents produced to inform business strategies, investment decisions and planning provide important insights into the Parties’ intentions and incentives and to some extent ability to compete (particularly absent the Merger), particularly where they contain details of funds spent, plans being implemented and proposals made by the Parties to third parties in the context of competing for customers. Parties’ internal documents can also be informative of the Parties’ perception of competitive threats, particularly those that drove (and may be likely to continue to drive) their strategies to improve and develop their products. In particular, we consider internal documents providing an indication of the competitive threat driving the Parties’ strategies are likely to be more reliable evidence of future competitive rivalry in terms of innovation/further product developments than some other evidence based on past competition which may be more reflective of other competitive parameters.⁵²⁴
- 9.6 In that context, we reviewed the Parties’ internal documents spanning the past four years to understand their strategy and plans for competing going forward, their assessment of competitive conditions, the rationale and drivers behind their competitive responses in the supply of merchandising solutions to airlines, and the supply of distribution solutions to airlines. We have considered merchandising and distribution separately and also assessed how far the Parties consider the two solutions to be related.
- 9.7 In assessing the content of an internal document, we have taken into account the purpose for which it was prepared, the context in which it appears and the extent to which views have changed over time and the reasons for such changes.⁵²⁵ In particular:

⁵²⁴ Chapter 11 - How we have considered the evidence in this inquiry.

⁵²⁵ To fully understand the context and importance of the documents, we (i) requested background information about the documents including the date the document was produced, the name of the author and the names of

- (a) we typically have placed greater weight on documents ultimately prepared to inform decision making by senior management as these are likely to be most reflective of the Parties' strategic thinking;
- (b) similarly, when assessing the competitive constraints on the Parties we have considered the context in which information appears in a particular document. For example, the fact that a competitor's name appears in a document is less informative than the context in which it appears. We have considered the different treatment of competitors across different product and business lines and the extent to which different competitors are monitored across the total set of internal documents over time.

The Parties' submissions

- 9.8 Both Sabre and Farelogix submitted that some of their documents that we have used warrant only historical interest at the very most and a significant proportion are over 18 months old.⁵²⁶ The Parties further submitted that we have built the majority of our analysis on selectively quoted, out-of-date 2017 documents, favouring this evidence over quantitative and more recent market evidence.⁵²⁷ Farelogix also told us that the views set out in its internal documents have changed in light of market developments.⁵²⁸
- 9.9 The Parties submitted that we have cherry-picked and mischaracterised documents and statements, often taking them out of context, to support our theories of harm.⁵²⁹ The Parties further submitted that in order to support our theories of harm, we have failed to refer to the relevant timeframe, author or surrounding context of the documentary evidence.⁵³⁰ The Parties submitted that we have taken forward-looking and aspirational statements in Sabre's internal documents out of context, focussing on Sabre's incentive and intent to innovate, while accepting explanations and contextualisations with regard to competitors' documents, focussing instead on their ability to innovate.⁵³¹

the recipients, and/or (ii) requested that the Parties tailor their internal document submissions so as to only submit documents produced by individuals with the most relevant knowledge on particular aspects of our enquiry (as identified by the Parties), and/or considered the submissions of the Parties in response to the issues statement and annotated issues statement and working papers. We set out additional information on the internal documents in Appendix D.

⁵²⁶ [REDACTED].

⁵²⁷ [REDACTED].

⁵²⁸ [REDACTED].

⁵²⁹ Parties' response to provisional findings, paragraph 1.8.

⁵³⁰ Parties' response to provisional findings, paragraph 3.11 and Annex 1 to the Parties' response to the provisional findings, paragraph 1.9.

⁵³¹ Parties' response to provisional findings, paragraph 3.10.

9.10 The Parties submitted that we have largely ignored other recent developments such as [REDACTED] and Farelogix's [REDACTED] scalability issues.⁵³² The Parties submitted that we predominantly refer to Sabre documents which pre-date its live-testing of NDC with United Airlines in April 2019.⁵³³ The Parties submitted that Sabre presentations produced around the time it developed its NDC strategy seek [REDACTED].⁵³⁴ The Parties submitted that these discussions were meant to explore and answer various key questions but did not purport to give definitive answers.⁵³⁵ The Parties submitted that several documents from 2017 on Sabre's NDC strategy use the conditional tense, and hypothesise, test and develop Sabre's retailing and distribution strategies.⁵³⁶ The Parties submitted that Sabre did not fully understand NDC or its implications, and built a range of different risk models based on the propaganda around NDC.⁵³⁷ The Parties also submitted that [REDACTED], one of the authors of the [REDACTED] saw his role as [REDACTED].⁵³⁸ The Parties further submitted that development timelines were aspirational rather than definitive.⁵³⁹

9.11 In addition, the Parties submitted that the documents from the time when Sabre developed its NDC strategy do not take into account the subsequent introduction of NDC version 17.2, which radically changed the industry in the subsequent period, [REDACTED].⁵⁴⁰

9.12 The Parties submitted that [REDACTED], as illustrated in subsequent internal documents and that in light of its evolving and changing view of the commercial possibilities enabled by NDC, Sabre revised its view of the competitive constraint posed by Farelogix as a result.⁵⁴¹ The Parties submitted one example of this [REDACTED]. The Parties submitted Amadeus has turned out to be a very strong threat and that, conversely, Sabre [REDACTED] to offer airlines.⁵⁴²

⁵³² Annex 1 to the Parties' response to the provisional findings, paragraph 1.7

⁵³³ Parties' response to provisional findings, paragraph 3.7.

⁵³⁴ [REDACTED], Annex 1 to the Parties' response to the provisional findings, paragraph 1.11.

⁵³⁵ [REDACTED].

⁵³⁶ [REDACTED].

⁵³⁷ [REDACTED].

⁵³⁸ [REDACTED].

⁵³⁹ Parties' response to provisional findings, paragraph 3.11.

⁵⁴⁰ Annex 1 to the Parties' response to the provisional findings, paragraph 1.12.

⁵⁴¹ [REDACTED].

⁵⁴² [REDACTED].

9.13 The Parties also submitted that we had failed to take into account the most recent witness evidence from the US trial, which they said is relevant to a number of the CMA's findings in the Provisional Findings.

Our assessment

9.14 We consider that documents produced in the period before Merger discussions (in particular the 18 months leading up to the Merger) offer relevant insights into competition between the Parties, competitive conditions generally and future strategic plans of the Parties for the following reasons:

- (a) as set out in further detail in Appendix D, these documents were authored by and/or prepared for members of the Parties' senior management and were used to make strategic decisions, including in Sabre's case to adopt an NDC strategy and invest millions into the development of NDC-enabled products;
- (b) the documents are recent prior to the Merger (with the majority dated within 18 months of the Merger);
- (c) the evidence suggests that adoption of NDC solutions by airlines has been slow overall with RFP processes and new product implementations often taking more than one year, meaning that fundamental shifts in the competitive landscape are, absent significant developments / events with respect to individual competitors, likely to be incremental (ie take place over a period of years not months). We consider that it is therefore unlikely that documents dated 2017 or 2018 would portray a fundamentally different competitive landscape to that which exists today (although we recognise that details are always unpredictable and subject to change). Instead, we consider their insights relevant in light of the lengthy and complex process of market evolution;
- (d) we consider that the evidence in its totality is not consistent with the explanation that Sabre's internal documents developing its NDC strategy are [redacted] or that timelines were merely aspirational given that:
 - (i) the Parties have provided no corroborating documentary evidence that the most senior staff had an opposing view (to that presented in the documents) or thought that the documents were purely hypothetical, or intended to be as such, and the documents themselves do not include references to being deliberately provocative (which one might expect of such a document intended for senior management even if just in a footnote or covering note);

- (ii) save for some specific issues (eg regarding individual documents in response to the Provisional Findings (discussed throughout this chapter), documents discussing negotiations with airlines and the scalability issues of Farelogix), by and large the Parties have not directed us to a bundle of their internal documents on which, in their opinion, we should have placed weight;
 - (iii) concrete decisions, ie Sabre's significant investment into developing its own NDC solutions, were made on the basis of these documents and timelines;⁵⁴³ and
 - (iv) the presentations were prepared by senior members of Sabre's staff over the course of several months, following research as well as internal and external interviews. We consider that it is unlikely that they would therefore contain a major misunderstanding of the fundamental aspects of competition in the industry, and in particular, that they would do so repeatedly; and
- (e) the evidence in Farelogix's internal documents dated February 2018 and May 2018, which the Parties submitted no longer represent Farelogix's views (set out at paragraphs 9.103(a), 9.103(b), 9.191(a), 9.191(b) and 9.196(a)-9.196(c) below) is consistent with statements made by Farelogix to Sabre and [redacted] in the context of the Merger negotiations and these were not corrected or amended by Farelogix prior to the announcement of the deal in November 2018.

9.15 We have been mindful that, in general, more recent documents are likely to accurately reflect up-to-date thinking of a business, and, as set out below we have taken documents produced after the Merger Agreement into account in our analysis and discuss these throughout this chapter (eg paragraph 9.80 for an analysis of more recent Sabre documents discussing Farelogix, paragraphs 9.81 for more recent evidence of Sabre responding to RFPs including NDC components, paragraph 9.167 for Sabre's more recent assessment of the threat of direct connect etc.). We have found in this context that in particular Sabre's recent documents do not discuss competitive conditions in the same depth as its pre-Merger documents. We have also found that Sabre's documents produced after the Merger Agreement generally do not contradict earlier ones. Where our review has brought to light material differences between pre-Merger and documents produced after the Merger Agreement, or where the Parties have directed us to particular recent documents (whether with regard to the Parties'

⁵⁴³ Paragraph 9.49. **Error! Reference source not found.**

assessment of a competitor, the development of the industry more generally, Farelogix's operational and scalability issues, and/or [REDACTED]), we have set this out and taken it into account in our assessment and highlighted any changes from earlier documents.

- 9.16 With regard to Sabre's submissions on the industry changing after the introduction of the 17.2 NDC standard, we have found that Sabre's internal documents do not include any meaningful discussion of changes to the industry as a result of the introduction of NDC standard 17.2 and the Parties have not directed us to recent documents that we should be placing weight on that supports their contention.
- 9.17 With regard to the evidence from the US trial, we note that we have conducted an independent inquiry based on the evidence provided to us. However, we have taken the Parties' submissions on the US trial into account and assessed them alongside the other evidence provided by the Parties.
- 9.18 Our assessment of the delays to Sabre's NDC strategy is set out at paragraphs 9.49 to 9.55 below for merchandising as well as paragraphs 28-33 of Appendix D, and in Chapter 11 as well as paragraphs 34-35 of Appendix D for distribution. Our overall assessment of the Merger (including recent developments) is set out in chapter 11.
- 9.19 A detailed overview of the author, context and content of the Parties' internal documents is set out at Appendix D.

Sabre's investments into NDC solutions

- 9.20 We have found in our inquiry that the industry is moving to employing solutions based on the NDC standard. Moreover, important aspects of our theories of harm centre on the impact that the Merger might have on Sabre's incentives to continue to invest in NDC solutions apace. We therefore consider the evidence on Sabre's investment in NDC.
- 9.21 Sabre has a strategy to develop NDC retailing and distribution solutions. The Parties submitted that this strategy is marketed as 'Beyond NDC'. The Parties submitted that Sabre began developing this strategy in 2017 and is in the process of implementing it. We have found that a significant portion of [REDACTED]. We therefore have placed substantial weight on [REDACTED] documents in our internal document analysis that follows. In particular, we refer to:
- (a) [REDACTED] **dated 12 April 2017**, which was shared with Sabre's CEO;

- (b) [REDACTED] **dated 22 May 2017**, which was prepared for a steering committee meeting and was circulated to attendees, including Sabre's CEO, Sabre's Executive Vice President and President of the Travel Network and Sabre's Head of Corporate Development and M&A ahead of the meeting;
- (c) [REDACTED] **dated 4 August 2017**, which formed part of the pre-reading material and/or was presented at [REDACTED];⁵⁴⁴ and
- (d) [REDACTED] **dated 15 August 2017**, which was circulated to Sabre's senior management (including its CEO) via email ahead of the Sabre annual strategic offsite.

9.22 A number of supplementary but related presentations used to facilitate the understanding of the business case, the impact on Sabre's business, and the implementation of the strategy etc. were produced during the same period. We have found that, while some of these presentations were in draft and/or did not form part of the final presentations at the [REDACTED] meetings, they contain consistent terminology and/or refer to the same concepts and considerations of the [REDACTED] presentations. We consider that the commentary in these presentations therefore provides relevant and supporting context which underpins the wider observations and proposals made in the [REDACTED] papers.

9.23 Throughout Sabre's internal documents, Sabre often refers to its GDS as 'Travel Network' or 'TN', and its Airline Solutions business, ie its airline IT business which includes its core-PSS as well as other airline IT, as 'AS'.

Meaning of 'NGR and NGD' within the context of Sabre's strategy

9.24 We have found that although Sabre generally refers to its strategy in using the terms NGR and NGD, the internal documents, as well as the Parties' submissions show that Sabre's NGR/NGD strategy is a strategy based [REDACTED], with one document explaining the different definitions. This document notes that NDC is an XML-based language protocol developed by IATA and that NGR refers to Next Generation Retailing which is Sabre's Pan-Sabre strategy objective for future retailing capabilities, based on NDC technology. The slide notes that this is meant to [REDACTED]. The slide also sets out that NGD refers to Next Generation Distribution which is the pan-Sabre strategy objective for future distribution capabilities and that Sabre wants to provide

⁵⁴⁴ Refer to Appendix D for more detail.

airlines to display products consistently across channels and allow suppliers to choose which channel to display their content in.⁵⁴⁵

9.25 We have found that while specifics of Sabre’s plans under the NGR heading were subject to varied description and a spectrum of capabilities, [REDACTED].⁵⁴⁶ Sabre’s internal documents show that this would change the [REDACTED].⁵⁴⁷ On this basis, as well as on the basis of the Sabre’s submissions, we understand that Sabre’s NGR strategy considerations included the introduction of merchandising capabilities.

9.26 Similarly, with regard to NGD, descriptions varied to some extent as Sabre’s internal discussions progressed, but we have found that [REDACTED]. Sabre’s internal documents in this context [REDACTED].

Development of Sabre’s NGR/NGD strategy

9.27 [REDACTED].⁵⁴⁸ [REDACTED]⁵⁴⁹ [REDACTED].

9.28 As described in more detail below, Sabre’s internal documents from [REDACTED] 2017 show Sabre [REDACTED].

9.29 Specifically, a presentation dated 15 August 2017 proposes a [REDACTED].⁵⁵⁰ The same presentation [REDACTED]:

Source: [REDACTED]

9.30 The proposal outlined in the August 2017 presentation appears to have been accepted by Sabre’s most senior management including Sabre’s CEO. A presentation dated 11 September 2017 circulated from Sabre’s CEO to all Sabre employees discussing [REDACTED]⁵⁵¹ and that the [REDACTED] namely [REDACTED];⁵⁵²

9.31 A more comprehensive overview of Sabre’s NGR/NGD strategy can be found at paragraphs 4-36 of Appendix D.

545 [REDACTED].
546 [REDACTED].
547 [REDACTED].
548 [REDACTED].
549 [REDACTED].
550 [REDACTED].
551 [REDACTED].
552 [REDACTED].

Sabre's investment into GDS-passthrough and NDC APIs

9.32 Sabre has invested into developing next generation distribution solutions, including working on implementing GDS passthrough with airlines, and developing an NDC API.⁵⁵³ In this context, a Sabre draft internal presentation dated 1 August 2018 prepared in contemplation of the Merger sets out that [REDACTED].⁵⁵⁴

9.33 In April 2019, Sabre announced that it was testing live NDC offers with United Airlines in its GDS⁵⁵⁵ and in September Sabre announced a collaboration with Singapore Airlines for the expansion of their NDC program providing select Sabre connected agents in Singapore with the ability to access and book unique NDC content from Singapore Airlines.⁵⁵⁶ In addition, we have also found that Sabre has started to compete for RFPs including NDC distribution components (NDC APIs and direct connect), having responded to bids from [REDACTED].⁵⁵⁷ With respect to the Parties' submissions that [REDACTED], we have found that:

(a) [REDACTED]⁵⁵⁸ [REDACTED].⁵⁵⁹

(b) [REDACTED]⁵⁶⁰[REDACTED].⁵⁶¹ As a result, we do not agree with the Parties that this document suggests that [REDACTED].⁵⁶²

9.34 In addition, Sabre, [REDACTED].⁵⁶³

Merchandising solutions

9.35 Our examination of the evidence from the Parties' internal documents in relation to merchandising solutions is structured as follows:

(a) first, we set out the Parties' submissions;

(b) second, we consider evidence from Sabre's internal documents;

⁵⁵³ [REDACTED].

⁵⁵⁴ [REDACTED].

⁵⁵⁵ [REDACTED].

⁵⁵⁶ Singapore Airlines Leverages Sabre to Propel NDC Offering to Travel Agents (<https://www.sabre.com/insights/releases/singapore-airlines-leverages-sabre-to-propel-ndc-offering-to-travel-agents/>).

⁵⁵⁷ [REDACTED].

⁵⁵⁸ [REDACTED].

⁵⁵⁹ [REDACTED].

⁵⁶⁰ [REDACTED].

⁵⁶¹ [REDACTED].

⁵⁶² Annex 1 to the Parties' response to the provisional findings report, paragraph 3.16.

⁵⁶³ [REDACTED].

- (c) third, we examine evidence from Farelogix’s internal documents; and
- (d) finally, we summarise the document evidence on merchandising solutions.

The Parties’ submissions

- 9.36 The Parties have made a number of submissions and representations to us during our inquiry. Those which are specific to merchandising solutions are addressed at the appropriate part of this chapter whereas others are set out in sections of our Final Report where we address the issue in question (eg distribution solutions, the counterfactual or barriers to entry and expansion).
- 9.37 The Parties submitted that we have focussed on Sabre’s internal documents without taking into account the fact that its internal documents describing its aspirations to launch a new merchandising product would receive more attention than third parties’ internal documents discussing incremental improvements to their own merchandising products, and that we have assessed this evidence in an asymmetric way.⁵⁶⁴ The Parties further submitted that [✂].⁵⁶⁵
- 9.38 Our assessment of the Parties’ submissions on the contents of its internal documents being merely aspirational is set out at paragraph 9.14(d) above. The evidence assessed in chapter 11 includes the counterfactual on whether absent the Merger Sabre is likely to develop an effective merchandising product. .
- 9.39 In general, for merchandising solutions as well as for other products and services, the Parties submitted that we have cherry-picked content to give the impression that Next Generation Retail (NGR) and Next Generation Distribution (NGD) are treated within Sabre as an integrated solution.⁵⁶⁶ The Parties submitted we have pooled together services with very different functionalities and very different customer requirements and competitor sets, conflating demand- and supply-side aspects of NDC, NGR and NGD, resulting in a mischaracterisation of the Parties’ competitive overlap both with respect to our analysis in distribution and merchandising.⁵⁶⁷
- 9.40 Whilst we recognise that NGR and NGD are broader than merchandising and distribution solutions and are often referred to in general terms, we consider that some of the documents discussed below make it clear when

⁵⁶⁴ Parties’ response to the provisional findings report, paragraph 4.6.

⁵⁶⁵ Annex 1 to the Parties’ response to the provisional findings report, paragraph 1.4.

⁵⁶⁶ Parties’ response to the provisional findings report, paragraph 3.11.

⁵⁶⁷ [✂].

they relate to merchandising or distribution solutions. Other documents make clear that merchandising solutions are of particular value within the suite of retailing solutions. We also note that Sabre's NDC strategy is marketed as an integrated strategy,⁵⁶⁸ and that Sabre's documents developing its NGR/NGD strategy are frequently titled as being 'pan-Sabre' (paragraph 9.21).

Sabre's internal documents

9.41 We have examined a large amount of evidence from Sabre's internal documents relating to competition in merchandising solutions:

- (a) first, we examine Sabre's plans for a PSS-agnostic NDC merchandising solution;
- (b) second, we consider Sabre's ability to develop this product;
- (c) third, we examine the evidence on its incentive to invest in this product;
- (d) fourth, we examine the evidence on threats in Sabre's merchandising investment decisions; and
- (e) finally, we consider how Sabre's product would compare to its rivals.

Sabre's plans for a PSS-agnostic NDC merchandising solution

9.42 Throughout the course of the inquiry, Sabre has made several submissions with respect to its intention to develop a PSS-agnostic NDC-enabled merchandising product. In the phase 1 Merger Notice, the Parties submitted that, but for the Merger, [REDACTED].⁵⁶⁹ In phase 2, the Parties submitted [REDACTED].⁵⁷⁰ The Parties submitted that [REDACTED].⁵⁷¹ [REDACTED].⁵⁷² However, the available evidence suggests that Sabre would, absent the Merger, have worked to improve its merchandising capabilities [REDACTED]. In particular:

- (a) [REDACTED].⁵⁷³ The Parties have not submitted any more recent documents that suggest it has changed its views since this document was drafted.

⁵⁶⁸ <https://www.sabre.com/ndc/> (accessed on 7 April 2020).

⁵⁶⁹ [REDACTED].

⁵⁷⁰ [REDACTED].

⁵⁷¹ Annex 1 to the Parties' response to the provisional findings report, paragraph 2.6.

⁵⁷² [REDACTED].

⁵⁷³ [REDACTED].

(b) A draft presentation titled [REDACTED] dated 29 March 2019 and associated with two Sabre senior management individuals [REDACTED] sets out Sabre's position as against the market in a number of areas [REDACTED]. With regard to [REDACTED]⁵⁷⁴[REDACTED].⁵⁷⁵ We consider that this presentation suggests that [REDACTED].

(c) In its announcement of the Merger, Sabre [REDACTED].⁵⁷⁶

(d) Sabre's internal assessment of potential synergies from the Merger dated 1 August 2018 stated that the acquisition of Farelogix would allow Sabre to save [REDACTED] that would otherwise be required to improve its merchandising product, Dynamic Retailer, including [REDACTED] to make Dynamic Retailer PSS-agnostic, and that this was viewed as [REDACTED].⁵⁷⁷ Sabre's valuation model therefore included [REDACTED].⁵⁷⁸

9.43 The evidence we have seen further clearly demonstrates that Sabre's NGR and NGD strategy more broadly was meant to be PSS-agnostic: :

(a) Sabre told us that [REDACTED].⁵⁷⁹

(b) Sabre also told us that [REDACTED];⁵⁸⁰

(c) Sabre also told us that [REDACTED]⁵⁸¹ [REDACTED];⁵⁸²

(d) A presentation titled [REDACTED] dated 20 April 2018 confirms that [REDACTED];⁵⁸³

(e) As set out in chapter 4, Sabre's submissions and internal documents confirm that acquiring a PSS-agnostic merchandising module was a key rationale for the Merger with a board presentation dated 10 November 2018 seeking approval for the Merger listing [REDACTED]⁵⁸⁴ as an anticipated benefit of the transaction. The speaking notes to the presentation refer to Farelogix's merchandising product as one of [REDACTED]⁵⁸⁵ [REDACTED].⁵⁸⁶ This was

574 [REDACTED].

575 [REDACTED].

576 [Sabre Corp enters agreement to acquire Farelogix: M&A call](#), page 7.

577 [REDACTED].

578 [REDACTED].

579 [REDACTED].

580 [REDACTED].

581 [REDACTED].

582 [REDACTED].

583 [REDACTED].

584 [REDACTED].

585 [REDACTED].

586 [REDACTED].

confirmed by Sabre in the hearing, where we were told that [REDACTED]⁵⁸⁷ as well as in a presentation to us which said that [REDACTED].⁵⁸⁸

9.44 As set out at paragraphs 9.29 above and 9.49(f) below, as well as at paragraphs 19-20 of Appendix D, the available evidence in this respect shows that Sabre envisioned [REDACTED] and that it [REDACTED] (see in this context paragraphs 32, 198-202 and 312-316 of Appendix D).⁵⁸⁹

9.45 Additional internal documents on Sabre developing its NDC strategy absent the Merger are set out at paragraph 36 of Appendix D.

Ability to develop a PSS-agnostic NDC-enabled merchandising product

9.46 Sabre submitted that Dynamic Retailer has [REDACTED] of becoming a materially stronger competitor in future.⁵⁹⁰ [REDACTED] Sabre's NDC strategy which has resulted in Sabre lagging behind both Travelport and Amadeus in getting its NDC solutions to market.⁵⁹¹

9.47 Sabre also told us that [REDACTED]:

(a) [REDACTED];

(b) [REDACTED];

(c) [REDACTED]; and

(d) [REDACTED].⁵⁹²

9.48 In particular, in its hearing Sabre [REDACTED]:

(a) [REDACTED].⁵⁹³

(b) [REDACTED].⁵⁹⁴

(c) [REDACTED].⁵⁹⁵

9.49 Whilst we have found Sabre's internal documents show that there have been [REDACTED], the available evidence suggest that Sabre is progressing its NDC

⁵⁸⁷ [REDACTED].

⁵⁸⁸ [REDACTED].

⁵⁸⁹ [REDACTED].

⁵⁹⁰ [REDACTED].

⁵⁹¹ Response to Issues Statement, paragraph 3.3.

⁵⁹² Parties' response to provisional findings, paragraph 4.4(ii).

⁵⁹³ [REDACTED].

⁵⁹⁴ [REDACTED].

⁵⁹⁵ [REDACTED].

strategy and that it considers that it could build a PSS-agnostic NDC-enabled merchandising product within the space of three to five years:

- (a) Sabre submitted that it had spent between [REDACTED]⁵⁹⁶ and that, in 2019, its investment into NDC products was projected to be [REDACTED], including for [REDACTED]⁵⁹⁷. Sabre submitted that this was [REDACTED] the 2018 spend⁵⁹⁸ and that it forecasted [REDACTED] of development resources staffing would be spent on NDC for the full year 2019.⁵⁹⁹ We recognise that these figures refer to NDC expenditure in general, rather than to merchandising in particular.
- (b) Sabre told us that it had also made [REDACTED].⁶⁰⁰ Sabre told us that its NDC budget represented '[REDACTED]'.⁶⁰¹
- (c) In the Merger Notice, Sabre told us [REDACTED].⁶⁰² In its response to the Issues Statement, Sabre submitted that it could only be in a position to potentially develop a minimally viable product [REDACTED] at the earliest.⁶⁰³
- (d) Sabre's most recent investment plan which sets out [REDACTED].⁶⁰⁴ [REDACTED].⁶⁰⁵
- (e) Sabre's marketing material on NDC also emphasise that Sabre is 'not starting from scratch' and that 'Digital merchandising, customer data and revenue management have been key investments at Sabre. We feel very confident about validating our strategy with our customers, the investments we have made and what's coming during the next few years.'⁶⁰⁶
- (f) The draft document titled [REDACTED] dated 20 August 2019 cited at paragraph 9.42(a) above sets out that [REDACTED].⁶⁰⁷ [REDACTED].⁶⁰⁸

⁵⁹⁶ [REDACTED].

⁵⁹⁷ [REDACTED].

⁵⁹⁸ [REDACTED].

⁵⁹⁹ [REDACTED].

⁶⁰⁰ [REDACTED].

⁶⁰¹ [REDACTED].

⁶⁰² [REDACTED].

⁶⁰³ Response to Issues Statement, paragraph 3.4(ii).

⁶⁰⁴ [REDACTED].

⁶⁰⁵ [REDACTED].

⁶⁰⁶ NDC to the power of Sabre – Chapter 3: Innovating Beyond NDC (<https://www.sabre.com/ndc/ndc-to-the-power-of-sabre-chapter-3-innovating-beyond-ndc/>).

⁶⁰⁷ [REDACTED].

⁶⁰⁸ [REDACTED].

- 9.50 Furthermore, the available evidence indicates that [REDACTED].⁶⁰⁹ In this context, the [REDACTED].⁶¹⁰ Further information on these bids is set out at paragraph 32 of Appendix D. [REDACTED].⁶¹¹
- 9.51 Sabre subsequently told us that, [REDACTED].⁶¹² We consider that [REDACTED].
- 9.52 With regard to any delays to the implementation of its NDC strategy more generally, Sabre's submissions and its internal documents confirm that it had made a prioritisation decision to modernise its mainframe capabilities ahead of fully implementing its NDC strategy.⁶¹³
- (a) At the main party hearing Sabre told us that the modernisation of its mainframe capabilities [REDACTED];⁶¹⁴
- (b) An April 2018 presentation [REDACTED].⁶¹⁵
- 9.53 However, we note that this mainframe modernization has been taking place over the past few years, and we understand [REDACTED].⁶¹⁶ We also consider that [REDACTED] would have taken this broader prioritisation decision into account.
- 9.54 A more comprehensive overview on the evidence of the delays to Sabre's NGR / NGD strategy is set out at paragraphs 28-35 of Appendix D.
- 9.55 We consider that the evidence above shows that Sabre [REDACTED] internal documents confirm that Sabre considered that it had the ability to build a credible PSS-agnostic merchandising product within the timespan of 3 to 5 years.

Incentive for Sabre investing in NDC merchandising solutions

- 9.56 We now consider the evidence on Sabre's incentive to develop an NDC-compatible, PSS-agnostic merchandising solution, as part of its wider strategy to develop NDC-enabled products and solutions. This enables us to understand the key industry trends that are affecting Sabre, the competitive threats it is reacting to, and the strength of the motivation it has to overcome challenges and implement the plans discussed above.

⁶⁰⁹ [REDACTED].

⁶¹⁰ [REDACTED].

⁶¹¹ [REDACTED].

⁶¹² Parties' response to provisional findings, paragraph 4.4(i).

⁶¹³ See also Appendix D.

⁶¹⁴ [REDACTED].

⁶¹⁵ [REDACTED].

⁶¹⁶ [REDACTED].

9.57 A detailed overview of the evidence in Sabre’s internal documents on its rationale and incentives in developing and implementing its NGR/NGD strategy is set out at paragraphs 37-51 of Appendix D.

- *Protecting GDS business*

9.58 Our Provisional Findings explained that airline retailing models based on content using the NDC standard increasingly allows airlines to undertake offer creation functions themselves and this represents a threat to Sabre as it diminishes the value of the GDS’s contribution to that particular function (whilst noting that GDSs also have broader functions).⁶¹⁷

9.59 In reaction to our Provisional Findings the Parties submitted that it is wrong to conclude that a key driver for Sabre to improve its merchandising solution is the need to protect the value of its GDS and that this premise was not supported by Sabre’s internal documents.⁶¹⁸ In this context, the Parties submitted that one strategy presentation put forward the view that [REDACTED].⁶¹⁹

9.60 The Parties further submitted that there was ‘no doubt that GDSs will remain important’ and that it was [REDACTED].⁶²⁰ The Parties also submitted that ‘Airlines do not procure on the basis of a single integrated solution and the value of the GDS and merchandising solution do not affect each other’.⁶²¹ Our overall assessment of these points are set out in chapter 11. We set out below the evidence from Sabre’s internal documents.

9.61 Sabre’s internal documents show that its investments into a PSS-agnostic merchandising solution and its investment into NDC-enabled distribution solutions were interlinked. Sabre considered that there were complementary links between retailing and distribution with airlines wanting to distribute more sophisticated offers consistently across all channels, providing another incentive for Sabre to invest in both. Notwithstanding the Parties’ submissions that [REDACTED], Sabre’s internal documents show a significant concern that shifting control of offer creation to the airline would weaken its GDS, if it did not invest in both NGR and NGD products and services:

(a) A slide in the [REDACTED] presentation dated 22 May 2017 sets out that [REDACTED].⁶²²

⁶¹⁷ [Provisional Findings](#) paragraph 11.25

⁶¹⁸ Parties’ response to the provisional findings report, paragraph 4.19.

⁶¹⁹ Parties’ response to the provisional findings report, paragraph 4.19 referring to [REDACTED].

⁶²⁰ Parties’ response to the provisional findings report, paragraph 4.19.

⁶²¹ Parties’ response to the provisional findings report, paragraph 4.19.

⁶²² [REDACTED].

- (b) The same presentation also sets out in its executive summary that [REDACTED]⁶²³ [REDACTED].⁶²⁴
- (c) Another presentation prepared for members of Sabre’s leadership at a commercial offsite discussion titled [REDACTED];⁶²⁵
- (d) With regard to the Parties’ submission that the [REDACTED] strategy presentation dated 15 August 2017 put forward the view that [REDACTED]⁶²⁶ [REDACTED], we note that the same presentation sets out in its executive summary that ‘[REDACTED]⁶²⁷ and that [REDACTED],⁶²⁸ and
- (e) A slide in the earlier [REDACTED] presentation dated 12 April 2017 describes the connection between merchandising and distribution, setting out that [REDACTED].⁶²⁹
[REDACTED].⁶³⁰

9.62 The complementarity between [REDACTED] is further spelt out in the draft document titled [REDACTED] dated 20 August 2019. This sets out that [REDACTED]⁶³¹ [REDACTED].⁶³²

9.63 We note in this context that Sabre’s internal documents explicitly reference risks to its GDS business, notwithstanding the Parties’ submissions that GDSs would ‘remain important’ to the industry.

9.64 Additional evidence on this point is set out at paragraph 42 of Appendix D. Additional evidence on documents discussing the need for Sabre to invest in both merchandising and NDC-enabled distribution products is set out at paragraph 49 of Appendix D.

- *Protecting core and non-core PSS business*

9.65 We have found that Sabre considered [REDACTED]:

⁶²³ [REDACTED].

⁶²⁴ [REDACTED].

⁶²⁵ [REDACTED].

⁶²⁶ Parties’ response to the provisional findings report, paragraph 4.19 referring to [REDACTED].

⁶²⁷ [REDACTED].

⁶²⁸ [REDACTED].

⁶²⁹ [REDACTED].

⁶³⁰ [REDACTED].

⁶³¹ [REDACTED].

⁶³² [REDACTED].

- (a) One document, from October 2018 (only a month before the Merger was agreed), said that [REDACTED].⁶³³ The document contains a graph showing that [REDACTED].⁶³⁴ This document suggests that an element of [REDACTED].
- (b) This point is made more explicitly in the [REDACTED] presentation dated 4 August 2017 which sets out that [REDACTED].⁶³⁵ This is repeated in a presentation titled [REDACTED].⁶³⁶
- (c) At the hearing, Sabre told us that [REDACTED].⁶³⁷

9.66 In that context, we have found that [REDACTED]. Furthermore, Sabre's internal documents include [REDACTED]. Documents from 2019 and 2018 as well as verbal statements to us include:

- (a) a presentation titled [REDACTED] dated December 2019, submitted to us [REDACTED] sets out that [REDACTED];⁶³⁸
- (b) [REDACTED];⁶³⁹ and
- (c) a slide in the presentation titled [REDACTED] dated 12 April 2018 sets out [REDACTED].⁶⁴⁰

9.67 Additional evidence on this point is set out at paragraph 50 of Appendix D.

9.68 We also note that Sabre's valuation analysis includes an assumption that the Merger would result in [REDACTED].⁶⁴¹ Sabre told us that this was because it assumed [REDACTED].⁶⁴² Consistent with the above, we consider that this demonstrates the increasing importance of merchandising as part of a PSS offering.

- *The importance of merchandising within Sabre's NGR/NGD strategy*

9.69 The Parties submitted that merchandising is just one of dozens of components that make up an airline's broader retailing solution and is not capable of generating unique competitive strength.⁶⁴³

⁶³³ [REDACTED].

⁶³⁴ [REDACTED].

⁶³⁵ [REDACTED].

⁶³⁶ [REDACTED].

⁶³⁷ [REDACTED].

⁶³⁸ [REDACTED].

⁶³⁹ [REDACTED].

⁶⁴⁰ [REDACTED].

⁶⁴¹ Appendix C, paragraph 32.

⁶⁴² Appendix C, paragraph 32.

⁶⁴³ Parties' response to the provisional findings report, paragraph 4.22.

9.70 We have found that submissions from Sabre as well as its documents show that merchandising capabilities are a critical component of NDC retailing solutions for airline customers and that the industry is moving towards more sophisticated use of merchandising solutions using the NDC standard:

- (a) The draft document titled '[REDACTED]' dated 20 August 2019 sets out that [REDACTED].⁶⁴⁴ [REDACTED]⁶⁴⁵ [REDACTED].⁶⁴⁶
- (b) Sabre described to us that [REDACTED]⁶⁴⁷, [REDACTED]⁶⁴⁸ [REDACTED].⁶⁴⁹
- (c) Sabre also told us '[REDACTED]'.⁶⁵⁰
- (d) At a call with [REDACTED] dated 14 November 2018, [REDACTED].⁶⁵¹

Competitive threats in Sabre's merchandising investment decisions

9.71 The previous section examined the evidence on Sabre's incentives for investing in NDC merchandising solutions. This section examines the evidence on Sabre's competitors in merchandising.

9.72 The Parties submitted that the merged entity would be constrained by a number of strong established players, including Amadeus, OpenJaw, Datalex, ITA as well as more recent entrants such as PROS, JR Technologies, and Interes,⁶⁵² as well as airline self-supply.⁶⁵³ Moreover, the Parties submitted that, in many instances, smaller competitors sit within large corporate technology companies, which are innovating and investing in this area, (eg PROS/Vayant, Google/ITA, HP/DXC and SAP) and can benefit from their investment and technological prowess. Therefore, absent the Merger, the Parties submitted that other players will be significantly better placed to compete for future business.⁶⁵⁴

9.73 The Parties further submitted that Amadeus, Datalex, PROS, OpenJaw, ITA and others are [REDACTED].⁶⁵⁵ In particular, they submitted that PROS is a strong independent and highly credible player and that [REDACTED].⁶⁵⁶ The Parties also

⁶⁴⁴ [REDACTED].

⁶⁴⁵ [REDACTED].

⁶⁴⁶ [REDACTED].

⁶⁴⁷ [REDACTED].

⁶⁴⁸ [REDACTED].

⁶⁴⁹ [REDACTED].

⁶⁵⁰ [REDACTED].

⁶⁵¹ [REDACTED].

⁶⁵² [REDACTED].

⁶⁵³ [REDACTED].

⁶⁵⁴ Response to Issues Statement, paragraph 3.14

⁶⁵⁵ Parties' response to provisional findings, paragraph 1.12 (ii).

⁶⁵⁶ Annex 5 to Parties' response to provisional findings, paragraph 3.2.

submitted that there was no evidential basis to suggest that Sabre considered there to be few competing providers of merchandising solutions, when age and context of the documents and other evidence was taken into account and that Sabre refers to and records other players as competitors in merchandising through market intelligence and bidding data.⁶⁵⁷

9.74 In this section we discuss the internal document evidence on these providers. Evidence on the suppliers identified by the Parties above, including an analysis of their internal documents, is set out in chapters 8 and 10. Our overall assessment of these competitors is set out in chapter 11. We also note that with respect to its competitors, we have found that Sabre's internal documents often discuss the competitive landscape in high level terms typically referring to competitors and business plans within 'NDC' or 'NGR/NGD' rather than by specific product offering.

- *Farelogix*

9.75 The Parties submitted that Farelogix has a market leading merchandising module and some talented people but it is no longer a significant innovator in distribution or NDC more generally.⁶⁵⁸

9.76 The Parties submitted that Farelogix is not a key innovator or disruptor, and that our investigation has placed undue weight upon this theory, largely based on a small number of references taken out of context from out-of-date internal documents.⁶⁵⁹ The Parties further submitted that it is clear from an analysis of the Parties' internal documents that Farelogix is no longer at the forefront of NDC development and faces a number of equally strong competitors,⁶⁶⁰ and that to the extent that Farelogix ever was a key innovator/disruptor, this is overstated and no longer the case.⁶⁶¹

9.77 We have set out below the evidence from Sabre's internal documents on Farelogix as well as on other competitors. Our analysis of the strength of each competitor, including their ability and incentive to invest in merchandising is set out in chapter 11.

⁶⁵⁷ Annex 1 to the Parties' response to the provisional findings report, paragraph 3.8, Parties' response to the Issues Statement, paragraph 4.10-4.26 and Tables 4.1. and 4.2.

⁶⁵⁸ [REDACTED].

⁶⁵⁹ Response to Issues Statement, paragraph 1.22.

⁶⁶⁰ Response to Issues Statement, paragraph 1.22.

⁶⁶¹ Response to Issues Statement, paragraph 5.84.

9.78 Sabre's [REDACTED] show that Sabre perceived Farelogix as one of its two key competitors when developing its NGR/NGD strategy in 2017 (the other being Amadeus). [REDACTED]:

- (a) The [REDACTED] presentation (22 May 2017) said '[REDACTED] Farelogix and Amadeus are the most relevant threats with other providers providing more limited technology'. [REDACTED].⁶⁶²
- (b) The [REDACTED] presentation also included an analysis of Farelogix over several slides, including a [REDACTED]. Further slides in the appendix include [REDACTED]⁶⁶³ [REDACTED]⁶⁶⁴ [REDACTED]⁶⁶⁵ [REDACTED] (see Appendix D).
- (c) A slide in the [REDACTED] dated 4 August 2017 compares [REDACTED] (see Figure 9.3 below). It showed [REDACTED].

Figure 9.3 – [REDACTED]

Source: [REDACTED].

- (d) Another slide in the appendix to the presentation sets out [REDACTED].⁶⁶⁶
- (e) A slide in the [REDACTED] presentation (15 August 2017) repeats a version of the slide from the [REDACTED] document described at paragraph (b) above, stating that 'among competitors, Amadeus Farelogix, and Datalex are the most relevant threats with others providing more limited technology'.⁶⁶⁷ [REDACTED].⁶⁶⁸

9.79 Furthermore, several of Sabre's internal documents prepared during the development and implementation of its NDC strategy include specific references to [REDACTED]:

- (a) An email chain including members of Sabre's management dated 20 March 2018⁶⁶⁹ includes an assessment of [REDACTED]. The document indicates that [REDACTED];⁶⁷⁰
- (b) The presentation [REDACTED] dated 12 April 2018, highlights [REDACTED]. The presentation includes several slides on [REDACTED].⁶⁷¹ We note that notwithstanding the Parties' submission that this document does not show a connection between NDC

662 [REDACTED].
663 [REDACTED].
664 [REDACTED].
665 [REDACTED].
666 [REDACTED].
667 [REDACTED].
668 [REDACTED].
669 [REDACTED].
670 [REDACTED].
671 [REDACTED].

merchandising solutions and NDC distribution solutions, and instead [REDACTED],⁶⁷² the slide explicitly refers to [REDACTED]⁶⁷³, [REDACTED]. We therefore do not agree with the Parties that this document shows no connection between NDC merchandising and NDC distribution solutions.

- (c) A presentation titled [REDACTED] dated May 2017 sets out in its executive summary [REDACTED].⁶⁷⁴
- (d) The presentation titled [REDACTED] dated 25 September 2017 sets out that [REDACTED].⁶⁷⁵ Therefore, notwithstanding [REDACTED],⁶⁷⁶ we consider that the context of the document indicates that the term [REDACTED].

9.80 In addition to the evidence cited above, we have also found that more recent internal documents show that Sabre continued to view Farelogix as a strong competitor as against other available alternatives across retailing and distribution generally as well as with regard to its merchandising capabilities:

- (a) A presentation prepared for Sabre's senior management in the context of the Merger titled [REDACTED] dated 10 November 2018 sets out in its speaking notes that [REDACTED].⁶⁷⁷
- (b) Another Sabre presentation titled [REDACTED] also dated 10 November 2018 which asks [REDACTED].⁶⁷⁸
- (c) An investment presentation centred on [REDACTED] dated 11 September 2018⁶⁷⁹ sets out [REDACTED]. The Parties submitted that this slide [REDACTED].⁶⁸⁰ We note that the [REDACTED].
- (d) A presentation titled [REDACTED].⁶⁸¹

9.81 Finally, in two recent Sabre internal documents discussing Sabre's possible responses to airline RFPs including NDC solutions (including both merchandising solutions and NDC APIs), Sabre singles out Farelogix as a significant competitor:

⁶⁷² Annex 1 to the Parties' response to the provisional findings report, paragraph 3.19(i).

⁶⁷³ [REDACTED].

⁶⁷⁴ [REDACTED].

⁶⁷⁵ [REDACTED].

⁶⁷⁶ Annex 1 to the Parties' response to the provisional findings report, paragraph 3.19(ii).

⁶⁷⁷ [REDACTED].

⁶⁷⁸ [REDACTED].

⁶⁷⁹ [REDACTED].

⁶⁸⁰ Annex 1 to Parties' response to provisional findings report, paragraphs 3.2 -3.3.

⁶⁸¹ [REDACTED].

- (a) The first, from 30 March 2018, [REDACTED].⁶⁸² [REDACTED];⁶⁸³ This document shows that Sabre viewed Farelogix as a threat to its distribution revenues. It also indicates that it viewed the adoption by airlines of NDC solutions as a threat to its merchandising and broader retailing revenues (which form part of its Airline Solutions business) as the offer creation function moves out of the GDS to the airlines.
- (b) In the second, a presentation titled [REDACTED] from 6 December 2018, [REDACTED].⁶⁸⁴ This document therefore shows that it is not the case that Sabre’s perception of the competitive threat posed to it by Farelogix’s has diminished over time and that by the time of the Merger Sabre no longer considered Farelogix a competitive threat.

- *Amadeus*

9.82 Some of Sabre’s internal documents which we have already discussed in the section on Farelogix above, show that Sabre considers Amadeus to be one of its most relevant competitors in merchandising solutions. Additional evidence is below:

- (a) Sabre’s [REDACTED].⁶⁸⁵
- (b) The [REDACTED] presentation dated 22 May 2017 includes several standalone slides on [REDACTED],⁶⁸⁶[REDACTED].⁶⁸⁷ [REDACTED].⁶⁸⁸ [REDACTED].
- (c) Sabre’s [REDACTED] presentation dated 12 April 2017 notes that [REDACTED].⁶⁸⁹
- (d) A presentation titled [REDACTED] dated 12 April 2018 sets out in the context of [REDACTED],⁶⁹⁰ [REDACTED].⁶⁹¹
- (e) The investment presentation centred on [REDACTED] dated 11 September 2018 described in more detail [REDACTED].⁶⁹²

682 [REDACTED].
 683 [REDACTED].
 684 [REDACTED].
 685 [REDACTED].
 686 [REDACTED].
 687 [REDACTED].
 688 [REDACTED].
 689 [REDACTED].
 690 [REDACTED].
 691 [REDACTED].
 692 [REDACTED].

- (f) A Sabre presentation titled [REDACTED] dated 8 August 2019 by Sabre’s SVP of Commercial Platform includes two slides [REDACTED].⁶⁹³
- (g) As noted above, a draft document titled [REDACTED] dated 20 August 2019 sets out that [REDACTED].⁶⁹⁴

- *Datalex*

9.83 We have found that Sabre’s internal documents that discussed Datalex were prepared in the context of Sabre developing its NGR/NGD strategy. These discussions were at a broad level and generally did not distinguish between Datalex’s merchandising or retail products and its distribution products.

9.84 Sabre’s internal documents show that in 2017, it considered that Datalex had [REDACTED], with the [REDACTED] presentations referring to Datalex as among Sabre’s most relevant threats alongside Farelogix and Amadeus. However, we have also found that Sabre’s NGR/NGD strategy documents did not benchmark Sabre against Datalex in the same way as against Farelogix and Amadeus. For example, [REDACTED]:

- (a) A slide in the [REDACTED] presentation dated 12 April 2017 sets out that Datalex [REDACTED].⁶⁹⁵
- (b) The executive summary to the [REDACTED] presentation dated 22 May 2017 notes that [REDACTED].⁶⁹⁶
- (c) Another slide in the same documents highlights [REDACTED].
- (d) The appendix to the [REDACTED] presentation also includes [REDACTED].⁶⁹⁷ [REDACTED].
- (e) A slide in a presentation titled [REDACTED] dated 15 August 2017 repeats [REDACTED] ‘among competitors, Amadeus Farelogix, and Datalex are the most relevant threats with others providing more limited technology’.⁶⁹⁸

9.85 In the context of the Merger, a presentation prepared for Sabre’s senior management dated 29 August 2017 includes [REDACTED].⁶⁹⁹

⁶⁹³ [REDACTED].
⁶⁹⁴ [REDACTED].
⁶⁹⁵ [REDACTED].
⁶⁹⁶ [REDACTED].
⁶⁹⁷ [REDACTED].
⁶⁹⁸ [REDACTED].
⁶⁹⁹ [REDACTED].

9.86 With regard to documents on Sabre’s implementation of its NDC strategy after 2017, we have found some references to Datalex. However, contrary to references to Farelogix in Sabre’s more recent internal documents, Datalex is often referred to within larger lists of competitors without specific commentary or appraisal. Datalex is also not mentioned [REDACTED]:

(a) The investment presentation centred on [REDACTED] dated 11 September 2018⁷⁰⁰ described in more detail at paragraph 9.80(c) above shows that [REDACTED].⁷⁰¹

(b) Datalex is listed as one of the competitors to Sabre in the presentations described at paragraph 9.88(a) and 9.88(c) below.

(c) However, in Sabre’s most recent [REDACTED] document for the year 2020 dated 21 July 2019, [REDACTED].⁷⁰²

- *Other competitors*

9.87 Generally, we have found that Sabre has not conducted in-depth assessments of other competitors with regard to their NDC merchandising or distribution capabilities, and discussions of competitors are generally high-level without reference to particular product or business line. For example, in its NGR/NGD strategy documents, other competitors are only mentioned in lists, and in some cases are compared negatively to Amadeus and Farelogix:

(a) A slide in the [REDACTED] presentation dated 22 May 2017 sets out [REDACTED].⁷⁰³

(b) A further slide in the [REDACTED] presentation sets out that ‘[REDACTED]; Farelogix and Amadeus are the most relevant threats with other providers providing more limited technology’. The slide sets out [REDACTED].⁷⁰⁴ A version of this slide is also included in the [REDACTED] presentation dated 15 August 2017.

(c) the [REDACTED] and [REDACTED] presentations also include some further commentary on competitors:

(i) [REDACTED];

(ii) [REDACTED];

⁷⁰⁰ [REDACTED].

⁷⁰¹ [REDACTED].

⁷⁰² [REDACTED].

⁷⁰³ [REDACTED].

⁷⁰⁴ [REDACTED].

- (iii) [REDACTED];
- (iv) [REDACTED]; and
- (v) [REDACTED].⁷⁰⁵

9.88 We have found that more recent Sabre internal documents do mention other competitor albeit significantly less in-depth when compared to those competitors already discussed [REDACTED]. We also note that it is not always clear from the documents and references to competitors whether Sabre is referring to a competitor with respect to its merchandising capabilities or other products such as shopping, revenue management and/or offer management packages. For example:

- (a) The investment presentation on [REDACTED].⁷⁰⁶
- (b) A further slide in the same presentation sets out [REDACTED].
- (c) A Sabre presentation by [REDACTED] dated 18 October 2018 discusses [REDACTED].⁷⁰⁷ [REDACTED].⁷⁰⁸
- (d) A Sabre presentation titled [REDACTED] dated 8 August 2019 by Sabre's SVP of Commercial Platform sets out [REDACTED].
- (e) A draft document titled [REDACTED] dated 20 August 2019 sets out that [REDACTED].⁷⁰⁹

9.89 With regard to [REDACTED], some recent internal documents suggest that Sabre considered [REDACTED] primarily as a strong competitor with regard to its [REDACTED], and as being able to provide services complimentary to those of Farelogix:

- (a) A presentation titled [REDACTED] dated 28 May 2019 in one slide [REDACTED].⁷¹⁰
- (b) A draft presentation titled [REDACTED] dated 29 March 2019 sets out that [REDACTED].⁷¹¹

- *Self-supply by airlines*

9.90 We found that self-supply by airlines in merchandising is not referenced or discussed in Sabre's internal documents and this was not disputed by the Parties in response to the Provisional Findings. We therefore consider that the available evidence from Sabre's documents do not show that Sabre

⁷⁰⁵ [REDACTED].
⁷⁰⁶ [REDACTED].
⁷⁰⁷ [REDACTED].
⁷⁰⁸ [REDACTED].
⁷⁰⁹ [REDACTED].
⁷¹⁰ [REDACTED].
⁷¹¹ [REDACTED].

considers self-supply of merchandising by airlines to be a competitive constraint.

Evidence from internal documents on how Sabre's merchandising product would compare to its competitors'

- 9.91 The Parties submitted that Sabre was currently lagging behind other merchandising suppliers ([REDACTED]) and that there was no evidence to suggest that it would be able to [REDACTED].⁷¹² The Parties further submitted that even if Sabre could develop a PSS-agnostic and NDC-enabled merchandising product within three to five years, a gap in capabilities would remain as Sabre's competitors will also have moved forward in that time.⁷¹³ The Parties submitted that Sabre's Vice President of Product Management, Strategic Initiatives at Travel Network testified in this respect that [REDACTED].⁷¹⁴
- 9.92 We have set out the evidence on Sabre's delays in implementing its NGR and NGD strategy (and the implications for its merchandising product at paragraphs 9.49 to 9.54 above, with additional information being set out at paragraphs 28-35 of Appendix D. Our overall assessment of the constraint currently and going forward of each of Sabre, Farelogix and other suppliers is set out in chapter 11.
- 9.93 With regard to Sabre's current position in merchandising as against its competitors, one recent draft presentation titled [REDACTED] dated 29 March 2019, sets out that [REDACTED].⁷¹⁵
- 9.94 However, with regard to Sabre's progress as against individual competitors, Sabre's internal documents indicate [REDACTED]:
- (a) A slide in the [REDACTED] presentation dated 4 August 2017 compares [REDACTED]. It showed [REDACTED] suggests that Sabre expected that its investment into NDC would allow it to make material gains as against its competitors (including with regard to further potential investments made by [REDACTED]).⁷¹⁶
- (b) Sabre's 2019 investment presentation on [REDACTED] in a slide comparing its competitors' [REDACTED], [REDACTED].⁷¹⁷

⁷¹² Parties' response to the provisional findings report, paragraphs 1.14 and 4.12.

⁷¹³ Parties' response to the provisional findings report, paragraph 4.5.

⁷¹⁴ Parties' response to the provisional findings report, paragraph 4.12.

⁷¹⁵ [REDACTED].

⁷¹⁶ [REDACTED].

⁷¹⁷ [REDACTED]

(c) An even more recent presentation titled [REDACTED] dated 8 August 2019 includes two slides [REDACTED].⁷¹⁸

9.95 We consider that these documents show that Sabre [REDACTED]. Furthermore, these documents also show that [REDACTED].

9.96 Generally, we have seen from [REDACTED], suggesting that it is able to offer a competitive (or even leading) solution within a short timeframe:

c. The Sabre presentation [REDACTED] sets out that [REDACTED];⁷¹⁹

d. The presentation to the board of directors [REDACTED] on 5-6 February 2019 [REDACTED];⁷²⁰ and

e. In Sabre's most recent [REDACTED] dated 21 July 2019, Sabre sets out its continued investment thesis for NDC: [REDACTED].⁷²¹

Farelogix's internal documents

9.97 The previous discussions focussed on Sabre's incentives and abilities to develop an NDC enabled PSS-agnostic merchandising solution. In this section we examine the evidence from Farelogix, and focus on two issues:

(a) First, the factors that Farelogix considers makes its merchandising solutions successful;⁷²² and

(b) second, the evidence on who Farelogix monitors as its competitors.

Farelogix's merchandising solution

9.98 Unlike Sabre, Farelogix has already developed a suite of products using the NDC standard. We have found that Farelogix's documents consistently highlight the ability of its product offering (including its merchandising solution) to give airlines control of the offer and retailing process and thereby reduce dependency on legacy systems:

⁷¹⁸ [REDACTED].

⁷¹⁹ [REDACTED].

⁷²⁰ [REDACTED].

⁷²¹ [REDACTED].

⁷²² [REDACTED].

- (a) In the [REDACTED] provided to Sabre (June 2018), Farelogix sets out how airline buying behaviour and NDC are driving significant changes in airline retailing and distribution. In this context, the slide sets out that [REDACTED].⁷²³ [REDACTED].
- (b) A later slide in the same presentation sets out that in the traditional airline distribution model [REDACTED].⁷²⁴ [REDACTED]⁷²⁵ [REDACTED].⁷²⁶
- (c) Farelogix marketing materials reference the airline’s ability to control the offer when using Farelogix’s products :
 - (i) In a presentation titled [REDACTED], dated August 2018, Farelogix sets out [REDACTED].⁷²⁷ [REDACTED].⁷²⁸ [REDACTED].⁷²⁹
 - (ii) A marketing presentation titled [REDACTED] dated February 2018 includes a section titled [REDACTED]. The presentation emphasises that Farelogix’s offer products are [REDACTED].⁷³⁰
 - (iii) Another marketing presentation [REDACTED].⁷³¹ [REDACTED].

9.99 Farelogix also frequently highlights its independence from the PSSs and neutrality on how airlines use or distribute offers as key selling points of its merchandising (and other NDC) products:

- (a) In the [REDACTED] provided to Sabre dated June 2018, Farelogix sets out in a section titled [REDACTED].⁷³²
- (b) Similarly, a slide deck prepared for [REDACTED] titled [REDACTED] dated 27-28 June 2018 slide notes that with regard to Farelogix’s [REDACTED].⁷³³

9.100 We have also found that Farelogix considered that it had additional advantages in competing for airline customers, including established customer links, interoperability with other suppliers and a proven track record in implementing NDC solutions (including its merchandising platform) with airlines:

723 [REDACTED].
 724 [REDACTED].
 725 [REDACTED].
 726 [REDACTED].
 727 [REDACTED].
 728 [REDACTED].
 729 [REDACTED].
 730 [REDACTED].
 731 [REDACTED].
 732 [REDACTED].
 733 [REDACTED].

- (a) In the [REDACTED] provided to Sabre (June 2018), Farelogix sets out that it has [REDACTED]⁷³⁴. [REDACTED].
- (b) Another slide repeated in both the [REDACTED] and the presentation to [REDACTED] repeats that '[REDACTED]⁷³⁵.
- (c) In the presentation titled [REDACTED] dated 11 October 2018, Farelogix sets out that [REDACTED].⁷³⁶

9.101 We have also seen evidence that Farelogix was working on improving its offer in merchandising, having released new features to its FLX Merchandise product in 2019.⁷³⁷ Farelogix's [REDACTED] similarly illustrates the plan of Farelogix prior to the Merger, [REDACTED] (and more widely the commerce gateway suite). In offer creation this includes features such as [REDACTED].⁷³⁸ While the Parties told us that Farelogix [REDACTED],⁷³⁹ it illustrates the developments and innovation possible for NDC-compatible merchandising products.

Evidence on Farelogix's competitors

9.102 We have found that Farelogix's internal documents show that in merchandising, Farelogix regularly monitored a limited range of market participants, namely PROS, ITA, Amadeus, Sabre and TravelSky.⁷⁴⁰

9.103 In this context, the internal documents show that it perceived Amadeus, Sabre and TravelSky to be competitors due to their established customer relationships with the vast majority of Farelogix's customers and target airlines, and their presumed ability to re-position their existing offer creation engines to meet airline demand for NDC solutions. The internal documents further show that Farelogix perceived a threat from PROS due to its recent acquisitions as well as its existing revenue management customer relationships with more than 80 airlines worldwide.⁷⁴¹

- (a) A Farelogix document titled [REDACTED] dated 20 February 2018 authored by Farelogix's CEO⁷⁴² sets out that [REDACTED].⁷⁴³ The same document [REDACTED].

⁷³⁴ [REDACTED].

⁷³⁵ [REDACTED].

⁷³⁶ [REDACTED].

⁷³⁷ [REDACTED].

⁷³⁸ [REDACTED].

⁷³⁹ Initial Phase 2 submission, paragraph 5.45.

⁷⁴⁰ [REDACTED].

⁷⁴¹ [REDACTED].

⁷⁴² [REDACTED].

⁷⁴³ [REDACTED].

- (b) Another document prepared by Farelogix’s CEO in or after May 2018⁷⁴⁴ sets out [REDACTED]⁷⁴⁵ [REDACTED].⁷⁴⁶ [REDACTED].⁷⁴⁷ [REDACTED].⁷⁴⁸ [REDACTED].⁷⁴⁹ [REDACTED].⁷⁵⁰
- (c) Similarly, a slide deck prepared for [REDACTED] titled [REDACTED] dated 27-28 June 2018 in response to a question from [REDACTED] on who Farelogix views as the ‘key competitors’ for each product sets out: [REDACTED]⁷⁵¹ [REDACTED].⁷⁵²

Summary of Parties’ evidence on merchandising solutions

9.104 We have found that Sabre considered NDC merchandising solutions to be a critical component of its NDC retailing strategy. We have found that Sabre has been investing in NDC retailing solutions, which at the very least included plans for a merchandising solution, in order to protect its GDS and PSS business. In particular, Sabre’s internal documents show that it was concerned that shifting control of offer creation to the airline would weaken its GDS. As a result, we consider that Sabre had the clear strategic incentive and intention to have developed a standalone PSS agnostic NDC merchandising solution absent the Merger, and that it would have had the ability to do so in the next three to five years. This is particularly supported by [REDACTED].

9.105 Although it has [REDACTED], the documents over a period of years from mid-2017 to mid-2019 show that Sabre has continued in its [REDACTED]. We have also found Sabre’s internal documents consistently discuss Farelogix and Amadeus showing that they are significant threats in merchandising, with one recent document describing Farelogix as [REDACTED].⁷⁵³

9.106 We have found that other competitors are only considered within Sabre’s internal documents in a more limited and caveated manner, although more recent documents refer to [REDACTED] more frequently. However, we have not found any in-depth assessment of any other competitor that compares to the analyses and assessments Sabre conducted with regard to Farelogix and Amadeus when developing its NGR/NGD strategy.

9.107 We have also found that Farelogix considered the GDSs with PSS capabilities (ie Sabre and Amadeus) to be competitors for its merchandising

744 [REDACTED].
745 [REDACTED].
746 [REDACTED].
747 [REDACTED].
748 [REDACTED].
749 [REDACTED].
750 [REDACTED].
751 [REDACTED].
752 [REDACTED].
753 [REDACTED].

solution as they are able to reposition their existing service offering to align better with airline retailing. In particular, we have found that although Farelogix perceived Amadeus and PROS to be more significant threats in merchandising than Sabre, Sabre was nonetheless one of only a few credible competitors to Farelogix.

9.108 We have not found evidence in the Parties' internal documents that airline self-supply is a material threat to their businesses.

Distribution solutions

9.109 Our examination of the evidence from the Parties' internal documents in relation to distribution solutions is structured as follows:

- (a) first, we set out the Parties' submissions;
- (b) second, we consider the evidence from Sabre's internal documents;
- (c) third, we discuss the evidence from Farelogix's internal documents;
- (d) fourth, we examine evidence on Farelogix's scalability;
- (e) fifth, we consider evidence from Sabre's valuation model; and
- (f) finally, we summarise the document evidence on distribution solutions.

The Parties' submissions

9.110 The Parties submitted that Sabre does not offer an NDC API while Farelogix does not offer a GDS. The Parties submitted that NDC APIs and GDSs are 'worlds apart' and that neither Party is the other's closest competitor 'by some distance'.

9.111 The above two points are addressed in chapter 11.

Direct connects

9.112 The Parties submitted that [REDACTED].⁷⁵⁴ The Parties told us that Farelogix is only one small technology supplier of direct connects.

⁷⁵⁴ [REDACTED].

- 9.113 We have assessed the relevance of Farelogix as a competitor in chapter 11, with evidence from the Parties' internal documents on this point set out below.
- 9.114 In particular, the Parties submitted that it is now clear that [REDACTED].⁷⁵⁵ The Parties submitted that a slide in a document in which Sabre describes one benefit of the Merger as being able to mitigate the risk from GDS bypass (see paragraph 9.164 below) was drafted by a low-level employee and did not reflect Sabre's transaction goals as stated in the remainder of the document or other documents on the merger rationale.⁷⁵⁶
- 9.115 The Parties submitted that Sabre's later internal documents, as well as testimony from the US trial,⁷⁵⁷ confirm that its view was increasingly that FLX OC was complementary to the GDS platform and that Sabre's strategy was [REDACTED].⁷⁵⁸
- 9.116 The Parties submitted that there is documentary evidence that Sabre's position on a number of issues including the risk from GDS bypass and direct connect evolved— for example, [REDACTED]⁷⁵⁹ [REDACTED].⁷⁶⁰ [REDACTED],⁷⁶¹ and in a draft presentation titled [REDACTED], dated December 2018 Sabre had observed a global GDS growth of [REDACTED] and was assuming [REDACTED].⁷⁶²
- 9.117 Our overall assessment of the impact of GDS bypass on competition within the indirect channel, and Farelogix's role in that, is in chapter 11, with evidence from the Parties' internal documents on this point set out below.
- 9.118 The Parties further submitted that we have overly relied on the Parties' aspirational growth comments and risk factors in Sabre's 2018 and 2019 annual reports.⁷⁶³ The Parties submitted that [REDACTED].⁷⁶⁴ The Parties submitted in this context that [REDACTED].⁷⁶⁵
- 9.119 The Parties submitted that their internal documents, as well as testimony from the US trial, showed that GDS passthrough represents the vast majority

⁷⁵⁵ [REDACTED].

⁷⁵⁶ Annex 1 to Parties' response to the provisional findings report, paragraph 3.5.

⁷⁵⁷ Annex 1 to Parties' response to the provisional findings report, paragraph 1.15.

⁷⁵⁸ [REDACTED].

⁷⁵⁹ Response to Issues Statement, paragraph 5.75(v) referencing [REDACTED].

⁷⁶⁰ Response to Issues Statement, paragraph 5.75(v) referencing [REDACTED], Annex 1 to the Parties response to the provisional findings report, paragraph 1.13.

⁷⁶¹ Response to Issues Statement, paragraph 5.75(v) referencing [REDACTED].

⁷⁶² Annex 1 to the Parties response to the provisional findings report, paragraph 1.14 referencing [REDACTED].

⁷⁶³ Annex 1 to the Parties' response to the provisional findings report, paragraph 1.2.

⁷⁶⁴ Parties' Initial Phase 2 submission, paragraph 5.35(ii).

⁷⁶⁵ [REDACTED].

of growth for NDC API usage,⁷⁶⁶ and that we have failed to take into account [REDACTED].⁷⁶⁷ Indeed, the Parties submitted that any assertion that GDSs would not pursue GDS pass-through but for an external non-GDS threat is unsupported by economic logic or factual evidence. In particular, the Parties submitted that GDS pass-through creates value for airlines and travel agents, which the GDS has an interest to foster, as it is a complementary solution to its own services. The Parties further submitted that the assertion that GDSs might develop GDS pass-through solutions for fear of losing control of the offer creation to airlines also does not stand because GDSs will remain an essential part of the distribution space, given the scale of their networks, and their offerings in terms of fulfilment and after-sales services to travel agents. The Parties submitted that this means that there is an overriding incentive to promote a complementary solution such as GDS pass-through.⁷⁶⁸

9.120 As we discuss in chapter 11, we do not deny that GDSs will remain an essential part of airline content distribution in the future. Nor do we dispute that a proportion of Farelogix-powered distribution will be using the GDS pass-through route. However, as discussed above, we assess the evidence on GDS bypass in chapter 11, with evidence from the Parties' internal documents on this point set out below.

9.121 The Parties further submitted that the documents we rely on are clearly insufficient to establish an SLC given that they show airlines have [REDACTED] to apply competitive pressure on Sabre and multiple sources of innovation.⁷⁶⁹

9.122 Our approach with regard to the analysis of the Parties' internal documents, including our assessment of the probative value of the Parties' pre-Merger documents and our views on Sabre's internal documents being entirely aspirational are set out at paragraphs 9.14 to 9.19 above.

Competitive pressure from airline.com

9.123 The Parties submitted that, amongst others, its internal documents show that airline.com poses a much more tangible threat to the GDSs than direct connect, taking up a large and growing share of airlines' bookings. The Parties submitted that while there was significant headroom for airline.com to continue to grow, there is no direct evidence that direct connect will ever

⁷⁶⁶ Parties' response to the provisional findings report, paragraph 5.13.

⁷⁶⁷ [REDACTED].

⁷⁶⁸ [REDACTED].

⁷⁶⁹ [REDACTED].

overcome the technological and economic barriers that have prevented it gaining a material share of bookings to date.⁷⁷⁰

9.124 Sabre also provided [REDACTED].⁷⁷¹ The Parties further submitted that Sabre's annual report also refers to airline.com as a risk to Sabre's GDS.⁷⁷²

9.125 We have assessed the competitive constraint of airline.com in chapter 11 using evidence from the Parties as well as from airlines and competitors to the Parties.

9.126 The Parties submitted that while it is true that [REDACTED],⁷⁷³ and that airline.com was a key driver behind Sabre's NDC development strategy, as airlines want to be able to display the same rich content and differentiated bundles in the indirect channel as they are able to offer in the direct channel.⁷⁷⁴ We assess the evidence from Sabre's internal documents below.

Farelogix

9.127 The Parties submitted that we have failed to put Farelogix's growth prospects into their proper context, as even with the most optimistic forecasts, Farelogix would remain a miniscule player. The Parties submitted that in order for the Merger to give rise to a significant overlap, Farelogix would have to grow exponentially, which it has not achieved in the past ten years,⁷⁷⁵ noting that Farelogix has itself repeatedly overestimated its forecast growth with its share remaining flat.⁷⁷⁶ The Parties submitted that we have overstated the importance of Farelogix when compared to other NDC API rivals.⁷⁷⁷

9.128 Our assessment of Farelogix's growth in distribution solutions is discussed in chapter 11, with evidence from the Parties' internal documents on this point set out below.

9.129 Furthermore, the Parties submitted that evidence from Farelogix's internal documents suggesting that it considered GDS closer competitors than other NDC API providers was not supported by the bidding data and ignored the changes to the industry since they were drafted.⁷⁷⁸ We assess the evidence from Farelogix's internal documents below. Our overall assessment of

⁷⁷⁰ [REDACTED], Parties' response to the provisional findings report, paragraph 1.16.

⁷⁷¹ Parties' response to the provisional findings report, paragraphs 5.71 and 5.72.

⁷⁷² Annex 1 to Parties' response to the provisional findings report, paragraph 3.11.

⁷⁷³ [REDACTED].

⁷⁷⁴ Parties' response to the provisional findings report, paragraph 5.76.

⁷⁷⁵ Parties' response to the provisional findings report, paragraph 5.10.

⁷⁷⁶ Parties' response to the provisional findings report, paragraph 5.18.

⁷⁷⁷ Parties' response to the provisional findings report, paragraph 5.10.

⁷⁷⁸ Annex 1 to the Parties' response to the provisional findings report, paragraph 1.21.

competitors (including GDSs and other NDC API providers) is set out in chapter 11.

Competitors

9.130 With regard to NDC distribution solutions, the Parties submitted that while Farelogix was somewhat a ‘first mover’ in the development of NDC APIs during the early days, particularly in terms of public advocacy, there is now a large and increasing number of providers active in the NDC space (including Amadeus, Datalex, OpenJaw and PROS)⁷⁷⁹ and that Farelogix is by no means unique or particularly innovative, particularly in distribution.⁷⁸⁰

9.131 The Parties further submitted that the industry is rapidly evolving, and that players such as Amadeus, ATPCO, Atriiis Technologies, Google/ITA, IBS, NDC Exchange, PROS, Travelport and Travelsky/OpenJaw have already announced numerous initiatives to advance their NDC-enabled solutions in the coming months and years whilst other competitors such as [REDACTED], can be expected to be continuing to develop their offerings.⁷⁸¹ For instance, the Parties submitted that [REDACTED] is almost double the size of Farelogix in terms of employees and has a much larger global footprint; [REDACTED] is an enormous global IT company whose annual turnover dwarfs Farelogix’s and has experience and reputation to easily expand in the market for NDC APIs; [REDACTED] is at the forefront of NDC development and could easily pivot towards more frequently offering its NDC API on a standalone basis.⁷⁸² With regard to the constraint imposed from NDCExchange, the Parties submitted that internal documents on the competitor (set out at paragraphs 9.183(a) and 9.191(d) below) have been disproven by significant advances in the competitor’s development.⁷⁸³

9.132 The Parties further submitted that our analysis failed to give appropriate attention to the competitive threat posed by NDC Exchange, Travelfusion and TP Connects, to adequately recognise OpenJaw as a significant competitive constraint, to analyse DXC Technology and JR Technologies or to appropriately investigate IBS and RAMAX. The Parties submitted that there is nothing intrinsically difficult about developing an NDC API product and that 22 IT providers, other than Farelogix, are IATA NDC Level-4 capable. The Parties further submitted that beyond the IATA certification lists, there are multiple other technology providers who could potentially

⁷⁷⁹ [REDACTED].

⁷⁸⁰ [REDACTED].

⁷⁸¹ [REDACTED].

⁷⁸² [REDACTED].

⁷⁸³ Annex 1 to the Parties’ response to the provisional findings report, paragraph 1.23.

enter the market for distribution solutions. Notably, Lufthansa has recently published a list of 27 technology partners for NDC and IAG has listed 20 non-GDS aggregators to help expand its distribution of IAG NDC API content.⁷⁸⁴

- 9.133 Chapter 11 of our report discusses our assessment of these competitors, with evidence from the Parties' internal documents on this point set out below.
- 9.134 The Parties further submitted that what matters is the competitive situation now, not what it was when Farelogix first began selling NDC APIs and that bidding data (discussed in the previous chapter) is a much better tool to assess this.⁷⁸⁵ The Parties also submitted that we had failed to take into account internal documents demonstrating Sabre's evolving thinking regarding its competitors, pointing to the documents cited at paragraphs 9.84(e) and 9.182(a) which show Sabre referring to additional distribution competitors in more recent documents.⁷⁸⁶
- 9.135 We have taken a forward-looking view of competition in our assessment of the Merger. This has involved assessing the Parties' internal documents as well as other evidence, as discussed in chapter 11.
- 9.136 The Parties submitted that we had failed to take into account the competitive constraint on Sabre from other GDSs, while accepting that they are each other's closest rivals.⁷⁸⁷ The Parties submitted that the assumption that the incentives of the GDSs are aligned and that there is no real competition between them, is unsupported and unverified. The Parties submitted that this amounted to an allegation of a coordinated effects theory of harm.⁷⁸⁸ The Parties submitted that the market evidence showed that GDSs compete for travel agents and that airlines can take advantage of this to exert leverage, allowing them to play off GDSs against each other (eg to push through private channel arrangements).⁷⁸⁹ The Parties submitted that GDS fees reducing over time was indicative of strong competition between them.⁷⁹⁰ Furthermore, the Parties submitted that GDSs have no ability to control how airlines use an API and that if a GDS did not adapt to consume particular API-delivered content then it would accelerate rather than retard

⁷⁸⁴ Parties' response to the provisional findings, paragraphs 5.55-5.58 and 5.61.

⁷⁸⁵ [REDACTED].

⁷⁸⁶ Parties' response to the provisional findings report, paragraph 5.54.

⁷⁸⁷ Parties' response to the provisional findings report, paragraphs 1.16 and 5.85.

⁷⁸⁸ Parties' response to the provisional findings report, paragraph 1.16.

⁷⁸⁹ Parties' response to the provisional findings report, paragraphs 5.36, 5.89 and 5.90.

⁷⁹⁰ Parties' response to the provisional findings report, paragraph 5.91.

GDS bypass for that content.⁷⁹¹ The Parties submitted that Amadeus regularly competes against IT providers for the provision of NDC APIs, and that in a competitive market with no intellectual property barriers to entry, there is no economic incentive for GDSs not to compete aggressively.⁷⁹²

9.137 We consider that chapter 11 makes clear that we have assessed the constraint that is likely to be imposed by other GDSs in the supply of distribution solutions including NDC APIs.

9.138 The Parties also submitted that they would be constrained by airline self-supply,⁷⁹³ with a growing number of large and mid-sized airlines fulfilling their NDC API requirements in-house, and that this could be done at fairly low costs.⁷⁹⁴

9.139 We have taken account of airline self-supply in our assessment in chapter 11, with evidence from the Parties' internal documents on this point set out below.

Dynamic assessment

9.140 The Parties submitted that there is no evidence to suggest that Farelogix would become a competitively stronger presence than it is today, but [REDACTED].⁷⁹⁵

9.141 With regard to Sabre, the Parties submitted that it remains [REDACTED].⁷⁹⁶ Even if it were able to meet this target, the Parties submitted that it would still lag behind its competitors who would also continue to develop their own offerings during that time.⁷⁹⁷

9.142 As noted in paragraph 9.137 above, it is clear from our assessment in chapter 11 that we have taken a forward-looking perspective.

9.143 The Parties also submitted that Sabre's proposal to [REDACTED] RFP (referred to at paragraph 9.174(d) below), did not involve Sabre developing an [REDACTED], and that the RFP was 'more so about merchandising', with direct connect only being relevant in so far as it would be the delivery method for the merchandising solution.⁷⁹⁸ The Parties also submitted that Sabre's [REDACTED]

⁷⁹¹ Parties' response to the provisional findings report, paragraph 5.92.

⁷⁹² Parties' response to the provisional findings report, paragraph 5.92.

⁷⁹³ [REDACTED].

⁷⁹⁴ Parties' response to the provisional findings report, paragraphs 5.65-5.69.

⁷⁹⁵ [REDACTED], Parties' response to the provisional findings report, paragraph 4.24.

⁷⁹⁶ [REDACTED].

⁷⁹⁷ [REDACTED].

⁷⁹⁸ Annex 1 to the Parties' response to the provisional findings report, paragraph 3.16, quoting [REDACTED] testimony in the US trial (Annex 1 to the Parties' response to the provisional findings report, Figure 11).

document discussing its proposed response to the [REDACTED] RFP (referred to at paragraph 9.174(d) below) related to merchandising only and was not authored by Sabre's Travel Network business unit. The Parties submitted that [REDACTED].⁷⁹⁹ We have assessed this submission at paragraph 9.33 above. More broadly we note that the Parties' submissions on the relevance of direct connect to merchandising supports the points made at paragraphs 9.61 and 9.79 above as well as paragraph 9.171 below.

Innovation

- 9.144 The Parties submitted that there is no support for any theory that innovation might be lost as a result of the Merger. The Parties submitted that the evidence does not support current competition concerns in either distribution or merchandising and furthermore does not support the suggestion that Farelogix could emerge to become a broader dynamic threat in distribution or on the PSS side.⁸⁰⁰
- 9.145 In addition, the Parties submitted that Farelogix is not a unique competitor whose independence is key to continued industry innovation in NDC solutions in retailing or distribution and is in fact using [REDACTED].⁸⁰¹ The Parties submitted that the suggestion that Farelogix was a threat and key innovator was based on a static and historical analysis of internal documents on the position of Farelogix, and failed to take into account its sales over time, the bidding data and forecasts for the purposes of its valuation.⁸⁰² The Parties submitted that any advantage Farelogix originally had in the NDC API space from its early investment into NDC has evaporated, that Farelogix [REDACTED] and that newer entrants are better placed to innovate in this space.⁸⁰³
- 9.146 The Parties submitted that the evidence shows that there is effective innovation competition with the major GDSs currently in a race to roll out NDC, and with numerous other parties offering NDC solutions (including both NDC merchandising solutions and NDC APIs in addition to the range of product areas Farelogix is not active in). The Parties submitted that the Merger will in fact stimulate innovation.⁸⁰⁴

⁷⁹⁹ Annex 1 to the Parties' response to the provisional findings report, paragraph 3.18.

⁸⁰⁰ [REDACTED].

⁸⁰¹ [REDACTED].

⁸⁰² Parties' response to the provisional findings report, paragraph 1.16.

⁸⁰³ Parties' response to the provisional findings report, paragraph 5.46, Annex 1 to Parties' response to the provisional findings report, paragraph 1.22.

⁸⁰⁴ [REDACTED].

9.147 Our assessment of the Merger's effect on innovation in the marketplace is in chapter 11.

Linkages between merchandising and distribution

9.148 The Parties submitted that NDC, NGR/NGD, merchandising, GDSs, Direct Connect and Farelogix are all different things which must be addressed separately.⁸⁰⁵ The Parties submitted [REDACTED].

9.149 The Parties further submitted that [REDACTED].

9.150 As set out throughout this chapter, we have distinguished between these concepts (see eg paragraphs 9.24 to 9.26 above, as well as this chapter's division into merchandising and distribution), while taking into where the evidence shows that common language is used or connections are between concepts are drawn. We note in this context that Sabre's most recent Annual Report (for 2019) sets out that 'In July 2018, we announced the creation of the Travel Solutions organization, which consists of Travel Network and Airline Solutions. This structure reinforces our focus on the next generation of retailing, distribution and fulfilment.'⁸⁰⁶

9.151 The Parties further submitted that Sabre referring to Farelogix in its documents generally, rather than with respect to specific products misinterprets the nature of Sabre's initial brainstorming efforts. The Parties submitted that it was not relevant what specific products rivals had available to them when Sabre had no real NDC strategy and it is not surprising that Sabre's internal documents would identify companies with a head-start in NDC developments, such as Farelogix. The Parties submitted that it was evident Sabre needed to catch up across the board. Furthermore, since Farelogix has only two major products, and only one (merchandising) where Sabre could potentially compete, the Parties submitted that there was no need to be more specific in these initial presentations.⁸⁰⁷ We have set out the constraint from Farelogix in each of merchandising and distribution separately in this chapter.

⁸⁰⁵ [REDACTED].

⁸⁰⁶ Sabre SEC filing form 10-K 2019, page 1.

⁸⁰⁷ [REDACTED].

Sabre's delays in implementing its NDC solution

- 9.152 The Parties submitted that we have failed to take [REDACTED] into account.⁸⁰⁸ The Parties submitted that Sabre's [REDACTED],⁸⁰⁹ [REDACTED].⁸¹⁰ The Parties submitted that we have mischaracterised development timeframes as definitive rather than merely aspirational,⁸¹¹ and submitted that [REDACTED].⁸¹² The Parties submitted [REDACTED].⁸¹³ Sabre also submitted that [REDACTED].⁸¹⁴
- 9.153 We have set out the evidence on the delays to Sabre's NDC strategy, including its distribution strategy at paragraphs 28-35 of Appendix D. Our forward looking assessment of the Merger is set out in chapter 11.

Farelogix's scalability

- 9.154 The Parties submitted that Farelogix is currently experiencing critical scaling and operational issues [REDACTED].⁸¹⁵ The Parties told us that the issues affecting Farelogix included outdated hardware, server instability and increasing infrastructure costs.⁸¹⁶ The Parties told us that these issues had inhibited not just Farelogix's ability to expand and win new customers, but also its ability to serve its existing customers.⁸¹⁷
- 9.155 The Parties told us that these issues were demonstrated by Farelogix [REDACTED].⁸¹⁸ The Parties also provided [REDACTED] which indicated that [REDACTED].⁸¹⁹
- 9.156 The Parties submitted that [REDACTED] to help address its [REDACTED]⁸²⁰ and that [REDACTED].⁸²¹
- 9.157 The Parties submitted that while Farelogix was taking steps to try to resolve its issues, it had to date been unsuccessful and, therefore, Farelogix would not be a 'uniquely strong' competitor in the market going forward.⁸²²

⁸⁰⁸ Parties' response to provisional findings report, paragraph 1.16(ii).

⁸⁰⁹ Parties' response to provisional findings report, paragraphs 3.9(iii) and 5.96.

⁸¹⁰ Parties' response to provisional findings report, paragraph 3.10 [REDACTED].

⁸¹¹ Parties' response to provisional findings report, paragraph 3.11,

⁸¹² Parties' response to provisional findings report, paragraphs 3.11 and 5.95.

⁸¹³ Parties' response to provisional findings report, paragraph 5.96.

⁸¹⁴ Parties' response to provisional findings report, paragraph 5.96.

⁸¹⁵ Parties' initial phase 2 submission, paragraph 1.21.

⁸¹⁶ Parties' initial phase 2 submission, paragraph 5.13. See also Farelogix main party hearing transcript, page 15, line 17 to page 18, line 4. [REDACTED].

⁸¹⁷ Parties' initial phase 2 submission, paragraph 5.13, Parties' response to the provisional findings report, paragraph 4.25.

⁸¹⁸ Parties' initial phase 2 submission, paragraph 5.13. [REDACTED], Annex 2 to the Parties' response to the provisional findings report.

⁸¹⁹ [REDACTED].

⁸²⁰ Parties' initial phase 2 submission, paragraph 5.13-5.16.

⁸²¹ Annex 1 to the Parties' response to the provisional findings report, paragraph 3.22.

⁸²² Parties' response to the provisional findings report, paragraph 5.100.

9.158 The Parties also told us that internal emails with the intent of reassuring customers had to be placed into their proper context [REDACTED].⁸²³ These submissions are assessed below.

Sabre's valuation model

9.159 The Parties told us that if Farelogix were 'an expanding force and an existential threat to Sabre', it would be able to command a higher valuation than Sabre's \$360 million offer.⁸²⁴ Sabre told us that any theory of harm which posited Farelogix as an increasingly important competitive constraint needed to be reconciled with the valuation evidence.⁸²⁵

9.160 Sabre submitted that the Parties' valuation analysis shows that this Merger is 'not a killer acquisition',⁸²⁶ and the 'absence of any anti-competitive premium' should be treated as 'strong, objective evidence that the Merger is not anti-competitive'.⁸²⁷ These submissions are assessed below.

Sabre's internal documents

9.161 With respect to its distribution functions, we have found that Sabre's internal documents often discuss the competitive landscape in high level terms typically referring to competitors and business plans within 'NDC' or 'NGR/NGD' rather than by specific product offering. Our assessment of these documents proceeds in two steps:

- (a) First, we have examined whether Sabre considered airline adoption of distribution solutions based on the NDC standard as a threat to its GDS business (which is where its distribution activities sit).
- (b) Second, we have considered the evidence on each of the individual competitive constraints that Sabre may face, including GDSs, other indirect distribution providers, airline.com and self-supply by airlines.

Evidence on threats to Sabre's GDS from NDC adoption

9.162 Our analysis of the rationale and incentive for Sabre's investment in products and services using the NDC standard, including a discussion of threats it identified with regard to its GDS business, is at paragraphs 38-49

⁸²³ Parties' response to the provisional findings report, paragraph 5.97, Annex 1 to the Parties' response to the provisional findings report, paragraph 1.20.

⁸²⁴ Parties' response to provisional findings, paragraphs 1.8 and 1.16.

⁸²⁵ [REDACTED].

⁸²⁶ Parties' response to provisional findings, paragraphs 5.47.

⁸²⁷ [REDACTED].

of Appendix D. This subsection summarises our findings from Appendix D and draws out the key evidence on the extent to which Sabre considered airline adoption of NDC-enabled solutions could be a threat to its GDS.

9.163 We have found in the documents that [REDACTED].

(a) One document titled [REDACTED] from 18 October 2018, noted that [REDACTED].⁸²⁸ This document clearly sets out in [REDACTED].

(b) The [REDACTED] presentation dated 4 August 2017 sets out that Sabre has [REDACTED].⁸²⁹

9.164 As set out in further detail at paragraphs 43-47 of Appendix D, we also found that Sabre's [REDACTED] showed [REDACTED], and that [REDACTED]. By way of example:

(a) One document dated April 2017 clearly sets out that [REDACTED].⁸³⁰ [REDACTED].⁸³¹

(b) [REDACTED].⁸³²

(c) A presentation dated July 2018 prepared in the context of the Merger and [REDACTED] sets out that acquiring Farelogix would 'Mitigate the risk from potential GDS bypass'.⁸³³

9.165 This is consistent with evidence that Sabre believed that [REDACTED], and as set out in further detail below, we have found [REDACTED]. Furthermore, this is consistent with Sabre considering [REDACTED]:

(a) A slide in the appendix to the [REDACTED];⁸³⁴ and

(b) Meeting notes authored by Sabre's Head of Corporate Development from his meetings with Farelogix's CEO set out that Farelogix's CEO told Sabre that [REDACTED]:

(i) A document titled [REDACTED] dated 29 August 2017 sets out in its executive summary that [REDACTED] told Sabre that he [REDACTED];⁸³⁵ and

⁸²⁸ [REDACTED].
⁸²⁹ [REDACTED].
⁸³⁰ [REDACTED].
⁸³¹ [REDACTED].
⁸³² [REDACTED].
⁸³³ [REDACTED].
⁸³⁴ [REDACTED].
⁸³⁵ [REDACTED].

(ii) Sabre's Head of Corporate Development's notes from an August 2017 set out that [REDACTED] told him that [REDACTED].⁸³⁶

(c) During the US trial, Sabre's CEO was shown a slide in court showing that as airline adoption of NDC increased, GDS fees to airlines would decrease (at a higher rate than incentives paid to travel agents).⁸³⁷ In response, Sabre's CEO testified that this slide showed what would have happened if Sabre did not transform its technology.⁸³⁸

(d) In their response to our Provisional Findings, the Parties also submitted that 'To take the obvious point, if a GDS did not adapt to consume particular API-delivered content then it would accelerate rather than retard GDS bypass for that content.'⁸³⁹

9.166 In this context, as set out in further detail at paragraph 48 of Appendix D, several Sabre internal documents [REDACTED]. These internal documents also show that Sabre [REDACTED].⁸⁴⁰

9.167 Further to the Parties' submissions at paragraph 9.118 above, we assessed whether Sabre's view of the threat of direct connect has changed over time. The available evidence firstly indicates that Sabre's recent documents still regularly refer to a risk of direct connect to its business [REDACTED]:

(a) Sabre's most recent Annual Report (for 2019) noted: 'Some travel suppliers that provide content to Travel Network, including some of Travel Network's largest airline customers, have sought to increase usage of direct distribution channels. For example, these travel suppliers are trying to move more consumer traffic to their proprietary websites, and some travel suppliers have explored direct connect initiatives [...]. This direct distribution trend enables them to apply pricing pressure on intermediaries and negotiate travel distribution arrangements that are less favorable to intermediaries;' (emphasis added).⁸⁴¹

(b) A [REDACTED] from direct connect.⁸⁴²

9.168 Additional examples of Sabre's recent internal documents acknowledging a risk from direct connect are set out at paragraph 45 of Appendix D.

⁸³⁶ [REDACTED].

⁸³⁷ See paragraph 170 of Appendix D for a version of this slide.

⁸³⁸ United States of America v Sabre Corporation, Bench Trial transcript Day Three, page 689 (unsealed).

⁸³⁹ Parties' response to the provisional findings report, paragraph 5.92.

⁸⁴⁰ See Appendix D.

⁸⁴¹ Sabre SEC filing form 10-K 2019, page 6.

⁸⁴² [REDACTED].

9.169 It therefore appears that some threat from direct connect (together with airlines' own websites) continues to concern the Sabre business. However the available evidence indicates that, [REDACTED], the threat of direct connect appears to be less significant than in the past:

(a) While a document dated 4 August 2017 set out that [REDACTED],⁸⁴³ as set out at paragraph 9.167(b), a later document revised this risk down to [REDACTED].⁸⁴⁴

(b) A draft presentation titled [REDACTED], dated December 2018 Sabre sets out that it had observed a global GDS growth of [REDACTED] and was assuming [REDACTED];⁸⁴⁵

9.170 Additional evidence on Sabre's estimates of the threat to its business from airline adoption of NDC, as well as the risk from direct connect, are set out at paragraphs 46 and 51 of Appendix D.

9.171 Finally, as set out at paragraph 9.58 above with further examples provided at paragraphs 42-43 and 49 of Appendix D, Sabre's internal documents show that [REDACTED] and its investment into NDC-enabled distribution solutions were interlinked:

(a) Sabre's internal documents show a concern [REDACTED].

(b) Internal Sabre discussions also indicate that [REDACTED], with one document dated 18 October 2018 noting that Sabre PSS customers inquiring about investing in NDC API solutions represented [REDACTED].⁸⁴⁶ In addition:

(i) An email chain including members of Sabre's management dated 20 March 2018⁸⁴⁷ includes an assessment of [REDACTED]. The document indicates that [REDACTED].⁸⁴⁸

(ii) A similar point is made in an earlier presentation titled [REDACTED] and dated May 2017 which sets out in its executive summary that [REDACTED]. The slide further notes that [REDACTED].⁸⁴⁹ The executive summary recommended that [REDACTED].⁸⁵⁰

843 [REDACTED].
844 [REDACTED].
845 [REDACTED].
846 [REDACTED].
847 [REDACTED].
848 [REDACTED].
849 [REDACTED].
850 [REDACTED].

Competitive constraints on Sabre in distribution

9.172 In this subsection we examine the evidence from Sabre’s internal documents about the competitive threat of rivals in its distribution activities.

- *Farelogix*

9.173 Sabre’s [REDACTED] documents show that Sabre perceived Farelogix as one of its two most relevant competitors when developing its NGR/NGD strategy in 2017 (the other being Amadeus). The [REDACTED] documents consider Farelogix’s competitive offering holistically and but in this context also explicitly highlight Farelogix’s distribution capabilities:

- (a) the slide in the [REDACTED] (22 May 2017) and [REDACTED] (15 August 2017) presentations in which Sabre sets out that Farelogix is among its ‘most relevant threats’ [REDACTED];⁸⁵¹
- (b) the [REDACTED] (22 May 2017) presentation contains several slides on [REDACTED], which (amongst others) reference and discuss [REDACTED];⁸⁵² and
- (c) the slide in the appendix to the [REDACTED] presentation dated 3 August 2017, which refers to [REDACTED] as [REDACTED].⁸⁵³

9.174 Other recent documents specifically highlight Farelogix’s ongoing constraint on Sabre’s GDS:

- (a) A presentation by Sabre’s Vice President of Product Management, Strategic Initiatives and Head of Sabre’s NDC Strategy dated 27 September 2018 sets out [REDACTED].⁸⁵⁴ [REDACTED].⁸⁵⁵
- (b) In an email chain from early January 2019, Sabre’s former Senior Vice President, Air Line of Business Sabre Travel Network writes that [REDACTED].⁸⁵⁶
- (c) A presentation for members of Sabre’s senior management dated 16 January 2019 regarding upcoming negotiations between Sabre and [REDACTED] proposes that [REDACTED].⁸⁵⁷

⁸⁵¹ [REDACTED].

⁸⁵² [REDACTED].

⁸⁵³ [REDACTED].

⁸⁵⁴ [REDACTED].

⁸⁵⁵ [REDACTED].

⁸⁵⁶ [REDACTED].

⁸⁵⁷ [REDACTED].

(d) As set out at paragraph 9.81 above, in two recent Sabre internal documents discussing Sabre’s possible response to an airline RFP including distribution components, [REDACTED].⁸⁵⁸

9.175 In this context, Sabre’s internal documents also highlight that it views Farelogix as a competitor (rather than a provider of complementary services) when implementing GDS passthrough solutions [REDACTED]:

(a) On 30 August 2018, Sabre’s Vice President of Product Management, Strategic Initiatives and head of Sabre’s NDC Strategy⁸⁵⁹ wrote in an email to Sabre’s Head of Corporate and M&A⁸⁶⁰ and Sabre’s SVP, Product Management Commercial Solutions, Airline Solutions⁸⁶¹ that [REDACTED].⁸⁶²

(b) In the context of [REDACTED], in August 2018 Sabre’s Vice President of Product Management, Strategic Initiatives and head of Sabre’s NDC Strategy wrote an email to Sabre’s Head of Corporate and M&A noting that [REDACTED].⁸⁶³

(c) In an email dated August 2018 to (among others) Sabre’s SVP, Product Management Commercial Solutions, Airline Solutions⁸⁶⁴, Sabre’s Vice President of Product Management, Strategic Initiatives and head of Sabre’s NDC Strategy⁸⁶⁵ sets out that ‘[REDACTED].⁸⁶⁶ [REDACTED].

- *Amadeus*

9.176 The internal documents show that Sabre perceived [REDACTED] strategy in 2017:

(a) the [REDACTED] presentation (22 May 2017) described at paragraphs 9.78(a) and 9.78(b) above sets out that [REDACTED];⁸⁶⁷

(b) as set out in more detail above (paragraph 9.78(b) and 9.78(e) above), both the [REDACTED] and [REDACTED] (15 August 2017) presentations describe Amadeus as among Sabre’s most relevant threats;⁸⁶⁸

858 [REDACTED].
859 [REDACTED].
860 [REDACTED].
861 [REDACTED].
862 [REDACTED].
863 [REDACTED].
864 [REDACTED].
865 [REDACTED].
866 [REDACTED].
867 [REDACTED].
868 [REDACTED].

- (c) as set out at paragraph 9.173(c) above, Sabre's [REDACTED] presentation highlights [REDACTED]; and
- (d) the [REDACTED] presentation dated 4 August further includes a slide on thought-leadership which sets out that [REDACTED].⁸⁶⁹ A separate slide also notes that [REDACTED].⁸⁷⁰

9.177 We have also found that Sabre's internal documents discussing the implementation of its NDC strategy (including recent documents) consider Amadeus to be its most relevant competitor in distribution [REDACTED]:

- (a) [REDACTED] in the presentations described at paragraph 9.174(a) above.
- (b) A presentation titled [REDACTED] dated 12 April 2018 sets out in the context of Sabre's NDC distribution capabilities that [REDACTED].⁸⁷¹

- *Travelport*

9.178 We have found that Sabre's internal documents discussing the implementation of the distribution component of NDC strategy (in particular GDS passthrough) consider Travelport to be a relevant competitor [REDACTED]:

- (a) [REDACTED] in the presentations described at paragraph 9.174(a) above.
- (b) A presentation titled [REDACTED] dated 12 April 2018 sets out in the context of Sabre's NDC distribution capabilities that [REDACTED].⁸⁷²
- (c) A presentation dated 22 May 2018 titled [REDACTED] discusses [REDACTED].⁸⁷³

- *Datalex*

9.179 We have discussed Sabre's internal documents regarding Datalex in the subsection on merchandising solutions (paragraphs 9.83 to 9.86 above). We noted that Sabre's discussions on Datalex were generally at a high level and did not distinguish between specific merchandising and distribution products. We therefore consider that these documents are also relevant to how Sabre viewed Datalex as a rival in distribution and that our observations above apply equally here.

⁸⁶⁹ [REDACTED].

⁸⁷⁰ [REDACTED].

⁸⁷¹ [REDACTED].

⁸⁷² [REDACTED].

⁸⁷³ [REDACTED].

- *Other competitors*

9.180 As noted above, we have found that Sabre’s NGR/NGD strategy documents only sporadically refer to other competitors and that Sabre’s internal documents do not consistently refer to other competitors across internal documents. In particular, Sabre has not conducted in-depth assessments of other competitors with regard to their NDC merchandising or distribution capabilities.

9.181 In this context, two of the [REDACTED] presentations compare other competitors unfavourably to Farelogix and Amadeus:

(a) A slide in the [REDACTED] presentation dated 22 May 2017 sets out [REDACTED].⁸⁷⁴

(b) A further slide in the [REDACTED] sets out that [REDACTED] Farelogix and Amadeus are the most relevant threats with other providers providing more limited technology’. The slide sets out [REDACTED].⁸⁷⁵ A version of this slide is also included in the [REDACTED] presentation dated 15 August 2017.

9.182 In other instances, in particular in more recent documents, Sabre’s internal documents refer to other competitors alongside Farelogix and Amadeus, although not referring to the same competitors consistently:

(a) As set out at paragraph 9.174(a) above, Sabre’s most recent Investment Planning document for the year 2020 dated 21 July 2019 sets out that with regard to NDC [REDACTED].⁸⁷⁶

(b) A Sabre presentation by [REDACTED]⁸⁷⁷ [REDACTED] dated 18 October 2018 discusses [REDACTED].⁸⁷⁸ [REDACTED].⁸⁷⁹

(c) A slide on thought-leadership in the [REDACTED] presentation dated 4 August 2017 sets out that [REDACTED].⁸⁸⁰

9.183 Some presentations also provide general commentary on competitors:

(a) with regard to NDC Exchange, on 7 September 2018, Sabre’s Vice President [REDACTED]⁸⁸¹ sent an email to individuals of Sabre’s senior

874 [REDACTED].
875 [REDACTED].
876 [REDACTED].
877 [REDACTED].
878 [REDACTED].
879 [REDACTED].
880 [REDACTED].
881 [REDACTED].

management, including its [REDACTED] regarding ATPCO's NDC Exchange setting out that [REDACTED]⁸⁸²; and

(b) the [REDACTED] and [REDACTED] presentations include some commentary on competitors:

(i) [REDACTED];

(ii) [REDACTED];

(iii) [REDACTED];

(iv) [REDACTED]; and

(v) [REDACTED].⁸⁸³

- *Airline.com*

9.184 Regarding the airline.com channel, the Parties have submitted evidence of [REDACTED]. However, as set out at paragraph 9.166 above [REDACTED]. Furthermore, we have not seen evidence to suggest that airline.com has been a primary driver for Sabre to invest in its own NGR/NGD capabilities (with the evidence on the Parties' rationale for investing into NGR/NGD being set out above and in Appendix D). In this context, a presentation for the Board of Directors (May 2017) said [REDACTED]. The presentation further noted that [REDACTED].⁸⁸⁴

- *Self-supply by airlines*

9.185 We found that self-supply by airlines in NDC APIs is not referenced or discussed in Sabre's internal documents and in particular Sabre does not assess or consider in-house NDC API solutions when considering relevant benchmarks for its NDC strategy and does not explicitly reference airlines increasing use of these solutions as a threat to its wider strategy.

Farelogix's internal documents

9.186 We now turn to assessing the evidence from Farelogix:

(a) First, we examine the evidence on how Farelogix views airlines' use of different indirect distribution channels;

(b) second, we discuss the competitive constraints it faces;

⁸⁸² [REDACTED].

⁸⁸³ [REDACTED].

⁸⁸⁴ [REDACTED].

- (c) third, we set out the evidence on how it perceives the links between merchandising and distribution solutions; and
- (d) finally, we consider how it markets itself to airlines in distribution.

Evidence on future indirect channel distribution mix

9.187 In the [REDACTED] provided to Sabre (June 2018), Farelogix sets out [REDACTED] and that [REDACTED].⁸⁸⁵

9.188 Farelogix’s internal documents show that it was actively working with GDSs to implement GDS pass-through for airlines and expected revenue growth from this:

- (a) The [REDACTED] provided to Sabre dated June 2018 sets out that [REDACTED].⁸⁸⁶ Similar statements are repeated throughout the presentation and in a comparable presentation give to [REDACTED].⁸⁸⁷ This indicates that [REDACTED].
- (b) Both the [REDACTED] dated June 2018 and a presentation provided to [REDACTED] in the context of the Merger set out that it assumed [REDACTED].⁸⁸⁸
- (c) As set out in Appendix C, Farelogix management projected [REDACTED].

9.189 Nonetheless we have seen evidence which indicates that Farelogix considered that direct connect would continue to play a role within distribution strategies of airlines:

- (a) The presentation [REDACTED] dated 27-28 June 2018 sets out that [REDACTED].⁸⁸⁹
- (b) In an email from a Farelogix contact in the [REDACTED] to Farelogix’s CEO (amongst others) dated 9 July 2018, [REDACTED].⁸⁹⁰ [REDACTED].⁸⁹¹
- (c) [REDACTED].⁸⁹²
- (d) As set out in Appendix C, Farelogix management projected its revenues from GDS bypass would continue to grow over the near term.

885 [REDACTED].
 886 [REDACTED].
 887 [REDACTED].
 888 [REDACTED].
 889 [REDACTED].
 890 [REDACTED].
 891 [REDACTED].
 892 [REDACTED].

9.190 Furthermore, in an email from Farelogix’s CEO to [REDACTED] Group’s CEO dated 29 June 2018, Farelogix’s CEO described how [REDACTED].⁸⁹³ An internal document dated 15 August 2018 sent via email from Farelogix’s CEO to Farelogix’s CTO and Farelogix’s CFO discussing Farelogix’s different sale options also sets out that [REDACTED],⁸⁹⁴ suggesting that Farelogix’s products (including its NDC API) was still exercising competitive pressure on Sabre, even within the context of Sabre implementing GDS-pass-through.

Competitive constraints on Farelogix

9.191 Within distribution, we have found that Farelogix’s internal documents show that it considered the GDS companies to be closer competitors than other NDC API providers such as Datalex and OpenJaw and that it communicated this both internally and externally to [REDACTED]. We note in this context that to the extent that Farelogix considered the statements to [REDACTED] to be incorrect, it did not correct or amend these prior to the announcement of the deal in November 2018:

- (a) The Farelogix document titled [REDACTED] drafted by Farelogix’s CEO and dated 20 February 2018,⁸⁹⁵ discussing market drivers in offer creation and distribution sets out with respect to risk factors to Farelogix’s FLX OC product that [REDACTED].⁸⁹⁶ [REDACTED].⁸⁹⁷
- (b) Another document prepared by Farelogix’s CEO in or after May 2018,⁸⁹⁸ sets out with respect to the threat posed by [REDACTED].⁸⁹⁹ [REDACTED].⁹⁰⁰ [REDACTED].⁹⁰¹ [REDACTED].⁹⁰² [REDACTED].⁹⁰³
- (c) A slide deck prepared for [REDACTED] titled [REDACTED] dated 27-28 June 2018 in response to a question from [REDACTED] on who Farelogix views as the ‘key competitors’ for each product sets out: ‘[REDACTED].⁹⁰⁴ [REDACTED].⁹⁰⁵

893 [REDACTED].
894 [REDACTED].
895 [REDACTED].
896 [REDACTED].
897 [REDACTED].
898 [REDACTED].
899 [REDACTED].
900 [REDACTED].
901 [REDACTED].
902 [REDACTED].
903 [REDACTED].
904 [REDACTED].
905 [REDACTED].

(d) with regard to NDC Exchange, a Farelogix internal note dated November 2018 describes the functionality of the product and then in a section titled [REDACTED].⁹⁰⁶

9.192 The Parties submitted internal Farelogix emails in which Farelogix individuals comment on ongoing bids and RFPs both with regard to NDC APIs. While a number of these only list or make passing reference to other suppliers participating in the RFP,⁹⁰⁷ some discuss adapting Farelogix's bids:

(a) in submitting a final bid for [REDACTED] including potentially several Farelogix products including FLX OC and, FLX Shop & Price and FLX M, [REDACTED] is discussed in an email from Theo Kruijssen (Farelogix CFO) dated 1 September 2017, who sets out that, [REDACTED].⁹⁰⁸ [REDACTED]⁹⁰⁹; and

(b) when Farelogix competed to retain [REDACTED] for Farelogix Open Connect in 2017 (for which it was successful), an email to Farelogix's CEO dated 22 March 2017 sets out [REDACTED].⁹¹⁰ [REDACTED].⁹¹¹

9.193 The Parties submitted that these internal documents support the conclusion that Farelogix faces strong competition from other airline IT companies. We note that both examples cited above are from 2017 (ie prior to the documents drafted by Farelogix's CEO discussing the competitive landscape from 2018). We also note that comments on interactions on specific bids, which are limited in terms of frequency, may not be representative of competitive dynamics overall and may not provide an accurate indication of a supplier's competitive threat and therefore need to be considered in light of all the evidence including from other internal document sources and third party evidence (see in this context our analysis on Datalex and DXC Technologies in chapter 8 above).

9.194 In regard to more recent documents, we have only seen a very limited number of Farelogix documents discussing competitive conditions. Of those which do, we have found these to generally be less comprehensive in their assessment of competitive threats than the internal documents set out in the preceding section:

⁹⁰⁶ [REDACTED].

⁹⁰⁷ [REDACTED]

⁹⁰⁸ [REDACTED].

⁹⁰⁹ [REDACTED].

⁹¹⁰ [REDACTED].

⁹¹¹ [REDACTED].

- (a) A document titled [REDACTED] dated December 2018 (ie after the Merger was agreed) provided a graph setting out the competitors to each of Farelogix's products, listing 12 companies as being able to compete for either merchandising, NDC APIs or both. However, the slide deck does not offer any commentary on the strength of each competitor (eg there is no mention that Sabre's merchandising solution does not use the NDC standard).⁹¹²
- (b) An internal presentation to Farelogix's CEO on [REDACTED] (4 March 2019) sets out that Farelogix is [REDACTED].⁹¹³ The speaking notes to the slide say [REDACTED].⁹¹⁴

9.195 Notwithstanding Farelogix's testimony at the US trial and in submissions to us, we have not found that Farelogix's internal documents suggest that it [REDACTED]. The Parties have also not provided any corroborating internal documents suggesting that Farelogix is facing a 'technological debt' with respect to the schema of its NDC API.

How Farelogix perceives links between merchandising and distribution

9.196 We have examined the extent to which Farelogix considers that demand by airlines for merchandising and distribution are linked as airlines require both, and that being able to offer both provided an advantage to Farelogix:

- (a) The Farelogix document titled [REDACTED] drafted by Farelogix's CEO and dated 20 February 2018⁹¹⁵ on market drivers sets out [REDACTED].⁹¹⁶ [REDACTED].⁹¹⁷ [REDACTED]⁹¹⁸ [REDACTED].
- (b) In the same document Farelogix sets out that [REDACTED].⁹¹⁹
- (c) In the context of discussing competition from the GDSs, another document prepared by Farelogix's CEO in or after May 2018,⁹²⁰ sets out that [REDACTED].⁹²¹
- (d) Similarly, a slide deck prepared for [REDACTED] titled [REDACTED] dated 27-28 June 2018, Farelogix sets out [REDACTED].⁹²² [REDACTED].⁹²³

9.197 In this context, we have also found that the complementarity between merchandising and distribution as well as the ability for airlines to distribute

912 [REDACTED].
 913 [REDACTED].
 914 [REDACTED].
 915 [REDACTED].
 916 [REDACTED].
 917 [REDACTED].
 918 [REDACTED].
 919 [REDACTED].
 920 [REDACTED].
 921 [REDACTED].
 922 [REDACTED].
 923 [REDACTED].

offers in a channel agnostic manner are highlighted by Farelogix’s marketing material, indicating that such linkages were important to airlines and that Farelogix enables airlines to distribute offers across multiple distribution channels:

- (a) A recent blog post by Farelogix dated 21 January 2020 sets out that there are four pillars of an airline business case for its retailing transformation, namely ‘Increased revenue through advanced merchandising of ancillary products’, ‘Optimized revenue through dynamic pricing’, ‘Competitive advantage’ and ‘Maximizing distribution efficiency’;⁹²⁴
- (b) In a presentation titled [REDACTED] dated 20 March 2018, Farelogix presents [REDACTED]⁹²⁵;
- (c) A presentation titled [REDACTED] dated February 2018 [REDACTED].⁹²⁶; and
- (d) In a presentation given to [REDACTED] in August 2018 titled [REDACTED], Farelogix includes within a set of slides on the NDC business case that it provides the airlines with [REDACTED]⁹²⁷ [REDACTED].⁹²⁸

How Farelogix markets itself to airlines

9.198 As with merchandising, we have found that Farelogix’s [REDACTED] provided to Sabre (June 2018) setting out that [REDACTED] includes that NDC is able to [REDACTED] and adds that NDC [REDACTED].⁹²⁹ Another slide sets out that [REDACTED].⁹³⁰ The next slide sets out that [REDACTED].⁹³¹

9.199 Farelogix’s documents also highlight its neutrality on how airlines use or distribute offers, its independence from the PSSs and GDSs and its lack of conflicts of interest as key selling points of its NDC (including its distribution) products:

- (a) A slide deck prepared for [REDACTED] titled [REDACTED] dated 27-28 June 2018 provides some insights on Farelogix’s competitive position in the market, noting that its advantages over competitors in ‘[REDACTED]’ are that it has [REDACTED];⁹³²

⁹²⁴ Trends, Ideas, and Musings to Kick off the New Year: The Final Chapter, <http://blog.farelogix.com/trends-ideas-and-musings-to-kick-off-the-new-year-asia-pacific-outlook>.

⁹²⁵ [REDACTED].

⁹²⁶ [REDACTED].

⁹²⁷ [REDACTED].

⁹²⁸ [REDACTED].

⁹²⁹ [REDACTED].

⁹³⁰ [REDACTED].

⁹³¹ [REDACTED].

⁹³² [REDACTED].

- (b) In a marketing presentation titled [REDACTED] (August 2018), Farelogix sets out that it [REDACTED]⁹³³;
- (c) In a marketing presentation titled [REDACTED] (20 March 2018), one of the benefits of Farelogix’s Airline Commerce Gateway (including its merchandising and distribution products) is set out to be [REDACTED]⁹³⁴; and
- (d) Another marketing presentation titled ‘[REDACTED]’ dated 5 February 2018, Farelogix presents its FLX OC and FLX NDC API products and sets out under the heading [REDACTED] that they provide ‘[REDACTED].⁹³⁵ [REDACTED].⁹³⁶

9.200 As set out at paragraph 9.100 above, we have also found that Farelogix considered that it had additional advantages in competing for airline customers, including established customer links, interoperability with other suppliers and a proven track record in implementing NDC solutions (including its distribution solutions) with airlines:

- (a) In the [REDACTED] provided to Sabre (June 2018), Farelogix sets out that it has [REDACTED]⁹³⁷. [REDACTED]; and
- (b) In the presentation titled [REDACTED] dated 11 October 2018, Farelogix sets out that [REDACTED]⁹³⁸ [REDACTED].⁹³⁹

Farelogix’s growth

9.201 While we acknowledge the evidence submitted by the Parties in paragraph 9.156, we have also received information from Farelogix which indicates that its claimed scaling issues are not substantially affecting its business:

- (a) Noting the Parties’ submission in paragraph 9.159 above, we consider it relevant that Farelogix circulated internal communications stating that [REDACTED].⁹⁴⁰
- (b) At its hearing with the CMA, Farelogix told us that its stability and scalability issues [REDACTED].⁹⁴¹ Farelogix also told us that it had no intention of exiting the

933 [REDACTED].

934 [REDACTED].

935 [REDACTED].

936 [REDACTED].

937 [REDACTED].

938 [REDACTED].

939 [REDACTED].

940 Farelogix circulated internal communications [REDACTED].

941 [REDACTED].

distribution business⁹⁴² and that it continued to anticipate it would become a 'volume business' as NDC gained acceptance.⁹⁴³

9.202 To the extent that Farelogix is suffering from scaling problems, [REDACTED] have not prevented it from competing for new customers (see also the bidding data in chapter 8), nor from continuing to develop new product features:

- (a) A presentation delivered to Farelogix's board in April 2019 stated that Farelogix was working on new sales opportunities with the following airlines: [REDACTED].⁹⁴⁴ [REDACTED].⁹⁴⁵
- (b) Farelogix told us that, since the production of the April 2019 board presentation, it was pursuing further pipeline opportunities including possible deals [REDACTED].⁹⁴⁶
- (c) Internal emails dated March 2019 show that Farelogix discussed which airline customers it could target as 'moon shots', identifying [REDACTED] and [REDACTED] as potential opportunities.⁹⁴⁷
- (d) Farelogix marketing materials show that it introduced a new 'FLX Seat Manager' functionality to FLX Merchandising in July 2019 and that it announced new features for FLX Merchandising at the same time.⁹⁴⁸

9.203 Farelogix internal documents also show that it has plans to address stability issues and that it had already taken some steps to [REDACTED].⁹⁴⁹ For example, in an update for the board in April 2019, Farelogix stated that it had recently hired experienced staff with specific expertise, including in technology change management, and that it planned to recruit further to be able to better handle new customer implementations. The presentation also stated that Farelogix:⁹⁵⁰

(a) [REDACTED];

(b) [REDACTED];⁹⁵¹ and

942 [REDACTED].
943 [REDACTED].
944 [REDACTED].
945 [REDACTED].
946 [REDACTED].
947 [REDACTED].
948 [REDACTED].
949 [REDACTED].
950 [REDACTED].
951 [REDACTED].

(c) [REDACTED]. The presentation noted that Farelogix had already [REDACTED] and agreements were pending with [REDACTED].

9.204 We note that Farelogix subsequently told us that these actions were merely a starting point to [REDACTED].⁹⁵² Specifically, Farelogix told us that individual hires were not sufficient to [REDACTED].⁹⁵³ We also note that the DOJ's proposed findings of fact in the Delaware Proceedings stated that moving to the cloud had helped improve Farelogix's system stability and scalability.⁹⁵⁴

9.205 Finally, we note that Sandler told us that [REDACTED],⁹⁵⁵ [REDACTED].⁹⁵⁶ We consider that, if [REDACTED], Sandler would have been more willing to consider alternative bids, [REDACTED]. Importantly, in the event that Sandler were to pursue an alternative transaction, the available evidence suggests that Farelogix could have resolved its claimed scaling issues through such an alternative acquisition.⁹⁵⁷

Sabre's valuation model

9.206 Evidence from valuation models is one possible source of relevant evidence for different aspects of our assessment, including the potential growth of the target business in the counterfactual and possible anti-competitive effects. Typically, this evidence is not determinative by itself and will be assessed alongside other relevant evidence.⁹⁵⁸

9.207 When assessing the value of a potential target for acquisition, firms will typically use multiple valuation methods. One such method, a discounted cash flow analysis, bases a firm's value on the present value of the future profits expected to be earned by the target. It is common for the acquirer to assess the value of the profits that the target would be expected to generate on a standalone basis, before incorporating anticipated synergies deriving from the merger (for example, any incremental profits or anticipated cost savings). An analysis of the standalone projections for the target business can provide useful insight into its likely performance in the counterfactual. Similarly, reviewing the synergies anticipated from a merger may indicate competition concerns, where for example the valuation model includes assumed price increases, reducing investment or the protection of revenues that the acquirer may otherwise lose as a result of competition from the

⁹⁵² [REDACTED].

⁹⁵³ [REDACTED].

⁹⁵⁴ United States of America vs Sabre Corporate, docket 244, paragraph 312.

⁹⁵⁵ [REDACTED].

⁹⁵⁶ See Appendix C.

⁹⁵⁷ Farelogix's CEO stated in an email exchange [REDACTED]. Farelogix management also stated internally [REDACTED].

⁹⁵⁸ See [Ex-post assessment of merger control decisions in digital markets](#), section I.5.

target. Such anti-competitive effects may explain a purchase price that may otherwise be perceived to be too high (ie the acquirer is willing to pay a 'premium' for the market power it attains from the merger). However, firms may not always disclose such synergies in their valuation models, or such effects may be difficult to estimate with any precision.

9.208 In this case, as regards the likely growth of the target business, we consider that the revenue projections which underlie Sabre's valuation model show Sabre's expectation that Farelogix would continue to grow as an independent business. These projections show that Sabre anticipated that:

- (a) Farelogix would [REDACTED], in the coming years; and
- (b) this growth would be driven primarily by [REDACTED]. Specifically:
 - (i) In merchandising, Sabre projected an increase in FLX M revenue from [REDACTED] in 2018 to around [REDACTED] in 2021, including new customer wins each year;⁹⁵⁹
 - (ii) in distribution, Sabre projected an increase in Farelogix GDS bypass ticket sales from [REDACTED] tickets in 2018 to [REDACTED] tickets in 2020, and an increase in Farelogix GDS pass-through ticket sales, from [REDACTED] in 2018 to [REDACTED] in 2020;⁹⁶⁰ and
 - (iii) Sabre anticipated total revenue growth from [REDACTED] in 2018 to [REDACTED] in 2021.⁹⁶¹

9.209 As a result of this growth, Sabre projected that Farelogix would [REDACTED].

9.210 We also note that the Parties' forecasts used in the valuation models do not support their submission that Farelogix, operating independently, would [REDACTED].

9.211 Having considered the projections for Farelogix as a standalone business, we next reviewed the synergies that Sabre expected to be generated from the Merger and considered their relevance to our assessment of each of merchandising and distribution.

9.212 As regards merchandising, and as described earlier in this chapter, we note that the synergies in Sabre's valuation model included [REDACTED].⁹⁶² We consider

⁹⁵⁹ See Appendix C and [REDACTED].

⁹⁶⁰ See Appendix C.

⁹⁶¹ See Appendix C.

⁹⁶² Paragraph 9.42(d).

that this indicates Sabre's intentions to improve its merchandising solution and to compete more strongly in merchandising absent the Merger.

9.213 In addition, we note that Sabre's valuation model included an assumption that [REDACTED]. Sabre stated that this was because it assumed [REDACTED].⁹⁶³ This indicates the incentives for Sabre to improve its own merchandising solution absent the Merger.

9.214 In distribution, we agree with the Parties that quantified synergies included in Sabre's model do not include incremental profits deriving from anti-competitive effects, for example from GDS revenues that would otherwise be lost to Farelogix, or from Sabre raising prices post-Merger. We also note that quantified synergies do not include reduced investment in developing GDS passthrough following the Merger. While informative, this absence of evidence is clearly not determinative by itself, particularly given that, as noted above, firms may not always include synergies related to potential anti-competitive effects in their models or quantify them with any precision. More generally, it is also not necessary for a valuation exercise to include an overt assessment of the anti-competitive potential of a merger for the CMA to find competition concerns. As with our assessment of merchandising, it is important to consider the evidence from the valuation model and supporting documents in the overall context of the Merger and alongside the totality of other evidence received during our inquiry.

Summary of Parties' evidence on distribution solutions

9.215 We have found that Sabre considered that the airlines' move to demanding NDC solutions represented a threat to Sabre's business. It estimated that without investing in NDC solutions [REDACTED].

9.216 We have found that Sabre's internal documents show that its [REDACTED], with Farelogix identified among the most important suppliers of these services. These documents also indicate that, even if GDS bypass were to remain a relatively small part of the distribution market, this would only be because it has played (and continues to play) a significant role in pushing the GDSs themselves to introduce new services such as GDS pass-through so as to prevent the loss of greater GDS volumes to other channels. In addition, Farelogix's internal documents see growth in GDS pass-through but also a continued role for GDS bypass in some airlines' distribution strategies.

⁹⁶³ Paragraph 9.68.

- 9.217 Sabre and Farelogix's internal documents show that Farelogix's competitive position in distribution is enhanced by its strong position in merchandising. Both Sabre's and Farelogix's internal documents make reference to the ability to [REDACTED]. Farelogix documents also recognise in the context of airlines seeking to move away from legacy models, merchandising and distribution are key to this and that the use of merchandising in turn drives a need for NDC-compatible distribution and vice versa. Farelogix has been and remains well placed to capture sales from this changing demand by being active in both merchandising and distribution.
- 9.218 While we note that there is some evidence that Farelogix has faced technical and scaling issues in its distribution business, we consider that the available evidence supports a view that such issues are surmountable and have not materially affected its ability to compete. [REDACTED]⁹⁶⁴ [REDACTED].
- 9.219 Sabre's internal documents also indicate that Sabre also views Amadeus as a significant competitor and Travelport as a relevant competitor in distribution. We have found that Sabre's internal documents, while occasionally listing other competitors ([REDACTED]), do not refer to other competitors with as much frequency or in as much depth as Farelogix, Amadeus and Travelport.
- 9.220 We have found that Farelogix views the GDSs to be stronger competitors than NDC API providers (such as Datalex and OpenJaw).
- 9.221 With regard to the threat of airline.com, we note that Sabre's internal documents do not suggest that this was a material driver for its investment in NDC distribution solutions.
- 9.222 We have also found that self-supply by airlines of NDC APIs are not discussed in the Parties' internal documents in any meaningful way.

⁹⁶⁴ Chapter 9, section on 'Evidence on Farelogix's growth'.

10. Evidence from third parties

- 10.1 Chapter 9 examined evidence from the Parties on the Parties' investment and expansion plans, how they perceive and react to competitive threats from rivals and other sources (eg self-supply) for both the merchandising solutions and distribution solutions markets. This Chapter takes a similar approach and presents evidence we have gathered from third parties regarding the merchandising solutions and distribution solutions markets, comprising third party suppliers, airlines and travel agents.

Evidence from competitors

- 10.2 This section sets out the evidence we have gathered from the Parties' competitors, drawing from competitors' internal documents, and their responses to our questionnaires and calls.⁹⁶⁵ The chapter evaluates the qualitative evidence on how suppliers view the competitive landscape, what are the strengths of individual suppliers or channels, and their strategy and growth plans regarding the development of NDC solutions. Some of the evidence is common to both merchandising and distribution markets; we identify these instances where appropriate. Further examples of supporting evidence similar to that cited and quoted below are set out in Appendix E.
- 10.3 The chapter builds on chapter 8 which discussed the current capabilities of suppliers and some quantitative measures of current competition. From the evidence presented in that chapter we found that Farelogix and Amadeus are currently the two leading suppliers of merchandising solutions. We also found that Farelogix is the most prominent and successful provider of NDC-compatible distribution solutions followed by Amadeus and, to a lesser extent, OpenJaw. This chapter evaluates other qualitative evidence and takes a more forward-looking perspective than does chapter 8.
- 10.4 We first present the evidence relating to merchandising and then examine the evidence relating to distribution. Finally, we consider competitors' views on the Merger.

⁹⁶⁵ We have received responses to our questionnaires from 16 providers of merchandising and/or distribution solutions: Amadeus, Atrius, Datalex, HitchHiker, Interes, ITA, JR Technologies, OpenJaw, Peakwork, PROS, SAP, SITA, Travelfusion, Travelport, Wooba, Zulu. ATPCO submitted that [REDACTED]. We have had calls with six providers (PROS, ITA, JR Technologies, OpenJaw, Interes, Travelport) and held a hearing with Amadeus. In addition, we have received senior management-level internal documents in relation to strategy, growth plans and competitors monitoring from six providers: Amadeus, Travelport, OpenJaw, Datalex, PROS and ITA. Throughout the report, we specify whether each piece of evidence is drawn from questionnaires, calls, or internal documents.

Evidence from competitors on merchandising

Competitive landscape and strength of merchandising suppliers

- *Competitors' internal documents*

10.5 We consider how third party suppliers of merchandising solutions monitor rivalry between one another offers probative evidence of the competitive environment in which the Parties operate. We have examined internal documents of third party providers to understand their perceptions of the competitive constraints in the market, including the threats from Sabre and Farelogix. We have given weight to, competitors' internal documents, which set out their competitive strategies and growth plans We consider these provide evidence on similar points as those listed in relation to the Parties' internal documents above (chapter 9), ie they are informative of competitors' market positioning relative to the Parties', the strength of their constraints on the Parties, and how these might change in the future. The summaries for each supplier are below.

- *Amadeus*

10.6 Amadeus documents consider a number of suppliers of merchandising solutions including Farelogix, Datalex, OpenJaw and Sabre. The documents also discuss in-house supply by the airlines and some documents (which are more recent) also mention [REDACTED]. The more recent documents also [REDACTED]. Generally, the commentary in these documents presents Farelogix [REDACTED]. Commentary on other supply solutions is [REDACTED]. This is illustrated in the following examples:⁹⁶⁶

(a) [REDACTED].⁹⁶⁷

(b) In a presentation from December 2018, Amadeus benchmarks itself against Farelogix across Merchandising, NDC (IT) and Shopping functions. The slide states that [REDACTED]⁹⁶⁸

(c) [REDACTED].⁹⁶⁹

⁹⁶⁶ Please note that some of the documents and quotes presented in this section are also relevant for the distribution section in paragraphs 10.42 et seq.

⁹⁶⁷ [REDACTED].

⁹⁶⁸ [REDACTED].

⁹⁶⁹ [REDACTED].

(d) [REDACTED].⁹⁷⁰

(e) [REDACTED].⁹⁷¹

(f) [REDACTED].⁹⁷² [REDACTED].

- *Datalex*

10.7 Datalex monitors rivalry in ‘*airline retailing*’ which includes merchandising and distribution. A November 2019 Datalex document, indicated that Farelogix and OpenJaw are transitioning from being ‘*independent from PSS providers*’ to ‘*extension to PSS systems.*’⁹⁷³ Datalex provided another benchmark report [REDACTED] dated July 2019 in which Datalex is listed as one of the ‘*leaders*’ in Airline Retailing [REDACTED]. OpenJaw and PROS are not listed amongst the leaders but are seen as ‘*challengers.*’ [REDACTED].⁹⁷⁴

- *OpenJaw*

10.8 OpenJaw also monitors competition in ‘*airline retailing*’. Its documents refer to [REDACTED] as its main competitors in airline retailing. In a recent presentation, OpenJaw acknowledges [REDACTED] weakened position due its financial difficulties.⁹⁷⁵

- *PROS*

10.9 PROS provided detailed competitive analysis reports on the technical capabilities of Farelogix, Amadeus and Sabre. The report on Farelogix focuses on its merchandising solution, while the other two concern Sabre’s and Amadeus’ revenue management solutions.⁹⁷⁶ In a document from August 2019, PROS has identified Datalex’s weakened position, [REDACTED] and Amadeus’ minimal investments in UI [user interface]/Mobile as market dynamics that PROS should take advantage of.⁹⁷⁷

10.10 Two documents from Amadeus and OpenJaw recognised Farelogix’ independence from a GDS and PSS as a factor relevant to its competitive

⁹⁷⁰ [REDACTED].

⁹⁷¹ [REDACTED].

⁹⁷² [REDACTED].

⁹⁷³ [REDACTED].

⁹⁷⁴ [REDACTED].

⁹⁷⁵ [REDACTED].

⁹⁷⁶ PROS submitted that [REDACTED]. See [REDACTED].

⁹⁷⁷ [REDACTED].

position currently and indicate that this would be lost as a result of the Merger.

- (a) An OpenJaw document concerning the impact of Sabre's proposed acquisition of Farelogix and [REDACTED] on OpenJaw's competitive environment stated that [REDACTED]'⁹⁷⁸ OpenJaw told us that the document did not necessarily represent the current view of the company.⁹⁷⁹
- (b) In a document assessing Sabre's proposed acquisition of Farelogix, Amadeus noted that, [REDACTED].⁹⁸⁰

- *Competitors' submitted views*

- *Views on main competitors in merchandising*

10.11 We asked competitors to identify who they consider to be their main competitors of merchandising. Farelogix, Amadeus and Sabre were the most frequently mentioned, and Datalex was also frequently identified. OpenJaw and PROS are also mentioned but to a lesser extent. ITA was not identified as a competitor by other suppliers.⁹⁸¹

- (a) Amadeus listed Farelogix, Sabre, Datalex, OpenJaw and in-house airline IT as its main competitors in merchandising and NDC compatible solutions and considered Farelogix a '*very strong*' competitor in merchandising modules.⁹⁸² At the hearing, Amadeus told us that it [REDACTED]⁹⁸³ but that it considered itself catching up in terms of functionalities. On PSS competition more generally, Amadeus told us that [REDACTED], which is 'a very established system' [REDACTED] Sabre has started rewriting its systems onto open technologies [REDACTED]. Amadeus noted that it took its business [REDACTED] to re-write its systems onto open technologies.⁹⁸⁴
- (b) OpenJaw told us that it considered [REDACTED] as its main competitors in merchandising. It defined [REDACTED] as '*quite a strong player*' and '*a leader in*

⁹⁷⁸ [REDACTED].

⁹⁷⁹ [REDACTED].

⁹⁸⁰ [REDACTED].

⁹⁸¹ Phase 2 CMA competitor questionnaire, Q4(c): '*If you supply Merchandising module, please provide the following information in relation to your Merchandising modules: (c) who your main competitors are in the supply of Merchandising modules*' – eight competitors provided a response, among which one submitted it does not provide merchandising – and Phase 1 CMA service provider questionnaire, Q5(c): '*For each of the following non-core PSS modules you provide, please set out in the table below: (c) who your main competitors are worldwide and (if different) in Europe*' – the table listed '*Merchandising, Scheduling, Inventory and availability, Shopping and pricing*' and eight competitors provided a response.

⁹⁸² [REDACTED]. See also Amadeus' response to the Issues Statement, section 3.

⁹⁸³ [REDACTED].

⁹⁸⁴ [REDACTED].

NDC enablement’ albeit with a *‘narrow focus on direct connect and GDS bypass’*. It also submitted that Sabre and Amadeus have incumbency with airlines, that [X] many customers in the [X] give it potential to win others and that, [X] is *‘functionally strong’* but currently under financial stress.⁹⁸⁵

- (c) PROS listed Sabre, Farelogix and Amadeus as its main competitors in merchandising.⁹⁸⁶
- (d) ITA listed *‘PSS providers’*, Farelogix and Datalex as its main competitors in merchandising. It submitted that its merchandising offering is comparable to FLX M, despite the smaller volume of business/impacted passengers or tickets.⁹⁸⁷
- (e) [X] submitted that [X] other competitors are *‘OpenJaw, Datalex and Amadeus and Sabre, (not because of their technology, but because of their presence and contractual access to system environment, RFPs etc.)’*⁹⁸⁸ [X] told us that it sees Farelogix as a direct competitor in merchandising.⁹⁸⁹
- (f) [X] told us that it does not see Farelogix, Sabre or Amadeus as its competitors in airline retailing as it focuses on a different space [X] It told us that [X].⁹⁹⁰
- (g) Both [X] and SITA submitted that Farelogix, Sabre, Amadeus, Datalex and OpenJaw are their main competitors in merchandising.^{991, 992}

- *Views on self-supply of merchandising*

10.12 We have asked competitors to what extent they consider self-supply by airlines (ie building merchandising solutions in-house) to be a constraint.⁹⁹³ Most competitors said airlines increasingly focus on core competencies and outsource IT and that the constraint from in-house solutions is limited as only

⁹⁸⁵ [X].

⁹⁸⁶ [X].

⁹⁸⁷ [X].

⁹⁸⁸ [X].

⁹⁸⁹ [X].

⁹⁹⁰ [X].

⁹⁹¹ [X].

⁹⁹² [X].

⁹⁹³ Phase 1 CMA service provider questionnaire, Q17: *‘To what extent do you consider airlines’ in-house solutions, ie the ability to build non-core PSS modules constrain technology and software companies such as yourself, Sabre or Farelogix? For example, do airlines use the possibility to build their in-house solutions when negotiating for contracts?’* – 10 providers replied. Although the exact question concerned more generally *‘non-core PSS modules’* we consider that, being merchandising a non-core PSS module, this is relevant for us to draw inferences on merchandising.

large airlines have the resources and capabilities to develop merchandising internally.

- (a) OpenJaw submitted that, although airline inhouse IT teams are always a competitor, many airlines are moving towards focussing on core competencies and outsourcing IT.⁹⁹⁴
- (b) PROS submitted that *‘only the very largest airlines (ie United, Delta, etc) have the interest/resources to develop modules in-house.’*⁹⁹⁵
- (c) [REDACTED].⁹⁹⁶
- (d) [REDACTED] submitted that very few airlines have the ability to build non-core PSS modules in-house.⁹⁹⁷
- (e) SITA submitted that the constraint from in-house merchandising is *‘limited’* as airlines tend to engage with external providers.⁹⁹⁸

10.13 Only one competitor (Amadeus) said in-house merchandising solutions are a feasible/credible alternative for airlines, which constrain its *‘market behaviour and negotiations.’*⁹⁹⁹

Competitors’ strategies in NDC-compatible merchandising solutions

10.14 We have examined competitor internal documents related to their investment and expansion plans to assist us in our dynamic assessment of the market. We have considered their strategies in developing merchandising solutions, to understand the extent to which they have constrained and will continue to constrain the Parties. Further to the findings described in the preceding section on competitive landscape, our assessment focuses on Amadeus, Datalex, OpenJaw, PROS and ITA. We consider their internal documents and responses to our questionnaires and calls.

10.15 All these suppliers have NDC strategies that include merchandising and distribution, as well as other elements of airline retailing more broadly. We set out their overall strategies in this section. Elements of their plans specific

994 [REDACTED].

995 [REDACTED].

996 [REDACTED].

997 [REDACTED].

998 [REDACTED].

999 [REDACTED].

to distribution will be discussed when we present evidence relating to distribution from paragraph 10.53.

- *Amadeus*

10.16 As Amadeus is generally considered further ahead in the development of its NDC strategy than Sabre, we have also assessed how Amadeus' NDC strategy has evolved over time as well as its plans going forward, the factors that drove Amadeus' strategic choices and the extent to which it has responded to the potential disruption of its business model. We consider this to be relevant as to inform our analysis of Sabre's drivers in developing an NDC strategy and its future evolution in the counterfactual.

10.17 [REDACTED]. In doing so, Amadeus consistently benchmarked itself against [REDACTED].¹⁰⁰⁰

10.18 [REDACTED]. Specifically:

(a) [REDACTED].¹⁰⁰¹

(b) [REDACTED].¹⁰⁰²

(c) [REDACTED].¹⁰⁰³

10.19 In terms of its plans going forward, Amadeus submitted that it has today completed most of its investment in its merchandising capabilities and plans [REDACTED].¹⁰⁰⁴ Amadeus told us that [REDACTED].¹⁰⁰⁵ Amadeus submitted that [REDACTED].¹⁰⁰⁶ Amadeus told us that [REDACTED].¹⁰⁰⁷ Amadeus added that it continues to invest to ensure that its NDC-capable products evolve in line with the IATA NDC standard.¹⁰⁰⁸

10.20 Amadeus submitted that it plays a leading role in innovating in the market and it is committed to developing NDC solutions.¹⁰⁰⁹

¹⁰⁰⁰ See Appendix E, paragraphs 48-53 for details on specific documents.

¹⁰⁰¹ [REDACTED].

¹⁰⁰² [REDACTED].

¹⁰⁰³ [REDACTED].

¹⁰⁰⁴ [REDACTED].

¹⁰⁰⁵ [REDACTED].

¹⁰⁰⁶ [REDACTED].

¹⁰⁰⁷ [REDACTED].

¹⁰⁰⁸ [REDACTED].

¹⁰⁰⁹ Amadeus' response to the Provisional Findings, section 4.

- *Datalex*

10.21 Datalex told us that, in the context of its recently publicised financial issues,¹⁰¹⁰ it had undergone a substantive reorganisation in the past twelve months and that it was reviewing its entire business with a view to breaking even in 2019 before aiming for growth from 2020 onwards.¹⁰¹¹ Datalex told us that it had internal strategy plans in place to stabilise the business¹⁰¹² and that it anticipated [REDACTED] growth across merchandising and NDC [REDACTED],¹⁰¹³ [REDACTED].¹⁰¹⁴

10.22 Datalex provided a series of documents which described [REDACTED].¹⁰¹⁵ Datalex also submitted [REDACTED].¹⁰¹⁶ The evidence that we received from Datalex’s internal documents and further details on its recent financial issues are set out in Appendix E.

10.23 We consider that the documents provided by Datalex [REDACTED]. In particular, we consider that [REDACTED].

- *OpenJaw*

10.24 OpenJaw told us that it saw an increasing pipeline of opportunities for its platforms and that it expected to compete strongly as the market shifts towards airline-controlled retailing and NDC.¹⁰¹⁷ It provided [REDACTED].¹⁰¹⁸ OpenJaw’s product roadmap indicates that [REDACTED].

10.25 OpenJaw told us that it had ‘invested heavily’ in building its t-Retail platform [REDACTED] and that it aimed to grow its presence in NDC-enabled merchandising and distribution solutions in the coming years. OpenJaw told us that it [REDACTED].¹⁰¹⁹

10.26 OpenJaw’s internal documents showed that it anticipates a number of potential challenges in the market for NDC solutions, which is limited due to ‘*high barriers to entry*’ and characterised by slow take up by airlines. [REDACTED].¹⁰²⁰

¹⁰¹⁰ See [Datalex investor relations website](#). See also Appendix E, paragraphs 72-74.

¹⁰¹¹ [REDACTED].

¹⁰¹² [REDACTED].

¹⁰¹³ [REDACTED].

¹⁰¹⁴ Paragraph 8.25.

¹⁰¹⁵ [REDACTED].

¹⁰¹⁶ [REDACTED].

¹⁰¹⁷ [REDACTED].

¹⁰¹⁸ See Appendix E, paragraphs 82-91 and [REDACTED].

¹⁰¹⁹ [REDACTED].

¹⁰²⁰ See Appendix E, paragraphs 82-91 and [REDACTED].

10.27 The documents provided to us by OpenJaw indicate that it [REDACTED] and its plans do not indicate that it is likely to grow materially from its current competitive position.

- *PROS*

10.28 PROS told us that it had plans to improve its product features and functionality in NDC-compatible solutions in the coming years.¹⁰²¹ [REDACTED].¹⁰²²

10.29 PROS told us that it would likely face a number of difficulties in seeking to expand, which applies to the supply of merchandising and distribution solutions, including:

(a) Difficulty in accessing airline information owned or controlled by the major PSS providers, from both a technical and commercial perspective;¹⁰²³

(b) Anti-competitive tactics by PSS providers to block airline use of third party technology offerings;¹⁰²⁴

(c) Operational complexity associated with global privacy and data protection compliance;¹⁰²⁵ and

(d) The availability of technical personnel with relevant airline industry experience.¹⁰²⁶

10.30 PROS provided only a limited number of relevant strategy documents. The documents provided by PROS [REDACTED]. Our detailed review of the documents provided by PROS is set out in Appendix E.

- *ITA*

10.31 ITA told us that it has plans to invest more in NDC, dynamic pricing and cache-based shopping products in the future.¹⁰²⁷ [REDACTED]¹⁰²⁸ [REDACTED].¹⁰²⁹

¹⁰²¹ [REDACTED].

¹⁰²² [REDACTED].

¹⁰²³ PROS told us that [REDACTED]. [REDACTED].

¹⁰²⁴ PROS told us that [REDACTED]. [REDACTED].

¹⁰²⁵ [REDACTED].

¹⁰²⁶ [REDACTED].

¹⁰²⁷ [REDACTED].

¹⁰²⁸ [REDACTED].

¹⁰²⁹ [REDACTED]. See [REDACTED].

10.32 ITA told us that it was still considering its strategy in NDC solutions and that its plans were at an early stage in development.¹⁰³⁰ [REDACTED]¹⁰³¹ and we note that an internal document described Farelogix as the market leader in this regard and stated that [REDACTED].¹⁰³²

10.33 ITA also told us that, while it did not see major obstacles to its plan going forward, it anticipated that there may be difficulties caused by the length of negotiations for new contracts and that the technical process of changing shopping and pricing systems could present challenges for airlines.¹⁰³³ [REDACTED].¹⁰³⁴

10.34 The document that we have reviewed from ITA shows that [REDACTED]¹⁰³⁵ [REDACTED].

Overall summary of competitor evidence in merchandising

10.35 We have used competitor evidence on the competitive landscape to assess the current state of competition in the market for merchandising solutions. In summary, having examined competitors' internal documents and submissions and seen which competitors are referred to most frequently, as well as the depth at which they are considered, this evidence indicates that that Farelogix, Amadeus, Sabre and Datalex, whose financial difficulties are recognised by competitors, are the main providers in merchandising. OpenJaw and PROS are generally viewed as lesser competitors. ITA is generally not referred to among the main providers in merchandising in competitors' internal documents or submissions. Self-supply by airlines of merchandising solutions is not seen by suppliers as a strong constraint.

10.36 Amadeus is clearly viewed as a strong competitor by suppliers generally. Amadeus currently does not supply PSS-agnostic merchandising solutions to airlines on a standalone basis, instead it supplies merchandising as part of an NDC retailing solution.

10.37 We have used competitor evidence on their strategies and future plans to help us form a dynamic assessment of the marketplace. Concerning competitors' NDC strategies related to merchandising, we note that Amadeus has been [REDACTED]. We expect that Amadeus will continue to exercise a strong constraint going forward. We expect other, non-GDS, merchandising suppliers including Datalex, PROS, OpenJaw and ITA to continue to supply

¹⁰³⁰ [REDACTED].
¹⁰³¹ [REDACTED].
¹⁰³² [REDACTED]. See also Appendix E, paragraphs 109-112.
¹⁰³³ [REDACTED].
¹⁰³⁴ [REDACTED].
¹⁰³⁵ [REDACTED].

and exert some constraint, though we have material doubts over the intention, incentive and/or ability of these suppliers to increase their competitive constraint significantly post-Merger:

- (a) Datalex does have plans to grow its merchandising solutions revenue but it faces considerable financial difficulties which may inhibit its ability to do so;
- (b) OpenJaw told us that it has invested and aimed to grow its presence in NDC-enabled merchandising solutions in the coming years. However, its plans identified a number of weaknesses and challenges that it will face and do not indicate that it is likely to grow materially from its current competitive position
- (c) PROS does plan to grow its merchandising revenues but described its plans as being 'aspirational' and has not undertaken detailed planning; and
- (d) ITA [REDACTED].

Evidence from competitors on distribution

Competitive landscape and strength of distribution suppliers

10.38 As with the provision of merchandising solutions market above, we have considered evidence from third party suppliers relating to the strengths of individual distribution suppliers, distribution channels and airline self-supply to be probative regarding the competitive environment in which the Parties operate. We have examined competitors' internal documents and their responses to our questionnaires and calls.

10.39 It is relevant whether distribution solutions are supplied by GDSs or other technology companies like Farelogix, OpenJaw, Datalex and PROS, as the former have a range of related functions and revenue streams to protect and grow within the distribution space. Therefore, we consider that GDSs' views on competition in the market for distribution solutions will necessarily differ from the ones of other technology providers. These differences are discussed in chapter 7. For example, GDSs operate two-sided platforms balancing the demands of airlines and travel agents. Distribution solutions supplied by a GDS may or may not offer airlines the option of bypassing the GDS. As discussed in chapters 3 and 7, GDSs also provide a range of other services. Distribution solutions supplied by Farelogix and companies such as OpenJaw, Datalex and PROS, on the other hand, are technology solutions supplied to airlines which allow them to decide how to distribute their content to travel agents and travellers. We have been mindful of these differences

when considering how different providers view the competition that they face.

- *Competitors' internal documents*

10.40 We consider how suppliers of distribution solutions monitor rivalry in their internal documents, to understand their perceptions of the competitive constraints in the markets including the threats from Sabre and Farelogix.

10.41 The documents indicate that the GDSs primarily monitor each other (and other aggregators to a lesser degree) but they also acknowledge the threat of 'direct connect' and 'NDC' providers including Farelogix. Other IT providers (ie Datalex and OpenJaw) look at NDC compatible distribution solutions in the broader context of airline retailing alongside GDS. The documents also indicate that Farelogix is a recognised leader in NDC-compatible distribution solutions which allows airlines to establish direct connects.

- *Amadeus*

10.42 Amadeus' documents show that it considers itself to be ahead of the other two GDSs in distribution and perceives Sabre as the main competitive threat. The documents identify Farelogix as an established leader in NDC and direct connect and Travelfusion as a leading 'aggregator'.^{1036, 1037} [REDACTED].¹⁰³⁸ Specifically:¹⁰³⁹

(a) [REDACTED]¹⁰⁴⁰ [REDACTED]¹⁰⁴¹

(b) [REDACTED].¹⁰⁴²

(c) [REDACTED].¹⁰⁴³

(d) [REDACTED].¹⁰⁴⁴

¹⁰³⁶ [REDACTED].

¹⁰³⁷ [REDACTED].

¹⁰³⁸ [REDACTED].

¹⁰³⁹ In addition to the documents and quotes presented in this section, please also consider the ones presented in the merchandising section in paragraph 10.6.

¹⁰⁴⁰ [REDACTED].

¹⁰⁴¹ [REDACTED].

¹⁰⁴² [REDACTED].

¹⁰⁴³ [REDACTED].

¹⁰⁴⁴ [REDACTED].

(e) [REDACTED].¹⁰⁴⁵

(f) As mentioned in the merchandising section above, in a presentation from December 2018, Amadeus benchmarks itself against Farelogix across Merchandising, NDC and shopping functions. The presentation states that [REDACTED].¹⁰⁴⁶

(g) [REDACTED].¹⁰⁴⁷

10.43 In relation to distribution channels more generally, Amadeus' internal documents identified both airline.com and direct connect as threats to its GDS business.

10.44 [REDACTED]. This is illustrated in the following examples:

(a) [REDACTED].¹⁰⁴⁸

(b) [REDACTED].¹⁰⁴⁹ [REDACTED].¹⁰⁵⁰

(c) [REDACTED].¹⁰⁵¹

- *Travelport*

10.45 [REDACTED].¹⁰⁵². [REDACTED]

- *OpenJaw*

10.46 As mentioned above, Datalex and OpenJaw look at distribution in the broader context of airline retailing solutions and NDC.

10.47 An OpenJaw document in 2018 highlighted GDS/PSS (Amadeus, Sabre), travel retailing platforms (eg OpenJaw, [REDACTED]), standalone NDC Providers (Farelogix) and in-house solutions as the different options for airlines to enable NDC. It stated that GDS/PSS providers have strong market position to win NDC deals due to the '*commercial levers they can pull with airlines*', that [REDACTED].¹⁰⁵³

1045 [REDACTED].
1046 [REDACTED].
1047 [REDACTED].
1048 [REDACTED].
1049 [REDACTED].
1050 [REDACTED].
1051 [REDACTED].
1052 [REDACTED].
1053 [REDACTED].

- *Datalex*

(a) A July 2019 study analysing the airline retailing market commissioned by Datalex set out that *‘airline distribution is rapidly changing’* as an opening statement and describes NDC and One Order as part of the *‘enhanced airline retailing’* that more than *‘190 airlines will be looking to implement over the next 5 years.’*¹⁰⁵⁴

- *ITA*

10.48 [REDACTED].¹⁰⁵⁵

- *Competitors’ submitted views*

- *Views on use of GDS bypass and airline.com*

10.49 We have been told during our inquiry by some third parties that providers of GDS bypass solutions, such as Farelogix, offer airlines another option to distribute content than going via the GDSs. We have also been told by some third parties that in the event of worsening terms or poorer performance of GDSs, airlines could divert booking volumes to airline.com. We therefore asked competitors whether airlines have used the possibility of switching to, or increasing their use of, other distribution channels (airline.com or direct connects) in negotiations, to understand whether these channels are seen as a competitive constraint on distribution suppliers.¹⁰⁵⁶

10.50 Both GDS competitors submitted that airlines use the threats of both airline.com and direct connects to get more favourable commercial terms.

(a) Amadeus said that airlines use both airline.com and GDS bypass (direct connect and aggregators) as negotiation levers with Amadeus.¹⁰⁵⁷ It also submitted that:

- (i) it faces *‘direct pressure’* from airline.com because airlines have been successful in changing their business model to the detriment of GDSs

¹⁰⁵⁴ [REDACTED].

¹⁰⁵⁵ [REDACTED] provided by ITA.

¹⁰⁵⁶ Phase 2 CMA competitor questionnaire, Q9: *‘Please explain how airlines negotiate contracts with you for (ii) Services for indirect content distribution. In particular, please describe any mechanisms or leverages airlines have used in negotiations with you with an aim to obtain more favourable contract terms or discounts (including leveraging from one product to another). Please provide examples and indicate whether the negotiations resulted in more favourable contract terms for the airline or not.’* The levers listed in the table provided below the questions included: *‘the possibility of using Direct Connect’* and *‘The possibility of switching or increasing the airline’s use of the direct channel (ie airline.com)’* – seven providers replied.

¹⁰⁵⁷ [REDACTED].

(eg with surcharges and content withdrawal), and there has also been a structural shift in bookings from the indirect to the direct channel in the past few years,^{1058, 1059} whereby large airlines have been *'very aggressive in pushing their direct channel at the expense of indirect channels'* and seek to marginalise neutral indirect distribution to avoid comparison shopping;¹⁰⁶⁰

(ii) [REDACTED] and that direct connects have become more frequent in recent years as *'several large airlines have sought to drive business away from the GDS channel.'*¹⁰⁶¹

(iii) it is generally the airlines dictating the level of bookings fees via a GDS, since without their content GDSs would not have a value proposition to TAs, and that what seems to be the driving factor for such fees is the extent to which an airline has a credible direct distribution channel to use as a bargaining tool in negotiations.¹⁰⁶²

(b) [REDACTED].¹⁰⁶³ [REDACTED].¹⁰⁶⁴

(c) PROS submitted that airlines use the possibility of switching or increasing the airline's use of airline.com *'as a 'carrot' to pre-negotiate volume discounts'* with PROS. On direct connect, PROS initially submitted that it does not see that used by its own customers as a negotiation lever as PROS' solutions are already *'a method for bypass of GDS'*¹⁰⁶⁵ but then submitted that, even if it wanted to, it would not be able to bypass the GDS.¹⁰⁶⁶

- *Views on main competitors in distribution*

10.51 We asked competitors to identify who they consider their main competitors in distribution. Their responses indicate that Amadeus and Sabre are most frequently mentioned, with Farelogix and Datalex also frequently identified as 'direct connect' or 'NDC' competitors, followed by OpenJaw but to a

¹⁰⁵⁸ Amadeus' key observations on Reference Decision, section 4.

¹⁰⁵⁹ Amadeus' response to the Issues Statement, section 2. See also [REDACTED].

¹⁰⁶⁰ Amadeus' key observations on Reference Decision, section 3.

¹⁰⁶¹ [REDACTED].

¹⁰⁶² [REDACTED].

¹⁰⁶³ [REDACTED].

¹⁰⁶⁴ [REDACTED].

¹⁰⁶⁵ [REDACTED].

¹⁰⁶⁶ [REDACTED].

lesser extent. An aggregator, Travelfusion, is also mentioned but mainly by GDSs and small aggregators.¹⁰⁶⁷

- (a) Amadeus mentioned the direct channel and direct connect among the significant competitive constraints. It listed other GDSs - Sabre and Travelport - among Travelfusion, Travelsky, Ypsilon, Sirena, TPConnects and Atrii as its *'direct competitors'* in NDC compatible distribution services.¹⁰⁶⁸ Amadeus also told us that Farelogix is one of several providers that airlines can use to distribute content including GDSs, OpenJaw, JR Technologies, TP Connects, PROS and Airlines Technology,¹⁰⁶⁹ but it does not see Farelogix as *'an important innovator'* and *'significant disruptive force'* in the distribution market.¹⁰⁷⁰
- (b) [REDACTED].¹⁰⁷¹ [REDACTED].¹⁰⁷²
- (c) OpenJaw listed [REDACTED] as its main competitors. We note that OpenJaw considered [REDACTED] as a particularly strong player in the market which [REDACTED]. It submitted that [REDACTED] is very difficult to compete with [REDACTED] and that it has *'strongly embraced NDC (which no doubt they initially saw as a threat to their business model [REDACTED])'*¹⁰⁷³ OpenJaw also told us that [REDACTED].¹⁰⁷⁴
- (d) PROS listed Farelogix, Datalex and OpenJaw as its main competitors.¹⁰⁷⁵ PROS told us that it would not be able to bypass the GDS (as Farelogix does) as it opted for a different commercial strategy and that it does not view itself as a replacement for the PSS.¹⁰⁷⁶
- (e) ITA listed Farelogix and Datalex as its main competitors¹⁰⁷⁷ and said it sees its technology as having an advantage compared to Farelogix in terms of performance and infrastructure.¹⁰⁷⁸

¹⁰⁶⁷ Phase 2 CMA competitor questionnaire, Q5(c): *'If you provide Services for indirect content distribution, please provide the following information in relation to the Services for indirect content distribution that you offer: (c) who you consider to be your main competitors'* – 11 providers replied. [REDACTED].

¹⁰⁶⁸ [REDACTED].

¹⁰⁶⁹ [REDACTED].

¹⁰⁷⁰ Amadeus' response to the Issues Statement, section 3.

¹⁰⁷¹ [REDACTED].

¹⁰⁷² [REDACTED].

¹⁰⁷³ [REDACTED].

¹⁰⁷⁴ [REDACTED].

¹⁰⁷⁵ [REDACTED].

¹⁰⁷⁶ [REDACTED].

¹⁰⁷⁷ [REDACTED].

¹⁰⁷⁸ [REDACTED].

(f) [redacted] as main providers in travel distribution but noted that [redacted] and referred to the [redacted].¹⁰⁷⁹

(g) [redacted]. SITA submitted that it was only active in distribution with the standalone 'translation service' provided through NDC Exchange and that it was '*not aware of any direct competitor for this standalone service.*'¹⁰⁸⁰

- *Views on airline self-supply of distribution solutions*

10.52 We have asked competitors to what extent they are constrained by airline self-supply of distribution solutions, and whether airlines use this option to negotiate better terms.¹⁰⁸¹ Amadeus identified self-supply to be a constraint; the responses from most other competitors generally show that the extent for airlines to self-supply distribution solutions is limited.

(a) OpenJaw said airlines are moving towards focussing on core competencies and outsourcing IT.¹⁰⁸²

(b) PROS said it did not consider in-house distribution solutions by airlines as a constraint.¹⁰⁸³

(c) [redacted].¹⁰⁸⁴

(d) [redacted] although airlines might be able to write the solutions' specifications, they will typically need a supplier to build connection services.¹⁰⁸⁵

(e) SITA submitted that the constraint from in-house distribution is '*limited*' as airlines are '*reliant on their Core PSS and Non-Core PSS providers to enable connection between the various distribution channels.*'¹⁰⁸⁶

Competitor strategy in developing distribution solutions

10.53 As discussed in paragraphs 10.14-10.34 above, all suppliers have NDC strategies that include merchandising and distribution, as well as other elements of airline retailing more broadly. This section assesses elements of

¹⁰⁷⁹ [redacted]

¹⁰⁸⁰ [redacted].

¹⁰⁸¹ Phase 1 CMA service provider questionnaire, Q17: '*To what extent do you consider airlines' in-house solutions, ie the ability to build connection services constrain technology and software companies such as yourself, Sabre or Farelogix? For example, do airlines use the possibility to build their in-house solutions when negotiating for contracts?*' – 10 providers replied.

¹⁰⁸² [redacted].

¹⁰⁸³ [redacted].

¹⁰⁸⁴ [redacted].

¹⁰⁸⁵ [redacted].

¹⁰⁸⁶ [redacted].

their strategies specific to distribution which are relevant to forming a dynamic view of the market.

- *Amadeus*

10.54 Amadeus' NDC strategy has evolved in the past five years. As discussed in paragraph 10.16, [REDACTED].

10.55 In general, Amadeus documents show that, in developing its NDC strategy, Amadeus was reacting to:

(a) [REDACTED];

(b) [REDACTED]. Specifically:

(i) A presentation from 2017 stated that [REDACTED].¹⁰⁸⁷

(ii) A more recent presentation from July 2019 listed among the reasons why airlines are pushing for NDC the strategic aim to [REDACTED].¹⁰⁸⁸

10.56 Moreover, Amadeus' documents indicate that [REDACTED].

(a) [REDACTED].¹⁰⁸⁹

(b) [REDACTED].¹⁰⁹⁰

10.57 Regarding future investment plans, Amadeus submitted that it considers that a significant amount of investment is required to integrate new content sources, including NDC, in a way that maximises efficiency for content providers and that it is also investing to develop other aspects of its indirect distribution offer, such as search optimisation and interface improvement.¹⁰⁹¹ Amadeus told us that it plans to invest around [REDACTED] in its indirect distribution services over [REDACTED], and that it is investing heavily in NDC and working with other industry players to enhance NDC standardisation.^{1092, 1093} Amadeus submitted that it considers itself to be an important innovator in NDC. More specifically, it submitted that: (i) it has been committed to NDC development for a long time (starting investing in its own NDC merchandising solutions in 2013); (ii) it evolved its GDS into the Amadeus Travel Platform, which is

¹⁰⁸⁷ [REDACTED].

¹⁰⁸⁸ [REDACTED].

¹⁰⁸⁹ [REDACTED].

¹⁰⁹⁰ [REDACTED].

¹⁰⁹¹ [REDACTED].

¹⁰⁹² Amadeus response to CMA issues statement, paragraph 4.1.

¹⁰⁹³ [REDACTED].

equipped to handle NDC at scale; (iii) it achieved the highest certification currently available both as an IT provider and as an aggregator.¹⁰⁹⁴

- *Datalex*

10.58 Datalex told us that it [REDACTED].¹⁰⁹⁵ As discussed above, Datalex currently faces financial difficulties.

- *OpenJaw*

10.59 OpenJaw provided [REDACTED] and [REDACTED] which showed that [REDACTED]. OpenJaw's internal documents showed that it [REDACTED]. In one of the documents, OpenJaw stated that [REDACTED].¹⁰⁹⁶

- *PROS*

10.60 PROS told us that it had plans to improve its product features and functionality in both merchandising and distribution in the coming years, but these are not a top strategic priority for PROS overall and it faces difficulties in expanding as discussed in paragraph 10.28 above.¹⁰⁹⁷

- *ITA*

10.61 [REDACTED].¹⁰⁹⁸ [REDACTED]¹⁰⁹⁹ ITA told us that it would initially target existing customers of its shopping tool but noted that many of these customers already had NDC API agreements with Farelogix.¹¹⁰⁰

- *Travelfusion*

10.62 Travelfusion initially submitted that [REDACTED].¹¹⁰¹ In response to our follow up requests for information,¹¹⁰² Travelfusion told us that:

(a) [REDACTED].

(b) [REDACTED].

¹⁰⁹⁴ Amadeus' response to the Provisional Findings, paragraph 4.7.

¹⁰⁹⁵ [REDACTED].

¹⁰⁹⁶ See Appendix E and [REDACTED], provided in response to CMA phase 2 questionnaire dated 15 November 2019.

¹⁰⁹⁷ [REDACTED].

¹⁰⁹⁸ [REDACTED].

¹⁰⁹⁹ [REDACTED].

¹¹⁰⁰ [REDACTED].

¹¹⁰¹ [REDACTED].

¹¹⁰² [REDACTED].

(c) [REDACTED].

10.63 Travelfusion has not been able to provide any internal documents setting out its plans in greater detail, despite being formally requested to do so by the CMA. We accordingly place less weight on its statements of intent compared to the evidence of expansion from other competitors, which have been substantiated by specific documentary plans to allow us to carry out the assessment with a greater degree of certainty.

Overall summary of competitor evidence in distribution

10.64 As with merchandising, we have used competitor evidence on the competitive landscape to assess the current state of competition in the market for distribution solutions. In summary, having examined competitors' internal documents and submissions and seen which competitors are referred to most frequently, as well as the depth in which they are considered, this evidence indicates that Farelogix, Sabre, Amadeus, Datalex and, to a lesser extent, Travelfusion and OpenJaw are seen as the main providers in distribution today. We note that Travelport is also mentioned among the main providers in the market for distribution solutions by Amadeus. Self-supply by airlines of distribution solutions is not seen as a particularly strong constraint to providers and that the possibility of switching booking volumes to airline.com and Direct Connect is frequently used by airlines as a negotiation lever.

10.65 Concerning competitors' NDC strategies related to distribution, which inform our assessment of dynamic competition in the market (chapter 11), we note that Amadeus is well advanced and is continuing to invest heavily to enhance its ability to integrate NDC content. The submissions and documents that we received from non-GDS competitors show that:

(a) Datalex plans to [REDACTED]. It is facing financial difficulties.

(b) OpenJaw has [REDACTED].

(c) PROS told us that improving its distribution solution was not a strategic priority and it faces difficulties in expanding, as discussed above.

(d) ITA told us that it is not focussing on distribution and it would initially target existing customers of its shopping tool but noted that many of these customers already had NDC API agreements with other providers (eg Farelogix).

- (e) Travelfusion is in the process of introducing an NDC API. It told us that [REDACTED]. We have not seen any plans or strategy documents on how it plans to achieve this.

Competitors' views of the Merger

Evidence from competitor internal documents

10.66 Several providers analysed the impact on their businesses of the Merger in their internal documents. They generally considered it would strengthen Sabre's strategy in developing NDC-compatible solutions in both merchandising and distribution and give it the possibility to cross-sell FLX M to its customers but result in the loss of Farelogix as an independent provider, which some of them see as an opportunity for themselves.

- (a) Amadeus seems to consider Sabre's acquisition of Farelogix both a threat and an opportunity:

(i) Amadeus notes that [REDACTED]. It also notes that Farelogix's independence from a GDS and PSS (which is a key competitive advantage for Farelogix) could be challenged. [REDACTED].¹¹⁰³

(ii) Another presentation states that [REDACTED].¹¹⁰⁴

(b) [REDACTED].¹¹⁰⁵

(c) [REDACTED].^{1106, 1107} OpenJaw told us that the document did not necessarily represent the current view of the company.¹¹⁰⁸

(d) [REDACTED].¹¹⁰⁹

Competitors' submitted views

10.67 When asked about the impact of the Merger on their organisation, on competition and innovation, several competitors have expressed concerns regarding distribution.¹¹¹⁰

¹¹⁰³ [REDACTED].

¹¹⁰⁴ [REDACTED].

¹¹⁰⁵ [REDACTED].

¹¹⁰⁶ [REDACTED].

¹¹⁰⁷ [REDACTED].

¹¹⁰⁸ [REDACTED].

¹¹⁰⁹ [REDACTED].

¹¹¹⁰ See competitors' responses to Phase 2 competitor questionnaire, question 36 'Please indicate whether you have any comments or concerns (and provide reasons) about this merger's impact on: (a) your organisation; (b)

- (a) PROS submitted that it would expect less innovation, as Farelogix was a *'frontrunner for NDC and direct open connect as a cost-effective alternative to legacy GDS providers.'*¹¹¹¹
- (b) [REDACTED] submitted that *'the only established alternative to Amadeus and Sabre'* as well as *'the most important vendor and enabler of direct connect solutions'* would disappear, but some airlines might shift demand to other vendors to avoid working with Sabre.¹¹¹²
- (c) OpenJaw submitted that it has concerns about the Merger's impact on competition in distribution due to the possible bundling of Sabre's products with Farelogix APIs and a *'lack of ability to offer content distribution via a non-Farelogix API.'*¹¹¹³
- (d) [REDACTED] submitted that they are concerned [REDACTED] by the merger's impact on competition and innovation.¹¹¹⁴

10.68 Others were either unconcerned or expressed mixed views.

- (a) On the Merger in general, Amadeus told us that [REDACTED].¹¹¹⁵
 - (i) On merchandising, Amadeus submitted that the Merger will [REDACTED], as the combination of the Parties creates [REDACTED]. It also stated that the Parties are *'complementary in the merchandising space.'*
 - (ii) On distribution, Amadeus submitted that airlines may lose a PSS- and GDS-agnostic player but *'there are other third-party suppliers'*¹¹¹⁶ and Farelogix is only active in indirect distribution as a provider to airlines of APIs that enable direct connect, which is not a particularly novel model [REDACTED]. It also submitted that it does not see Farelogix as [REDACTED].¹¹¹⁷
- (b) [REDACTED].¹¹¹⁸

competition in the supply of (i) Merchandising modules and (ii) Services for indirect content distribution; and (c) innovation in the industry.' and Phase 1 competitor questionnaire, question 28 (same question with only terminology changes: *'non-core PSS'* instead of *'merchandising'* modules and *'content distribution'* instead of *'services for indirect content distribution.'* Competitors that were asked this question in Phase 1 were not asked again in Phase 2. Combining Phase 1 and Phase 2 responses, 12 providers replied.

¹¹¹¹ [REDACTED].

¹¹¹² [REDACTED].

¹¹¹³ [REDACTED].

¹¹¹⁴ [REDACTED].

¹¹¹⁵ [REDACTED].

¹¹¹⁶ [REDACTED].

¹¹¹⁷ Amadeus' response to the Issues Statement, section 3.

¹¹¹⁸ [REDACTED].

- (c) ITA, which currently focuses on shopping solutions and does not have an NDC API product yet, submitted that it is not concerned by the Merger as it competes *‘only moderately with the Parties’* and sees *‘limited overlap’* between them in non-core PSS solutions. On distribution and innovation, ITA submitted that it is not concerned but noted that *‘as of today Farelogix is the primary non GDS/PSS provider.’*¹¹¹⁹
- (d) SITA submitted that it is not concerned as it does *‘not compete with Farelogix functionality or address the same markets in any significant way’*.¹¹²⁰
- (e) [REDACTED] either noted that this merger should be *‘carefully monitored’* [REDACTED] or that they are not affected by the potential effects on competition [REDACTED].^{1121, 1122}
- (f) [REDACTED] submitted that the Merger will have *‘no impact’* but did not provide any reasoning.¹¹²³

Overall summary of competitors’ views of the Merger

10.69 In summary, we note that competitors’ views on the Merger depend on how directly their own business will be affected. In particular, IT providers most closely situated to Farelogix’s offering in both merchandising and distribution (ie OpenJaw and PROS) expressed concern, either in relation to innovation or to their ability to compete to the merged entity. Amadeus, which is closely situated to Sabre in both merchandising and distribution, did not express concern. Others either submitted they do not see themselves as close competitors to the Parties or that they do not expect to be impacted.

10.70 On merchandising, we note that competitors generally consider that the Merger would strengthen Sabre’s strategy in developing NDC-compatible merchandising solutions and give it the possibility to cross-sell Farelogix’s merchandising product to its customers. However, several noted that it would result in the loss of Farelogix as an independent provider.

10.71 On distribution, we note that competitors generally consider that the Merger would strengthen Sabre’s strategy in developing NDC-compatible distribution solutions but also that it would result in the loss of Farelogix as an independent provider of direct connects.

1119 [REDACTED].
 1120 [REDACTED].
 1121 [REDACTED].
 1122 [REDACTED].
 1123 [REDACTED].

Evidence from airlines

10.72 Airlines are customers of both Parties. It is primarily their decision making and preferences that drive the competitive process that leads to the development, quality and price of the solutions provided by the Parties.¹¹²⁴ Understanding their demand characteristics and preferences is therefore important for the merger assessment.

10.73 This section presents the evidence gathered from airlines through their responses to our questionnaires, calls and their internal documents. These airlines serve a material proportion of passengers globally as well as in the UK.¹¹²⁵

10.74 The section is structured as follows.

- (a) First, we present evidence regarding airlines' adoption of the NDC standard and procurement of related solutions. This applies generally to both merchandising and distribution markets.
- (b) Second, we consider evidence specific to merchandising, including airlines' views on the strengths of the Parties relative to competing suppliers, and on self-supply.
- (c) Third, we examine evidence relating to distribution, including airlines' use of distribution channels such as GDS, GDS bypass, GDS pass-through and airline.com, and their views on suppliers' strengths, and on self-supply.
- (d) Fourth, we examine airlines evidence on their preference for suppliers of merchandising and/or distribution solutions that are independent of the GDS or PSS.
- (e) Fifth, we consider airlines' general views on the Merger.
- (f) Sixth, we consider the Parties' submissions specific to airline evidence.
- (g) Finally, we provide a summary of the conclusions we draw from the airline evidence.

¹¹²⁴ For example, see section 'Airlines' evaluation of merchandising suppliers' and Appendix F which set out how airlines evaluate suppliers of NDC solutions in RFP processes.

¹¹²⁵ These 35 airlines together account for 45% of passengers to/from and within the UK (based on CAA Airport Statistics data 2018). See Appendix F, section 'Introduction' for further details on the coverage of our questionnaires.

Airlines' adoption of the NDC standard and related NDC-compatible solutions

- 10.75 This section considers the extent of airlines' adoption of the NDC standard and related merchandising, distribution and other retailing solutions. This informs our understanding of the importance of NDC-compatible solutions and their implementation progress, in light of airlines' changing business models as discussed in chapter 7.¹¹²⁶
- 10.76 The majority of airlines responding to our questionnaires, including major full-service carriers active in the UK, and regional or national carriers across the globe, told us they have adopted or plan to adopt the NDC standard. Many of these have already made investments in related NDC-compatible solutions in distribution, merchandising, and/or other retailing functions, and consider these to be important.
- (a) The significant majority of airlines (including all Tier 1 airlines) said they have developed or are developing capabilities to adopt the NDC standard; only four smaller regional airlines said they have no such plan.¹¹²⁷ In particular, 13 airlines have already made or committed investments to do so for the next few years.¹¹²⁸
- (b) Nearly all airlines said NDC-compatible solutions are important to them,¹¹²⁹ frequently identifying better customer experience (ie personalisation and differentiation) and airline control of the offer as the benefits.
- 10.77 In this context, Tier 1 airlines appear to be more advanced than smaller airlines in adopting NDC distribution solutions. Some large airlines told us that they support IATA's 'NDC Leaderboard' roadmap and NDC@Scale,¹¹³⁰ or are working towards the goal to achieve at least 20% of their sales in the indirect channel powered by an NDC API by the end of 2020.¹¹³¹ Three large airlines reasoned that NDC APIs provide alternative distribution channels to GDSs, which can encourage innovation in distribution, improve their customer offerings, and gain more control over the offer creation.¹¹³²

¹¹²⁶ Further details are set out in Appendix F, sections 'Airline views on NDC standard and its adoption' and 'Airline content distribution strategies'.

¹¹²⁷ [REDACTED]. The following airlines said they have no such plans: [REDACTED].

¹¹²⁸ [REDACTED].

¹¹²⁹ Out of these, nine airlines said it is crucial or very important in achieving their future goals: [REDACTED].

¹¹³⁰ NDC@Scale is a set of criteria that will demonstrate that airlines (and their IT providers), aggregators and travel sellers have a minimum set of recognized capabilities to drive volumes of NDC transactions towards 2020. (IATA website: <https://www.iata.org/en/programs/airline-distribution/ndc/ndc-scale/>, accessed 27.01.2020).

¹¹³¹ [REDACTED].

¹¹³² [REDACTED].

10.78 We have also reviewed the request for proposal (RFPs) from 12 airlines to suppliers of NDC-compatible solutions in the last three years, to understand what airlines require to fulfil their NDC strategy, and how they procure these.¹¹³³ We found that there seems to be a trend for airlines to procure merchandising and/or pricing functions together with distribution (NDC API). For example, seven out of 12 RFPs relating to NDC solutions included at least merchandising and distribution.¹¹³⁴ However, this approach is not universal as some RFPs focus on specific functions (eg merchandising only).¹¹³⁵

Evidence from airlines relating to merchandising

10.79 In chapter 7, we explained that merchandising, including the sale of personalised dynamic offers and ancillaries, is an important element under airlines' new business models. This section summarises the evidence from airlines regarding:

- (a) evaluation of suppliers when airlines procure merchandising solutions;
- (b) their responses to our questionnaires/calls on supplier strengths;
- (c) their ability to self-supply.

10.80 As explained in paragraph 10.78, some airlines procure merchandising and distribution solutions together and/or they evaluate suppliers of both solutions collectively. Where this is the case, we present the evidence in this section.

Airlines' evaluation of merchandising suppliers

10.81 In chapter 8 we have analysed bidding data which provides an overview of the frequency of suppliers bidding for and winning merchandising contracts. This section further considers the qualitative evidence on airlines' choice of supplier, including the reasons for their choice or the scores they gave to individual suppliers. We have reviewed the evaluation of supplier for seven airlines which procured merchandising solutions in the last three years using RFPs or negotiations.¹¹³⁶

¹¹³³ See Appendix F, section Airline recent RFPs, for further details.

¹¹³⁴ [REDACTED].

¹¹³⁵ For example, [REDACTED] in merchandising; [REDACTED] in NDC API and direct connect but not in offer creation modules; [REDACTED] on merchandising and pricing solutions (as they already had NDC API); [REDACTED] in merchandising, but [REDACTED]; and [REDACTED] in distribution. Also, an airline may not buy all solutions included in the RFP from the same supplier (eg [REDACTED]).

¹¹³⁶ Further details are provided in Appendix F, section 'Airline recent RFPs'.

10.82 Two very large airlines evaluated suppliers of standalone merchandising solutions. Both have chosen Farelogix.

(a) [REDACTED] evaluated Farelogix and [REDACTED] and chose Farelogix, whereas [REDACTED] did not qualify because ‘their solution did not meet up to the requirements’.¹¹³⁷ It did not evaluate other suppliers. [REDACTED].¹¹³⁸

(b) [REDACTED],¹¹³⁹[REDACTED].¹¹⁴⁰ [REDACTED].

10.83 The following five airlines evaluated suppliers for NDC solutions including both merchandising and distribution together, among other retailing functions.

(a) SAS (a Tier 1 airline in Scandinavia, 2017-2018) evaluated [REDACTED].¹¹⁴¹ [REDACTED]¹¹⁴²

(b) TAP (a Tier 3 airline in Portugal, 2017) evaluated Amadeus, Datalex, Farelogix, OpenJaw, PROS and Travelfusion. Datalex and [REDACTED] obtained the highest overall score, but TAP selected [REDACTED],¹¹⁴³ [REDACTED].¹¹⁴⁴ Farelogix was placed ahead of [REDACTED], while [REDACTED].

(c) [REDACTED].¹¹⁴⁵ [REDACTED].

(d) Etihad (2017, a Tier 2 airline) received proposals from [REDACTED], Datalex and Farelogix. It gave Farelogix the highest score of [REDACTED] against Datalex ([REDACTED]), which was the only other shortlisted bidder.

(e) [REDACTED].

10.84 We consider the airlines’ RFP evaluation evidence above shows that Farelogix has a strong reputation in merchandising and in NDC solutions, is regularly shortlisted by airlines in their evaluation of suppliers and has the ability to win contracts to supply very large airlines. Amadeus, Datalex and OpenJaw were also regularly among the shortlisted suppliers, while other providers are rarely among the shortlisted suppliers.

¹¹³⁷ [REDACTED]

¹¹³⁸ [REDACTED]. See Appendix F, section ‘Airline recent RFPs’ for further details.

¹¹³⁹ [REDACTED].

¹¹⁴⁰ [REDACTED].

¹¹⁴¹ [REDACTED].

¹¹⁴² [REDACTED].

¹¹⁴³ [REDACTED].

¹¹⁴⁴ TAP explained that their decision to go on with [REDACTED] was related to [REDACTED].

¹¹⁴⁵ [REDACTED].

Airlines' submitted views on merchandising supplier strength

10.85 We asked airlines for their views on Farelogix, Sabre and suppliers of merchandising solutions other than the Parties (to which 21 airlines responded). We also asked airlines to identify the suppliers that they consider will become stronger or weaker competitor to either of the Parties in the next five years, based on their expectations of developments in the industry (to which 19 responded). Their responses are summarised for each supplier below. Further details are set out in Appendix F, section 'Airline responses on the strength of merchandising and distribution suppliers'.

- (a) **Farelogix.** Airlines in general noted Farelogix's broader functionality and capabilities in merchandising compared to other suppliers. This includes 'innovative nature' and 'leading in developing technology' in NDC, merchandising and related services.¹¹⁴⁶ Five airlines described it as 'disruptor'.¹¹⁴⁷ Five responding airlines identified Farelogix as becoming stronger in merchandising,¹¹⁴⁸ due to reasons such as 'established position in the industry' and 'forward thinking'.¹¹⁴⁹ No airline identified Farelogix as becoming weaker.
- (b) **Sabre.** Airlines typically noted that Sabre has a less developed merchandising solution and is PSS-dependent.¹¹⁵⁰ For example, Lufthansa told us that Sabre 'has far less advanced NDC technology and features than Amadeus ... [and] would be several years behind Amadeus should Sabre begin to invest in NDC.'¹¹⁵¹ However, six responding airlines identified Sabre to become stronger in merchandising,¹¹⁵² because of its established role as GDS and a PSS, substantial financial resources and a valued merchandising product. One large European airline made these comments in anticipation of the Merger,¹¹⁵³ while a Latin American airline¹¹⁵⁴ said Sabre would be stronger if there was competition from

¹¹⁴⁶ Based on our analysis of airline responses to the questionnaires, described in the paragraphs below, with further details provided in Appendix F.

¹¹⁴⁷ [REDACTED]

¹¹⁴⁸ [REDACTED] one airline nuanced that Farelogix would become stronger if there is competition between Sabre, Farelogix and Amadeus. In addition to these airlines, [REDACTED] submitted that jointly Sabre and Farelogix will become stronger; we did not include [REDACTED] in the count.

¹¹⁴⁹ Note that the question asked which suppliers would become stronger/weaker competitors to either of the Parties and therefore the numbers of airlines identifying either Farelogix or Sabre would be understated as airlines are likely to have focused on providers they considered to be competitors to the Parties.

¹¹⁵⁰ Based on our analysis of airline responses to the questionnaires, described in the paragraphs below, with further details provided in Appendix F.

¹¹⁵¹ Summary of 3rd party hearing with Lufthansa, p.5

¹¹⁵² Responses to our airline questionnaire: [REDACTED]. In addition to these airlines, [REDACTED] submitted that jointly Sabre and Farelogix will become stronger; we did not include [REDACTED] in the count.

¹¹⁵³ [REDACTED]

¹¹⁵⁴ [REDACTED]

Farelogix and Amadeus. One large airline mentioned Sabre among suppliers becoming weaker because ‘their innovation pace is too slow.’¹¹⁵⁵

- (c) **Amadeus** is identified by nearly all (20) responding airlines as an alternative to the Parties.¹¹⁵⁶ Three large airlines considered Amadeus in particular as a close competitor to Farelogix,¹¹⁵⁷ while other airlines noted Farelogix’s broader functionality and more flexible offering than Amadeus’. Nearly all (17) responding airlines identified Amadeus as becoming stronger in merchandising due to their established position as PSS, mature capabilities and capital investments. No airline identified Amadeus as becoming weaker.
- (d) **Travelport** was rarely mentioned as an alternative to the Parties.¹¹⁵⁸ In the two cases it was mentioned, the airlines considered Farelogix to have better functionality and flexibility than Travelport.¹¹⁵⁹
- (e) **Datalex** was considered an alternative to the Parties by 13 responding airlines across a range of sizes and geographies.¹¹⁶⁰ Five of these highlighted Farelogix’s advanced capabilities compared to Datalex.¹¹⁶¹ Two airlines ([REDACTED]) identified previous issues with delivery of Datalex product as its weakness.¹¹⁶² Moreover, five¹¹⁶³ airlines identified Datalex to become weaker,¹¹⁶⁴ with two airlines¹¹⁶⁵ specifying this to be due to Datalex recent financial issues and issues around Lufthansa’s contract termination.¹¹⁶⁶ [REDACTED] indicated that the financial issues Datalex faces has detracted them from using Datalex.¹¹⁶⁷ Only one airline identified them as becoming stronger.¹¹⁶⁸

¹¹⁵⁵ [REDACTED]

¹¹⁵⁶ However, four airlines which do not use Amadeus PSS systems indicated Amadeus as an alternative but noted that Amadeus merchandising works best or that it is integrated into Amadeus PSS, indicating that Amadeus product may not be easily available to them.

¹¹⁵⁷ [REDACTED]

¹¹⁵⁸ One airline [REDACTED] identified Travelport among suppliers which could become weaker, but did not provide reasons.

¹¹⁵⁹ [REDACTED]

¹¹⁶⁰ [REDACTED]

¹¹⁶¹ [REDACTED]

¹¹⁶² [REDACTED]

¹¹⁶³ Note that in addition to the five airlines, [REDACTED] identified Datalex as both becoming stronger and weaker explaining that this would depend whether they manage to solve their current financial problems.

¹¹⁶⁴ [REDACTED]

¹¹⁶⁵ [REDACTED]. Other airlines did not provide reasons.

¹¹⁶⁶ See paragraph [REDACTED] regarding submissions from [REDACTED], and Appendix E for further details regarding Datalex’s financial issues.

¹¹⁶⁷ [REDACTED]

¹¹⁶⁸ [REDACTED]

- (f) **OpenJaw** was identified as an alternative to the Parties by seven responding airlines,¹¹⁶⁹ including large European airlines. While three airlines said it is a close alternative,¹¹⁷⁰ others said it is a limited or moderate alternative or noted limited functionalities of OpenJaw relative to Farelogix. Five responding airlines considered OpenJaw would become stronger in merchandising,¹¹⁷¹ with reasons such as ‘getting more NDC contracts’¹¹⁷² and ownership by Travelsky.¹¹⁷³ One¹¹⁷⁴ major airline mentioned OpenJaw among the providers that will become weaker.
- (g) **PROS** was considered to be an alternative to the Parties by 12 responding airlines.¹¹⁷⁵ However, the airlines which compared PROS’ offering to Farelogix generally said PROS lags behind Farelogix in functionality and noted that PROS merchandising solution is still under development.¹¹⁷⁶ Five responding airlines submitted that PROS will become stronger,¹¹⁷⁷ highlighting its recent acquisition, effort to improve its solution and revenue optimisation capabilities. One airline submitted it will become weaker as its merchandising solutions need to be ‘flexible and easily integrated into PSS’.¹¹⁷⁸
- (h) **ITA/Google** was referred as an alternative by six responding airlines, most of which are in North America.¹¹⁷⁹ While two large US airlines said ITA/Google is a close alternative to Farelogix,¹¹⁸⁰ other airline comments indicated ITA/Google’s limited product offering. Only a few (three) responding airlines told us that ITA will become stronger in merchandising in future,¹¹⁸¹ [REDACTED].¹¹⁸² One airline said ITA/Google will become weaker as the airline is not ‘sure they will continue to invest in their products’.¹¹⁸³
- (i) **Other providers (SAP, IBS, JR Technologies, TP Connects)**.¹¹⁸⁴ Airlines rarely referred to other providers as alternatives for merchandising

¹¹⁶⁹ [REDACTED]. [REDACTED] listed OpenJaw as an alternative but submitted that it has ‘not evaluated OpenJaw, Datalex, Google/ITA, IBM, Expedia or DXC in regard to non-core PSS services, and cannot comment on the extent to which they compete with Sabre and Farelogix’ and hence we have not counted its response.

¹¹⁷⁰ [REDACTED]

¹¹⁷¹ [REDACTED]

¹¹⁷² [REDACTED]

¹¹⁷³ [REDACTED]

¹¹⁷⁴ [REDACTED]

¹¹⁷⁵ [REDACTED]. Also [REDACTED], but it also submitted that they have not done functional comparison.

¹¹⁷⁶ [REDACTED] noted ‘weak alternative, [REDACTED] noted that ‘improving quickly’; [REDACTED] that it is their ‘new offering in scope’.

¹¹⁷⁷ [REDACTED]

¹¹⁷⁸ [REDACTED]

¹¹⁷⁹ [REDACTED]

¹¹⁸⁰ [REDACTED]

¹¹⁸¹ [REDACTED]

¹¹⁸² Paragraph 10.83(c)

¹¹⁸³ [REDACTED]

¹¹⁸⁴ DXC, IBM and Expedia were mentioned by [REDACTED], but it submitted that it has not evaluated their products [REDACTED].

solutions and provided limited commentary. SAP was referred as an alternative to by three airlines.¹¹⁸⁵ Two airlines'¹¹⁸⁶ comments indicated that it is a weak or inferior alternative to Farelogix, and another airline¹¹⁸⁷ noted that [REDACTED]. IBS was referred as an alternative by one airline,¹¹⁸⁸ but it did not provide any comments. One airline referred to JR Technologies and TP Connects as an alternative and its response indicated that they have a comparable technology to Farelogix.¹¹⁸⁹ JR Technologies was referred for a second time as an alternative by [REDACTED], [REDACTED].¹¹⁹⁰ The suppliers discussed in this paragraph were not in general referred by airlines as providers which could become stronger in future.¹¹⁹¹

10.86 The above shows that Farelogix is considered by airlines as the strongest provider of merchandising solutions, having mature capabilities, followed by Amadeus. PROS and Datalex were identified as weaker alternatives, with Datalex considered becoming even weaker in the future. OpenJaw and ITA/Google were considered as more limited alternatives. While there is a list of other providers, they are not in general considered as alternative suppliers.

Airlines' submitted views on self-supply of merchandising solutions

10.87 This section sets out airline views on self-supply of merchandising solutions; further details are provided in Appendix F, section 'Self-supply'. Of all the 35 responding airlines, only three airlines (which are Tier 1 or 2) self-supply merchandising solutions.¹¹⁹² Of these, one uses its in-house solutions in combination with Sabre's,¹¹⁹³ one has recently outsourced to Farelogix,¹¹⁹⁴ and one large airline expects to procure a third-party solution to replace its in-house tools 'to deliver increased functionality and a lower cost of ownership' and considers Farelogix as a 'strong contender'.¹¹⁹⁵

¹¹⁸⁵ [REDACTED] (the airline referred to SAP/PROS), [REDACTED]

¹¹⁸⁶ [REDACTED]

¹¹⁸⁷ [REDACTED]

¹¹⁸⁸ [REDACTED]

¹¹⁸⁹ This was indicated by [REDACTED]

¹¹⁹⁰ Note that [REDACTED] (Paragraph [REDACTED] and Appendix F, section 'Airline recent RFPs').

¹¹⁹¹ Except for JR Technologies and TP Connects. [REDACTED] submission indicates that it considered JR Technologies and TP Connects to be among providers becoming a stronger competitor in the future in merchandising ([REDACTED]), while [REDACTED] considered JR Technologies to be among competitors becoming stronger in merchandising.

¹¹⁹² [REDACTED]

¹¹⁹³ [REDACTED]

¹¹⁹⁴ Farelogix will replace part of its B2C e-commerce solution [REDACTED]

¹¹⁹⁵ [REDACTED]

10.88 Eight airlines said they have not considered self-supply of merchandising solutions.¹¹⁹⁶ The reasons included they ‘do not have the resources to produce the [merchandising] tool, drive continuous innovation and provide the proper support’, whilst ‘external vendors can leverage specialized skill set’;¹¹⁹⁷ or that it ‘requires significant resource investment for maintenance and regular development’ which is not their ‘core competency’.¹¹⁹⁸

10.89 None of the airlines said they have plans to develop their own merchandising solutions. However, six airlines (of various tiers) said that they would consider self-supply,¹¹⁹⁹ some were caveated with cost and skill considerations. The following reasons were provided:

- (a) [redacted] said it has chosen to outsource over self-supply because of time to the market (as building would have taken several years and costed several millions).¹²⁰⁰
- (b) [redacted] said it ‘would be able to develop these in-house if we had the right knowledge and resources.’¹²⁰¹
- (c) Lufthansa Group ‘would consider to develop in-house (e.g. with Lufthansa Systems) in case of issues with the current provider or if there is the opportunity to develop a product that can be sold to other airlines.’¹²⁰²

10.90 The above shows that airlines generally do not consider self-supply of merchandising solutions to be a credible option.

Evidence from airlines relating to distribution

10.91 This section summarises the evidence from airlines specific to distribution. We have considered airlines’ distribution strategy and their current and future use of various distribution channels. This evidence assists our understanding of the relative significance of each distribution channel, how they are expected to change in future, and accordingly, the significance of Farelogix, Sabre and other suppliers of distribution solutions. We have summarised the evidence on:

¹¹⁹⁶ [redacted]. A few other airlines responded in more general terms and submitted that they have considered, but decided against, developing non-core PSS modules in general: [redacted]

¹¹⁹⁷ [redacted]

¹¹⁹⁸ [redacted]

¹¹⁹⁹ [redacted]

¹²⁰⁰ [redacted]

¹²⁰¹ [redacted]

¹²⁰² [redacted]

- (a) the past and present shifting of volumes from the indirect GDS channel to the indirect GDS bypass channel and/or the direct airline.com channel;
- (b) airlines' views on their expected use of various distribution channels;
- (c) airlines' negotiations with GDSs and airline evidence on pricing;
- (d) airlines' submitted views on the overall strength of suppliers of distribution solutions; and
- (e) airline evidence on self-supplying distribution solutions.

Volume shift from GDS to GDS bypass and/or airline.com

10.92 British Airways (which has self-supplied its NDC API, discussed further later in this chapter, save as regards Interline Segments (see chapter 5 above)) and Lufthansa (for whom Farelogix provides an NDC API) are two major European airlines which have adopted GDS bypass using NDC API as a means to distribute content for several years. We have considered how the shares of bookings on British Airways and Lufthansa have changed, in particular since these airlines introduced surcharges on the GDS or withdrew content from the GDS. We found that both airline.com and GDS bypass have gained shares from the GDS, for these airlines.¹²⁰³

- (a) British Airways introduced a technology charge on bookings made on GDS in November 2017. Between Q4-2017 and Q3-2019, [REDACTED]¹²⁰⁴ [REDACTED].
- (b) Lufthansa withdrew content from GDS in April 2018, after which it saw an increase in the share of bookings through GDS bypass by 5pp and increase in airline.com by 2pp between Q1-2018 and Q3-2019, at the expense of the GDS. Prior to this, Lufthansa introduced Distribution Cost Charge (ie a charge for bookings made on GDS) in September 2015. Considering this longer period between Q3-2015 and Q3-2019, the GDS share has decreased by 18pp (from 71% to 53%), and the share of airline.com has [REDACTED] and GDS bypass [REDACTED].

10.93 Internal documents of [REDACTED] show that their strategies are to increase usage of distribution solutions based on the NDC API and airline.com, away from the traditional GDS platform.¹²⁰⁵

¹²⁰³ See Appendix F, section 'Airline changing mix of distribution channels' for further details.

¹²⁰⁴ The difference does not show up as 6pp due to rounding.

¹²⁰⁵ See Appendix F, section 'Airline changing mix of distribution channels' for further details.

(a) An IAG Board update in 2018 states that [REDACTED].¹²⁰⁶ [REDACTED].¹²⁰⁷

(b) A [REDACTED] 2019 3-year plan states that direct channel is its preferred sales channel.¹²⁰⁸ [REDACTED] plans shifting more bookings from GDS to direct channels and notes that if [REDACTED] decides to introduce GDS surcharges, then it would need to offer an alternative booking solution such as direct connect (GDS bypass) as an alternative to GDS for travel agents to make bookings.¹²⁰⁹

10.94 The above shows that airline.com plays a role in winning volumes from the GDS platform. For airlines that have already adopted or are adopting NDC APIs, GDS bypass also plays a role and is expected to continue to do so.

Airlines' submitted views on expected use of various distribution channels

10.95 We asked airlines about their views on the expected use of distribution channels in future, to which 29 airlines responded. They generally expect to reduce the share of GDS (although this would remain an important channel) and increase the use of GDS bypass and airline.com. Many also plan on using or growing GDS pass-through. Further details are set out in Appendix F, section 'Airline changing mix of distribution channels.'

- **GDS**

10.96 Nearly all 29 responding airlines told us that they project reducing the share of bookings through GDS.¹²¹⁰ Some airlines noted that GDSs may become more of an aggregator and no longer creating the offer,¹²¹¹ while seven airlines (including large European and US airlines) indicated that GDSs will stay important in the indirect channel as they provide the ability to distribute at scale or are preferred by TMCs.¹²¹² Five large European and North American airlines noted that GDSs have been slow in innovating and developing technology (based on the EDIFACT standard, with one describing it 'outdated'¹²¹³), which limits their ability to enhance customer offer to respond to customer needs.¹²¹⁴

¹²⁰⁶ [REDACTED]

¹²⁰⁷ [REDACTED]

¹²⁰⁸ [REDACTED]

¹²⁰⁹ [REDACTED]

¹²¹⁰ Responses to our airline questionnaire: [REDACTED] submitted that they plan to grow GDS, but the responses indicate that in absolute volume rather than grow the share of bookings; [REDACTED] did not indicate their usage plans of GDS. [REDACTED] submitted that they plan to grow GDS (but they also indicate that they plan to grow at least one other channel).

¹²¹¹ [REDACTED]

¹²¹² [REDACTED]

¹²¹³ [REDACTED]

¹²¹⁴ [REDACTED]

- *GDS bypass*

10.97 Nearly all 29 responding airlines project increasing their usage of both direct connect and aggregators (and reduce usage of GDS),¹²¹⁵ some noting that it has created competitive pressure on the GDS to adapt.¹²¹⁶

(a) A range of airlines, including large and mid-sized ones,¹²¹⁷ noted that having a GDS bypass has brought competitive pressure on GDSs and encouraged them to develop their NDC solutions. They reasoned that direct connect introduces competitive pressure on indirect distribution (and the GDSs that are so entrenched in the necessary content flow between airlines, travel agents and passengers).¹²¹⁸ Another said ‘if GDS do not continue to invest in technology enablement for NDC, they expect to see more interest in GDS bypass’.¹²¹⁹

(b) In relation to aggregators, IAG told us that ‘it would be primarily aggregators that would drive most of our NDC value’, and that it does not expect GDS bypass to fully replace traditional GDS distribution at least in the short/medium term.¹²²⁰ [X] seeks to grow the use of aggregators ‘to be double digits in the next 5 years’.

- *GDS pass-through*

10.98 Slightly more than half of the 29 responding airlines said they plan to either start using or grow GDS pass-through.¹²²¹ Three airlines qualified that this would be the case only if GDSs keep innovating and adopting the NDC standard.¹²²² As noted in paragraph 10.97 (a) above, airlines have told us GDS pass-through is part driven by GDS bypass.

- *Airline.com*

10.99 Nearly all of 29 responding airlines plan to grow their share of bookings through airline.com,¹²²³ but some larger airlines noted that direct channels

¹²¹⁵ Only [X] submitted that it plans to keep share of direct connect as it is currently, but grow share through aggregators. All other airlines indicated that they plan to grow both or either of the channels; except the following airlines which did not indicate their plans towards GDS bypass: [X]

¹²¹⁶ Also see Appendix F, section ‘GDS responses and Farelogix’s role in airlines achieving their distribution goals.’

¹²¹⁷ [X]

¹²¹⁸ [X]

¹²¹⁹ [X]

¹²²⁰ [X]

¹²²¹ [X]

¹²²² [X]

¹²²³ Three airlines did not provide response to our questionnaire [X]

are not suitable for all customers and there might be limited substitution with the indirect channel.¹²²⁴ For example, IAG told us that there are some products¹²²⁵ that they ‘do not offer on our website and that we do offer through the GDS and now via the NDC. So, the website would have only been a small alternative’¹²²⁶ and ‘don’t expect travel agencies to book on the B2C website.’¹²²⁷ American Airlines told us that ‘indirect channels provide access to additional customers that choose not to use the direct channel.’¹²²⁸ Similarly, another airline noted that airline.com ‘channel will never replace completely GDS distribution.’¹²²⁹

Evidence from airlines negotiations with GDS and on pricing

10.100 Airline [REDACTED] two to ten [REDACTED].¹²³⁰ The extent to which different outside distribution options or suppliers have been used as a negotiating lever can provide insights into understanding their degree of constraints on the GDS.

10.101 We asked airlines to identify the levers they used in negotiating contractual terms with GDS in the last three years, to which 22 airlines responded.¹²³¹ A number of airlines told us they have used GDS bypass as a negotiating lever when they renew their contracts with the GDS, in addition to the use of airline.com.

(a) 13 airlines (including 8 Tier 1 airlines) have used the threat of utilising direct connect as a lever in negotiating with the GDS,¹²³² of which six airlines said they referenced Farelogix specifically.¹²³³ Nine of these 13 airlines also used airline.com as a lever.¹²³⁴ Most airlines using both levers rank direct connect as equally important as airline.com.¹²³⁵

(b) Five other airlines said they used airline.com but not direct connect as a lever.¹²³⁶

¹²²⁴ [REDACTED]. We note chapter 6 discusses how the growth of airline.com can be a result of capturing booking volumes from a range of other sources (eg call centres) and not necessarily simply from GDS.

¹²²⁵ Such as special rates for corporate customers or package holiday deals to travel agents.

¹²²⁶ [REDACTED]

¹²²⁷ Response to our putback

¹²²⁸ [REDACTED]

¹²²⁹ [REDACTED]

¹²³⁰ [REDACTED].

¹²³¹ Further details of the responses are set out in Appendix F.

¹²³² [REDACTED]

¹²³³ [REDACTED]

¹²³⁴ [REDACTED]

¹²³⁵ Seven out of nine ranked both levers as equally important - [REDACTED]

¹²³⁶ [REDACTED]

- (c) Four other airlines did not use either airline.com or direct connect as a lever.¹²³⁷

10.102 We have also considered evidence in airline internal documents and testimony at the Delaware Proceedings. We found that some airlines have used GDS bypass, including the solutions supplied by Farelogix, to lower their distribution costs and improve their bargaining positions vis-à-vis the GDSs:

- (a) [REDACTED].¹²³⁸
- (b) Delta testified that having Farelogix as a GDS alternative improved Delta's bargaining position.¹²³⁹
- (c) [REDACTED].¹²⁴⁰
- (d) An IAG internal document (2019) highlighted that the move to NDC connections would 'result in lower distribution costs in the long-term with greater airline control and faster innovation'; [REDACTED].¹²⁴¹
- (e) An American Airlines document (2019) states [REDACTED].¹²⁴²

Airlines' submitted views on strength of distribution solution suppliers (NDC API and GDS)

10.103 This section summarises airlines' views on the strength of distribution solutions suppliers. We asked airlines for their views on the suppliers which could supply them with services required to establish GDS bypass and their capabilities (to which 21 airlines responded). We also asked airlines to identify suppliers which they expect to become stronger or weaker than either of the Parties in the next five years (to which 23 airlines responded). Their responses are summarised for each supplier below.¹²⁴³ Further details are set out in Appendix F, section 'Airline responses on the strength of merchandising and distribution suppliers'.

- (a) **Farelogix:** Airlines typically noted that Farelogix has advanced connection and NDC API capabilities, experience with integration to PSS and travel

¹²³⁷ [REDACTED]

¹²³⁸ [REDACTED]

¹²³⁹ [REDACTED]

¹²⁴⁰ [REDACTED]

¹²⁴¹ [REDACTED]

¹²⁴² [REDACTED]

¹²⁴³ Based on questionnaires across both Phase 1 and Phase 2.

agency implementation.^{1244,1245} Two airlines also highlighted it has the scale required to serve large airlines.¹²⁴⁶ Seven airlines considered Farelogix will become stronger,¹²⁴⁷ due to the industry transition to an NDC adoption and Farelogix's growth of technology offerings and direct distribution.¹²⁴⁸ Only one airline¹²⁴⁹ submitted that Farelogix (together with Datalex and OpenJaw) might be weaker as they cannot handle 'the rush of demand.'

(b) **Sabre:** Airlines generally consider Sabre to have a strong market position as a GDS;¹²⁵⁰ five have identified it as a supplier to provide GDS bypass services,¹²⁵¹ but responses noted its 'low interest in providing direct connect',¹²⁵² 'dependency on PSS',¹²⁵³ or worse capabilities.¹²⁵⁴ Four airlines said Sabre will become stronger due to its established position and technical and financial resources.¹²⁵⁵ Four¹²⁵⁶ airlines submitted that GDSs would become weaker in their traditional role if they fail to evolve, innovate or adopt NDC, but airlines did not indicate that, among other GDSs, only Sabre would become weaker.

(c) **Amadeus:** 11 airlines referred to Amadeus as a supplier for GDS bypass services.¹²⁵⁷ Of these, four commented that Farelogix has better functionality than Amadeus,¹²⁵⁸ and three prefer Farelogix due to its independence from a GDS,¹²⁵⁹ while two said Amadeus is cheaper.¹²⁶⁰ Most airlines (14) expect Amadeus to become stronger in future due to its technology investments and position as a GDS and PSS provider. In addition, one airline submitted that Amadeus would become stronger than

¹²⁴⁴ Based on our analysis of airline responses to our questionnaires, described in the paragraphs below, with further details provided in Appendix F.

¹²⁴⁵ At the remedies hearing, American Airlines further told us that while an NDC API was based on XML standards, the use of those standards varied by provider; they varied in quality. American Airlines told us that it had studied NDC alternatives and considered that there was a lack of alternatives to Farelogix and only Farelogix provided a suitable alternative for its needs.

¹²⁴⁶ [REDACTED]

¹²⁴⁷ [REDACTED]

¹²⁴⁸ Note that the question asked which suppliers would become stronger/weaker competitors to either of the Parties and therefore the numbers of airlines identifying either Farelogix or Sabre would be understated as airlines are likely to have focused on providers they considered to be competitors to the Parties.

¹²⁴⁹ [REDACTED]

¹²⁵⁰ Based on our analysis of airline responses.

¹²⁵¹ [REDACTED]

¹²⁵² [REDACTED]

¹²⁵³ [REDACTED]

¹²⁵⁴ [REDACTED]

¹²⁵⁵ [REDACTED]. In addition to these airlines, [REDACTED] submitted that Sabre would become stronger than Amadeus if they acquire Farelogix.

¹²⁵⁶ [REDACTED]

¹²⁵⁷ [REDACTED]

¹²⁵⁸ [REDACTED] (although the comparison is to GDS altogether rather than specifically to Amadeus), [REDACTED]

¹²⁵⁹ [REDACTED] (the comparison is to GDS altogether rather than specifically to Amadeus), [REDACTED]

¹²⁶⁰ [REDACTED]

Sabre, unless Sabre acquires Farelogix.¹²⁶¹ One¹²⁶² airline submitted that it will become weaker.¹²⁶³

- (d) **Travelport.** Two airlines in Europe referred to Travelport as a supplier to provide GDS bypass services,¹²⁶⁴ although we note that Travelport does not offer an NDC API solution. More generally regarding its GDS business, 11 airlines expected Travelport to become weaker,¹²⁶⁵ due to reasons such as not having a PSS, is already the weakest among the GDSs, continues to lose market share, and faces financial challenges. Only three airlines expect it to become stronger.¹²⁶⁶
- (e) **Datalex.** 11 airlines considered Datalex as a supplier to provide GDS bypass services,¹²⁶⁷ but of these, four noted Datalex has more limited functionality and offering than Farelogix,¹²⁶⁸ and two also noted Datalex's focus on airline.com.¹²⁶⁹ Seven airlines considered that Datalex would become weaker.¹²⁷⁰ Three airlines¹²⁷¹ submitted that Datalex will become stronger because NDC would lower barriers to entry and because they are among the ones growing in terms of their technology offering.
- (f) **OpenJaw:** Six out of 21 responding airlines considered OpenJaw as a supplier for GDS bypass services.¹²⁷² A large European airline said OpenJaw has a focus on airline.com and in Asian regions, but is 'probably the next best alternative to Farelogix despite a different technical setup.'¹²⁷³ Three large airlines considered its small scale and ownership by Chinese GDS Travelsky as limiting its competitiveness,¹²⁷⁴ but one of these said it is developing quickly.¹²⁷⁵ Three airlines¹²⁷⁶ submitted that OpenJaw will become weaker because it is niche, cannot handle the rush in demand or

¹²⁶¹ [REDACTED]

¹²⁶² [REDACTED]

¹²⁶³ In addition, four airlines [REDACTED] submitted that legacy GDSs will become weaker in their traditional role.

¹²⁶⁴ Responses to our airline questionnaire: [REDACTED] (note that while it named the main GDS as an alternative, the comparison to Farelogix was on general basis, without specifics to Travelport).

¹²⁶⁵ [REDACTED] referred to GDS, among which it named Amadeus, Sabre and Travelport, becoming weaker if they do not innovate and adopt.

¹²⁶⁶ [REDACTED] (stronger compared to Farelogix, but position should not change against Sabre), [REDACTED]

¹²⁶⁷ [REDACTED]

¹²⁶⁸ [REDACTED]

¹²⁶⁹ [REDACTED]

¹²⁷⁰ [REDACTED]

¹²⁷¹ [REDACTED]

¹²⁷² [REDACTED]

¹²⁷³ [REDACTED]

¹²⁷⁴ [REDACTED]

¹²⁷⁵ [REDACTED]

¹²⁷⁶ [REDACTED]

do not have as good technology as Farelogix, but two airlines¹²⁷⁷ submitted that it will become stronger.

- (g) **JR Technologies:** Five airlines¹²⁷⁸ referred to JR Technologies as a supplier to establish services required for GDS bypass, but the comments in general noted its small scale, and only one¹²⁷⁹ airline considered it to be a strong competitor to Farelogix in technology platform business. A representative of United Airlines testified at the Delaware Proceedings that for NDC he [REDACTED].¹²⁸⁰ However, [REDACTED].
- (h) **DXC:** A few¹²⁸¹ airlines referred to DXC as an alternative supplier to provide services to establish GDS bypass, but United¹²⁸² airline noted its limited capabilities, while American Airlines¹²⁸³ submitted that it does not have scale to serve the airline. In the Delaware Proceedings, United Airlines testified that while it has considered DXC¹²⁸⁴ for an NDC API in 2017, it has decided against choosing the supplier due to ‘their capabilities and lack of experience with travel agencies and airlines’.^{1285,1286}
- (i) **IBS, SAP, Interes and PROS:** One¹²⁸⁷ airline referred to IBS, one¹²⁸⁸ to SAP in combination with PROS and two¹²⁸⁹ to Interes, but the airlines noted that Farelogix has superior functionality compared to these providers and a more stable offering than IBS. One more airline¹²⁹⁰ referred to PROS and noted ‘ready API shopping capability, no ordering capability’. In the Delaware Proceedings, United testified that they considered SAP solutions in general (not specifically relating to NDC solutions) to be high risk and ‘based on their lack of experience at time [around 2016] it was not a good fit’ for United at all.^{1291,1292}
- (j) **NDC Exchange:** Three airlines¹²⁹³ referred to NDC Exchange; of these, one¹²⁹⁴ noted that it is a ‘new entrant’, while two other airlines noted lack of

1277 [REDACTED]

1278 [REDACTED]

1279 [REDACTED]

1280 [REDACTED]

1281 [REDACTED]

1282 [REDACTED]

1283 [REDACTED]

1284 DXC is [REDACTED]

1285 [REDACTED]

1286 Similarly, [REDACTED]

1287 [REDACTED]

1288 [REDACTED]

1289 [REDACTED]

1290 [REDACTED] One more airline [REDACTED] referred to PROS in combination with OpenJaw.

1291 [REDACTED]

1292 A representative from the United testified that he met with SAP to look at their Hybris solution [REDACTED]

1293 [REDACTED]

1294 [REDACTED]

retailing functions with [REDACTED]¹²⁹⁵ specifying that it is ‘a true direct connect’ and does not provide shopping, booking, ticketing and merchandising.

(k) **Travelfusion and TPConnects:** A few¹²⁹⁶ airlines referred to Travelfusion and TPConnects as a supplier to establish services for GDS bypass; however, the airlines in general noted that their business is in aggregation. One airline¹²⁹⁷ submitted that they therefore have the ability to consume NDC content from any provider, including Farelogix, while another airline¹²⁹⁸ submitted Farelogix cannot be compared directly.

(l) **ITA:** none considered ITA as a supplier for GDS bypass services.

10.104 In the Delaware Proceedings (which focussed on the Merger’s impact on distribution) American Airlines and United Airlines testified they do not consider IATA certification to be a reliable measure of suitability or capabilities,¹²⁹⁹ nor that it is equivalent to Farelogix, even though a number of providers have IATA certification.¹³⁰⁰ United Airlines said that the number one factor in evaluating NDC providers would be knowledge and experience, and operational capabilities. United Airlines testified that they would feel comfortable that Farelogix can handle their large airline (as they have American Airlines), compared to brand new NDC provider that has not reputation or experience.¹³⁰¹

Airlines’ submitted views on self-supply of distribution solutions (NDC API)

10.105 This section sets out airline views on self-supply of distribution solutions; further details are provided in Appendix F, section ‘Self-supply’. Six airlines, including large and mid-size airlines in Europe and the US told us that they have developed or are developing their NDC APIs in-house,¹³⁰² but that doing so was complicated and involved significant costs and challenges. Those provided detailed reasoning include:

(a) IAG cited ‘no suitable provider’ and ‘desire to be in control of their distribution’ as reasons for self-supplying NDC API solution, although it

¹²⁹⁵ [REDACTED]

¹²⁹⁶ Travelfusion: [REDACTED]; TP Connects: [REDACTED]

¹²⁹⁷ [REDACTED]

¹²⁹⁸ [REDACTED]

¹²⁹⁹ American Airlines testified that they need to know further information beyond IATA certification, such as the size of the company, its resources, their previous experience working with airlines as complex as American, the company’s ability to keep to the levels of innovation required, etc.

¹³⁰⁰ [REDACTED]

¹³⁰¹ [REDACTED]

¹³⁰² [REDACTED]

considered this ‘a complex, expensive process that involves many stages and requires a long time to develop comprehensive functionality.’¹³⁰³

(b) [REDACTED].¹³⁰⁴

(c) Delta, [REDACTED], is currently building NDC APIs but said ‘it is complicated, time-consuming and expensive.’¹³⁰⁵ However, Delta witness in the Delaware proceedings testified that it is currently considering Farelogix for its NDC API but has not made a decision yet.^{1306,1307}

10.106 Seven other airlines told us that, although they would consider developing NDC APIs,¹³⁰⁸ they have chosen to outsource it to a third-party provider generally due to the financial and maintenance costs, and expertise required. Specific reasons provided include:

(a) American Airlines has decided not to self-supply given the significant costs, which it estimated to be \$40 million to develop and \$25 million yearly to maintain and it would take two to three years to develop and another two years to replace connections. It said the required resources for developing NDC solutions would not be available for other projects.¹³⁰⁹

(b) [REDACTED] found that it was ‘very difficult and expensive to keep them updated’ and has chosen Farelogix to provide its NDC API for the full suite to free up its IT resources.¹³¹⁰

(c) In the Delaware Proceedings, a representative of United testified that the lack of [REDACTED] them in building the API and estimates it would take them [REDACTED] to develop their own NDC API.¹³¹¹ United’s internal estimates suggests that it could build its own API [REDACTED].¹³¹² United’s internal document considered in-house NDC solutions to be an alternative, but noted [REDACTED] required significant IT resources’.¹³¹³

(d) [REDACTED] said ‘it is not a software developer enterprise’ and cannot afford the ‘high cost’ to develop, implement, maintain, evolve NDC protocol’.

1303 [REDACTED]
1304 [REDACTED]
1305 [REDACTED]
1306 [REDACTED]
1307 [REDACTED]
1308 [REDACTED] not counted as it submitted ‘not considered at the moment, but open to reconsider if ROI works on’.
1309 [REDACTED]
1310 [REDACTED]
1311 [REDACTED]
1312 [REDACTED]
1313 [REDACTED]

(e) [REDACTED] said it would ‘only consider in-housing if we felt it could deliver a cost or strategic advantage’, compared to capability of external service providers.

10.107 The remaining airlines told us that they have not considered in-house supply, similarly citing a lack of expertise and significant costs as the main reasons.¹³¹⁴

10.108 In response to our Provisional Findings, the Parties submitted that [REDACTED].¹³¹⁵ However, the airlines’ responses above show that several large or mid-size airlines do self-supply, but some other large airlines instead choose to outsource because of the significant costs involved, or the lack of financial resources and expertise to self-supply. Therefore, self-supply of NDC API may be a viable option for some, but not for other airlines. One airline recently abandoned in-house supply and switched to an outsourced solution. Overall, we consider that self-supply is unlikely to be an option for smaller airlines who may find the technical challenges and costs prohibitive.

Preference for a channel-agnostic provider of merchandising and/or distribution solutions

10.109 In airlines’ submitted views and internal documents about suppliers of merchandising and/or distribution solutions, they often consider a supplier’s independence from the GDS and PSS as an important factor. They particularly refer to Farelogix’s independent or channel-agnostic role as its strength and identify the removal of such role as a concern of this Merger. This section summarises this evidence.

(a) IAG [REDACTED].¹³¹⁶

(b) [REDACTED] told us that while Amadeus is a possible alternative to Farelogix in merchandising, it ‘wanted to be less dependent on their current PSS and on GDS’.

(c) Lufthansa told us (in relation to direct connect) that Amadeus Altea is not an option because ‘owned by our PSS and main GDS provider, it provides almost no independent solution from IT perspective to challenge GDS legacy business model’. It also told us that it explored investing in Farelogix because of ‘the perceived value of maintaining an independent player in an otherwise highly concentrated market’.

¹³¹⁴ See Appendix F for further details on airline submissions.

¹³¹⁵ Response to provisional findings, paragraph 5.66 ([REDACTED]).

¹³¹⁶ [REDACTED]

- (d) Etihad expressed a concern relating to this Merger that ‘one of the best non GDS controlled providers are becoming a GDS controlled provider; Farelogix help airlines to facilitate an advanced direct connect to the travel trade’.
- (e) Alitalia told us that Farelogix is ‘pioneer and most successful firm in NDC Offer and Order solutions for GDS by-pass and pass-through’ for its innovative approach and independency from GDS’, and it was concerned that ‘competition in the NDC non-core solutions might be impacted by the acquisition reducing independency of Farelogix decisions and prioritization.’
- (f) [REDACTED] said the Merger ‘removes from the market one of the largest non PSS vendors offering merchandising technology and direct connect NDC technology’.
- (g) [REDACTED] told us that ‘if [FLX-M] were removed from the market as a free-standing solution, most airlines would be challenged to effectively replace it.’
- (h) Norwegian told us that ‘Farelogix could benefit from being an independent, PSS agnostic suppliers, offering “best of breed” components, complementary to the traditional PSS suppliers.’
- (i) [REDACTED] told us that ‘non-GDS affiliated companies such as Farelogix enable non-GDS aggregators to intermediate in the offer of attractive services to customers’.
- (j) [REDACTED].¹³¹⁷
- (k) [REDACTED] said GDSs tend to have a conflict of interest when it comes to providing GDS bypass solutions.

Airlines’ views on the Merger

10.110 About half of the responding airlines expressed concern about the Merger, some told us that they are not concerned and around a quarter either did not express a view or provided ambiguous responses (eg raised concerns conditional on something happening, or noted both advantages and disadvantages). Of the airlines who expressed a view one way or the other, over half expressed concerns about the Merger’s impact on the competition in merchandising, distribution and innovation. The paragraphs

¹³¹⁷ [REDACTED]

below summarise their reasoning, with further details set out in Appendix F, section 'Views on the Merger'.

- (a) Nearly half of airlines (12 out of 27) raised concerns regarding non-core PSS solutions¹³¹⁸ (of which merchandising is a module).¹³¹⁹ The reasons include no viable alternative, removal of a leading and independent (non-PSS) provider of merchandising and NDC solutions, or stifling innovations by Farelogix. Specific comments included that the Merger would make the competition in the already limited space worse,¹³²⁰ remove 'from the market one of the largest non-PSS vendors offering merchandising technology and direct connect technology,¹³²¹ and airlines would be challenged to effectively replace Farelogix's 'leading retailing solution' from the market 'as a free-standing option'.¹³²²
- (b) Two further airlines expressed concerns regarding airline IT services in general,¹³²³ submitting that '[redacted]'¹³²⁴
- (c) About half of airlines [13 out of 27] raised concerns regarding distribution, contending that the Merger would remove an experienced and / or independent supplier in the market with limited competition;^{1325,1326} that Farelogix is the only provider with the required expertise; would provide Sabre with market power which may lead to price increases or reduction in innovation;¹³²⁷ and would remove Farelogix which is viewed as a disruptor.¹³²⁸

10.111 The airlines which expressed concerns also identified the Merger's impact on innovation more generally due to Farelogix's record as an innovator. Reasons cited include 'innovations may slow down due to the influence of Sabre's policy, corporate structure or its position in the

¹³¹⁸ Note that the summary incorporates responses from Phase 1 and Phase 2. In Phase 1 we have asked airlines about their views on the merger's impact on non-core PSS services. The airlines responding to Phase 2 only questionnaire were asked about the merger's impact on merchandising solutions.

¹³¹⁹ [redacted]

¹³²⁰ [redacted]

¹³²¹ [redacted]

¹³²² [redacted]

¹³²³ [redacted]

¹³²⁴ [redacted]

¹³²⁵ [redacted]

¹³²⁶ American Airlines despite submitting to us that overall it is unlikely that Sabre would adopt such a strategy where ' Sabre chose to use Farelogix's technology for other purposes than improving its NDC capabilities or completely shut it down', it expressed concerns that the Merger would remove a 'disruptor' and innovator (the CMA questionnaires, third party hearing, remedies hearing). In addition, American Airlines submitted that Farelogix 'provided competitive pressure for GDS to invest more in developing NDC capabilities and technology.'

¹³²⁷ [redacted]

¹³²⁸ [redacted]

market’,¹³²⁹ ‘Sabre’s different interests or incentives as a GDS’,¹³³⁰ ‘Farelogix has provided competitive pressure for GDS to invest more in developing NDC capabilities’¹³³¹ and Farelogix is a ‘disruptor’.¹³³²

10.112 [X] expressed concerns on non-core PSS services, distribution and innovation. In particular [X] submitted that the number of providers which have a competitive offer for NDC, direct connect and merchandising solutions is limited. Farelogix is one of the strongest providers that can compete with the leading PSS and GDS providers.

10.113 On the other hand, some airlines were not concerned in non-core PSS (8 of 27 airlines)¹³³³ or distribution (six airlines).¹³³⁴ Of these airlines, four airlines said the Merger would make the Parties more effective,^{1335, 1336} or it would be beneficial to them by introducing NDC content into the GDS. One airline qualified that the Merger’s impact would be positive (as it provides funds required to Farelogix) if Farelogix is kept as separate company.¹³³⁷

10.114 American Airlines and [X] responded to our Provisional Findings. American Airlines supported the overall analysis in the Provisional Findings in particular in distribution. [X] welcomed the Provisional Findings in relation to the Sabre/Farelogix merger, supporting our concerns that there is a real risk that the Merger will stifle the nascent, but growing, competitive constraint that Farelogix imposes on all GDSs, including Sabre.

The Parties’ submissions specific to airline evidence and our response

10.115 The below paragraphs summarise the Parties’ submissions regarding the airline evidence. Based on the evidence considered above, our view in response to the Parties’ submissions is also summarised below.

- (a) The Parties submitted that NDC API market is characterised by significant growth and change in recent years and ‘airline views are less reliable as the airlines surveyed by the CMA will necessarily include both (i) airlines who procured NDC APIs several years ago and therefore may have an out-

1329 [X]

1330 [X]

1331 [X]

1332 [X]

1333 [X]

1334 [X]

1335 [X]

1336 American Airlines, while concerned regarding the impact of the merger on content distribution and on innovation, with regards to the impact on merchandising, it submitted the merger may be beneficial because Sabre could rely on Farelogix’s technology to improve their own technological capacities. This would create competitive pressure on the other providers.

1337 [X]

of-date view of competitive conditions; and (ii) airlines who are yet to procure NDC APIs, and may not have engaged fully with the current competitive environment and the range of credible options available to them.¹³³⁸

- (i) We have considered evidence from a wide range of airlines of various sizes and regions, including those who have recently procured NDC API solutions.¹³³⁹ While the markets are undergoing changes, procurement and implementation of NDC API solutions are typically long processes that can take months or more than a year.¹³⁴⁰ Therefore, in our view, the responses from airlines that have made purchases in the past few years, those who in the process of making purchases, or expected to do so in future are informative to our assessment.
- (b) The Parties submitted that some airlines are not well informed about the competitive environment in the airline IT space: [REDACTED] have not carried out an RFP process for an NDC API nor investigated the capabilities of the other IATA certified NDC providers.¹³⁴¹ The Parties also submitted that both American Airlines and United Airlines have strong incentives to oppose the Merger due to reasons not related to competition law; for example, [REDACTED].¹³⁴²
 - (i) We note that RFIs and RFPs are not the only mechanisms for airlines to evaluate providers' capabilities and their experience and airlines may evaluate suppliers without issuing RFP or RFI.¹³⁴³ Nevertheless, we have considered evidence from a range of airlines, including those which have recently evaluated suppliers through RFP processes.¹³⁴⁴ Other airlines, [REDACTED], make similar points and their evidence is presented throughout the report. We further discuss the weight we put on airline evidence in chapter 11.
- (c) The Parties submitted that the airlines' views do not support the CMA's provisional conclusion on Sabre's position in merchandising absent the merger.¹³⁴⁵ [REDACTED].¹³⁴⁶ Only six out of 19 airlines responding to the CMA

¹³³⁸ [REDACTED]

¹³³⁹ Chapter 10, Evidence from airline, 'Airlines' evaluation of merchandising suppliers' and paragraph 10.103 (g)

¹³⁴⁰ For example, several airlines went through the selection process of its NDC supplier (NDC API, merchandising and other revenue management solutions) in 2018, but the solutions are still being developed. (SAS, [REDACTED])

¹³⁴¹ Response to Provisional Findings, paragraph 5.31.

¹³⁴² Response to Provisional Findings, paragraph 3.13.

¹³⁴³ Chapter 10, footnote 1292 and paragraph 10.103 h), footnote 1299

¹³⁴⁴ Chapter 10, Evidence from Airlines, 'Airlines' evaluation of merchandising suppliers'

¹³⁴⁵ Response to Provisional Findings, paragraph 4.9

¹³⁴⁶ Response to Provisional Findings, paragraph 1.11 ii)

questionnaire expected Sabre to become stronger in merchandising, whilst 17 out of 19 expected Amadeus to become stronger.

- (i) Airlines' submitted views were based on their experiences with Sabre's existing product which forms part of our analysis in chapter 8. The submitted views are not necessarily aware of Sabre's intention, incentives and ability in developing its merchandising solutions and the implications on its competitive strength, which we have assessed in detail based on other evidence.
- (d) In regard to distribution, the Parties submitted that the CMA fails to acknowledge the feedback from other airlines which state that other competitors can offer the same technical functionality and services as Farelogix, including OpenJaw/Travelsky which airlines considered as being equally as competitive as Farelogix.¹³⁴⁷
- (i) We acknowledge that other alternatives to provide services exist, but there are qualitative differences across the providers. Airline evidence clearly shows that Farelogix offers a higher quality product, has experience and scale to serve large airlines.¹³⁴⁸ We also take other evidence from other sources into account in forming our overall assessment of other competitors.
- (e) The Parties submitted that most growth that is occurring in GDS bypass to-date is attributable to airlines that are dominant in particular markets and the model is not scalable to all airlines and all travel agents, and incremental growth in Direct Connect can be expected to become increasingly more difficult.¹³⁴⁹
- (i) Airline evidence shows that airlines of various sizes have either already established or are working towards establishing GDS bypass, indicating that size is not the main relevant factor. Further, regardless of the extent of future growth of direct connects, we are concerned to understand the booking volumes going through direct connect channels and, particularly, Farelogix and the extent to which that imparts competitive constraint on Sabre and, if so, whether the Merger may be expected to substantially lessen competition in the

¹³⁴⁷ Response to Provisional Findings, paragraph 5.55 iii)

¹³⁴⁸ Chapter 10, Evidence from airlines, 'Airlines' submitted views on strength of distribution solution suppliers (NDC API)

¹³⁴⁹ Response to Provisional Findings, paragraph 5.16

distribution solutions market. A majority of airlines of various sizes indicated that they project increasing their usage of GDS bypass.¹³⁵⁰

Summary of airline evidence

10.116 The evidence from airlines' submitted views and their internal documents considered above shows that:

- (a) Airlines generally considered that NDC-compatible solutions in merchandising, distribution and other retailing functions are important to their strategy and have either already made investments or had plans to do so.¹³⁵¹
- (b) In merchandising, Farelogix is considered to be a leading provider, with broad functionality and a strong reputation, followed by Amadeus. Datalex and OpenJaw are also considered as current providers, but as weaker alternatives.¹³⁵² Airlines in general do not consider self-supply of merchandising solutions to be a credible option.¹³⁵³
- (c) In distribution, airlines' strategies are to increase usage of distribution solutions based on the NDC API (including GDS bypass) and airline.com and reduce use of the GDS (although this would remain an important channel).¹³⁵⁴
- (d) Airlines have told us that they consider both GDS bypass and airline.com are important levers that they use to negotiate with a GDS.¹³⁵⁵
- (e) Amongst providers of NDC API solutions, Farelogix is considered to have advanced capabilities. Amadeus and Datalex were most often considered to be an alternative to Farelogix, followed by OpenJaw.¹³⁵⁶ Some large or mid-sized airlines can self-supply, although this incurs significant costs.¹³⁵⁷
- (f) In merchandising, most but not all airlines said that they value PSS-agnostic providers (including Farelogix). In distribution, airlines generally

¹³⁵⁰ Paragraph 10.97

¹³⁵¹ Paragraphs 10.76 et seq.

¹³⁵² Paragraphs 10.82 et seq. and 10.85 et seq.

¹³⁵³ Paragraphs 10.87 et seq.

¹³⁵⁴ Paragraphs 10.95 et seq.

¹³⁵⁵ Paragraph 10.100

¹³⁵⁶ Paragraphs 10.103 et seq.

¹³⁵⁷ Paragraphs 10.105 et seq.

value channel-agnostic providers (including specifically Farelogix) for their independence from the GDS.¹³⁵⁸

- (g) Around half of airlines we contacted have expressed concerns about the Merger's impact on competition in merchandising, distribution and innovation (the rest of airlines either provided ambiguous responses or did not have concerns).¹³⁵⁹ Airlines noted that the merger would remove a successful and growing innovator that has been an alternative to the GDSs, and as a result increase Sabre's market power and set back progress in developing NDC-enabled solutions.

Evidence from travel agents

10.117 This section sets out the evidence we have gathered from travel agents. Travel agents do not procure merchandising modules from either of the parties, so our questions focus on distribution. As Farelogix does not market to travel agents we have primarily relied on responses from Sabre's travel agent customers.

10.118 While Farelogix submitted it does not have travel agents as customers, its solutions allow airlines to bypass the GDS and distribute content to travel agents. The more willing travel agents are to use GDS bypass (direct connects), the more credible Farelogix's distribution solutions will be. Therefore, travel agents' willingness to access content using GDS bypass is a relevant element for the assessment of Farelogix's significance as a competitor in the supply of distribution solutions.

10.119 As set out in Chapter 3, we consider three different types of travel agents: OTAs, TMCs and other B&M travel agents. Each of these three market segments are material to Sabre's business model. The proportion of bookings for Sabre by type of travel agents are: OTAs ([REDACTED]), TMCs ([REDACTED]) and other B&M travel agents ([REDACTED]).¹³⁶⁰ While TMCs account for the smallest share by booking volume, they account for the highest proportion of the gross profits of the GDSs.¹³⁶¹

10.120 We sent detailed questionnaires to over 50 travel agents including OTA, TMCs and other B&M travel agents we received responses from over 20 travel agents [REDACTED].¹³⁶² In addition, the Parties have referred to evidence

¹³⁵⁸ Paragraph 10.109

¹³⁵⁹ Paragraphs 10.110 et seq

¹³⁶⁰ [REDACTED]

¹³⁶¹ Chapter 3, paragraph 3.40

¹³⁶² We sent a detailed phase 2 questionnaire as well as a simpler online questionnaire and had already received responses as part of our phase 1 inquiry. Further details in Appendix G.

from travel agents at the Delaware Proceedings and we have incorporated it in our assessment below.

10.121 We consider the following evidence from travel agents in further detail:

- (a) current use of GDS bypass via direct connects or aggregators;
- (b) travel agent views on differences between GDS vs GDS bypass;
- (c) costs to establish direct connects;
- (d) future use of GDS bypass by travel agents;
- (e) travel agent views on travellers using airline.com;
- (f) views on accessing NDC content;
- (g) views on the Merger.

10.122 We consider differences by travel agent segments where views appear to differ.

Current use of GDS bypass

10.123 We found that OTAs are the main segment of travel agents that use GDS bypass currently. By contrast, usage of GDS bypass by TMCs and other B&M travel agents is limited.

- (a) All OTA respondents indicated they used direct connects. Their use of these varied from 1% of bookings for [REDACTED] to 30% for [REDACTED] in 2018.¹³⁶³ In some cases, they account for a high proportion of bookings with a specific airline. For example, 80% of one OTA's bookings [REDACTED] were via direct connects and another two OTAs had airlines for which over 95% of their bookings were done via direct connects.¹³⁶⁴ Most responding OTAs also said they use aggregators.¹³⁶⁵ These aggregator bookings accounted on average for 20% of the OTAs global bookings.¹³⁶⁶ None of the OTAs which responded indicated they had used airline.com to book flights.

¹³⁶³ All eight OTAs which responded to our questionnaires had used direct connects in 2018. [[REDACTED]].

¹³⁶⁴ [REDACTED]

¹³⁶⁵ Six out of eight OTAs recorded bookings through aggregators in 2018, [REDACTED]

¹³⁶⁶ Based on a simple average of four OTAs who provided estimates of booking use by channel on a global basis. There is significant variation with one OTA [[REDACTED]]

- (b) Less than a third of the responding TMCs have established direct connects,¹³⁶⁷ and these accounted for less than 2% of each travel agent's airline bookings in 2018.¹³⁶⁸ More than half used aggregators, generally this accounted for less than 10% of each TMCs total bookings,¹³⁶⁹ although one small TMC indicated that 54% of their bookings were through aggregators.¹³⁷⁰ Three TMCs indicated use of airline.com, all less than 1% of total bookings.
- (c) Of the (non-TMC) B&M travel agents we received responses from, the majority had established direct connects. The highest user of direct connects placed 6% of their bookings through direct connects in 2018.¹³⁷¹ Two B&M travel agents indicated that they used aggregators although for less than 1% of bookings.¹³⁷² Three B&Ms also indicated they made some bookings direct using the airline's website this appeared to be in relation to certain budget airlines.¹³⁷³

10.124 The main reasons given by travel agents across all segments for using direct connects and aggregators was to access content that was not available on their GDS, or due to surcharges imposed on GDS bookings.¹³⁷⁴ In addition, one OTA said it was a result of a commercial negotiation with airlines,¹³⁷⁵ and a TMC also told us it has a direct connect due to a client mandate.¹³⁷⁶

10.125 We also asked travel agents how they have accessed NDC content in the past. Just under half of the travel agents which responded indicated they had accessed NDC content via GDS bypass, including TMCs, OTAs and B&M travel agents. A small number indicated they had accessed NDC content through their GDS.¹³⁷⁷

¹³⁶⁷ Four TMCs [redacted] indicated they had used direct connects in 2018]. This was out of 13; including eight phase 2 detailed questionnaire responses and two call notes, two online questionnaire responses and a phase 1 response.

¹³⁶⁸ TMC users of aggregators included [redacted]

¹³⁶⁹ 8 out of 13 TMCs recorded bookings through non-GDS aggregators (including 2 call notes, 2 online questionnaire results and a phase 1 response). [redacted]

¹³⁷⁰ [redacted]

¹³⁷¹ Five out of seven other B&M travel agents said they had direct connects in 2018 – one said that 6.3% of their bookings were through direct connect [redacted], another travel agents [redacted] listed 8 airlines it had direct connects with each with between 0-2% of bookings. [redacted], and two responded to our phase 1 questionnaire indicated they had direct connects [redacted]

¹³⁷² [redacted]

¹³⁷³ [redacted]

¹³⁷⁴ [redacted]

¹³⁷⁵ [redacted]

¹³⁷⁶ [redacted]

¹³⁷⁷ 6 Out of the 14 responding travel agents which responded to the question had consumed via direct connects, [redacted] Reasons given included having access to a 'without baggage price, more extended variations of prices bundled with pre-packed services', [redacted] and 'surcharge free and light fares'. Only 3 out of 14 indicated they had

Travel agent views on differences between GDS vs GDS bypass

10.126 To understand their willingness to use GDS bypass, we asked travel agents to explain the differences between GDS and GDS bypass services discussing advantages and drawbacks of each. Most travel agents including agents highlighted at least some drawbacks with the functionality of non-GDS services including the OTAs who were more inclined to use it and the TMCs and B&M travel agents for whom the differences in functionality to date have led to limited use of bypass.¹³⁷⁸ Most commonly this included travel agents highlighting limitations with making complex bookings involving multiple carriers;¹³⁷⁹ and post-booking services.¹³⁸⁰

10.127 Some TMCs also highlighted limitations with comparing multiple airlines;¹³⁸¹ managing agent workflows /taking longer;¹³⁸² and/or managing operations with other systems such as safety and security tracking tools.¹³⁸³

10.128 Two travel agents also highlighted differences with incentive payments. One B&M travel agent [X] said that they currently receive incentives from the GDS to use their platform and a TMC [X] suggested ‘the main drawback of aggregators is that it is typically a paid for option’. An OTA [X] also noted that one of the benefits of direct connect was being able to obtain additional content such as more ancillary services.

10.129 In our online questionnaire we also asked respondents to rank the most important features when it comes to making a booking. Three out of the four respondents indicated availability of content was most important, with ease of comparison shopping being the next most highly ranked feature before the level of incentives, level of fulfilment support, mid/back office capabilities and ability to book with other items (e.g. accommodation).¹³⁸⁴

accessed NDC content through their GDS in the last 12 months. [X] When asked to explain the additional content gained one travel agent explained that they accessed NDC content for testing purposes but currently there is no differentiated content that is not available through traditional legacy connections. In addition, five travel agents told us they had accessed NDC content via a Non GDS aggregator [X] one via airline.com [X]

¹³⁷⁸ [X] 10 out of 13 responses (based on 15 ph2 responses – 2 did not answer)

¹³⁷⁹ [X]

¹³⁸⁰ [X]

¹³⁸¹ [X]

¹³⁸² [X]

¹³⁸³ [X]

¹³⁸⁴ Availability of content ranks 1st three times and 2nd once, Easy of comparison shopping ranked 2nd three times and 1st once. Level of incentives ranked third twice and fifth once, level of fulfilment support ranked fourth twice, mid/back office support ranked fifth twice and fourth once. Ability to book other items, ranked sixth twice and 3rd once.

10.130 The Parties in their response to our Provisional Findings also highlighted views from two TMCs presented during the Delaware proceedings suggesting the GDS are very important to the TMCs' business model because of their workflows, functionality and user experience compared to other content sources which TMCs may use.¹³⁸⁵

Costs to establish GDS bypass

10.131 We asked travel agents to estimate the costs to establish direct connects with airlines. Most respondents did not provide financial estimates; of those two travel agents who did the range varies: one OTA suggested costs start at \$100,000,¹³⁸⁶ and another estimated it to be \$1 million.¹³⁸⁷ A few TMCs told us that a direct connect requires significant investment from both a technical and process perspective.¹³⁸⁸ A B&M travel agent said they had two developers at the time of implementation.¹³⁸⁹ As regards timing to establish direct connects, we received a range of responses from travel agents which vary widely from a few months to 18 months.¹³⁹⁰

10.132 However, airlines can fund these investments for the travel agents. For example, one OTA received over [REDACTED] as an 'NDC set up bonus' from an airline in relation to the implementation and maintenance of NDC direct connects.¹³⁹¹

10.133 In response to our Provisional Findings the Parties further highlighted evidence of the costs of establishing direct connects from the Delaware proceedings. They referred to a TMC which said that 'establishing a direct connect is laborious and costly to build and maintain',¹³⁹² would require a lot of upfront capital and that operating costs would rise substantially in the order of \$15 per transaction.

Future use of GDS bypass

10.134 We asked travel agents about their current pipeline of GDS bypass under implementation, and their views on future usage of GDS bypass. We

¹³⁸⁵ Response to Provisional Findings Annex 1, quotes representatives off BCD Travel and CWT.

¹³⁸⁶ [REDACTED]

¹³⁸⁷ [REDACTED]

¹³⁸⁸ [REDACTED]

¹³⁸⁹ [REDACTED]

¹³⁹⁰ For example, one agent said agents suggested 'this could take anywhere from 12 months for new NDC airlines but only 8 weeks for players with established connections' [REDACTED]. Other responses included: 9-18 months', 2-3 months, 6 – 9 months [REDACTED] and up to a year [REDACTED]and [REDACTED]

¹³⁹¹ [REDACTED]

¹³⁹² Response to Provisional Findings, Annex 1, paragraph 4.8 (iii)

found that the use of GDS bypass is likely to grow further for the OTA segment.

- (a) The majority of OTAs we received responses from anticipated using direct connects more often in the future and all of them mentioned content restrictions as reason to establish direct connect.¹³⁹³
- (b) Three OTAs have further direct connects in the implementation stage,¹³⁹⁴ however one OTA suggested they had declined five airlines because of implementation costs.¹³⁹⁵
- (c) The proportion of UK bookings made through GDS bypass on a [redacted] OTA [redacted] grew from less than [redacted]

10.135 Responses from TMCs were mixed and did not indicate that there was likely to be large growth even given the low base:

- (a) Over a quarter of TMCs which answered the question indicated they anticipate an increase in direct connects usage,¹³⁹⁶ including one which had a new direct connect at the implementation stage.¹³⁹⁷
- (b) Others appeared less certain about increasing the use of direct connects; one said it would make the decision on a case by case basis.¹³⁹⁸ Another told us it would use an aggregator rather than direct connect to access restricted content.¹³⁹⁹

10.136 Of the four B&M travel agents which responded to questions about their future usage of GDS bypass, two said they were unsure,¹⁴⁰⁰ the other two predicted substantial increases.¹⁴⁰¹

10.137 We also asked travel agents to explain under what circumstances they would increase bookings through direct connect. Where travel agents responded to this question it was in relation to airlines putting more content outside the GDS or increase surcharges on content available via the GDS.

¹³⁹³ [redacted] 3 OTAs indicate the proportion of bookings likely to grow over next 5 years, the other responses are unclear. [redacted]

¹³⁹⁴ [redacted]

¹³⁹⁵ [redacted]

¹³⁹⁶ [Out of 8 TMCs responding to phase 2 detailed questionnaire. [redacted] 2 thought their use of direct connects would likely increase] and 2 TMCs responded to our online questionnaire – [redacted] predicted substantial increase, [redacted] one didn't know.

¹³⁹⁷ [redacted]

¹³⁹⁸ [redacted]

¹³⁹⁹ [redacted]

¹⁴⁰⁰ [redacted]

¹⁴⁰¹ [redacted] indicated that it would increase from 9% to 20% in the next five years, [redacted] in response to our online questionnaire predicted a 'substantial increase' in the next five years.

¹⁴⁰² Although one TMC suggested their use of direct connects would increase if it added value and could be incorporated into their workflow without increasing costs.¹⁴⁰³

10.138 We also asked travel agents for their views on how they think they will likely access NDC content in the next 12 months.

10.139 In contrast to their historic usage on a forward-looking basis 9 of the 13 respondents indicated that they expected to access NDC content in the next 12 months through their GDS providers including most the TMCs and two OTAs.¹⁴⁰⁴ Only four travel agents suggested they planned to access NDC content through GDS bypass in the next 12 months and none of these were TMCs.¹⁴⁰⁵ Two travel agents told us they would be looking to access via an aggregator,¹⁴⁰⁶ and none via airline.com.

10.140 Four smaller travel agents also responded via our online questionnaire,¹⁴⁰⁷ three said NDC content would be not at all important but one said it would be very important and very positive.¹⁴⁰⁸ There was a mix of future use envisaged across both direct connect and GDS.¹⁴⁰⁹

10.141 The Parties submitted that airlines ‘control the release/availability of a Direct Connect API, but they cannot unilaterally decide to grow usage,’ which is controlled by travel agencies; and ‘there is no evidence that the buyer population intends to grow their usage of Direct Connects.’¹⁴¹⁰

10.142 We acknowledge that airlines cannot unilaterally decide to grow usage of direct connect. However, the evidence on airlines’ distribution strategy shows that they can incentivise usage, eg through surcharge on or withdrawing content from GDS, and their ability to do so is enhanced by having both airline.com and GDS bypass as alternative options to GDS.¹⁴¹¹

¹⁴⁰² [REDACTED]

¹⁴⁰³ [REDACTED]

¹⁴⁰⁴ [REDACTED] One of these later indicated that they expected this to be in the next 12-18 month.

¹⁴⁰⁵ [REDACTED]

¹⁴⁰⁶ [[REDACTED]]

¹⁴⁰⁷ [Online questionnaire responses: responses [REDACTED]]

¹⁴⁰⁸ [REDACTED]

¹⁴⁰⁹ Through which channel do you plan to access airline content that aligns with the NDC standard in the next 2 years? GDS and Direct connects were both listed twice, Airline websites/portal was listed 3 times and non GDS aggregator was listed once with one of the travel agents unsure who they would access the content.

¹⁴¹⁰ Response to Working Paper ‘Dynamic competition in distribution,’ p.20

¹⁴¹¹ Paragraphs 10.92-10.949

Travel agent views on travellers using airline.com

- 10.143 We also asked travel agents for their views on the extent to which they thought their customers would consider booking directly with airlines.
- 10.144 TMCs mostly responded to suggest that their customers would not consider this for example due to their needs in relation to duty of care reporting or highlighted that many of their customer are part of mandated travel programmes.¹⁴¹² A couple of TMCs also highlighted that some of their customers do check other sources to check they are getting a good deal.¹⁴¹³ Four TMCs said they access some content via airline.com [redacted], but this was for 1% or less of bookings for three agents although a small UK based TMC [redacted] indicated they used airline.com for 10% of their bookings.
- 10.145 Both B&M agents which responded to the question indicated that there is a growing trend to book via a metasearch provider,¹⁴¹⁴ however one noted that less than 10% of their customers would likely consider airline.com due to the singular product as well as some fares not being available on that channel.¹⁴¹⁵
- 10.146 OTAs mostly highlighted the fact that their consumers often search multiple platforms and often use metasearch providers before making a purchase and will often decide based on the lowest price.¹⁴¹⁶

Views on accessing NDC content

- 10.147 We asked travel agents for their views on the future of the industry and what role NDC would play.¹⁴¹⁷ The travel agents which responded in relation to growth all indicated that the role of NDC was likely to increase in importance in the future. In relation to whether this would be positive or negative travel agents have expressed a range of views, with more identifying benefits of NDC content, whilst a small number expressed concerns. For example:

¹⁴¹² 2 [redacted] Travel agents said their customers would not be interested in booking direct, 4 highlighted the additional services their clients get from using a TMC, [redacted], 4 highlighted customers use of mandated travel programmes i.e. travellers have to book through a TMC [redacted]

¹⁴¹³ 2 highlighted customers checking other sources [redacted]

¹⁴¹⁴ [redacted]

¹⁴¹⁵ [redacted]

¹⁴¹⁶ [redacted]

¹⁴¹⁷ Phase 1 travel agent questionnaire – 14 responses from OTAs, TMCs and B&M

- (a) A number of travel agents including TMCs, OTAs and a B&M travel agent highlighted the positives around having more personalised content.¹⁴¹⁸
- (b) Two travel agents highlighted the importance of NDC to the industry. One small TMC suggested NDC was ‘vital to move the industry forward.’¹⁴¹⁹ And a large B&M travel agent suggested that the further development of NDC is ‘Critical to ensure that all airline content can be retailed to all customers and to ensure that customers booking via a travel agency don’t have a degraded experience.’¹⁴²⁰
- (c) One OTA expressed mixed views; it said that NDC content benefits passengers and helps it attract customers, but GDS bypass is less efficient than GDS.¹⁴²¹
- (d) Another OTA told us that airlines use ‘NDC’ to reduce distribution cost, surcharging content on GDS to ‘enforce travel agents to move out of the GDS.’¹⁴²²
- (e) One smaller TMC was more concerned, hoping the technology would not come to fruition.¹⁴²³

10.148 In addition to evidence from our engagement with travel agents we also looked at The Beat Research report 2019 (sponsored by Delta) which is based on a survey of 30 multinational and regional TMCs on the adoption of the NDC standard.¹⁴²⁴ This report found that most TMCs view NDC adoption as positive, but fewer than half of the respondents planned to build their own direct connects to airlines to get NDC content. TMCs expect to access NDC content via multiple channels including GDS (100%), non-GDS aggregators (67%) and direct connects (40%) in the next 12 months. It also noted that TMCs in Europe have often gone outside of GDS and multi-sourced content in relation to low cost carriers, and so aggregating contents from multiple sources is not new.

¹⁴¹⁸ [REDACTED]

¹⁴¹⁹ [REDACTED]

¹⁴²⁰ [REDACTED]

¹⁴²¹ [REDACTED] ‘It is positive for our end-customers because airlines are offering differentiated pricing, which allows us to offer a more competitive price [...] helps us attract new customers.’ but noted that [GDS bypass] is a negative for our business. The GDS has better end-to-end capabilities, is far, far more efficient and has superior technology.’

¹⁴²² [REDACTED]

¹⁴²³ [REDACTED]

¹⁴²⁴ The Beat Research report titled “TMC NDC Adoption Barometer” – available at <https://interactive.thebeat.travel/TMC-NDC-Adoption-Barometer>

Travel agents' views on the Merger

10.149 We have received responses from 23 travel agents expressing their views about the impact of the merger on competition.¹⁴²⁵

- (a) Eleven travel agents including four TMCs, three OTAs and four B&M agent did not have concerns but did not suggest the impact of the Merger would be positive.¹⁴²⁶
- (b) A further seven travel agents did not have concerns (five TMCs and two OTAs) and indicated that the Merger could be positive for competition,¹⁴²⁷ citing reasons including: 'this merger will likely help innovation',¹⁴²⁸ 'bring a scalable solution to the NDC space';¹⁴²⁹ 'help Sabre in developing systems for NDC content'¹⁴³⁰ and 'get greater content at a competitive price'.¹⁴³¹
- (c) Three travel agents raised concerns about the impact of competition including one TMCs, one OTA and one B&M travel agent.¹⁴³² This included a suggestion that the Merger could 'slow down both competitors becoming a competitive alternative',¹⁴³³ and might put users of other GDS at a disadvantage.¹⁴³⁴

10.150 A metasearch engine provider said the Merger will reduce the number and variety of providers in the market and continue to 'cement the market power of Sabre'.¹⁴³⁵

The Parties' submissions relating to travel agent evidence

10.151 In response to our working papers, the Parties made the following submissions regarding the travel agent evidence:¹⁴³⁶

¹⁴²⁵ In total across phase 1 and phase 2 including our online questionnaire, 23 travel agents provided a view on the Merger, 4 responded that they didn't know or didn't answer the question. This included 10 TMCs, 7 OTAs and 6 B&M. In addition, there were views from a meta-search provider.

¹⁴²⁶ Two travel agents responded that they did not have concerns without listing reasons. [REDACTED] Seven travel agents had no concerns, [REDACTED] and listed reasons such as (i) travel agents not having commercials with Farelogix/ the merger not impacting them [the travel agent]. (ii)not all airlines using Farelogix / many using in house. (iii) All the GDS developing in this Space/ Sabre is catching up with Amadeus /the other GDS can also merge

¹⁴²⁷ [REDACTED]

¹⁴²⁸ [REDACTED]

¹⁴²⁹ [REDACTED]

¹⁴³⁰ [REDACTED]

¹⁴³¹ [REDACTED]

¹⁴³² [REDACTED] All responses are from our phase 1 questionnaire

¹⁴³³ [REDACTED]

¹⁴³⁴ [REDACTED]

¹⁴³⁵ [REDACTED]

¹⁴³⁶ Parties' response to Travel agent WP – pg 1, bullets 1-4

- (a) Travel agents think the merger will help ‘accelerating GDSs’ adoption of NDC’,
- (b) views of travel agents are ‘most likely to represent the potential risk to consumers of the transaction’.
- (c) Travel agents ‘universally identify significant weaknesses about direct connects when compared to a GDS’ and for travel agents the primary purpose of direct connects is ‘to obtain access to fares that were only otherwise available on airline.com or to get access to NDC content’.
- (d) Travel agents ‘unanimously expect use of NDC content in the next 12 months to be via their GDS’, with a minority (40%) expecting to receive NDC content via a direct connect’.
- (e) Travellers whose bookings pass through an FLX API would be expected to be mostly leisure travellers served by OTAs, which compete with airline.com.

10.152 In response to our Provisional Findings the Parties further submitted that in their view feedback from one side of the market has been unjustifiably dismissed, with little or no weight given to views on travel agents.¹⁴³⁷ The parties also submitted that travel agents find one-to-one connections like direct connect to be prohibitively expensive and limiting due to the lack of comparison shopping and integration with travel agents mid and back-office functions.¹⁴³⁸

10.153 In response to the points raised by the Parties, we consider that we have not dismissed the travel agent evidence and believe it is relevant to take this into account together with evidence from other sources. In particular, the evidence from travel agents has informed our understanding of their current and future intended use of GDS bypass, which types of travel agents are more likely to use GDS bypass and how they use these services, and we have taken these into account in our assessment. We disagree that all travel agents find GDS bypass to be prohibitively expensive and limiting. We have found that use varies across travel agents, with a number of responses indicating they expect increased future use and new connections being established in the future especially amongst online travel agents.¹⁴³⁹ We recognise there is significantly less interest in use of GDS bypass among TMCs and B&M agents.

¹⁴³⁷ Parties’ response to provisional findings paragraph 1.8 (vi)

¹⁴³⁸ Parties’ response to provisional findings paragraph 5.23

¹⁴³⁹ See sections; Current use of GDS Bypass and Future use of GDS bypass

10.154 Whilst noting that travel agents were mostly unconcerned by the transaction, many were neutral and a few raised concerns. We do not consider travel agents' views in relation to the Merger's overall impact on competition to be more determinative than airlines' views, as explained in Chapter 11 which assesses all evidence in the round assessment and discuss the relative weight we put on evidence from travel agents and airlines.¹⁴⁴⁰

Summary of travel agent evidence

10.155 In summary, the evidence from travel agents shows that:

- (a) Currently OTAs is the main segment that use GDS bypass. Some TMCs and other B&M travel agents also use this channel, but to a much lesser degree. Travel agents typically use GDS bypass to obtain better content.¹⁴⁴¹
- (b) Most travel agents highlight drawbacks in relation to using GDS bypass currently and costs to establish direct connects can be high, although this varies depending on the circumstance and in some cases may be covered by airlines.¹⁴⁴²
- (c) Travel agents typically view the role of NDC in the industry as growing, and this will improve content available and their ability to sell more ancillaries. More travel agents expect to be able to access content via their GDS than GDS bypass (and to do so within the next 12 months).¹⁴⁴³
- (d) GDS bypass usage and the volume of bookings it accounts for appears particularly likely to continue to grow amongst OTAs, but responses from TMCs and B&M suggests growth will be limited without further functionality development.¹⁴⁴⁴
- (e) TMCs, which serve corporate customers, use airline.com only to a very limited extent, and said their customers typically do not book on airline.com because they require services from TMCs such as duty of care reporting.¹⁴⁴⁵

¹⁴⁴⁰ See Chapter 11

¹⁴⁴¹ Paragraphs 10.123 et seq.

¹⁴⁴² Paragraphs 10.131 et seq.

¹⁴⁴³ Paragraphs 10.147 et seq.

¹⁴⁴⁴ Paragraphs 10.134 et seq.

¹⁴⁴⁵ Paragraphs 10.143 et seq.

(f) Most travel agents we have contacted do not have concerns about this Merger (they are either neutral or positive); only a small number have expressed a concern.¹⁴⁴⁶

¹⁴⁴⁶ Paragraphs 10.149 et seq.

11. Our assessment of the Merger

- 11.1 This chapter provides our assessment of the Merger. Throughout we draw on the evidence discussed in other chapters and in the Appendices.
- 11.2 First, we set out some introductory points, covering the context of the Merger, how we have considered the evidence in this inquiry, and the Merger's relevance to the UK.
- 11.3 Second, we provide our assessment of the relevant counterfactual. Given this Merger takes place in the context of lengthy, complex and far reaching changes in airlines' demand and suppliers' strategies, we assess this in light of all of the evidence set out in previous chapters.
- 11.4 Third, we provide our assessment of the competitive effects of the Merger respectively for the supply of merchandising solutions and for the supply of distribution solutions. This is before taking into account any countervailing factors, which we discuss in the following chapter.
- 11.5 In providing our assessment, we have summarised and considered relevant submissions from the Parties and third parties. We have also considered submissions on specific and individual pieces of evidence in the relevant chapters earlier in this Final Report.

Introduction to our assessment

The context of the Merger

- 11.6 At the time of our Final Report the UK and many other countries were grappling with Coronavirus (COVID-19) which has caused much disruption to the global travel industry. We recognise that these effects are uncertain, both in size and duration. However, Sabre has told the US District Court in Delaware on 30 March 2020 that the Merger Agreement is still in place.
- 11.7 Independently of the immediate circumstances, this Merger takes place against the background of the airline industry changing the services they sell, and the way they sell them. In Chapter 7, we explained that, on the demand side, airlines are reacting to competitive pressures from one another, including low cost carriers, as well as to changing passenger expectations. This requires them to differentiate their retailing offers by: (i) creating more personalised services and travel experiences with ancillaries; (ii) making greater use of dynamic or flexible pricing, as well as more personalised pricing based on an understanding of individual customers' needs; (iii) taking

greater control over their retailing offers compared to what has been possible using the solutions traditionally provided by GDSs and PSSs; and (iv) distributing personalised and flexible offers they create consistently across all sales channels.¹⁴⁴⁷

- 11.8 We have found that for airlines to make these business model changes they need to acquire new technological capabilities. Merchandising capabilities, which allow airlines to create the relevant content, are of growing importance.¹⁴⁴⁸ Distribution capabilities matter in their own right, and play a complementary role to merchandising, because, together, these allow airlines to deliver content to travel agents and travellers in new ways, for example to sell ancillaries and dynamic offers beyond a basic seat product.
- 11.9 We have also found that these changes have given rise to opportunities for suppliers to offer innovative solutions to allow airlines to differentiate themselves. The adoption of the NDC standard, and solutions compatible with NDC, with which airlines can create content in more flexible ways and distribute it across multiple channels, have been an important driver of this process.
- 11.10 In Chapter 9 we explained that Farelogix has developed products which have enabled airlines to evolve their business models in this way. Its merchandising solution, which is NDC compatible, allows airlines to control an important component of their retail offer, namely the creation of offers allowing for more personalised services and travel experiences. Farelogix also provides an NDC-compatible distribution solution (FLX NDC API / OC) for airlines to distribute differentiated offers across multiple sales channels.¹⁴⁴⁹
- 11.11 The response by the incumbent providers in this space has been relatively slow. In Chapter 7 we have found that GDSs were initially slow to facilitate the broad adoption of NDC standard. In more recent years, they have been investing in facilitating the distribution of NDC content on their platforms.¹⁴⁵⁰ These investments appear in part to be a response to the threat of airlines using NDC distribution solutions to bypass the GDSs and sell to travel agents directly, which pose a threat to the GDSs whose business models rely on the balancing of demand between airlines and travel agents.¹⁴⁵¹ These challenges have helped to drive competition between the GDSs themselves.

¹⁴⁴⁷ Chapter 7, Changes in airlines' demand in response to passengers' requirements.

¹⁴⁴⁸ Chapter 7, Suppliers responses to meet airline demands

¹⁴⁴⁹ Chapter 9, paragraphs 9.189-9.190 and 9.198.

¹⁴⁵⁰ Chapter 7, Suppliers responses to meet airline demands

¹⁴⁵¹ Chapter 9 for Sabre; Chapter 10 (Competitors' strategies in NDC-compatible merchandising solutions; Competitor strategy in developing distribution solutions) for Amadeus; Paragraph 7.6 in relation to GDS business model.

11.12 Given the implementation of the NDC standard is still relatively nascent, merchandising and distribution solutions (as well as other services that support the broader trends towards airline control of offer creation and personalisation) have much further to evolve in the future. There is general consensus among industry analysts and market participants that the development and the adoption of these solutions will be lengthy, complex and far-reaching.¹⁴⁵²

11.13 Our assessment of both the counterfactual and the competitive effects of the merger therefore focus on these ongoing and future competitive dynamics.

How we have considered the evidence in this inquiry

Overview of the evidence assessed

11.14 In assessing this Merger, we have gathered extensive evidence from a wide range of sources. They include:

- (a) The Parties' submissions during this Inquiry, their internal strategy documents and communications prepared for senior management produced in their ordinary course of business or in preparation for this Merger, their documents prepared for competition for customers (eg proposals to customers or internal evaluations), and their communications with investors and equity analysts (Chapter 9, Appendix D and throughout the report);
- (b) evidence from competitors, including their submissions and responses to our questionnaires during this Inquiry, and where available their internal documents on the competitive landscape and growth plans (Chapter 10 and Appendix E);
- (c) airlines' responses to our questionnaires, and where available their internal documents relating to distribution strategies and/or evaluation of suppliers (Chapter 10 and Appendix F);
- (d) travel agents' response to our questionnaires (Chapter 10 and Appendix G);
- (e) data on the revenues, customers, market share and bidding of key suppliers (Chapter 8, Appendix H);

¹⁴⁵² Paragraphs 7.13-7.14; Chapter 10 – Airlines' adoption of the NDC standard and related NDC-compatible solutions.

- (f) the Parties' valuation models and Sabre's purchase price for Farelogix (Chapters 4, 9 and Appendix C);
- (g) submissions by the Parties, airlines and travel agents to the US DoJ and at the proceedings in the US District Court in Delaware (throughout the Report);
- (h) other third-party sources such as equity analyst and industry reports (throughout the Report).

Submissions on our approach to assessing the evidence in this inquiry

- *The Parties' submissions*

11.15 In relation to our consideration of the evidence, the Parties contended that the provisional findings report was characterised by the following 'overarching errors':¹⁴⁵³

- (a) It favoured historical 'documentary evidence' over 'quantitative and other more recent market evidence';
- (b) it assessed 'forward-looking evidence in an asymmetric and inconsistent manner as between the Parties and competitors';
- (c) it dismissed feedback from the travel agents whose interests, in the Parties' views, are 'more aligned with those of end-travellers [...] whereas the airlines likely have the opposite agenda';
- (d) it relied on 'largely self-serving submissions from airlines', who the Parties submit, have credibility problems and 'may oppose the Merger because they wish to avoid comparison shopping';
- (e) it buried the finding from valuation evidence;
- (f) the findings were generally insupportable as the nature and length of the forward looking assessment necessary to determine whether the Merger will result in an SLC meant that the CMA was subject to a higher standard of proof, and that it is impossible for the CMA to reach a view to the requisite standard of proof.¹⁴⁵⁴

¹⁴⁵³ Paragraph 1.8, Parties' response to the provisional findings.

¹⁴⁵⁴ Paragraphs 4.13-4.15, Parties' response to the provisional findings

- *Third-party submission*

11.16 Amadeus submitted that our Provisional Findings have ‘taken on trust [narratives] from airlines without due regard to the views of passengers and other market participants’. It said our Provisional Findings did not consider ‘the clear strategic incentive of large airlines to undermine neutral indirect distribution, avoid price comparison and seek to disintermediate the airline ticket distribution industry’.¹⁴⁵⁵

Our approach to assessing the evidence

11.17 Our assessment of this Merger, as of any Merger, is necessarily prospective, as we are required to assess the impact of the Merger on rivalry over time.¹⁴⁵⁶ As discussed above, this Merger takes place in the context of lengthy, complex and far-reaching changes in how airlines sell and distribute their content. The Parties and their competitors have their own strategies which sometimes differ from each other, which they are implementing at different rates, in response to these changes. This means that competitive conditions are likely to evolve further.

11.18 Taking this into account, we have considered all the evidence in the round and in its relevant context. In particular, we have carefully exercised our judgement to determine how each type of evidence informs our assessment of future competitive dynamics. Below we describe how we consider each type of evidence to be relevant and probative for our assessment and, where it may be less probative, how we have taken this into account.

- *Parties’ internal documents*

11.19 Our assessment has given weight to the Parties’ internal documents in several different respects. Specifically, we have considered:

- (a) Documents produced to inform business strategies, investment decisions and planning provide important insights into the Parties’ intentions and incentives to compete (particularly absent the Merger). We consider that these documents can provide some indication of ability to compete going forward where they detail proposals for implementation of plans and associated funding as well as, more significantly, details of funds spent or plans that have been implemented. However, we recognise that ability is not determined by detailed planning alone. We have therefore considered evidence from internal strategy documents alongside other evidence (as

¹⁴⁵⁵ Paragraph 2.2, [Amadeus response to the provisional findings](#).

¹⁴⁵⁶ Merger Assessment Guidelines, paragraph 4.1.3.

set out below). Where the Parties said their documents were ‘aspirational’ or ‘hypothetical’ in terms of assessing the factors that would incentivise a change in strategy we have examined this and based on our interpretation of the documents in their context do not accept this submission, as discussed in greater detail in Chapter 9.¹⁴⁵⁷

- (b) Proposals made by the Parties to third parties in the context of competing for customers. We consider these documents provide an indication of their strategy and belief in their ability to compete.¹⁴⁵⁸
- (c) Documents related to competitive monitoring. We consider these to be informative of the Parties’ perception of competitive threats, particularly those that drove (and may be likely to continue to drive) their strategies to improve and develop their products. In particular, we consider internal documents providing an indication of the competitive threat driving the Parties’ strategies are likely to be more reliable evidence of future competitive rivalry in terms of innovation/further product developments than some other evidence based on past competition which may be more reflective of other competitive parameters.
- (d) Sabre’s communications with investors and equity analysts (given it is a listed company), and the Parties’ submissions regarding the rationale of their business strategies. We consider these also assist our understanding of their strategies set out in internal documents and the wider market context.

11.20 In addition, as explained in Chapter 9, we have assessed relevant documents prepared prior to the agreement of the Merger as well as more recent documents prepared after agreement of the Merger. In doing so, we have recognised that changes in the airline industry do not happen quickly.¹⁴⁵⁹ We have found that substantial planning, investments and product development are involved. We believe that this means that generally internal documents prepared in the run up to the Merger are likely to remain relevant alongside some more recent documents. We have also taken into account any evolution in the Parties’ thinking,¹⁴⁶⁰ and considered this alongside other evidence of changing competitive constraints to determine whether the Parties’ more historical documents appear to be outdated.

¹⁴⁵⁷ Chapter 9, paragraph 9.14(d).

¹⁴⁵⁸ See, for example, paragraph 11.47(b).

¹⁴⁵⁹ Chapter 9, paragraph 9.14(c).

¹⁴⁶⁰ Chapter 9, paragraphs 9.15 and 9.16.

- *Competitor's internal documents*

11.21 Similarly, we have also collected detailed evidence from, and given weight to, competitors' internal documents, which set out their competitive strategies and growth plans discussed in Chapter 10 and Appendix E.¹⁴⁶¹ We consider these provide evidence on the same points as those listed in relation to the Parties' internal documents above, ie they are informative of competitors' market positioning relative to the Parties', the strength of their constraints on the Parties, and how these might change in the future. In particular, we have assessed their scope to increase/reduce their competitive constraint in the same way as we have assessed the Parties' internal documents, balancing stated intentions, incentives and ability to expand with other factors that might mitigate against these being achieved.¹⁴⁶²

- *Evidence on customer base, bidding and market shares*

11.22 We have also placed weight on recent market evidence on the outcomes of competitive interactions, including the track record of the Parties and rivals in serving customers, bidding, winning contracts, and/or renewing significant contracts. We consider this recent market evidence, while not individually determinative, assists our understanding of a firm's wider credibility and reputation in the markets. We consider that this evidence is relevant because a strong track record of serving customers is likely to play an important role in determining which competitors will continue to compete and have greater ability to increase competitive constraint going forward. In that context, and given that changes in the industry happen gradually, we consider it is important to consider the evidence broadly and not just in term of very recent wins and losses.

11.23 We have taken market shares into account but consider these are less indicative of future competitive constraint than the evidence noted above.

(a) In merchandising, we consider that Sabre's current share is likely to understate its future competitive significance as it seeks to expand from being a PSS-dependent to a PSS-agnostic provider (as explained in Chapter 9).¹⁴⁶³ We also note that Amadeus and Sabre do not presently compete against each other for standalone merchandising modules but are likely to do so in future.

¹⁴⁶¹ Chapter 10, Evidence from competitors.

¹⁴⁶² See Paragraphs 11.69 et seq. below

¹⁴⁶³ Chapter 9, Sabre's plans for a PSS-agnostic NDC merchandising solution.

(b) In distribution, we considered market shares may not accurately reflect a supplier's competitive significance. For example it may understate Farelogix's role in driving Sabre to adopt GDS pass-through (as explained in Chapter 9),¹⁴⁶⁴ or offering airlines an outside option to negotiate better terms with GDSs including for NDC-enabled services (as explained in Chapter 10).¹⁴⁶⁵ It may overstate the degree of competition between GDSs for airlines given airlines' need to multi-home and given parity clauses (as explained in Chapter 7),¹⁴⁶⁶ and it may not reflect differentiation in the nature of the constraints exercised by airline.com, GDS bypass and GDSs (as explained below).

- *Views of third parties*

11.24 We are aware that all parties who have made representations to us, including the Parties, their competitors, airlines, travel agents and others, have their own commercial interests. Therefore, we have been appropriately sceptical and sought to ask objective questions that allow us to understand the competitive process and the important factors driving this. We have considered all representations with other evidence in the round, and weighing the relevance of the evidence in the context of each issue under consideration.

- *Airline views*

11.25 We have sought and relied on evidence from airlines to determine which suppliers are well regarded by airlines both as current suppliers and in terms of their likely ability to meet airline demand as the industry develops. In doing so:

(a) We have placed more weight on evidence from airlines' internal documents produced in their ordinary course of business, and responses which provide insight into their actual purchasing decisions and business models.

(b) We have considered evidence from a wide range of airlines.¹⁴⁶⁷ Wherever we have been able to, we have placed more weight on the evidence from airlines which are more likely to drive investment in NDC-compatible merchandising and distribution solutions, including, but not limited to, larger

¹⁴⁶⁴ Chapter 9, Evidence on threats to Sabre's GDS from NDC adoption and Chapter 9, paragraphs 9.174-9.176.

¹⁴⁶⁵ Chapter 10, Evidence from airlines negotiations with GDS and on pricing.

¹⁴⁶⁶ Chapter 7, paragraph 7.6.

¹⁴⁶⁷ Chapter 10 and Appendix F.

airlines (e.g. Tier 1 airlines) as well as those in IATA's NDC
Leaderboard.¹⁴⁶⁸

11.26 We consider that we can put weight on airlines' views in their relevant context, for the following reasons.

- (a) The merchandising and distribution solutions considered for this Merger assessment are purchased by airlines. While airlines have to have regard to travel agent needs, we consider that it is airline decision making and preferences which primarily drive the competitive process that leads to the development, quality and price of these solutions.¹⁴⁶⁹ Airlines are therefore well placed to comment on their preferences for different types of solutions and the capabilities of suppliers, in particular in terms of driving innovation.
- (b) Both Sabre and Amadeus have expressed a concern that airlines' views are 'self-serving' because, in their view, airlines have an incentive to avoid comparison shopping functions provided by the GDSs, which otherwise promote price competition between airlines. However, we do not consider this to be a valid reason to discount airlines' views. As explained in Chapter 7, we found that airlines have been changing their business models in response to competition from one another, including from low-cost carriers. They initially adopted GDS bypass in the indirect channel because it was not possible to distribute NDC content through the GDSs, rather than because of a wish to avoid comparison shopping. More recently, airlines are, over time, adopting GDS pass-through to distribute NDC content as it becomes available, and appear keen to do so. In addition, we note that while the Parties' and third party documents (including airline documents) assessed airline incentives and changes in demand in great detail, they rarely if ever referenced airline's attempts to avoid comparison shopping as a motivation for adopting GDS bypass solutions.

- *Views of travel agents*

11.27 In assessing the supply of distribution solutions, we recognise that Sabre operates a two-sided platform balancing the demands of airlines and travel agents, while Farelogix operates a different model which allows airlines to decide how they connect with travel agents. We have therefore considered evidence of travel agents, in addition to evidence from airlines, which pertain

¹⁴⁶⁸ However, we have not treated IATA Leaderboard as a comprehensive list of such airlines.

¹⁴⁶⁹ For example, see Chapter 10 (Airlines' evaluation of merchandising suppliers) and Appendix F which set out how airlines evaluate suppliers of NDC solutions in RFP processes.

specifically to their demand for different distribution solutions as detailed in Chapter 10.¹⁴⁷⁰

11.28 The Parties contended that travel agents' views are 'more aligned with those of end-travellers' and accordingly should be given more weight as compared to, in particular, the views of airlines. This contention appears to be based on a supposition that competition between travel agents for passengers is more effective than competition between airlines for passengers, but this supposition has not been substantiated by the evidence. In Chapter 7, we explained that, like travel agents, airlines compete with one another for passengers by differentiating their retailing offers to meet passenger demands. Therefore, we consider that travel agents' views on the Merger are not more determinative than airlines' views or other evidence of the overall effects of the Merger.

- *Valuation evidence*

11.29 We consider evidence on the valuation and purchase price of Farelogix to be informative of the Parties' assumptions of the growth potential of Farelogix, as explained in Chapter 9.¹⁴⁷¹ It forms a part our overall consideration of the impact of the Merger, to be taken into account alongside other evidence set out above.

- *Approach in a forward-looking assessment*

11.30 More generally, we do not agree with the Parties' contention that, given that our forward-looking assessment is necessarily longer term in light of industry dynamics and Sabre's own plans, we are subject a higher standard of evidence or it is impossible for us to make robust findings on whether an SLC is likely on a balance of probabilities. As noted above, all Merger assessment is prospective. Therefore, the fact that our assessment is prospective does not imply that we have to apply a higher standard of proof. There is no time limit on a prospective assessment beyond which it can be said it is impossible to predict outcomes with the necessary degree of certainty. Our ability to make relevant findings is not determined by the time period for our assessment but the evidence available to us. In addition, our assessment does not require the establishment of a long chain of cause and effect which in turn might require a higher standard of evidence.

¹⁴⁷⁰ Chapter 10, Evidence from travel agents.

¹⁴⁷¹ Chapter 9, Paragraphs 9.207 to 9.215.

11.31 While we appreciate that all prospective assessments raise challenges to some degree, as set out in detail below, we believe we have gathered a range of evidence that allows us to draw the necessary conclusions to the requisite standard of proof.

Relevance of the merger to the UK

11.32 The Parties operate at a global level. The UK has major airline, travel agency and passenger activity and we consider that the Merger may have a significant impact on airlines operating in the UK, and therefore on the price, quality and range of services they provide to UK passengers. This is because the Merger could potentially reduce the availability, and pace, of ongoing innovation in, NDC merchandising solutions and NDC distribution solutions. This would affect the supply options available to all airlines (including UK airlines), and the scope for UK passengers to have greater choice in, and control over, their travel experiences.

11.33 The scale of the services supplied by the Parties in the UK, and therefore the scope for a UK impact of the Merger, is indicated by the fact that:¹⁴⁷²

- (a) Sabre alone was responsible for almost [REDACTED] via travel agents in the UK in 2018.¹⁴⁷³
- (b) Farelogix is the IT provider supplying both merchandising and distribution solutions to a significant number of major network carriers operating flights to/from the UK. Its [REDACTED].¹⁴⁷⁴
- (c) Over [REDACTED] UK PoS bookings were made through connections using the Farelogix API in 2018.¹⁴⁷⁵
- (d) UK airlines paid booking fees of around [REDACTED] in the indirect channel in 2018.¹⁴⁷⁶

Assessment of the counterfactual

11.34 The counterfactual is an analytical tool used to help answer the question of whether a merger may be expected to result in an SLC. It does this by providing the basis for a comparison of the competitive situation in the market

¹⁴⁷² We note that Coronavirus (COVID-19) will clearly have a material impact on these figures in the immediate term.

¹⁴⁷³ Sabre response to market questionnaire – Annex 47

¹⁴⁷⁴ Chapter 8, 'Suppliers of merchandising and distribution solutions to major airlines', and Appendix F

¹⁴⁷⁵ Farelogix response to RFI- 72441265_1_Annex 103.1 CMA FLX RFI - Q9 supplementary 1.XLSX

¹⁴⁷⁶ Chapter 5, Jurisdiction, Table 5.1.

with the merger against the most likely future competitive situation in the market absent the merger. The latter is called the counterfactual.¹⁴⁷⁷ Developments which have arisen, or are likely to arise, as a result of the merger will not form part of the counterfactual assessment.¹⁴⁷⁸

11.35 The choice of counterfactual requires a judgement on the likely future situation in the absence of a merger. We may examine several possible scenarios to determine the appropriate counterfactual, one of which may be the continuation of the pre-merger situation. Ultimately only the most likely scenario based on the facts available to us, and the extent of our ability to foresee future developments, will be adopted.¹⁴⁷⁹

11.36 We note that the effects of the Coronavirus (COVID-19) will likely create significant uncertainties that will be felt across the travel industry as a whole. The Parties have not made representations on how this may impact the assessment, nor have they submitted that either Sabre or Farelogix will exit the markets, or become substantially weakened competitors relative to their rivals, as a result. We have seen no evidence that there will be a disproportionate impact on Sabre or Farelogix relative to the rest of the industry. It is important to preserve competition in markets and we consider that despite the significant disruption that Coronavirus (COVID-19) will create to the travel industry, it does not change our assessment of the consequences of the Merger for competition.

Merchandising

The Parties' submissions

11.37 Regarding the counterfactual in merchandising, the Parties submitted that:

- (a) Sabre [REDACTED]. Sabre said it is '[REDACTED]';¹⁴⁸⁰
- (b) the Provisional Findings 'erroneously concluded that a key driver for Sabre to improve its merchandising solution is the need to protect the value of its GDS';¹⁴⁸¹
- (c) Farelogix's growth in merchandising has '[REDACTED]' as it is facing [REDACTED].¹⁴⁸²

¹⁴⁷⁷ [Merger Assessment Guidelines](#), paragraph 4.3.1

¹⁴⁷⁸ [Merger Assessment Guidelines](#), footnote 37

¹⁴⁷⁹ [Merger Assessment Guidelines](#), paragraph 4.3.6

¹⁴⁸⁰ Paragraphs 4.4-4.5, Parties' response to the provisional findings.

¹⁴⁸¹ Paragraph 4.19, Parties' response to the provisional findings.

¹⁴⁸² Paragraph 4.24, Parties' response to the provisional findings.

Our assessment

- *Sabre*

11.38 In Chapter 9 we considered Sabre's strategy documents which show that Sabre considered NDC merchandising solutions to be a critical component of its NDC retailing strategy. Whilst currently Sabre may [✂], it has the [✂] strategic incentive to enhance its merchandising capabilities, in particular through the development of a standalone, NDC-compatible and PSS-agnostic merchandising solution absent the Merger to enable it to sell to all airlines irrespective of whether they use Sabre's PSS.¹⁴⁸³

11.39 We have therefore assessed whether it is likely that Sabre would have developed an NDC-compatible and PSS-agnostic merchandising solution absent the Merger. We have considered evidence on Sabre's intention, incentive and ability to do this, including when this development would likely have taken place and any impact of the merger on its existing investment plans in this area.

- *Intention and incentive*

11.40 Sabre's intention and strong incentive to develop an NDC enabled, PSS-agnostic merchandising product is established by the following evidence.

11.41 First, Sabre has confirmed its need and intention to improve its merchandising capabilities. It told us that its Next Generation Retailing and Next Generation Distribution strategy (which includes a new and more competitive merchandising solution) would be PSS-agnostic and its internal documents show that its intention is to develop and supply a PSS-agnostic merchandising solution.¹⁴⁸⁴

11.42 Second, we have found that a key driver for Sabre to develop new retailing capabilities, including merchandising, is to retain some of the value of its GDS which might be at risk as offer creation functions shift away from it to airlines, as we explained in Chapter 9.¹⁴⁸⁵ Traditionally, a GDS such as Sabre generates value not only by distributing content but also by performing offer creation functions, i.e. combining price, schedule and availability content for the airlines to sell tickets to passengers via their travel agent.¹⁴⁸⁶ However, with the emergence of new retailing models in an environment based on the

¹⁴⁸³ Chapter 9, Incentive for Sabre investing in NDC merchandising solutions.

¹⁴⁸⁴ Chapter 9, Sabre's plans for a PSS-agnostic NDC merchandising solution.

¹⁴⁸⁵ Chapter 9, paragraphs 9.62 to 9.65.

¹⁴⁸⁶ Chapter 7 and paragraph 2.2 (i), the Parties' Initial Phase 2 Submissions.

NDC standard, airlines are increasingly able to undertake the offer creation function themselves to which it is likely to respond.

- 11.43 Therefore, airlines will be less reliant on a GDS for its offer creation function and hence less willing to pay a GDS for the value of this function. This reduces the GDS's value. Sabre's strategy documents stated that this 'shift [of] control to airlines'¹⁴⁸⁷ represents a threat as it diminishes the value of its GDS's contribution to the overall process of creating and distributing airline content.¹⁴⁸⁸ This threat can materialise even if GDSs continue to perform other functions such as aggregation and distribution. The evidence therefore does not support Sabre's contention that its strategy is unrelated to the wish to mitigate the impact to the value of its GDS.
- 11.44 In addition, developing merchandising capabilities would strengthen Sabre's core PSS and non-core PSS business. It would likely mitigate the risk of Sabre losing PSS business to its competitors with a stronger merchandising component, [X], for airline customers who wish to purchase core and non-core PSS products together.¹⁴⁸⁹ Importantly, developing a PSS-agnostic merchandising solution would enable Sabre to grow its customer base and realise new revenue opportunities, because it would allow Sabre to compete for any airlines that choose to unbundle their merchandising module from the core PSS provider, including those which do not use Sabre's core PSS, which represent the majority of the market.¹⁴⁹⁰
- 11.45 Consistent with the above, Sabre highlighted the importance of having PSS-agnostic merchandising capability in its announcements to investors and analysts on the rationale for the Merger.¹⁴⁹¹ Similarly, in the context of its efficiencies submissions,¹⁴⁹² Sabre has also made a number of submissions on how integrating the Farelogix merchandising solution would improve its ability to compete with other suppliers ([X]) on merchandising and core-PSS solutions and give rise to additional revenue.

- *Ability and time frame*

- 11.46 In Chapter 9 we set out evidence from Sabre's plans on its ability to realise its intentions and develop a credible PSS-agnostic merchandising solution within three to five years absent the Merger.¹⁴⁹³ Sabre's internal documents and

¹⁴⁸⁷ [X]

¹⁴⁸⁸ Chapter 9, Protecting GDS business.

¹⁴⁸⁹ Chapter 9, paragraph 9.66.

¹⁴⁹⁰ Chapter 9, paragraph 9.66(c).

¹⁴⁹¹ Chapter 4, section 'Sabre's rationale for the Merger'.

¹⁴⁹² Chapter 12, paragraph 12.8.

¹⁴⁹³ Chapter 9, paragraphs 9.46 et seq.

submissions to us show that, prior to the Merger being announced, Sabre had already made progress in developing its NDC-enabled next-generation retailing offer. Since [REDACTED] Sabre has already invested [REDACTED] in NDC solutions, and it has [REDACTED].¹⁴⁹⁴ While we are uncertain how much of this investment has already been directed specifically for merchandising functions, we note that merchandising will be an important component in Sabre's NDC strategy.

11.47 We recognise that the development of an enhanced merchandising offering is a lengthy process, but we are not persuaded by the Parties' contention that [REDACTED], for the following reasons detailed in Chapter 9:

(a) Sabre previously told us that, [REDACTED].¹⁴⁹⁵ This is corroborated by a more recent Sabre internal planning document in 2019, which stated that if Sabre was [REDACTED].¹⁴⁹⁶

(b) Importantly, Sabre has already made proposals to several airlines that it [REDACTED], without knowledge of whether the Merger would be approved.¹⁴⁹⁷ We consider that this is significant evidence of Sabre's confidence and ability to do so.

(c) In relation to Sabre's submission on the [REDACTED], we note that Sabre appears to have made significant progress, for example as shown by the recent announcement of a significant investment in a partnership with Google

[REDACTED].¹⁴⁹⁸

11.48 We have therefore concluded that, absent the Merger, Sabre had the clear [REDACTED], incentive and ability to introduce an NDC-compatible PSS-agnostic merchandising product, and would have been likely to do so in the next three to five years. We consider Sabre's likely competitive position in this counterfactual relative to other suppliers in the competitive assessment below.

- *Farelogix*

11.49 We found in Chapter 8 that Farelogix is an established provider that continues to be successful in bidding for and retaining merchandising opportunities. The Parties contended that [REDACTED], but we note that Farelogix has recently continued to win, and renew or negotiate, significant contracts.¹⁴⁹⁹ Farelogix marketing

¹⁴⁹⁴ Chapter 9, paragraph 9.49(a).

¹⁴⁹⁵ Merger Notice, paragraph 24.17.

¹⁴⁹⁶ Chapter 9, paragraph 9.49(f).

¹⁴⁹⁷ Chapter 9, paragraph 9.50 and 9.81.

¹⁴⁹⁸ Sabre - Transcript of earnings call Q4 2019 (26 February 2020).

¹⁴⁹⁹ Chapter 8, Paragraph 8.81-8.82

materials show that it continues to invest in improving its merchandising capabilities.¹⁵⁰⁰ Moreover, Sabre's valuation model projected that, as a standalone business, Farelogix's [REDACTED].¹⁵⁰¹

11.50 On that basis, we have concluded that absent the Merger, Farelogix would continue to be a strong provider of merchandising solutions and would have continued to make product improvements and compete effectively for new customers.

Distribution

The Parties' submission

11.51 Regarding the counterfactual in distribution, the Parties submitted that:

(a) Sabre's [REDACTED].¹⁵⁰²

(b) Farelogix's [REDACTED]¹⁵⁰³ Farelogix would have to grow exponentially in order for the Merger to give rise to a significant overlap, which it has not achieved in the past ten years,¹⁵⁰⁴ noting that Farelogix has itself repeatedly overestimated its forecast growth.¹⁵⁰⁵

Our assessment

- *Sabre*

11.52 The evidence we have assessed shows that Sabre's competitive position relative to the other GDSs has remained broadly unchanged over the past few years.¹⁵⁰⁶ While Sabre has flagged that its development of NDC compatible distribution solutions [REDACTED] we note that [REDACTED] to date.

11.53 In Chapter 9 we found that Sabre's strategy documents also show that it has plans to develop distribution capabilities that are compatible with the NDC standard.¹⁵⁰⁷ This includes GDS pass-through and NDC APIs, [REDACTED].¹⁵⁰⁸ We consider that Sabre's investments in distribution, like merchandising, are in part driven by airlines' changing business needs which has required

¹⁵⁰⁰ Chapter 9, Paragraph 9.202(d).

¹⁵⁰¹ Chapter 9, Paragraph 9.208(b).

¹⁵⁰² Parties' response to the provisional findings, paragraph 5.96.

¹⁵⁰³ Parties' response to the provisional findings, paragraph 5.99.

¹⁵⁰⁴ Parties' response to the provisional findings, paragraph 5.10.

¹⁵⁰⁵ Parties' response to the provisional findings report, paragraph 5.18.

¹⁵⁰⁶ Chapter 8, paragraph 8.112

¹⁵⁰⁷ Chapter 9, paragraphs 9.32-9.34.

¹⁵⁰⁸ Chapter 9, paragraph 9.32.

flexible distribution capabilities not previously offered by GDSs, and the responses of rivals (including Farelogix) and the impact to its GDS business.

11.54 The evidence we have considered does not support Sabre's contention that it would face [REDACTED]. We noted in Chapter 9 that Sabre has recently been competing for airlines with an NDC-compatible solution with distribution (and other retailing) functions, such as for [REDACTED].¹⁵⁰⁹ Sabre told us that a main reason for its [REDACTED] is the need to [REDACTED],¹⁵¹⁰ but as discussed in paragraph 11.47(c) above we note that Sabre has made significant investments in its [REDACTED], which, in any event, is part of a wider effort undertaken by Sabre irrespective of the Merger.

11.55 As a result, we consider that absent the Merger Sabre would be likely to remain one of the three major GDS providers and, as such, one of the three major distributors of airline content. It would also continue its investment plans in NDC distribution solutions, including GDS pass-through and NDC API solutions.

- *Farelogix*

11.56 Our analysis of the most recent bidding and customer data considered in Chapter 8 showed that Farelogix continues to compete for NDC distribution solutions, and that it has won or renewed significant contracts (eg [REDACTED]) or is in the process of negotiation (eg [REDACTED]) in 2019.¹⁵¹¹

11.57 Moreover, Farelogix told us that it continued to anticipate a 'tipping point' in the market for NDC solutions as NDC gained acceptance,¹⁵¹² and that it intended to remain in the distribution business for this reason.¹⁵¹³

11.58 In relation to the Parties' contention that Farelogix has [REDACTED],¹⁵¹⁴ the evidence considered in Chapter 9 shows that, although [REDACTED]. We also noted that Farelogix's internal documents stated that [REDACTED].¹⁵¹⁵ This is also consistent with evidence from Sandler's sales process. As noted in Chapter 9,¹⁵¹⁶ if Farelogix were [REDACTED], we consider that Sandler would have been more willing to consider

¹⁵⁰⁹ Chapter 9, paragraphs 9.33 and 9.34.

¹⁵¹⁰ Parties' response to provisional findings, paragraphs 5.94-5.96.

¹⁵¹¹ Chapter 8, Paragraph 8.101

¹⁵¹² Farelogix main party hearing, page 49, lines 1-13.

¹⁵¹³ Farelogix main party hearing, page 24, lines 3-12.

¹⁵¹⁴ Chapter 9, paragraph 9.154; Parties' response to the provisional findings, paragraphs 1.16(ii) and 5.97.

¹⁵¹⁵ Chapter 9, Evidence on Farelogix's [REDACTED]

¹⁵¹⁶ Chapter 9, Sabre's valuation model.

alternative bids. We have seen evidence that there would likely be credible, alternative purchasers of Farelogix in such a scenario.¹⁵¹⁷

11.59 We found that the valuation evidence supports the view that both Parties expect Farelogix to continue to grow rather than stay stagnant or decline because of any scalability challenges.¹⁵¹⁸ We note that both Parties projected that [REDACTED].¹⁵¹⁹ Moreover, Sabre's valuation (and [REDACTED]) shows that the [REDACTED].¹⁵²⁰

11.60 As a result, we consider that absent the Merger, Farelogix would have continued to be a leading provider and developer of NDC distribution solutions, either under the ownership of Sandler or under different ownership.

Assessment of the competitive effects of the merger

Merchandising

The Parties' submissions

11.61 The Parties submitted that our assessment that Sabre would become a 'uniquely strong competitor to Farelogix and Amadeus in the next three to five years' is 'fantastical'.¹⁵²¹ They cited the following main reasons:

- (a) Sabre [REDACTED].¹⁵²²
- (b) Farelogix [REDACTED] and 'being a non-GDS supplier does not make Farelogix more disruptive'; or a 'uniquely strong competitor'.¹⁵²³
- (c) the Provisional Findings understated the potential competitive threat from [REDACTED] Amadeus, Datalex, PROS, OpenJaw and ITA; failed to justify why [REDACTED]¹⁵²⁴ and to properly assess the incentives of other players to expand and innovate.¹⁵²⁵ In Sabre's view, '[REDACTED]'.¹⁵²⁶
- (d) 'important aspects of the [Provisional Findings] in merchandising reflect conglomerate effect concerns', because the CMA did not 'properly justify why the loss of an "independent" merchandising provider could compound

¹⁵¹⁷ See Appendix C.

¹⁵¹⁸ Chapter 9, paragraphs 9.208 et seq.

¹⁵¹⁹ Chapter 9, paragraphs 9.208(b) and Appendix C.

¹⁵²⁰ Chapter 9, paragraph 9.208 and Appendix C, paragraph 2.

¹⁵²¹ Paragraph 1.10, Parties' response to the provisional findings.

¹⁵²² Paragraphs 4.4-4.5, Parties' response to the provisional findings.

¹⁵²³ Paragraphs 1.12; 4.19; 4.22, Parties' response to the provisional findings.

¹⁵²⁴ Paragraphs 1.14, 4.8; 4.28, Parties' response to the provisional findings.

¹⁵²⁵ Paragraphs 1.11(i); 4.5, Parties' response to the provisional findings.

¹⁵²⁶ [REDACTED].


any competition concerns'; and 'the value of the GDS and merchandising solution do not affect each'.^{1527, 1528}

Our assessment

11.62 As discussed at paragraph 11.38 above, we believe that in the absence of the Merger, Sabre would have developed its own NDC-enabled PSS agnostic merchandising product in the next three to five years. As a result of the Merger, we believe Sabre will no longer pursue its independent plans to compete using its own NDC-enabled PSS agnostic merchandising solution and would instead rely upon the acquired Farelogix merchandising solutions to do so.

11.63 In order to assess the loss of Sabre as a competitor against Farelogix and other suppliers of merchandising solutions, we have considered the impact of Sabre's expected development on competition in the absence of the Merger relative to its competitors. To do this, we first considered evidence on the constraint from Sabre as a supplier of NDC-compatible PSS-agnostic merchandising solutions, that would be expected to have developed absent the Merger. We then considered the constraint from Farelogix, and then considered the constraints from other suppliers.

- *Constraint from Sabre*

11.64 We recognise that Sabre is not a significant provider of merchandising solutions today and has not been competing closely with Farelogix in the provision of these services. Sabre's existing merchandising solutions are only available to its core PSS customers and for use on airline.com, whereas Farelogix offers a PSS-agnostic solution that can be integrated into any airline's IT systems and for use in both the indirect channel and airline.com. Where the Parties have competed recently for new merchandising opportunities, Sabre []. It has a low market share in merchandising as a result.¹⁵²⁹

11.65 We believe the evidence on the whole indicates that, Sabre would be likely to become a significant competitor to Amadeus, Farelogix and other competitors absent the Merger in the next three to five years. There are a number of relevant factors concerning Sabre's business that inform Sabre's ability to

¹⁵²⁷ Paragraph 4.19, Parties' response to the provisional findings report.

¹⁵²⁸ [].

¹⁵²⁹ Chapter 8, 'Overview of suppliers capabilities and customers' and 'Suppliers of merchandising and distribution solutions to major airlines'; Bidding analysis Table 8.4 and Table 8.5; Market Share: Table 8.6.

compete significantly with its own merchandising solution. We consider Sabre has a strong track record of delivering solutions to a range of airlines:

- (a) Sabre already supplies its core PSS to [REDACTED] airlines. It would have a significant advantage over its non-PSS competitors in being able to supply these customers and could increase its customer base on this basis alone.¹⁵³⁰ The attractiveness for some customers of integrating merchandising with its PSS is demonstrated, for example, in Sabre's submissions on the interconnection between merchandising and its PSS and efficiencies estimated for the Merger,¹⁵³¹ and in the concern shown by a non-PSS competitor.¹⁵³²
- (b) Sabre also provides GDS services to over 400 airlines.¹⁵³³ The volume of Sabre's relationships with airlines far outstrip any established relationships held by other non-GDS merchandising suppliers. With a PSS-agnostic merchandising solution, Sabre would be able to sell to a wider range of airlines beyond its current core PSS base.
- (c) More generally, Sabre is one of the two main global players active in supplying both airline IT and distribution services to airlines. It has significant resources and development capabilities and a deep knowledge of the airline booking system IT stack, with an existing global sales force and operational support capability.¹⁵³⁴ Sabre is considered by customers and other suppliers to be a strong competitor generally.¹⁵³⁵

11.66 Therefore, we consider that Sabre's current market position in merchandising substantially understates its likely competitive significance going forward. This is a developing market which is growing and, with the strengths described above, we consider the evidence refutes the Parties' view that there is [REDACTED].

¹⁵³⁰ Chapter 9, paragraph 9.65.

¹⁵³¹ See also Paragraph 3.3, Parties' efficiencies working paper response. [REDACTED], we consider that a similar integration benefit of merchandising and its PSS would arise if Sabre develops its own merchandising solution.

¹⁵³² PROS considered itself to be at a disadvantage compared to core PSS providers. Chapter 10, paragraph 10.29.

¹⁵³³ Merger Notice, paragraphs 3.65 and 3.77.

¹⁵³⁴ This is demonstrated by the Parties' submissions on rivalry enhancing efficiencies and customer benefits of the Merger. See Chapter 12, paragraph 12.10 and 12.13 and Chapter 14, paragraph 14.154.

¹⁵³⁵ Chapter 10, paragraphs 10.6-10.11; 10.40-10.48 and 10.51; Chapter paragraphs 10.85(a) and 10.103(b).

- *Constraint from Farelogix*

11.67 The evidence presented in Chapters 8, 9 and 10 shows that Farelogix is a strong established provider of merchandising solutions. Its effectiveness as a competitor is enhanced by the fact that:

- (a) It has a proven track record of delivering merchandising solutions at scale to a range of large and smaller airlines across all tiers, and experience in integrating with all major PSSs. Farelogix's current customer base includes some of the largest airlines in the world (eg [redacted]),¹⁵³⁶ and it has continued to win, negotiate or renew major contracts recently (e.g. [redacted]).¹⁵³⁷ It also has not lost any existing customer of its merchandising solution to another competitor to date.
- (b) It has a strong reputation throughout the industry. It is widely perceived (and monitored) by Sabre, Amadeus and other competitors to be the leading provider of merchandising solutions in terms of functionality and innovation.¹⁵³⁸ Airlines' responses and their evaluation of merchandising suppliers show that Farelogix has a similarly strong reputation among customers.¹⁵³⁹
- (c) It is one of only very few suppliers that currently offer a PSS-agnostic and standalone solution, commercially independent of a GDS and PSS. Farelogix's documents highlight its 'neutral' solution which 'gives airlines control and avoids lock-in with PSS', and its lack of 'conflicts of interest' with PSS and GDS as key selling points of its products.¹⁵⁴⁰ This market positioning is valued by many airlines, because Farelogix's product focuses on serving airlines without having to consider the impact on any GDS/PSS business.¹⁵⁴¹ This also means that Farelogix has a different incentive to innovate from that of the GDSs/PSSs, which also have to consider the impact of developing merchandising solution on their existing GDS/PSS business.

¹⁵³⁶ Chapter 8, paragraph 8.17 and Table 8.1.

¹⁵³⁷ Chapter 8, Analysis of bidding data and market shares, Merchandising; paragraphs 8.81-8.82

¹⁵³⁸ Chapter 9, paragraphs 9.75-9.81; Chapter 10, paragraphs 10.6-10.11, 10.40-10.48 and 10.51.

¹⁵³⁹ Chapter 10, Airlines' evaluation of merchandising suppliers; Airlines' submitted views on merchandising supplier strength.

¹⁵⁴⁰ Chapter 9, How Farelogix markets itself to airlines (paragraph 9.198 et seq.)

¹⁵⁴¹ Chapter 10, Preference for a channel-agnostic provider of merchandising and/or distribution solution. (paragraph 10.109 et seq.)

(d) It offers its merchandising solution alongside a suite of retailing and distribution solutions, so it can engage in cross-selling to its customers and continue to grow its customer base.¹⁵⁴²

11.68 As discussed above,¹⁵⁴³ we believe that absent the Merger, Farelogix is likely to continue to be a strong provider of merchandising solutions and would have continued to make product improvements and compete effectively for new customers.

- *Constraint from other suppliers*

11.69 In order to determine whether the Merger would be expected to result in an SLC in the supply of merchandising solutions, we have considered whether the competitive constraint from other suppliers post-Merger would be sufficient, individually or in aggregate, so as to prevent any SLC arising as a result of Sabre abandoning its independent development of merchandising.

11.70 We have therefore considered:

(a) The extent of the current competitive constraint from other suppliers, including Amadeus, Datalex, PROS, OpenJaw and ITA in particular, which, in the Parties' view, are [X];

(b) how, in each case, this competitive constraint is expected to change as result of expansion (including product improvement) by existing competitors post-Merger.

11.71 Based on these suppliers' plans and capabilities we assessed whether these suppliers have the combination of the intention, incentives and ability to expand in a timely, likely and sufficient manner to prevent any SLC from arising.¹⁵⁴⁴

- *Constraint from Amadeus*

11.72 As noted in Chapter 8, Amadeus has a large established customer base in part reflecting its position in core PSS,¹⁵⁴⁵ and it has been successful in winning recent contracts.¹⁵⁴⁶ Most competitors, including the Parties, monitor

¹⁵⁴² Chapter 9, paragraph 9.196 et seq.

¹⁵⁴³ Paragraphs 11.49 et seq.

¹⁵⁴⁴ Our assessment of competitors constraint going forward and post-Merger is based on existing evidence on their plans and capabilities. We believe this evidence accurately captures their incentives, intention and ability to expand going forward and in the event the Merger goes ahead and we have no reason or evidence to suggest otherwise.

¹⁵⁴⁵ Chapter 8, paragraph 8.9.

¹⁵⁴⁶ Chapter 8, paragraph 8.77; Table 8.4 and Table 8.5.

and identify it as a main competitive threat, and nearly all airlines consider it to be one of the leading providers of merchandising solutions.¹⁵⁴⁷

11.73 Therefore, we consider that Amadeus is currently a significant competitor in respect of its core PSS customers. However, we note that Amadeus's existing merchandising solution is PSS-dependent which limits its customer base to its core PSS customers. Moreover, it is not available on a standalone basis; instead it supplies NDC-compatible merchandising as part of an NDC retailing solution.¹⁵⁴⁸ We also found that some airlines prefer a supplier of merchandising that is independent of a GDS/PSS.¹⁵⁴⁹ These factors mean Amadeus is currently not an option for airlines seeking a standalone merchandising solution and/or from a non-GDS/PSS supplier.

11.74 Going forward, we recognise that Amadeus has been [X].¹⁵⁵⁰ Like Sabre, Amadeus has invested, and plans to invest [X] and it is ahead of all other non-Farelogix competitors in terms of this development. Given Amadeus' strength as a supplier of PSS and GDS, and its incentive to continue to enhance merchandising in part to retain the value of its GDS,¹⁵⁵¹ we consider that Amadeus has the intention, ability and incentive to continue to compete.

11.75 On that basis, we consider that Amadeus will continue to be a strong provider of merchandising solutions for its core PSS customers, and will likely continue to make product improvements and compete more effectively for a wider range of customers [X]. However, we consider that the focus and nature of innovation pursued by Amadeus, given its incentive to also consider the impact of merchandising on its GDS business, will be different to that pursued by a non-GDS provider (like Farelogix) who does not have to take these considerations into account.¹⁵⁵²

- *Constraint from Datalex*

11.76 We found that Datalex has been monitored by the Parties and some other suppliers as one of the other main competitors in the supply of merchandising and more generally retailing solutions.¹⁵⁵³ However, we consider that Datalex is currently a weaker competitor than Amadeus and Farelogix, based on the

¹⁵⁴⁷ Chapter 9, paragraphs 9.82, 9.103; Chapter 10 paragraphs 10.6-10.11, 10.40-10.48, 10.51 and 10.85.

¹⁵⁴⁸ Chapter 8, paragraph 8.10 and Chapter 10, paragraph 10.19.

¹⁵⁴⁹ Chapter 10, Evidence from airlines, section 'Preference for a channel-agnostic provider of merchandising and/or distribution solution' (paragraph 10.109 et seq.); and Chapter 10, paragraph 10.10(b).

¹⁵⁵⁰ Chapter 10, Competitors' strategy in developing NDC-compatible merchandising solutions, Amadeus.

¹⁵⁵¹ Chapter 10, Competitors' strategies in NDC-compatible merchandising solutions, Amadeus and Competitive landscape and strength of merchandising suppliers, paragraphs 10.6-10.11; Appendix E paragraphs 5-9.

¹⁵⁵² See paragraph 11.67(c)

¹⁵⁵³ Chapter 9, paragraphs 9.83-9.86, paragraph 9.103(b); Chapter 10, paragraphs 10.6-10.11.

evidence on existing customer base,¹⁵⁵⁴ the fact that it has a weaker reputation among customers,¹⁵⁵⁵ and the bidding data which shows that it has not won new customers in merchandising after [REDACTED].¹⁵⁵⁶

11.77 Going forward, we recognise that Datalex has both an intention and incentive to compete more strongly. Datalex originally told us it had ambitions to grow merchandising solutions revenues by [REDACTED]. However, its internal documents indicate that there are [REDACTED].¹⁵⁵⁷

11.78 Importantly, Datalex has been facing significant financial challenges that were publicised in 2019 which are affecting its ability to win new customers and resulted in the loss of a significant contract,¹⁵⁵⁸ and has weakened its reputation among airlines.¹⁵⁵⁹ It has remained suspended from trading at the Irish Stock Exchange since May 2019. We also consider that the scope for Datalex to grow revenues from its current customer base is much smaller than that of Sabre, as Datalex does not have the same cross-sell opportunities in PSSs nor an extensive roster of GDS customers.

11.79 For the reasons above, we consider that any expansion by Datalex in merchandising is materially uncertain. We consider that Datalex is likely to be constrained in its ability to improve its products and so, over time, is likely to provide a weakening constraint going forward (in the event other suppliers improve their products).

- *Constraint from PROS*

11.80 Through its acquisition of Vayant, PROS acquired a merchandising (and other retailing) capability. PROS has been mentioned in more recent internal documents of the Parties and other competitors, particularly in the context of wider retailing functions (since PROS is a strong supplier in pricing and revenue management which are other components of retailing solutions).¹⁵⁶⁰ Many airlines also considered PROS as a potential merchandising solutions supplier.¹⁵⁶¹ However, PROS has a very limited track record of supplying

¹⁵⁵⁴ Chapter 8, paragraph 8.23.

¹⁵⁵⁵ Chapter 10, Airlines' evaluation of merchandising suppliers; Airlines' submitted views on merchandising supplier strength.

¹⁵⁵⁶ Chapter 8, Analysis of bidding data in merchandising; Table 8.4 and Table 8.5.

¹⁵⁵⁷ Chapter 10, paragraphs 10.21 to 10.22.

¹⁵⁵⁸ Chapter 8, paragraph 8.25; Chapter 10, paragraph 10.85(e); Appendix E, paragraphs 72-74; and Appendix F.

¹⁵⁵⁹ Chapter 10, Airlines' submitted views on merchandising supplier strength.

¹⁵⁶⁰ Chapter 9, paragraphs 9.88-9.89, paragraphs 9.102-9.103; Chapter 10, paragraphs 10.6-10.11.

¹⁵⁶¹ Chapter 10, paragraph 10.85(g)

merchandising solutions based on its small existing customer base.¹⁵⁶² The bidding analysis shows that it has [REDACTED].¹⁵⁶³

- 11.81 Going forward, we note that a few airlines told us they expect PROS to become stronger in merchandising,¹⁵⁶⁴ and we recognise that PROS is now being monitored by the Parties and other suppliers more often than previously.¹⁵⁶⁵
- 11.82 However, PROS told us that growing its merchandising (and distribution) solutions was ‘not a top strategic priority’ for it and it would likely face a number of difficulties compared to those competitors that also provide PSSs.¹⁵⁶⁶ PROS’s internal documents indicate [REDACTED]. PROS told us that its revenue targets should be viewed as [REDACTED]¹⁵⁶⁷ [REDACTED]. We consider this implies a lower incentive to compete than demonstrated by Sabre in its plans.
- 11.83 We therefore consider that PROS has some incentive and some degree of intention to offer an NDC solution, [REDACTED]. Moreover, we also consider that there are material uncertainties regarding its ability to compete more strongly in the future. PROS has a low level of traction in the supply of merchandising and the scope for PROS to grow revenues from its current customer base is much smaller than that of Sabre, as PROS does not have the same cross-sell opportunities in PSSs nor an extensive roster of GDS customers.
- 11.84 Therefore, we consider that any expansion by PROS in merchandising is materially uncertain, and we believe it more likely than not that PROS would continue to provide a relatively limited competitive constraint in the supply of merchandising solutions going forward.

- *Constraint from OpenJaw*

- 11.85 We found that OpenJaw is currently a weak supplier in merchandising. In comparison with Farelogix and Amadeus, OpenJaw currently has fewer customers who are less significant,¹⁵⁶⁸ and a limited record of winning based

¹⁵⁶² Chapter 8, paragraph 8.31.

¹⁵⁶³ Chapter 8, Table 8.4 and Table 8.5.

¹⁵⁶⁴ Chapter 10, paragraph 10.85(g)

¹⁵⁶⁵ Chapter 9, paragraphs 9.88-9.89, paragraphs 9.102-9.103; Chapter 10, paragraph 10.6.

¹⁵⁶⁶ Chapter 10, Paragraph 10.28 and 10.29.

¹⁵⁶⁷ Chapter 10, Paragraphs 10.28-30.

¹⁵⁶⁸ Chapter 8, Paragraph 8.27-8.28.

on recent bidding data ([REDACTED]).¹⁵⁶⁹ It has a more mixed reputation amongst customers and competitors.¹⁵⁷⁰

11.86 Going forward, OpenJaw's strategy documents show that it had [REDACTED] and that it aims to grow [REDACTED] for the next three years. However, OpenJaw's product roadmap indicates that [REDACTED].¹⁵⁷¹ We consider that [REDACTED] demonstrates a lesser intention and incentive to expand than those demonstrated by Sabre in its plans. In addition, we consider the low level of traction OpenJaw's product has had to date, together with the lack of a core PSS customer base (to which Sabre has and can cross-sell), and a GDS customer base worldwide,¹⁵⁷² will also significantly impact on its ability to increase its competitive constraint going forward.

11.87 Therefore, we consider that any expansion by OpenJaw in merchandising is materially uncertain. Overall, OpenJaw would likely continue to provide only limited competitive constraint in the supply of merchandising solutions going forward.

- *Constraint from ITA*

11.88 We found that ITA is a supplier identified in the Parties' and other suppliers' competitive monitoring in merchandising in recent documents, where ITA is also particularly recognised for its strengths in another retailing solution (shopping).¹⁵⁷³ It is considered by several airlines (mainly in North America) as an alternative to Farelogix in merchandising.¹⁵⁷⁴ However, despite this and the fact that it has been under Google's ownership since 2011, ITA only supplies its merchandising solution to two airlines and [REDACTED]. Its current competitive constraint in the supply of merchandising solutions is therefore very limited.

11.89 Going forward, ITA does not appear to have a strong intention to grow its merchandising solutions. ITA told us that it was still considering its strategy in NDC solutions and its plans are at an early stage. Its focus remains on shopping solutions. ITA also told us that [REDACTED].¹⁵⁷⁵ ITA [REDACTED]. Airlines have

¹⁵⁶⁹ Chapter 8, Analysis of bidding data in merchandising; Paragraph 8.77

¹⁵⁷⁰ Chapter 10, Airlines' evaluation of merchandising suppliers; Airlines' submitted views on merchandising supplier strength Chapter 9, paragraph 9.87(c)(ii); Chapter 10, Competitive landscape and strength of merchandising suppliers.

¹⁵⁷¹ Chapter 10, Paragraph 10.24.

¹⁵⁷² We note that OpenJaw is a wholly-owned subsidiary of TravelSky which operates a 'local GDS' predominantly in China. See Chapter 8, paragraph 8.26.

¹⁵⁷³ Chapter 8, Paragraph 8.34; Appendix E, paragraphs 16, 20-21. Chapter 9, paragraphs 9.88; 9.103.

¹⁵⁷⁴ Chapter 10, Paragraph 10.85(h)

¹⁵⁷⁵ Chapter 10, Paragraph 10.33.

limited mixed views about the strength of ITA in merchandising going forward.¹⁵⁷⁶

11.90 In addition, we consider that the limited impact its product has had on the market to date is indicative of it having a limited ability to grow its constraint going forward. This is consistent with ITA's submissions that it would be [redacted].¹⁵⁷⁷ Therefore, we consider that any expansion by ITA in merchandising is materially uncertain.

11.91 Overall, we consider that ITA does not appear to have a strong intention to improve its merchandising solutions, and that it also has a limited ability to do so and so we believe ITA would be likely to provide only a limited competitive constraint at best in the supply of merchandising solutions.

- *Conclusion on constraint from other suppliers*

11.92 In summary regarding the strength of competitors, we expect that Amadeus will continue to exercise a strong constraint going forward. We expect other current merchandising suppliers including Datalex, PROS, OpenJaw and ITA to continue to supply and exert some constraint, though we have material doubts over the intention, incentive and/or ability of these suppliers to increase their competitive constraint significantly post-Merger. Notably, in the case of Datalex we consider that their constraint is likely to weaken going forward. Therefore, in aggregate the competitive constraint provided by this relatively small number of rivals is likely to remain relatively weak. We also found in Chapter 10 that the constraints from self-supply of merchandising solutions is limited.¹⁵⁷⁸

11.93 We have assessed those suppliers with specific growth plans above. We consider the likelihood that other suppliers could enter or expand, when we discuss barriers to entry and expansion in Chapter 12.

- *Customers' views on the Merger in relation to merchandising*

11.94 We found in Chapter 10 that many airlines have expressed concerns about the Merger's impact on competition and innovation in merchandising. They submitted that post-Merger there may be a reduction of innovation as Sabre may limit the innovation Farelogix has previously demonstrated.¹⁵⁷⁹ We note that travel agents are not customers for merchandising solutions of either of

¹⁵⁷⁶ Chapter 10, Paragraph 10.85(h)

¹⁵⁷⁷ Chapter 10, Paragraph 10.32.

¹⁵⁷⁸ Chapter 10, paragraphs 10.87 et seq.

¹⁵⁷⁹ Chapter 10, 'Airlines views on the Merger', paragraph 10.110(a).

the Parties (or other suppliers). We consider travel agents' view of the Merger in our assessment of distribution below.¹⁵⁸⁰

Overall conclusion

- 11.95 As a result of the Merger, Sabre will no longer pursue its independent plans to compete using its own NDC-compatible PSS agnostic merchandising solution against Amadeus, Farelogix and the other competitors. Based on the assessment above, and compared to the counterfactual, we have found that the Merger would remove a player from the market that would be likely to become a significant competitor in merchandising solutions in the next three to five years.
- 11.96 We consider that, should the Merger proceed, Amadeus is likely to continue to provide a strong constraint to the merged entity (ie Farelogix under Sabre's ownership), and they would be the two most significant competitors in merchandising. Absent the Merger, we consider that Sabre would become one of the three significant competitors alongside Amadeus and Farelogix, and it is not necessary for Sabre to 'leapfrog' these competitors for this to be the case.
- 11.97 We believe that Sabre would be likely to become significantly bigger than the remaining competitors. As noted above at paragraph 11.65, in addition to the advantages Sabre benefits from as one of the two main global players active in supplying both airline IT and distribution services to airlines, the volume of Sabre's relationships with airlines far outstrip any established relationships held by other non-GDS/PSS merchandising suppliers and Sabre would have a significant advantage over its non-PSS competitors in supplying its [✂] core-PSS customers with merchandising solutions. We consider that the other providers such as Datalex, PROS, ITA and OpenJaw are likely to continue to provide limited constraints going forward as explained in paragraph 73 above. When considered in aggregate, we do not consider that the constraint from other suppliers over time will be sufficient to prevent any SLC arising as a result of the removal of Sabre.
- 11.98 As a sensitivity to our assessment, we have also considered whether significant growth or product improvement by any one of these other suppliers, taken together with the limited constraint that is likely from the other suppliers over time, would be sufficient to prevent any SLC arising from the removal of Sabre.¹⁵⁸¹ However, our view is that, even if it were to materialise,

¹⁵⁸⁰ Paragraph 11.27.

¹⁵⁸¹ That is, to give rise to a third significant NDC-compatible PSS-agnostic merchandising solution post-Merger, alongside Amadeus and a combined Sabre/Farelogix.

any such enhanced competitive constraint would be insufficient to prevent any SLC arising as a result of the Merger.

11.99 Our view is that the loss of competition from Sabre alone, as described above, would likely be substantial. However, we also consider the Merger would likely lead to some further loss of competition as a result of Farelogix no longer being independent from GDS/PSS. In our view, an independent Farelogix would have a different incentive to innovate than the GDS/PSS for the reasons explained in 11.67 above, and this Merger would therefore likely result in the loss of a differentiated competitor in the market. We note that this consideration is unrelated to a conglomerate effect concern.¹⁵⁸²

11.100 In conclusion, therefore, we have found that the Merger may be expected to result in an SLC in the supply of merchandising solutions, subject to any countervailing factors (assessed in Chapter 12 below).

11.101 This SLC would be likely to manifest itself through a loss of innovation in merchandising solutions, resulting in reduced customer choice, fewer new features and upgrades being released more slowly. While the nature of innovation means that these effects may take some time to emerge in full, it also means they are likely to have a far-reaching detrimental impact on customers. Moreover, there would likely be an immediate impact on the competitive process – namely the ongoing rivalry between firms driving each other's day to day investment decisions. Sabre's independent effort to develop its merchandising solution would likely drive further innovation by rivals,¹⁵⁸³ but this driver would be lost as a result of the Merger.

11.102 This loss of competition may also result in higher prices as a result of the loss of a significant competitor in merchandising procurement processes, as Sabre and Farelogix would no longer compete against each other independently.

¹⁵⁸² Paragraph 11.61(d). We have not considered a theory of harm concerning the foreclose of rivals with any tying or bundling strategy between merchandising and distribution. See Chapter 7, Theories of harm for assessing the Merger.

¹⁵⁸³ For example, we note that internal documents of Sabre and Amadeus show that they regularly monitor other competitors, and they invest in anticipation of advances by rivals and before products are launched. These features of the market mean that we can expect rivals to be aware of investments by Sabre and to react to them. See Chapter 9, paragraphs 9.94-9.95, Chapter 10, paragraph 10.17-10.18, 10.42-10.43, 10.55-10.56 and Appendix E, paragraphs 5-26.

Distribution

The Parties' submissions

11.103 The Parties submitted that 'the bar to find an SLC' should be 'an extremely high one' in the supply of distribution solutions.¹⁵⁸⁴ They contended that:

- f.* The Parties are not close substitutes and do not compete in the same markets. Farelogix competes for NDC APIs; Sabre competes in the GDS space;¹⁵⁸⁵
- g.* Farelogix is not a significant constraint given its 'market share is de minimis',¹⁵⁸⁶ it has 'a persistently low rate of growth of direct connect over the last decade' and it 'overestimated its forecast growth';¹⁵⁸⁷ and other historic[al] documentary evidence is 'undermined or contradicted' by the empirical evidence;¹⁵⁸⁸
- h.* GDS bypass is 'prohibitively expensive' to travel agents,¹⁵⁸⁹ whilst 'GDS passthrough represents the vast majority of growth';¹⁵⁹⁰
- i.* airlines have many options for alternative suppliers of NDC APIs, including Amadeus, Datalex, DXC Technology and OpenJaw which, in the Parties' view, '[✂]'; other competitors include NDC Exchange, JRTechnologies, IBS and RAMAX;¹⁵⁹¹ there is 'nothing intrinsically difficult about developing an NDC API product' and there many IT providers with IATA certification;¹⁵⁹² and in-house supply of NDC API acts an 'extremely relevant constraint' on Farelogix;¹⁵⁹³
- j.* airlines can 'play the GDSs off against one another' through creating private channel arrangements within a GDS and removing content from a GDS;¹⁵⁹⁴
- k.* airline.com has a much higher market share than Farelogix, is 'a more important lever in negotiations than GDS bypass', and in particular a

¹⁵⁸⁴ Paragraph 1.16, Parties' response to the provisional findings.

¹⁵⁸⁵ Paragraphs 1.16(i), 5.7 and 5.8; Parties' response to the provisional findings.

¹⁵⁸⁶ Paragraph 5.5, Parties' response to the provisional findings.

¹⁵⁸⁷ Paragraphs 5.9, 5.18, Parties' response to the provisional findings.

¹⁵⁸⁸ Paragraph 3.9, Parties' response to the provisional findings.

¹⁵⁸⁹ Paragraph 3.12(iii) Parties' response to the provisional findings.

¹⁵⁹⁰ Paragraph 5.13 Parties' response to the provisional findings.

¹⁵⁹¹ Paragraphs 1.16(iv)(a) 5.55 Parties' response to the provisional findings.

¹⁵⁹² Paragraph 5.57, Parties' response to the provisional findings.

¹⁵⁹³ Paragraph 5.67, Parties' response to the provisional findings.

¹⁵⁹⁴ Paragraphs 1.16; 5.65; 5.73, Parties' response to the provisional findings.

‘significant competitive constraint in relation to the distribution of tickets to OTAs’.¹⁵⁹⁵

- I. the absence of a ‘market power premium’ in the deal valuation shows that this is ‘not a killer acquisition, and ‘there is no economic incentive for Sabre to shut down FLX OC’, and Farelogix would be able to command a higher valuation if it were ‘an expanding force and an existential threat to Sabre’.¹⁵⁹⁶

Our assessment

- *Constraint from Sabre*

11.104 We consider that Sabre is likely to continue to be a significant supplier of distribution solutions. It is extensively used by airlines as one of the main GDSs, competitors consider Sabre to be a strong competitor in distribution and we have not seen evidence to suggest that its current position will weaken.¹⁵⁹⁷ Moreover, Sabre has been developing, and has plans to continue to develop, NDC-compatible distribution solutions including working on GDS pass-through and developing an NDC API.¹⁵⁹⁸ Farelogix has been a key driver for Sabre to do so, as we further discuss from paragraph 11.107 below.

- *Constraint from other GDSs*

11.105 The remaining main competitors in distribution are two other GDSs – Amadeus and Travelport. Sabre and these two GDSs account for the large majority of GDS bookings.¹⁵⁹⁹ Like Sabre, they are well established and used extensively by airlines. However, we consider that the characteristics of the distribution market could make competition between the three GDSs more muted than what we would expect, by way of comparison, in a commodity market with three large firms. These characteristics, as explained in Chapter 7, include the fact that most airlines have to use all three GDSs in order to reach single-homing travel agents, the existence of parity clauses which may reduce the incentives of GDSs to compete for airlines and to differentiate their

¹⁵⁹⁵ Paragraph 1.16(v)(b); 5.7; 5.73, Parties’ response to the provisional findings.

¹⁵⁹⁶ Paragraphs 1.16(iii)(e) and RPF 5.47-48, Parties’ response to the provisional findings.

¹⁵⁹⁷ Chapter 8, paragraph 8.112; Chapter 10, evidence from competitors on Competitive landscape and strength of distribution suppliers; Chapter 10, ‘Airlines’ submitted views on strength of distribution solution suppliers’ and Appendix F, Table F.3

¹⁵⁹⁸ Chapter 9, paragraph 9.32.

¹⁵⁹⁹ Outside China, Japan and Russia which are primarily served by local GDSs. See Chapter 6 and Chapter 8.

offerings,¹⁶⁰⁰ and network effects which raise very significant barriers to entry.¹⁶⁰¹

11.106 For a number of years, the GDSs were slow to develop NDC-compatible solutions.¹⁶⁰² We recognise that, in recent years, some of the GDSs are beginning to enable GDS pass-through for distribution of NDC content, and Amadeus has been ahead of Sabre in also offering its own NDC API. Travelport was the first GDS to manage the booking of flights by a travel agent using the NDC standard in October 2018, but [X].¹⁶⁰³ The evidence from [X] Amadeus' strategy documents shows that airlines' growing ability to use GDS bypass (including Farelogix's solution) is an important factor that has driven such competitive responses from the GDSs.¹⁶⁰⁴

- *Constraint from Farelogix*

11.107 Farelogix is a differentiated competitor to the GDSs. It is focussed solely on serving airlines, enabling them to control how to distribute NDC content, in contrast with the GDSs' two-sided model which balances the demands of airlines and travel agents. We recognise this differentiation means that the GDS bypass solution Farelogix provides is not a perfect substitute for the GDSs, as many travel agents value the GDSs' wider functionality such as the ability to handle complex itineraries involving multiple airlines and support comparison shopping.

11.108 However, we have considered travel agent evidence, which does not support the Parties' view that it is 'prohibitively expensive' to travel agents to implement GDS bypass solutions.¹⁶⁰⁵ We found that GDS bypass offerings, including those provided by Farelogix, appear to be well-suited to reaching OTAs and other travel agents who have high technological capability, including some TMCs and larger B&M agents for some of the volumes currently handled by GDSs.¹⁶⁰⁶ Collectively these represent a substantial share of Sabre's travel agent bookings, for example OTAs account for nearly a third of all bookings of Sabre.¹⁶⁰⁷ While GDSs will continue to play an important role for travel agents, in our view, GDS bypass is an effective alternative to GDSs for a substantial part of their airline customer base, and

¹⁶⁰⁰ Chapter 7, paragraph 7.6.

¹⁶⁰¹ We further consider barriers to entry in Chapter 12.

¹⁶⁰² Chapter 7, Suppliers responses to meet airline demands

¹⁶⁰³ Chapter 8, paragraph 8.15.

¹⁶⁰⁴ Chapter 9, paragraphs 9.164-9.165; Chapter 10, paragraph 10.55-10.56.

¹⁶⁰⁵ Parties' response to the provisional findings, paragraph 3.12.

¹⁶⁰⁶ Chapter 6, section on 'Use of GDS and GDS bypass by different types of travel agent'; Chapter 10, Evidence from travel agents, Current use of GDS bypass; Future use of GDS bypass.

¹⁶⁰⁷ Chapter 10, Evidence from Travel agents, Para 10.119

provides airlines with a credible outside option as leverage in negotiating commercial terms, including fees, with the GDSs.¹⁶⁰⁸ To mitigate the threat of losing revenue to GDS bypass, GDSs have responded by developing new capabilities (eg NDC API or GDS pass-through) to allow airlines to control offer creation and distribute content.¹⁶⁰⁹ Therefore, any loss of competition between GDSs and GDS bypass distribution might have a material impact on competition.

11.109 We recognise that Farelogix's current market share is much smaller than those of Sabre, other GDS providers and airline.com,¹⁶¹⁰ and that Farelogix has previously overestimated its forecast growth. However, we consider that the importance of the competitive constraint imposed by Farelogix is better demonstrated by its role in driving the GDSs to enhance their offering to airlines, in particular by adopting NDC and enabling GDS pass-through.

11.110 Specifically, Sabre's internal documents show that these investments were to a [redacted].¹⁶¹¹ Amadeus' documents show that [redacted].¹⁶¹² Sabre identified Farelogix in particular as among the most important suppliers of these services.¹⁶¹³ These documents also show that, even if GDS bypass were to remain a relatively small part of the distribution market (as we expect), this would only be because it has played a significant role in pushing the GDSs themselves to improve services such as GDS pass-through so as to prevent the loss of bookings to other channels.¹⁶¹⁴ We expect Farelogix would continue to play this role absent the Merger. Without Farelogix, the ability of airlines to pressure the GDSs to innovate and develop in this sphere would be diminished. For this reason, while the empirical evidence shows that Farelogix has a small market share and a low growth rate in the past decade, we consider that this does not undermine the concerns expressed by Sabre in other documentary evidence.

11.111 Moreover, as the leading provider of NDC API, Farelogix is well placed to capture a significant share of any increased GDS bypass volumes that are forecast. Specifically, we have found that Farelogix:

¹⁶⁰⁸ Chapter 10, Evidence from airlines negotiations with GDS and on pricing.

¹⁶⁰⁹ Chapter 9, 'Evidence on threats to Sabre's GDS from NDC adoption'; Chapter 10, paragraph 10.97

¹⁶¹⁰ Chapter 8, Market share, Table 8.10

¹⁶¹¹ Chapter 9, paragraphs 9.163 et seq.

¹⁶¹² Chapter 10, paragraphs 10.42-10.44 and 10.55-10.56.

¹⁶¹³ Chapter 9, paragraphs 9.173 et seq.

¹⁶¹⁴ Chapter 9, paragraph 9.216. See Chapter 10, paragraphs 10.42-10.44 and 10.55-10.56 and Appendix E, paragraphs 5-24 for details on specific documents.

- (a) has more NDC API customers than any of its non-GDS rivals;¹⁶¹⁵
- (b) supplies a range of airlines, including some of the largest network carriers operating in the UK and in the world;¹⁶¹⁶ and is the most successful supplier to the IATA's NDC Leaderboard who are industry leaders in migrating to NDC solutions;¹⁶¹⁷
- (c) has a reputation among airlines of offering a high quality NDC API product because of its 'advanced connection'; 'experience with integration to PSS' and 'travel agency implementation', and 'the scale required to serve large airlines',¹⁶¹⁸ and many customers value Farelogix's independence from the GDS/PSS;¹⁶¹⁹
- (d) has shown it can rapidly grow its share of passenger volumes for airlines which have already adopted its technology, [redacted];¹⁶²⁰
- (e) is expected to grow by both Farelogix itself and Sabre ([redacted]), despite Farelogix's contention that it faced scalability challenges.¹⁶²¹

11.112 In addition, in our view the competitive strength of Farelogix, including its ability to further grow and its market influence, should not only be assessed in terms of measures such as current volumes and customer numbers alone, but in the light of other evidence as well. Through its wider commercial activities, Farelogix has existing customer relationships, a track record of delivering to large airlines, and a reputation as an innovator in the airline industry. We found that both existing and potential customers of Farelogix and competitors (including Sabre) all considered these to be important and to strengthen Farelogix's position as a competitor.¹⁶²²

11.113 We consider that Farelogix's strength is further enhanced by its independence from the GDSs. Unlike a GDS, Farelogix does not have to consider the impact of offerings on any existing GDS business, and can focus on providing and developing solutions to enable airlines to control their distribution across all channels.¹⁶²³ This independence is valued by the

¹⁶¹⁵ Chapter 8, Current suppliers of merchandising and distribution solutions to major airlines; Table 8.2

¹⁶¹⁶ Chapter 8, Current suppliers of merchandising and distribution solutions to major airlines; Table 8.2; Appendix F

¹⁶¹⁷ Chapter 8, paragraph 8.56

¹⁶¹⁸ Chapter 10, Airlines' submitted views on strength of distribution solution suppliers.

¹⁶¹⁹ Chapter 10, Preference for a channel-agnostic provider of merchandising and/or distribution solutions. (paragraph 10.109 et seq.)

¹⁶²⁰ Chapter 10, Paragraph 10.92

¹⁶²¹ Chapter 9, paragraph 9.208(b)(ii).

¹⁶²² Chapter 10, paragraphs 10.42-10.48 and 10.51 and 'Airlines' submitted views on strength of distribution solution providers'; Chapter 9, paragraphs 9.173 et seq.

¹⁶²³ Chapter 9, How Farelogix markets itself to airlines

airlines,¹⁶²⁴ and also acts as a factor in the competitive constraint Farelogix places on the GDSs.

11.114 We also take into account the fact that in our view the threat Farelogix poses to Sabre in distribution is enhanced by its strong position in merchandising, as reflected in [§] third parties' documents.¹⁶²⁵ The use of Farelogix's merchandising solution in turn drives a need for NDC-compatible distribution. It therefore changes airlines' preferences over distribution channels and increases the risk that they may move some volumes away from Sabre, which has limited ability to distribute this content, and towards GDS bypass options, which do have this ability. Much of this business at risk could go to Farelogix's own distribution solution, particularly for airlines who may value its ability to offer this alongside its merchandising solution. However, even if airlines were to instead consider using other bypass options, this would still represent a significant risk to Sabre's GDS business, and one that has emerged (and absent the Merger would continue to emerge) because of Farelogix's role as a leading provider and innovator in the industry.

- *Constraint from other suppliers*

11.115 We have considered the extent of the current competitive constraint from other suppliers of NDC APIs identified by the Parties above (paragraph 11.103) or suppliers of other NDC-compatible distribution solutions, and how these competitive constraints are expected to change as result of expansion by existing competitors.

- *Current competitive positions*

11.116 We found that Amadeus is currently the most significant competitor to Farelogix in relation to NDC APIs, while other competitors including OpenJaw and Datalex offer some, but not all, of the attributes offered by Farelogix:

(a) Amadeus supplies NDC APIs to 15 customers, comprising a range of large and smaller airlines of various tiers.¹⁶²⁶ The customer bases of

¹⁶²⁴ Chapter 10, Preference for a channel-agnostic provider of merchandising and/or distribution solutions. (paragraph 10.109 et seq.)

¹⁶²⁵ Chapter 9, paragraphs 9.61 et seq. for Sabre documents, and paragraphs 9.196 et seq. for Farelogix documents. Chapter 10, paragraphs 10.17-10.18, 10.42 and 10.54-10.56.

¹⁶²⁶ Chapter 8, paragraph 8.11(a)

OpenJaw,¹⁶²⁷ Datalex,¹⁶²⁸ and other competitors are much less significant than Farelogix's in terms of size and number.¹⁶²⁹

- (b) The bidding analysis shows that Amadeus has been the most successful competitor in winning against Farelogix, especially since 2017, followed by OpenJaw.¹⁶³⁰ JRTechnologies [X]. The most recent contract won by Datalex ([X]), prior to its financial irregularities being publicised. Other than these competitors and self-supply, no known suppliers have won against Farelogix in the bidding of the past five years.
- (c) In terms of customers' views, each of Amadeus, Datalex, and OpenJaw, and JRTechnologies have been identified by five or more airlines as potential alternatives to Farelogix; other suppliers were mentioned but to a much lesser degree. Airlines generally considered Farelogix to have a higher quality product in terms of experience in integration with different PSSs, implementation with travel agents and the ability to scale, as well as its independence from the GDS.¹⁶³¹
- (d) In terms of competitive monitoring in distribution generally (not specific to NDC API), Sabre's internal documents indicate that it considers [X] as competitors, and occasionally lists other competitors (such as [X]) but not with as much frequency or in as much depth.¹⁶³² Farelogix's internal documents show that it considered the GDSs to be closer competitors than other NDC API providers such as Datalex and OpenJaw.¹⁶³³ Like Sabre, other GDSs primarily monitor each other (and other aggregators to a lesser degree) and they also acknowledge the threat of 'direct connect' and 'NDC' providers including Farelogix. Other IT providers (ie Datalex and OpenJaw) look at NDC compatible distribution solutions in the broader context of airline retailing alongside GDS.¹⁶³⁴

11.117 We found that other competitors currently have a much weaker track record. IBS and RAMAX supply NDC APIs to a small number of airlines but they have not competed against Farelogix.¹⁶³⁵ DXC and NDC Exchange supply a translation technology rather than an NDC API.¹⁶³⁶ Moreover, these

¹⁶²⁷ Chapter 8, paragraph 8.29.

¹⁶²⁸ Chapter 8, paragraph 8.24

¹⁶²⁹ Chapter 8, section 'Overview of suppliers' capabilities and customers' (paragraph 8.5 et seq).

¹⁶³⁰ Chapter 8, section 'Analysis of bidding data in NDC API', Table 8.7 and Table 8.8.

¹⁶³¹ Chapter 10, section 'Airlines' submitted views on strength of distribution solution suppliers (NDC API and GDS)'

¹⁶³² Chapter 9 'Competitive constraints on Sabre in distribution' (paragraph 9.172 et seq)

¹⁶³³ Chapter 9, paragraph 9.191.

¹⁶³⁴ Chapter 10, paragraphs 10.41 and 10.51.

¹⁶³⁵ Chapter 8, paragraphs 8.41 and 8.46.

¹⁶³⁶ Chapter 8, paragraphs 8.44-8.45 and Chapter 10, paragraph 10.103(h)-(j)

suppliers are generally not perceived as competitive threats in any meaningful way in the Parties' competitive monitoring. We also note that Travelport was the first GDS to distribute NDC content using GDS pass-through, but it does not supply an NDC API.¹⁶³⁷

- *Competitive positions going forward*

11.118 Our assessment in Chapter 10 shows that competitors are at varying stages of their development of NDC-compatible distribution solution.¹⁶³⁸ We have assessed whether the expansion of these competitors would be timely, likely and sufficient to prevent any SLC arising as a result of the Merger, and specifically the removal of Farelogix as an independent competitor. Of the competitors with a stated intention to continue investing in NDC distribution capability:

- (a) Amadeus is the most advanced competitor in its development of distribution solution. Amadeus told us that it plans to invest around [REDACTED] in its indirect distribution services [REDACTED], and that it is investing heavily in NDC.¹⁶³⁹
- (b) Travelport told us that it [REDACTED].¹⁶⁴⁰
- (c) Datalex [REDACTED]. However, as noted in paragraph 11.78 above in our assessment of merchandising, Datalex has been facing significant financial challenges which are affecting its ability to win new customers.
- (d) OpenJaw has [REDACTED]; its internal documents showed that it [REDACTED].¹⁶⁴¹
- (e) ITA [REDACTED]; it initially targets existing customers of its shopping tool but noted that many of these customers already had NDC API agreements with Farelogix.¹⁶⁴²
- (f) Travelfusion is in the process of introducing an NDC API. It told us that [REDACTED]. We have not seen any plans or strategy documents on how it plans to achieve this.¹⁶⁴³
- (g) PROS told us that it had plans to improve its product features and functionality in the coming years, but these are not a top strategic priority

¹⁶³⁷ Chapter 8, paragraph 8.15.

¹⁶³⁸ Chapter 10, 10.54 et seq.

¹⁶³⁹ Chapter 10, paragraph 10.54-57.

¹⁶⁴⁰ Chapter 8, paragraph 8.15.

¹⁶⁴¹ Chapter 10, paragraph 10.26 and 10.59. See also chapter 12, paragraph 12.98.

¹⁶⁴² Chapter 10, paragraph 10.61.

¹⁶⁴³ Chapter 10, paragraph 10.63.

for PROS overall, and it would not be able to bypass the GDS as it opted for a different commercial strategy.¹⁶⁴⁴

11.119 Regarding other IATA-certified IT suppliers identified by the Parties as potential entrants, we found that IATA-certification is not a measure of quality or capabilities,¹⁶⁴⁵ and there is no evidence that these suppliers have specific plans to develop an NDC API solution to compete for customers. In relation to the Parties' view that there are no intrinsic difficulties about developing an NDC API, we recognise that a few other NDC API products have been, or are being, developed, but we consider that it is not a timely process for a supplier to scale a product to become a credible constraint. This is consistent with the scaling challenges experienced by Farelogix previously.

11.120 Therefore, we consider it more likely than not that Farelogix and its competitors, including Amadeus and OpenJaw would grow broadly in line with their current competitive positions, except Datalex whose strength going forward is likely to be weakened by its financial challenges. Travelport will likely continue its position as a GDS, including the development of NDC distribution using GDS pass-through. We note that few other competitors have plans to grow, but we consider there are material uncertainties over whether these competitors will be able to grow and exercise anything other than a very limited constraint in the market, and whether any such expansion would be timely and sufficient. We further assess barriers to entry or expansion in chapter 12.

- *Self-supply*

11.121 We have found that self-supply of NDC APIs imposes some constraint on the Parties. We recognise that several large or mid-size airlines do self-supply, but some other large airlines instead choose to outsource because of the significant costs involved, or the lack of financial resources and expertise to self-supply. One airline recently abandoned in-house supply and switched to an outsourced solution.¹⁶⁴⁶ Overall, we consider that self-supply is unlikely to be an option for smaller airlines who may find the technical challenges and costs prohibitive. In any event, even if self-supply would protect some larger airlines which can use self-supply protect themselves from price increases post-merger, the fact that prices are individually negotiated means this would not protect the significant number of other airlines who do not consider this option.

¹⁶⁴⁴ Chapter 10, paragraphs 10.50(c) and 10.60.

¹⁶⁴⁵ Chapter 10, paragraph 10.104.

¹⁶⁴⁶ Chapter 10, 'Airlines' submitted views on self-supply of distribution solutions (NDC API)'.

- *Other constraints*

11.122 In addition to GDS bypass, we recognise that some airlines have used other tools to negotiate with GDSs, including airline.com and private channels.

- *Airline.com*

11.123 We found that the market share and airline evidence confirms that airline.com plays an important role in airlines' overall distribution strategies.¹⁶⁴⁷ Similar numbers of airlines told us that they have used airline.com and GDS bypass as levers in negotiations with GDSs.¹⁶⁴⁸ However, we consider that airline.com plays a different role to GDS bypass in competing with the GDSs for the following reasons:

- (a) Airline.com is a less effective alternative for airlines to distribute content to passengers with complex requirements (particularly the more sophisticated corporate travellers who use TMCs), which are primarily served by GDSs.¹⁶⁴⁹
- (b) Airline.com share of bookings has been stable at around 50% on a global level. Its penetration may have reached 'full potential' for some airlines as reported in both [REDACTED] an equity analyst report.¹⁶⁵⁰ While some other airlines may be able to continue to grow airline.com, their ability to do so does not protect other airlines that have exhausted this option. Moreover, [REDACTED].¹⁶⁵¹
- (c) Airlines told us that they increasingly wish to make differentiated and personalised offers available across all sales channels, including within the indirect one,¹⁶⁵² and the ability to do this offered by Farelogix cannot be replaced with airline.com.
- (d) Additionally, although airline.com offers some constraint on GDSs via its impact on OTA bookings (incentivising GDSs to make sure they can offer relevant airline content to OTAs), the option of GDS bypass as a choice for OTAs adds to that pressure. Thus competition from airline.com may drive OTAs to adopt GDS bypass, which in turn may drive GDS pass-through.

¹⁶⁴⁷ Chapter 8, Table 8.9, airline.com share of distribution; Chapter 10, 'Airlines submitted views on expected use of various distribution channels, Airline.com' and 'Volume shift from GDS to GDS bypass and airline.com'

¹⁶⁴⁸ Chapter 10, 'Evidence from airlines negotiations with GDS and on pricing'

¹⁶⁴⁹ Chapter 10, paragraph 10.143 et seq; and 10.93. We note that the constraint faced by GDSs specific to bookings on the OTA segment may not protect other travel agent segments such as TMCs. While Sabre [REDACTED], we note that in practice [REDACTED] (see paragraph 7.6(i)). This means Sabre can to some extent set different fees for bookings [REDACTED].

¹⁶⁵⁰ Chapter 6, Competition between direct channel (including airline.com) and indirect channel, paragraph 6.52.

¹⁶⁵¹ Chapter 9, paragraph 9.184.

¹⁶⁵² Chapter 6, paragraph 6.35; Chapter 7, Paragraph 7.12; Chapter 10, paragraphs 10.92 - 10.99, Appendix F.

We consider that the Merger would remove one option (ie Farelogix) for travel agents, especially OTAs, to obtain content outside the GDS to compete against airline.com.

- *Private channel arrangements*

11.124 Regarding private channel arrangements, we note that Sabre currently has private channel agreements with [REDACTED] airlines. The private channel bookings of these airlines account for less than [REDACTED] of total bookings on Sabre's GDS, but Sabre told us that [REDACTED].¹⁶⁵³ While we acknowledge that private channel or other surcharge arrangements can exercise some pressure on Sabre for those airlines that have used this arrangement, the airlines that have agreed these arrangements with Sabre also use GDS bypass; we consider the option of GDS bypass may in turn provide additional pressure for GDSs to agree to a private channel agreement with an airline.¹⁶⁵⁴

- *Valuation of Farelogix*

11.125 We have considered the evidence on the valuation and purchase price of Farelogix in Chapter 9.¹⁶⁵⁵ We found that this evidence supports the view that both Parties expect Farelogix to continue to grow in distribution (and in merchandising) solutions, rather than decline because of any scalability challenges. We noted that the valuation evidence did not include quantified synergies from anti-competitive effects (eg protecting GDS revenues that would otherwise be lost to Farelogix). We consider that the absence of an overt assessment of the anti-competitive potential, or any so-called 'market power premium', of a merger as part of a valuation exercise cannot be considered determinative by itself. We have therefore considered this finding in the overall context of the Merger and alongside the totality of other evidence received during our inquiry.

- *Customers' views on the Merger*

11.126 Many of the airlines responding to our questionnaires expressed concerns about the Merger's impact on distribution, as did [REDACTED]. In particular, airlines noted that the Merger would remove a successful and growing innovator that has been an alternative to the GDSs, and as a result increase Sabre's (and other GDS') market power and set back progress in developing

¹⁶⁵³ [REDACTED]. See Appendix 17, Merger Notice.

¹⁶⁵⁴ Chapter 9, paragraph 9.166 Appendix D (paragraph 48), and Appendix E paragraph 6(d) and 6(e), Figure 5 and 7.

¹⁶⁵⁵ Chapter 9, paragraphs 9.206 et seq.

NDC solutions.¹⁶⁵⁶ Travel agents were on the whole less concerned: a small number expressed a concern, some told us that it could be positive while most others were neutral.¹⁶⁵⁷

Overall conclusion

11.127 On the basis of the evidence considered above, we found that the Parties face a number of constraints, in particular from other GDSs, and to some extent from a few NDC API suppliers and airline.com, in the market for the supply of distribution solutions.

11.128 We consider that, Farelogix, as a supplier that is differentiated from the GDSs and airline.com, has played and is likely to continue to play a significant role in the market for distribution solutions. Farelogix's role is valued by airlines and it has driven the GDSs to invest in NDC distribution capabilities including GDS pass-through. In particular, Farelogix's independence from the GDSs acts as a factor in the competitive constraint it places on the GDSs for reasons explained in paragraph 11.113 above. We also take into account the fact that in our view the threat Farelogix poses to Sabre in distribution is enhanced by its strong position in merchandising as explained in paragraph 11.114.

11.129 Our view is that we should be particularly cautious about any loss of competition, even from a smaller competitor, which could have a significant impact in a relatively concentrated market characterised by the features explained in paragraph 88 above. We expect that, absent the Merger, Farelogix would be likely to continue to play a significant role in constraining the GDSs and other competitors, and that should the Merger proceed the constraint from other suppliers or types of constraint would be insufficient to prevent any SLC.

11.130 We have therefore concluded that the Merger may be expected to result in an SLC in the supply of distribution solutions to airlines, subject to any other countervailing factors (assessed in Chapter 12 below). This loss of competition would be likely to lead to a reduction in innovation in distribution solutions, particularly in terms of the development of GDS pass-through capabilities by the GDSs, to the detriment of all airlines and travel agents across the sector. In the short term, it may also result in the GDSs charging higher prices than they otherwise would do to some airlines, due to a reduction in airlines' ability to redirect volumes away from the GDSs to Farelogix's GDS bypass as an alternative channel, particularly because one

¹⁶⁵⁶ Chapter 10, Airlines' views on the Merger, paragraph 10.110 et seq.

¹⁶⁵⁷ Chapter 10, Travel agents' views on the Merger, paragraph 10.149 et seq.

of the reasons for airlines to adopt GDS bypass is to reduce their distribution costs.

12. Countervailing factors

- 12.1 There are some instances when a merger may reduce competition substantially but for one or more countervailing factors. One countervailing factor might be because a merger allows the merger parties to realise efficiencies which enhance rivalry between the firms left in the market after a merger. Another is once the reaction by rivals or potential rivals is taken into account, by examining the likelihood of them entering into a market or expanding their activities in it, an SLC is not likely to arise. A third is that customers have sufficient options available that they have countervailing buyer power which prevents an SLC (or an adverse effect resulting from an SLC) from coming about.
- 12.2 Therefore, before concluding on the Merger, in this section we assess whether there are any countervailing factors which would prevent an SLC from arising despite our competitive assessment discussed above.

Efficiencies

Introduction

- 12.3 CMA guidance states:

Efficiencies arising from the merger may enhance rivalry, with the result that the merger does not give rise to an SLC. For example, a merger of two of the smaller firms in a market resulting in efficiency gains might allow the merged entity to compete more effectively with the larger firms.¹⁶⁵⁸

- 12.4 When considering the existence of any such efficiencies, the CMA Guidance states that:

It is not uncommon for merger firms to make efficiency claims. To form a view that the claimed efficiencies will enhance rivalry so that the merger does not result in an SLC [...] the [CMA] must expect, that the following criteria will be met:

- (a) The efficiencies must be timely, likely and sufficient to prevent an SLC from arising (having regard to the effect on rivalry that would otherwise result from the merger); and

¹⁶⁵⁸ [Merger Assessment Guidelines](#), paragraph 5.7.2.

- (b) the efficiencies must be merger specific, ie a direct consequence of the merger, judged relative to what would happen without it.¹⁶⁵⁹

Efficiency claims can be difficult for the CMA to verify because most of the information concerning efficiencies is held by the merger firms. The CMA therefore encourages the merger firms to provide evidence to support any efficiency claims whether as part of the SLC analysis or the consideration of relevant customer benefits.¹⁶⁶⁰

- 12.5 In addition to the criteria stated above (ie timely, likely and sufficient to prevent an SLC from arising, and merger-specific), the CMA Guidance also explains that savings resulting from supply-side efficiencies, such as cost reductions, are not necessarily rivalry-enhancing if they are retained by the merged entity rather than affecting the consumer-facing proposition which would determine the degree of rivalry with competitors.¹⁶⁶¹
- 12.6 In line with the CMA Guidance set out above, when considering whether the Merger is likely to generate rivalry enhancing efficiencies, the Parties must provide evidence that the claimed efficiencies will enhance rivalry so that the Merger will not result in an SLC. The CMA must expect¹⁶⁶² that the efficiencies will be:
- (a) Timely, likely and sufficient to prevent an SLC from arising;
 - (b) merger-specific; and
 - (c) would result in increased rivalry in the relevant market(s).

Views of the Parties

- 12.7 The Parties submitted that the Merger would result in a range of efficiencies and customer benefits. Specifically, the Parties told us that the Merger would:
- (a) Allow Sabre to address market opportunities by immediately marketing a competitive PSS-agnostic merchandising module;¹⁶⁶³ and
 - (b) accelerate the adoption of fully integrated end-to-end NDC solutions at scale across the airline industry.¹⁶⁶⁴

¹⁶⁵⁹ [Merger Assessment Guidelines](#), paragraph 5.7.4.

¹⁶⁶⁰ [Merger Assessment Guidelines](#), paragraph 5.7.5.

¹⁶⁶¹ [Merger Assessment Guidelines](#), paragraph 5.7.9.

¹⁶⁶² [Merger Assessment Guidelines](#), paragraph 5.7.4.

¹⁶⁶³ [REDACTED].

¹⁶⁶⁴ [REDACTED].

Efficiencies arising from Sabre's acquisition of a PSS-agnostic merchandising module

12.8 The Parties submitted that, by acquiring a PSS-agnostic merchandising solution, Sabre will be able to offer a solution to airlines [REDACTED] and will be able to better serve airlines which prefer to procure merchandising alongside their core PSS.¹⁶⁶⁵ As a result, the Parties told us the Merger would enhance rivalry with Amadeus, ITA and others.¹⁶⁶⁶

12.9 The Parties told us that the Merger would lead to more robust competition in NDC retailing as Sabre's acquisition of FLX M would improve the offerings of both Sabre and Farelogix. The Parties told us that:

(a) Sabre's expertise as a provider of a core PSS for airlines would enable it [REDACTED];¹⁶⁶⁷ and

(b) the Merger would improve incentives to invest in enhanced interoperability as the merged entity would fully internalise benefits from incremental sales spurred by better integration.¹⁶⁶⁸

12.10 The Parties also told us that the Merger would help resolve [REDACTED]¹⁶⁶⁹ and that combining Sabre's global infrastructure with Farelogix's market-ready product would enable the merged entity to better compete with Amadeus and ITA, among others, for NDC merchandising opportunities.¹⁶⁷⁰

Efficiencies arising from the acceleration of end-to-end NDC

12.11 The Parties told us that the Merger would accelerate the delivery of NDC content through the GDS, increasing competition amongst Sabre, Amadeus and Travelport, as well as promoting price transparency and inter-brand competition among airlines.¹⁶⁷¹

12.12 The Parties told us that Farelogix's NDC technology and NDC engineering skills would allow Sabre to improve the NDC support of its GDS and that, [REDACTED].¹⁶⁷² The Parties told us that this [REDACTED]:

¹⁶⁶⁵ [REDACTED].

¹⁶⁶⁶ [REDACTED].

¹⁶⁶⁷ [REDACTED].

¹⁶⁶⁸ [REDACTED].

¹⁶⁶⁹ [REDACTED].

¹⁶⁷⁰ [REDACTED].

¹⁶⁷¹ Sabre told us that [REDACTED] that the Merger would create greater rivalry as the GDSs begin to consume NDC content with greater frequency and volume. [REDACTED].

¹⁶⁷² [REDACTED].

- (a) [REDACTED];
- (b) [REDACTED]; and
- (c) [REDACTED].¹⁶⁷³

12.13 The Parties submitted that, by integrating Farelogix’s technology and engineering talent with Sabre’s infrastructure, the Merger would enable airlines to distribute, book and fulfil more sophisticated offers using the NDC standard at a global scale while fully integrating with the features and support of the Sabre GDS, and to do so more effectively and quickly than would be possible without the Merger.¹⁶⁷⁴

Timeliness and likelihood

12.14 The Parties submitted that the efficiencies described above were likely and would materialise in a timely manner.¹⁶⁷⁵ Sabre told us that it anticipated that incremental customers would be attracted by the merged entity’s improved product offering [REDACTED].¹⁶⁷⁶

12.15 Specifically, Sabre told us that its financial model included the following assumptions:

- (a) The addition of a ‘best-of-breed’ NDC merchandising solution [REDACTED].¹⁶⁷⁷
- (b) The merged entity would [REDACTED].¹⁶⁷⁸

12.16 Sabre told us that its financial model demonstrated that [REDACTED]¹⁶⁷⁹ and that Sabre would [REDACTED].¹⁶⁸⁰

Sufficiency

12.17 The Parties told us that the full range [REDACTED].¹⁶⁸¹ As set out in Appendix C, [REDACTED]. Sabre told us that benefits were [REDACTED].¹⁶⁸²

1673 [REDACTED].
1674 [REDACTED].
1675 [REDACTED].
1676 [REDACTED].
1677 [REDACTED].
1678 [REDACTED].
1679 [REDACTED].
1680 [REDACTED].
1681 [REDACTED].
1682 [REDACTED].

12.18 The Parties told us that [REDACTED]. The Parties told us that the [REDACTED].¹⁶⁸³

12.19 The Parties also submitted that positive feedback on the proposed Merger from travel agents showed that efficiencies were significant and would benefit end travellers, in particular through the acceleration of GDS NDC adoption.¹⁶⁸⁴

Merger specificity

12.20 With respect to merger-specificity, the Parties cited four reasons why the efficiencies could not be realised absent the Merger:

(a) First, Sabre was currently in the midst of a [REDACTED] to a [REDACTED], and [REDACTED].¹⁶⁸⁵

(b) Second, [REDACTED].

(c) Third, since Farelogix does not offer a core PSS nor a GDS, [REDACTED].¹⁶⁸⁶

(d) Fourth, [REDACTED].¹⁶⁸⁷

Rivalry enhancing

12.21 The Parties submitted that the Merger will:

(a) Enhance rivalry across the overall airline travel and booking industry, as the merged entity would have a stronger product portfolio and would be better able to compete with providers such as Amadeus;¹⁶⁸⁸

(b) enhance competition for PSS suites, as the merged entity would offer the option to combine a ‘best-of-breed’ merchandising module with its PSS stack, where Amadeus was currently the only core-PSS provider offering a successful merchandising module;¹⁶⁸⁹ and

(c) allow Sabre to offer a GDS pass-through using the NDC standard and speed up its adoption of the NDC standard, closing the gap with other GDS providers, Amadeus and Travelport, on NDC solutions and challenging Amadeus in end-to-end NDC solutions.¹⁶⁹⁰

¹⁶⁸³ [REDACTED].

¹⁶⁸⁴ [REDACTED].

¹⁶⁸⁵ [REDACTED].

¹⁶⁸⁶ [REDACTED].

¹⁶⁸⁷ [REDACTED].

¹⁶⁸⁸ [REDACTED].

¹⁶⁸⁹ [REDACTED].

¹⁶⁹⁰ [REDACTED].

Our assessment

12.22 In this section, we assess the evidence provided by the Parties that the Merger would result in rivalry-enhancing efficiencies which would prevent the SLCs that we have identified from arising.

12.23 Overall, we consider that the Parties have not provided evidence, as required by the CMA Guidance, that the purported efficiencies are likely to be timely, likely and sufficient to prevent the SLCs from arising and that the efficiencies are Merger specific.¹⁶⁹¹

12.24 We assess the specific claims made by the Parties, and the evidence provided, in more detail in the following sections.

Sabre's acquisition of Farelogix's PSS-agnostic merchandising solution

12.25 We have considered whether the merged entity is likely to become more competitive against Amadeus and other suppliers of merchandising solutions as a result of the Merger, and whether any such increase in rivalry would be timely, likely and sufficient to offset the SLCs that we have identified. Specifically, we have considered whether rivalry will be enhanced as a result of:

- (a) Sabre becoming more competitive by acquiring a PSS-agnostic merchandising module; and
- (b) the merged entity becoming more competitive than Farelogix in merchandising, as a result of improvements that can only be realised through the Merger.

Enhanced rivalry through Sabre's acquisition of FLX M

12.26 As set out in chapter 11, we consider that, absent the Merger, Sabre would have developed and offered a credible PSS-agnostic and NDC-compatible merchandising solution to airlines.¹⁶⁹² We consider that Sabre would have a strong commercial incentive, and the ability, to develop such a product in the counterfactual within the next three to five years and the Merger is not therefore the only means through which Sabre would be able to offer a PSS-agnostic merchandising module as part of its overall offer to airlines. Any claimed rivalry-enhancing efficiency deriving from Sabre's acquisition of a

¹⁶⁹¹ [Merger Assessment Guidelines](#), paragraph 5.7.4

¹⁶⁹² Paragraph 11.48.

PSS-agnostic merchandising module is therefore not merger specific and does not meet the efficiencies criteria set out in the Guidance.

12.27 To the extent that rivalry-enhancing efficiencies can be expected to arise as a result of Sabre's accelerated ability to offer such a product, we first note that airlines already have the option of procuring FLX M irrespective of who supplies their core PSS (and are therefore currently able to procure FLX M together with Sabre's PSS, albeit from different suppliers). It is not clear therefore how the Merger can be expected to result in enhanced rivalry for customers. Second, even if we were to consider rivalry-enhancing efficiencies to arise from Sabre's acquisition of FLX M – for example, through combining Sabre's global infrastructure, sales force and operational support with Farelogix's merchandising product, we consider that this would represent a temporary benefit only (as customers would be able to procure Sabre's own NDC merchandising solutions in the counterfactual), therefore limiting any claimed increase in competition arising from any efficiency of this nature.

12.28 Given the above, we conclude that we have not seen sufficient evidence that any such efficiencies would be timely, likely and sufficient to prevent an SLC from arising.

Enhanced rivalry through improvements to FLX M

12.29 We consider that the Parties have provided insufficient evidence to show that any efficiencies as a result of post-Merger improvements to FLX M would be timely, likely and sufficient to prevent an SLC from arising, nor that any such efficiencies are merger specific.

12.30 First, we note that, in its submissions to the DOJ,¹⁶⁹³ Sabre stated that:

(a) [REDACTED] and Sabre has indicated that it intends to offer Farelogix products separately for [REDACTED];

(b) [REDACTED];

(c) [REDACTED].

12.31 It is therefore unclear whether and when any significant improvements could be expected to be made post-Merger.

12.32 Second, while the Parties submitted that Sabre's core PSS/GDS expertise would be used to improve FLX M and Sabre's global infrastructure would

¹⁶⁹³ [REDACTED].

enable the merged entity to better compete in merchandising, the Parties described these efficiencies in very general terms only. The Parties did not provide specific details nor supporting evidence of the types of product improvements which would be made to FLX M, the timing of such improvements, the likelihood of their success, the significance of the benefits to be expected, or the extent to which they are rivalry-enhancing and would prevent an SLC from arising.

12.33 Third, we consider that, absent the Merger, Farelogix would be able to obtain similar insights through alternative means, for example through collaborations with other core PSS providers or by developing its working relationships with these providers. Similarly, the Merger is not the only means through which Farelogix would be able to [REDACTED].¹⁶⁹⁴

12.34 For the reasons above, we consider that the Parties have not provided evidence of why each Party has specific resources that cannot be replicated by the other in the absence of the Merger, nor how the Merger will deliver additional innovation and enhance rivalry above what would have existed in the absence of the Merger in NDC retailing or for PSS suites.

Acceleration of end-end-NDC

12.35 The Parties submitted that the Merger would accelerate the delivery of NDC content through the GDS, increasing competition amongst GDSs and inter-brand competition amongst airlines.

12.36 We first note that accelerating the implementation of a product or service that would have been implemented at a later date without a merger is not described as a type of efficiency in the CMA Guidance.¹⁶⁹⁵ Indeed, taken at face value it would appear that the purported efficiency in this scenario is not specific to the Merger.

12.37 As described in our assessment of the counterfactual, we consider that the evidence shows Sabre would have been likely to develop its own capabilities in NDC merchandising solutions and NDC distribution solutions irrespective of the Merger. Therefore, we consider the Parties' claimed efficiencies in respect of integrating end-to-end NDC solutions are not merger-specific.

12.38 We noted in paragraph 12.30 that Sabre [REDACTED].

¹⁶⁹⁴ We have found that, absent the Merger, Farelogix would continue to compete strongly in merchandising and distribution. See paragraphs 11.50, and 11.58-60.

¹⁶⁹⁵ [Merger Assessment Guidelines](#).

It is not clear therefore to what extent the Merger can be expected to accelerate Sabre's ability to offer end-to-end NDC solutions, compared to what we would expect in the counterfactual, where Sabre will develop its own PSS-agnostic, NDC-enabled merchandising module in the next 3-5 years.

12.39 We also note that the Parties told us that [REDACTED]. However, they also told us that, prior to the Merger, [REDACTED],¹⁶⁹⁶ [REDACTED].¹⁶⁹⁷ While the Parties told us that [REDACTED] were expected to be significantly more effective following the Merger,¹⁶⁹⁸ they did not provide further, more specific details on [REDACTED] that could be expected, nor the timings of those [REDACTED]. In this context, we also note that Farelogix's CEO told us that Farelogix currently had [REDACTED].¹⁶⁹⁹ We consider that it is not clear how additional improvements which facilitate GDS pass-through of NDC content are specific to the Merger, and therefore would not be achievable in the counterfactual.¹⁷⁰⁰

12.40 Finally, the Parties also made a number of submissions relating to customer benefits as a result of accelerated NDC adoption and told us that the Merger was pro-competitive because the comparison element of GDSs 'facilitates greater price transparency and competition between airlines to the benefit of travel agents and end customers'.¹⁷⁰¹

12.41 However, the Parties' submissions on accelerated NDC adoption were limited to general statements about offering 'a seamless and fully integrated end-to-end NDC solution' rather than setting out specific improvements which can only be achieved through the combination of Sabre and Farelogix. We have not seen persuasive evidence that any efficiencies arising as a result of any such product improvements will be timely, likely and sufficient to prevent the SLCs from arising, nor that they are specific to the Merger.

12.42 In terms of comparison shopping facilitated by Sabre's GDS, we addressed the Parties submissions on this more generally in paragraph 11.26. As regards of our efficiencies assessment specifically, the Parties' have not provided evidence to support a claim that rivalry would be enhanced as a result of accelerated NDC adoption through the GDS and the comparison element of GDSs, beyond high-level assertions. We have not seen evidence of the scale, likelihood or timing of any such efficiency and we note that it is

¹⁶⁹⁶ [REDACTED].

¹⁶⁹⁷ [REDACTED].

¹⁶⁹⁸ [REDACTED].

¹⁶⁹⁹ [REDACTED].

¹⁷⁰⁰ We also note that [REDACTED]. [REDACTED]. In our view, this further indicates the possibility for Sabre and Farelogix to collaborate and/or integrate with each other's products in a scenario where each business remained independent.

¹⁷⁰¹ [REDACTED].

unclear when Sabre plans to undertake any integration between its own products and those of Farelogix following the Merger.¹⁷⁰² It is therefore unclear how the Merger will lead to efficiencies as a result of the comparison element of GDSs.

Conclusion on efficiencies

12.43 The evidence submitted by the Parties provides insufficient support that these changes would be expected to result in an increase in rivalry compared to the counterfactual, or that potential efficiencies are merger-specific and timely, likely and sufficient to prevent the SLCs that we have identified from arising.

12.44 We therefore conclude that there is insufficient evidence for us to expect that the Merger would result in rivalry-enhancing efficiencies that would be timely, likely and sufficient to prevent the SLCs that we have concluded may be expected to result from the Merger.

Countervailing buyer power of airlines

12.45 In some circumstances, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices or worsen quality.¹⁷⁰³ We refer to this as countervailing buyer power. The existence of countervailing buyer power may make an SLC finding less likely. If all customers of the merged firm possess countervailing buyer power post-merger, then an SLC is unlikely to arise. However, often only some – not all – customers of the merged firm possess countervailing buyer power. In such cases, we assess the extent to which the countervailing buyer power of these customers may be relied upon to protect all customers.¹⁷⁰⁴

12.46 The extent to which customers have buyer power is dependent on a number of different factors. An individual customer's negotiating position will be stronger if it can easily switch its demand away from the supplier, or where it can otherwise constrain the behaviour of the supplier. Typically, a customer's ability to switch away from a supplier will be stronger if there are several alternative suppliers to which the customer can credibly switch, or the customer has the ability to sponsor new entry or enter the supplier's market itself by vertical integration. Where customers have no choice but to take a supplier's products, they may nonetheless be able to constrain prices by

¹⁷⁰² Paragraph 12.30.

¹⁷⁰³ [Merger Assessment Guidelines](#), paragraph 5.9.1

¹⁷⁰⁴ [Merger Assessment Guidelines](#), paragraph 5.9.1.

imposing costs on the supplier, for example by refusing to buy other products produced by the supplier.¹⁷⁰⁵

12.47 The CMA Guidance notes that, even where a market is characterised by customers who are larger than the suppliers, it does not necessarily follow that there will be countervailing buyer power.¹⁷⁰⁶ In addition, where individual negotiations are prevalent in a market, the CMA Guidance states that the buyer power possessed by any one customer will not typically protect other customers from any adverse effects that might arise from the Merger.¹⁷⁰⁷

Views of the Parties

12.48 The Parties told us that airlines have a significant degree of countervailing buyer power as a result of their ability to:¹⁷⁰⁸

- (a) Use one or both of GDS and NDC solutions, depending upon which solution is best to reach their travel agents;
- (b) divert volume to the direct channel to be distributed directly to travellers;¹⁷⁰⁹ and
- (c) develop their own in-house products to compete if they are not satisfied with the options available to them. The Parties cited examples of British Airways building its own 'end-to-end NDC capabilities' and Air France KLM building its own NDC API.¹⁷¹⁰

12.49 The Parties told us that airlines have also sought to develop preferential offerings available to travel agents through the private channel.¹⁷¹¹ The Parties told us that these private channel arrangements showed that airlines are able to 'force the market' in certain directions by exercising their market power.¹⁷¹²

¹⁷⁰⁵ [Merger Assessment Guidelines](#), paragraph 5.9.2 and 5.9.3.

¹⁷⁰⁶ [Merger Assessment Guidelines](#), paragraph 5.9.4.

¹⁷⁰⁷ [Merger Assessment Guidelines](#), paragraph 5.9.6.

¹⁷⁰⁸ [REDACTED].

¹⁷⁰⁹ Sabre told us that airline.com is a strong distribution alternative to indirect channels and this gave airlines bargaining power in negotiations. [REDACTED].

¹⁷¹⁰ [REDACTED].

¹⁷¹¹ See paragraph 3.25(c) for a description of private channel arrangements.

¹⁷¹² [REDACTED].

Views of third parties

12.50 In its response to our issues statement,¹⁷¹³ Amadeus told us that evidence showed that large airlines have market power in negotiations with GDSs. Amadeus told us that this view was supported by:

- (a) commercial agreements which showed that large airlines, and even smaller airlines, were aware that their content was ‘must have’ to GDSs and were able to leverage that position to renegotiate terms with GDSs;¹⁷¹⁴
- (b) large airlines’ ability to reserve certain ancillary services exclusively for their airline.com and/or channels using the NDC standard. Amadeus told us that airlines did this to make their websites more attractive to passengers¹⁷¹⁵ and that evidence suggested that direct distribution was a significant constraint on indirect distribution, particularly in respect of business passengers;¹⁷¹⁶ and
- (c) [redacted] which showed that airlines had required Amadeus to agree to lower booking fees.¹⁷¹⁷

Our assessment

12.51 The submissions that we received from the Parties and Amadeus related to airlines’ countervailing buyer power in relation to their distribution strategy only. Neither the Parties nor third parties made submissions that airlines have countervailing buyer power as relates to merchandising modules.

12.52 In our competitive assessment, we concluded that the Merger may be expected to result in an SLC in the supply of merchandising solutions. We have found that the Merger is likely to result in the loss of a credible and significant alternative merchandising provider in Sabre.¹⁷¹⁸ We analysed the competitive constraints that currently exist in the market for airline merchandising solutions and we have not seen evidence that expansion from other providers will be timely, likely and sufficient to replace the loss of Sabre’s merchandising offering or, alternatively, to offer an agnostic merchandising product that would sufficiently replace that of Farelogix.¹⁷¹⁹ While there exist alternative providers of merchandising modules, our analysis

¹⁷¹³ See [Amadeus response to CMA issues statement](#).

¹⁷¹⁴ Amadeus response to CMA issues statement, paragraph 2.10(a).

¹⁷¹⁵ Amadeus response to CMA issues statement, paragraph 2.10(b).

¹⁷¹⁶ Amadeus response to CMA issues statement, paragraph 2.8.

¹⁷¹⁷ Amadeus response to CMA issues statement, paragraph 2.10(c).

¹⁷¹⁸ Paragraph 11.95.

¹⁷¹⁹ Paragraph 11.97.

of the effects of the Merger shows that airlines will have fewer credible switching options as a result of the Merger, thereby reducing their buyer power.

- 12.53 In terms of distribution, we found in chapter 11 that while there are a few other suppliers of distribution solutions based on NDC APIs, they are weaker than Farelogix.¹⁷²⁰ In chapter 10, we found that airlines consider the independence of a supplier from the GDS and PSS providers to be an important factor in choosing a direct connect provider,¹⁷²¹ and that around half of airlines raised concerns that the Merger would remove an experienced and/or independent supplier from a market with limited competition.¹⁷²² We therefore found that Sabre's ownership of Farelogix is likely to result in the loss of a credible, independent alternative in airlines' negotiations with GDSs, reducing their buyer power.
- 12.54 One potential source of countervailing buyer power from airlines is to divert volumes from the merged entity to airline.com. We have found that although airline.com plays an important role in airlines' overall distribution strategy and imposes competitive pressure on the GDS, its constraint on the Parties is likely limited by the factors outlined in paragraph 11.123. Therefore, while we recognise that airline.com provides some leverage for airlines, we do not consider that the use of airline.com is sufficient to afford airlines countervailing buyer power, such as to offset the impact of the Merger, with respect to distribution services.
- 12.55 In terms of airlines' ability to self-supply, we noted in our competitive assessment that a small number of airlines have developed, or are developing, their own NDC distribution solutions, including NDC APIs, and airlines generally told us that they faced significant challenges and costs in doing so.¹⁷²³ We found that self-supply in distribution is unlikely to be an option for smaller airlines who may find the technical challenges and costs prohibitive.¹⁷²⁴
- 12.56 While some larger airlines may have the ability to build their own distribution solutions in-house, this will not protect other airline customers from the adverse effects of the Merger. Therefore, we do not consider that countervailing buyer power as a result of airlines' ability to self-supply

¹⁷²⁰ Paragraph 11.116-117.

¹⁷²¹ Paragraph 10.109.

¹⁷²² Paragraph 10.109(c).

¹⁷²³ See paragraphs 10.105 and 10.105.

¹⁷²⁴ Paragraph 11.121.

distribution solutions is sufficient to prevent an SLC from arising across the market for distribution solutions as a whole.¹⁷²⁵

12.57 Finally, we also note that the use of full content provisions in GDS contracts (see paragraph 12.99 for a description of full content provisions) with airlines may indicate that airlines do not have significant negotiating power.

Conclusion on countervailing buyer power

12.58 We have concluded that there is insufficient countervailing buyer power to prevent the SLCs that we have identified.

Barriers to entry and expansion

12.59 Given our above findings on SLC, we have assessed whether entry by new firms or expansion by existing providers may mitigate or prevent an SLC.¹⁷²⁶ In doing so we have considered whether such entry or expansion would be timely, likely and sufficient. The CMA Guidance notes that:

Potential (or actual) competitors may encounter barriers which adversely affect the timeliness, likelihood and sufficiency of their ability to enter (or expand in) the relevant market(s). Barriers to entry are thus specific features of the market that give incumbent firms advantages over potential competitors. Where entry barriers are low, the merged firm is more likely to be constrained by entry; conversely, this is less likely where barriers are high. The strength of any given set of barriers to entry or expansion will to some extent depend on conditions in the market, such as a growing level of demand.¹⁷²⁷

12.60 In our SLC assessment in chapters 10 and 11 we have assessed the existing investment and expansion plans of providers of NDC merchandising solutions and NDC distribution solutions. In this section we assess the extent to which we consider that barriers to entry and expansion exist in the supply of merchandising and distribution solutions to airlines which may inhibit or

¹⁷²⁵ As regards self-supply in merchandising, we found in our competitive assessment that self-supply in merchandising was very limited and that, although three larger airlines had developed their own merchandising modules, they each also used third party solutions. Even though some larger airlines had self-supplied and some said that they would consider it, others told us that they would not consider it. See paragraphs 10.88-10.90. As with distribution, the potential for some of larger airlines to self-supply in merchandising cannot be relied upon as means of protecting all airline customers against the adverse effects of the Merger.

¹⁷²⁶ [Merger Assessment Guidelines](#), paragraph 5.8.1.

¹⁷²⁷ [Merger Assessment Guidelines](#), paragraphs 5.8.3 to 5.8.4.

prevent post-Merger entry or expansion in the event of a worsening of the competitive position.

Merchandising

Views of the Parties

- 12.61 The Parties submitted that there are low barriers to entry and expansion in the supply of merchandising solutions and that these products can be developed by any IT company.¹⁷²⁸
- 12.62 The Parties told us that there are accepted industry standards for certain non-core PSS modules, namely scheduling, shopping and pricing and availability modules and that, while merchandising modules are more recent and so do not benefit from such accepted standards, the technological know-how required to create a merchandising module does not differ from what is needed to create other non-core PSS modules.¹⁷²⁹
- 12.63 The Parties submitted that there are a number of providers currently in the market for merchandising modules, including Amadeus, Datalex, ITA, OpenJaw, PROS, DXC, JR Technologies and IBS,¹⁷³⁰ and that IATA was continually certifying and adding IT providers to its registry as order management capable.¹⁷³¹
- 12.64 As described in chapter 4, we note that Sabre told us that development of a competitive PSS-agnostic merchandising module would [REDACTED]¹⁷³² and that, even if it were to [REDACTED] developing a PSS-agnostic merchandising solution, it would [REDACTED] for Sabre to develop a product [REDACTED].¹⁷³³ However, Sabre also told us that it would not be correct to equate [REDACTED] with barriers to entry and expansion in the market more generally.¹⁷³⁴

Views of third parties

- 12.65 We asked competitors and customers of the Parties for their views on barriers to entry and expansion in the supply of merchandising modules. Competitors and customers consistently told us that there are financial, technical and commercial obstacles to competing successfully in merchandising. We have

¹⁷²⁸ [REDACTED].

¹⁷²⁹ [REDACTED].

¹⁷³⁰ [REDACTED].

¹⁷³¹ [REDACTED].

¹⁷³² See paragraph 4.18 and [REDACTED].

¹⁷³³ [REDACTED].

¹⁷³⁴ [REDACTED].

incorporated the views of these third parties into our assessment of barriers to entry and expansion in merchandising below.

Our assessment

12.66 Although the Parties submitted that there are low barriers to entry and expansion in merchandising solutions, we consider Sabre's submissions setting out [REDACTED] indicate the existence of certain barriers, in relation to the development time, associated cost and expertise required to build a competitive merchandising product.

12.67 Sabre told us that [REDACTED].¹⁷³⁵ [REDACTED].¹⁷³⁶

12.68 We consider that this demonstrates the challenges in developing a competitive, PSS-agnostic merchandising solution. However, we also consider that Sabre is significantly better placed than other potential entrants to compete effectively in the provision of such solutions, as a result of Sabre's significant resources, its established airline customer base and its position as a PSS and GDS provider which gives it a deep understanding of customer needs and of airline IT architecture. Indeed, these factors were material in our consideration of the most likely counterfactual to the merger and our finding that Sabre would have become a credible merchandising competitor within a timeframe of 3-5 years.¹⁷³⁷

12.69 Further, Sabre's submissions regarding the time and cost associated with developing a competitive PSS-agnostic merchandising module were consistent with the submissions that we received from other providers of non-core PSS merchandising modules. These are relevant for considering whether entry and/or expansion would be timely, likely and sufficient to prevent an SLC from arising:

- (a) Amadeus told us that the development of complex non-core PSS modules required a relatively significant upfront investment.¹⁷³⁸ Amadeus submitted that it began its own NDC merchandising solutions programme in 2013, before it released a minimum viable product in [REDACTED].¹⁷³⁹ Amadeus told us that it had [REDACTED] in merchandising and that [REDACTED].¹⁷⁴⁰ Amadeus also told us

¹⁷³⁵ [REDACTED].

¹⁷³⁶ [REDACTED].

¹⁷³⁷ Paragraph 11.48.

¹⁷³⁸ [REDACTED].

¹⁷³⁹ [REDACTED].

¹⁷⁴⁰ [REDACTED]. [REDACTED].

that, [REDACTED].¹⁷⁴¹ Amadeus continues to invest over [REDACTED] per year in its merchandising offering.¹⁷⁴²

(b) [REDACTED].¹⁷⁴³

(c) OpenJaw told us that it would take ‘over a decade and tens of millions of euros investment’ to build out a sophisticated solution with sufficient functionality to meet the diverse needs of different airlines,¹⁷⁴⁴ and that it had taken the established providers of merchandising solutions years to establish themselves in the market.¹⁷⁴⁵

(d) ITA told us that the provision of non-core PSS merchandising modules was a complex process requiring investment in coding and development.¹⁷⁴⁶

(e) [REDACTED].¹⁷⁴⁷ [REDACTED].¹⁷⁴⁸

12.70 Similarly, [REDACTED] told us that developing a competitive shopping, pricing and merchandising engine would require tens of millions of dollars in upfront investment¹⁷⁴⁹ and airlines told us that they had not developed their own merchandising solutions as merchandising was complex, required specific expertise and airlines generally considered that they could not develop competitive products efficiently in-house.¹⁷⁵⁰ However, we also note that [REDACTED] told us that there were many providers of non-core PSS services and that there were no technological barriers for new entrants.¹⁷⁵¹

12.71 In our view, the high costs and lengthy development processes described by Sabre and the majority of its competitors demonstrate that there are significant challenges in developing a merchandising module and becoming a credible provider of merchandising solutions. These challenges are likely to be most significant for new entrants, even those that are well resourced, and particularly significant for any provider seeking to enter from another industry.

12.72 The cautious expansion plans expressed to us by competitors to the Parties also indicate that barriers are significant and that entry or expansion in merchandising is difficult. The plans of existing providers indicate that there

1741 [REDACTED].

1742 [REDACTED].

1743 [REDACTED].

1744 [REDACTED].

1745 [REDACTED].

1746 [REDACTED].

1747 [REDACTED].

1748 [REDACTED].

1749 [REDACTED].

1750 See paragraph 10.87 to 10.89.

1751 [REDACTED].

are substantial challenges to overcome for those existing providers seeking to enhance their own products and to compete more effectively against the market leaders, such as Amadeus and Farelogix. Any new entrant would face significantly greater development costs, would require greater development time, and would be further behind those existing competitors.

12.73 Competitors to the Parties consistently told us that the importance of merchandising modules to airlines means that airlines are unlikely to switch to providers that do not have a proven track record and the ability to demonstrate the reliability of their solutions (eg by referring to live customer testimony). For example:

- (a) OpenJaw told us that, in general, most airlines are conservative, risk averse and operationally focussed and that this can make it difficult for new entrants to acquire new business. OpenJaw explained that airlines typically look for validation that a provider’s solution works for another airline and that this naturally presents challenges for new entrants without an established customer base.¹⁷⁵²
- (b) PROS told us that it was difficult for new providers to establish commercial relationships with airlines and that it was difficult for new entrants to gain credibility without an established presence in the industry.¹⁷⁵³ PROS told us that size, scale and reputation are significant factors in airlines’ procurement decisions and that airlines are often reluctant to do business with start-ups.¹⁷⁵⁴
- (c) [REDACTED] told us that it was currently unsuccessful in winning contracts and that it considered that this was due to a lack of ‘live customer references’.¹⁷⁵⁵ [REDACTED] told us that it entered the airline IT industry in [REDACTED] and that it had so far proven difficult to gain traction against the established competitors.¹⁷⁵⁶
- (d) [REDACTED] told us that establishing relationships with airlines is crucial to success but that it is difficult for small suppliers to build a strong reputation.¹⁷⁵⁷
- (e) [REDACTED].¹⁷⁵⁸

1752 [REDACTED].
1753 [REDACTED].
1754 [REDACTED].
1755 [REDACTED].
1756 [REDACTED].
1757 [REDACTED].
1758 [REDACTED].

(f) [REDACTED] similarly told us that the complexity of established airline business processes and the inter-connectivity of systems makes it difficult to gradually replace or upgrade legacy business processes. [REDACTED] added that airlines are very risk-averse and that it is difficult to convince airlines to change solution provider.¹⁷⁵⁹

12.74 [REDACTED] also told us that customers in the airline industry are accustomed to relying on very large global players and that the need to gain airline trust, demonstrate reliability and establish partnerships with larger IT companies limited the ability of the parties' competitors to expand.¹⁷⁶⁰

12.75 The evidence shows that customer perceptions of service providers are an important consideration in their decision-making process when awarding contracts. In our view, it is reasonable to expect that it would take a new entrant or an existing smaller supplier time to build its reputation and record for reliability, and that the obstacle of gaining a first major airline customer is likely to represent a significant barrier, particularly to new entry, even in circumstances where the new entrant in merchandising has other commercial relationships with airlines. We also note that [REDACTED] told us that they have struggled to win customers in airline retailing and that they have found it difficult to build scale as a provider of merchandising solutions. We therefore consider that the need to build a reputation for reliability and to gain credibility with customers acts as a significant barrier to expansion as well as entry and that, after initial entry, many providers continue to find it difficult to expand significantly. In this context, we note that airlines generally considered alternative merchandising solutions to the Parties to be of more limited functionality than that of Farelogix, and only a limited number of airlines considered that alternative providers would become stronger in merchandising in the coming years.¹⁷⁶¹ We consider that this is further evidence that new entry and expansion by existing competitors is unlikely to be timely enough to prevent an SLC from arising.

12.76 However, even if a rival could enter or expand in competition to the merged entity, customers of the Parties have told us that switching providers is a complex and expensive task:

(a) [REDACTED] told us that it was [REDACTED], and that this had been an expensive project that had affected [REDACTED]. [REDACTED] told us that switching modules was 'not easy'.¹⁷⁶²

¹⁷⁵⁹ [REDACTED].

¹⁷⁶⁰ [REDACTED].

¹⁷⁶¹ See paragraph 10.85.

¹⁷⁶² [REDACTED].

- (b) [REDACTED] told us that switching non-core PSS modules would be a ‘daunting endeavour’ but noted that this was less complex than switching core PSS.¹⁷⁶³
- (c) [REDACTED] told us that the difficulty associated with changing non-core providers depended on the amount of integration with other systems and told us that changes in systems such as a merchandising engine would require ‘medium to large projects’.¹⁷⁶⁴
- (d) [REDACTED] told us that it was [REDACTED] and that it expected this to be expensive, time consuming and complicated and that the switch would require extensive internal and external resources.¹⁷⁶⁵
- (e) [REDACTED] told us that adding non-core PSS modules typically involved a lower level of risk than changing core PSS but that associated costs varied and could still be significant.¹⁷⁶⁶
- (f) [REDACTED].¹⁷⁶⁷

12.77 We note, however, that despite the above submissions, some customers have changed providers in the recent past. The evidence indicates that the cost of switching can be overcome but may represent a challenge for certain providers, and for new entrants in particular, which have yet to establish relationships with large airlines and have yet to build a reputation for reliability. On that basis, we consider that the cost of switching merchandising provider might further reduce the timeliness, likelihood and sufficiency of new entry and/or expansion to prevent an SLC from arising.

Distribution

Views of the Parties

12.78 Sabre submitted to the US DOJ that [REDACTED].¹⁷⁶⁸ The Parties told us that Farelogix, however, is not a GDS and the fact that [REDACTED] did not mean that there were barriers to entry for IT services that facilitate indirect distribution of airline content,¹⁷⁶⁹ such as the building of an NDC API.

1763 [REDACTED].
 1764 [REDACTED].
 1765 [REDACTED].
 1766 [REDACTED].
 1767 [REDACTED].
 1768 [REDACTED].
 1769 [REDACTED].

- 12.79 The Parties told us that it is relatively simple to build an NDC API which can be used to distribute airline content.¹⁷⁷⁰ The Parties told us that, while GDSs benefit from significant network efforts, there were no specific or general technology barriers which must be overcome in order to compete for the provision of NDC API connections.¹⁷⁷¹
- 12.80 The Parties told us that the supply of NDC APIs was becoming increasingly commoditised¹⁷⁷² and submitted that this was clear from the large number of firms on the IATA registry of firms that are capable of creating an NDC API.¹⁷⁷³ The Parties told us that IATA was continually certifying and adding IT providers as NDC capable and that the majority of providers had been added in the last two years.¹⁷⁷⁴
- 12.81 We note that Sabre also told us that its own efforts to build NDC APIs as part of its NDC strategy [REDACTED].¹⁷⁷⁵ Sabre told us that it remained at [REDACTED], and the product [REDACTED].¹⁷⁷⁶ Sabre told us that, even if it was able to meet this timeframe, [REDACTED].¹⁷⁷⁷ However, Sabre told us that the [REDACTED] should not be equated to barriers to entry as regards NDC APIs as a whole.¹⁷⁷⁸

Views of third parties

- 12.82 We asked competitors and customers of the Parties for their views on barriers to entry and expansion in the supply of NDC APIs. These third parties told us that new entrants and expansion candidates would be likely to face similar challenges in competing for the supply of NDC APIs as for merchandising modules. That is, while the introduction of the IATA NDC standard was open to any third party to use, financial and commercial obstacles nonetheless represented significant obstacles that would need to be overcome. We have incorporated the views of these third parties into our assessment of barriers to entry and expansion in distribution below.

¹⁷⁷⁰ [REDACTED].

¹⁷⁷¹ [REDACTED].

¹⁷⁷² [REDACTED].

¹⁷⁷³ [REDACTED].

¹⁷⁷⁴ [REDACTED].

¹⁷⁷⁵ [REDACTED].

¹⁷⁷⁶ [REDACTED]. We note however that Sabre has been representing to its airline customers that it is able to develop NDC merchandising capabilities within a relatively short time frame. See paragraph 9.51.

¹⁷⁷⁷ [REDACTED].

¹⁷⁷⁸ [REDACTED].

Our assessment

- 12.83 Given that [REDACTED],¹⁷⁷⁹ our assessment of barriers to entry and expansion in distribution focusses on the barriers to the provision of NDC APIs.
- 12.84 Sabre submitted that it is not correct to equate [REDACTED] with barriers to entry more generally. Sabre told us that [REDACTED].¹⁷⁸⁰ Sabre also told us that [REDACTED] were not relevant for our assessment as [REDACTED].¹⁷⁸¹
- 12.85 However, the Parties have also submitted that the technology underlying NDC APIs is the same, regardless of the channel to which the API connects¹⁷⁸² (eg whether it connects directly to a travel agent or to a GDS, as Sabre is attempting to do). While we agree that [REDACTED], we consider that Sabre's submissions provide relevant evidence for our assessment in terms of the difficulties in competing against the market leaders.
- 12.86 We also note that Sabre's submission that it would [REDACTED],¹⁷⁸³ indicating that the provision of NDC APIs is not a purely commoditised supply and that there remains some differentiation between the products developed by different suppliers.
- 12.87 Consistent with Sabre's submissions on [REDACTED] developing a set of NDC APIs to compete with the market leaders, we note that competitors to the Parties told us that the investment required to develop NDC APIs was significant.¹⁷⁸⁴
- 12.88 We have noted that in the US proceedings, the DoJ included in its proposed findings of fact that barriers to entry and expansion included the ability of the distribution tool to integrate with airline and third party IT systems and post-booking services (eg the passenger name record to make changes to a booking, exchanging and refunding tickets, managing interline tickets, facilitating ticket payment and settlement) in a similar way as Farelogix's FLX OC solution currently does.¹⁷⁸⁵ The DoJ's proposed findings of fact also stated that integrating distribution into an airline's PSS was a technical barrier to entry.¹⁷⁸⁶ The DoJ quoted the Farelogix CEO as saying that Farelogix has

¹⁷⁷⁹ Paragraph 12.78.

¹⁷⁸⁰ [REDACTED].

¹⁷⁸¹ [REDACTED].

¹⁷⁸² See also [REDACTED] which states that: 'both GDS bypass [Direct Connect] and GDS pass-through NDC API implementations rely on equivalent technology and are essentially the same product from a technical perspective, whether a particular NDC API connection constitutes a GDS bypass or GDS pass-through solution is simply a question of what the NDC API connects to (which is determined by the airline customer)'.

¹⁷⁸³ [REDACTED].

¹⁷⁸⁴ [REDACTED].

¹⁷⁸⁵ [REDACTED].

¹⁷⁸⁶ [REDACTED].

had to use ‘screen scrape and green screen emulators to map and integrate’ content, mostly because of ‘Sabre and Amadeus not providing easy APIs to integrate’.¹⁷⁸⁷

- 12.89 Third party providers also told us that development time could be significant. Amadeus, for example, told us that its Altea NDC product may be used to facilitate direct connect and that it had started development in [REDACTED], achieving Level 4 IATA certification in 2019.¹⁷⁸⁸ Amadeus told us that it had been continuing to develop its Altea NDC product since [REDACTED] and expected to see [REDACTED].¹⁷⁸⁹ [REDACTED].¹⁷⁹⁰ ITA told us that building an NDC-enabled direct connect was a complex process requiring investment in coding and development and that the limited associated revenues may disincentivise new entrants.¹⁷⁹¹
- 12.90 However, some other providers told us that they considered that technological barriers to entry were low. OpenJaw told us that, as NDC is an open standard, any new entrant can technically develop a solution based on the standard at minimal cost.¹⁷⁹² [REDACTED] told us that knowledge of the traditional airline technology industry was required to build NDC APIs but that there were no technological barriers to new entrants.¹⁷⁹³
- 12.91 We also note that all airlines that responded to our questionnaires (including those airlines that have developed, or are developing, their own NDC APIs) told us that building NDC APIs is a complex process involving significant challenges and costs, and requires specific expertise.¹⁷⁹⁴ In particular, we note that those airlines which have not already developed (or have not yet started to develop) in-house NDC APIs told us that they preferred to outsource to third parties as they lacked the expertise required. However, our inquiry has also identified a number of airlines who have or would consider in-house NDC APIs.¹⁷⁹⁵ Evidence from providers shows that Amadeus considers airline in-house supply of APIs to be a constraint but views from other suppliers indicates that the competitive constraint is limited.¹⁷⁹⁶
- 12.92 We consider that overall the evidence shows that in-house supply is an option for some airlines. However, this would not protect other airlines from the

¹⁷⁸⁷ [REDACTED].

¹⁷⁸⁸ [REDACTED].

¹⁷⁸⁹ [REDACTED].

¹⁷⁹⁰ [REDACTED].

¹⁷⁹¹ [REDACTED].

¹⁷⁹² [REDACTED].

¹⁷⁹³ [REDACTED].

¹⁷⁹⁴ Paragraphs 10.105 to 10.106.

¹⁷⁹⁵ Paragraphs 10.104 and 10.105.

¹⁷⁹⁶ Paragraph 10.52.

adverse effects of the merger, some of whom have identified barriers to building an in-house NDC API.

12.93 Overall, we consider that the evidence shows that the introduction of the NDC standard has lowered technical barriers to entry in the supply of NDC APIs but that the development of competitive capabilities nonetheless requires specialist expertise and can require significant upfront investment. While these barriers are not insurmountable, we note the limited success of players such as [REDACTED] in winning significant contracts to supply solutions based on NDC APIs to airlines¹⁷⁹⁷ and that the large majority of airlines, despite having an intricate understanding of airline IT architecture, cited difficulties in building NDC APIs. This indicates that, while barriers may be lower than in the past, there remain difficulties in developing solutions to compete effectively with the market leaders and that entry and/or expansion will not be timely, likely or sufficient to prevent an SLC from arising across the market as a whole.

12.94 We have also considered non-technical aspects of entry and expansion. Third parties told us that NDC API providers, which enable GDS bypass, face specific commercial obstacles in competing against the traditional GDS content distribution model, as a result of certain features of the market and contractual provisions that have become prevalent in the industry.

12.95 [REDACTED], for example, told us that barriers to providing NDC direct connect solutions (facilitated by NDC APIs) were high¹⁷⁹⁸ and that it was difficult for providers to compete against the GDSs because:

- (a) restrictions in GDS contracts with many airlines, including full content agreements, limited the extent to which direct connect providers could compete as an alternative to GDS distribution;¹⁷⁹⁹
- (b) the historic business model of the GDSs involved GDSs paying incentive fees per segment booked to travel agents. [REDACTED] told us that travel agents were therefore reluctant to switch away from the GDSs to direct connect solutions;¹⁸⁰⁰
- (c) GDSs often provide middle- and back-office solutions to travel agents integrated with the GDS. To date, [REDACTED] told us that it appeared that GDSs were not motivated, and may be unwilling, to integrate direct connect or other NDC API-based solutions with the middle- and back-office solutions

¹⁷⁹⁷ Paragraphs 11.116 and 11.117.

¹⁷⁹⁸ [REDACTED].

¹⁷⁹⁹ [REDACTED].

¹⁸⁰⁰ [REDACTED].

that they provide to travel agents. [REDACTED] told us that this would likely act as a drag on the adoption of direct connect solutions by travel agents.¹⁸⁰¹

12.96 [REDACTED] added that new and smaller players such as [REDACTED] would only be successful if their solutions can interact with the core PSS but that PSS providers may prevent this.¹⁸⁰²

12.97 Several airlines also told us that incentive payments to travel agents and clauses in GDS contracts acted as significant barriers to entry for providers seeking to distribute content directly to travel agents via NDC APIs. For example:

(a) [REDACTED] told us that loyalty payments and minimum booking commitments in GDS agreements with travel agents and parity clauses in GDS agreements with airlines created significant obstacles to deploying NDC/Direct Connect amongst travel agents.¹⁸⁰³

(b) [REDACTED] told us that:

GDSs are abusing their market power to protect their current business model but also in order to impose barriers to entry to their future NDC aggregator position. Despite [REDACTED] refusal to apply non-discrimination / parity provision in the NDC aggregator scheme, the GDS are still trying to impose these restrictions which also constitute barriers to entry... If implemented in the new distribution world, such provisions would set high barriers to entry or expansion for any new entrants and existing non GDS aggregators.¹⁸⁰⁴

(c) [REDACTED] told us that parity clauses created a barrier to entry for alternative providers of distribution solutions to travel agents, as they cannot compete on price against incumbent providers.¹⁸⁰⁵

(d) [REDACTED] told us that 'huge incentives' make it difficult to motivate travel agents to switch away from the GDS booking platforms.¹⁸⁰⁶

(e) [REDACTED] told us that incentive payments made by GDSs to travel agents, coupled with parity clauses in GDS contracts, represented a significant obstacle for direct connect providers to overcome. [REDACTED] told us that these

1801 [REDACTED].
1802 [REDACTED].
1803 [REDACTED].
1804 [REDACTED].
1805 [REDACTED].
1806 [REDACTED].

restrictions make it ‘contractually impossible’ for its preferred channels to compete effectively.¹⁸⁰⁷

12.98 The views expressed to us by airlines in paragraph 12.97 above were consistent with the submissions that we received from third party airline IT service providers. OpenJaw told us that the large GDS/PSS providers were able to use commercial restrictions to limit the ability of new entrants to compete effectively.¹⁸⁰⁸ [REDACTED] told us that ‘restrictive PSS/GDS-to-airline contracts’ were one of the main obstacles faced by new entrants and existing providers seeking to expand,¹⁸⁰⁹ and PROS similarly identified ‘commercial blocking tactics’ employed by GDS/PSS providers as a significant barrier to entry and expansion for direct connect providers.¹⁸¹⁰

12.99 We are also aware that Sabre is in ongoing antitrust litigation with US Airways Inc., which filed a suit against Sabre in April 2011, including an allegation that Sabre’s use of ‘full content provisions’ in its GDS contracts with airlines created unlawful restrictions on trade.¹⁸¹¹ The US Airways suit stated that full content provisions comprised four elements which were central to its claims:¹⁸¹²

- (a) No Better Benefits provisions which required US Airways to provide all of its fares to customers through the Sabre GDS.
- (b) No Discounts provisions which required any fares offered by US Airways through the Sabre GDS to be no more expensive, and no less comprehensive, than fares offered by US Airways through any other forum.
- (c) No Direct Connects provisions which prohibited US Airways from requiring or inducing any travel agent to book on the US Airways website, or otherwise circumvent the Sabre platform.
- (d) No Surcharge provisions which prevented US Airways from charging higher fees to travel agents for booking through the Sabre platform than for booking through other means.

12.100 In December 2016, the jury issued a verdict in favour of US Airways with respect to its claims relating to Sabre’s contracts with US Airways. Sabre strongly denies all allegations made by US Airways and the two parties

¹⁸⁰⁷ [REDACTED].

¹⁸⁰⁸ [REDACTED].

¹⁸⁰⁹ [REDACTED].

¹⁸¹⁰ [REDACTED].

¹⁸¹¹ See [US Airways, Inc. vs Sabre Holdings Corporation](#), page 11.

¹⁸¹² See [US Airways, Inc. vs Sabre Holdings Corporation](#), page 10.

remain in ongoing litigation, with Sabre and US Airways each filing appeals challenging the various judgments.¹⁸¹³

12.101 Of relevance to our assessment of barriers to entry and expansion in distribution, we note that, as part of the trial, Farelogix's CEO, Jim Davidson, testified about Farelogix's entry and expansion attempts and those of other potential competitors to the GDSs.¹⁸¹⁴ Jim Davidson testified that, despite the fact that Farelogix had developed more innovative and efficient technologies than those used by Sabre, anti-competitive barriers to entry – specifically the full content provisions challenged by US Airways – prevented Farelogix and others from introducing improved competitive technology in the distribution market.¹⁸¹⁵ However, we also note that, at Farelogix's hearing with the CMA, Jim Davidson told us that, while he had been 'very opinionated' on these contractual provisions in the past, he now considered that NDC rendered full content provisions irrelevant. Jim Davidson told us that these contractual clauses were relevant when the industry depended on filed fares but that NDC meant that this would no longer be the case.¹⁸¹⁶

12.102 Based on the evidence set out above, we consider that full content provisions and other GDS contractual clauses may be a barrier to entry and expansion for providers seeking to distribute airline content to travel agents via NDC APIs. This is because such clauses may place restrictions on airlines incentivising or promoting the use of non-GDS distribution channels, restricting the ability of new entrants and expansion candidates to grow, and may make it more difficult for entrants and expansion candidates to compete on content with GDS providers.

12.103 In our view, the prevalence of the contractual clauses described above represents a significant commercial challenge that may be difficult for any new entrant or expansion candidate to overcome in order for it to effectively constrain the merged entity. In addition, incentive payments to travel agents represent a significant commercial obstacle which is likely to make new entry or expansion on a sufficient scale to mitigate or prevent an SLC difficult.

12.104 Given the commercial obstacles to competing against the GDS model more generally (as described in paragraphs 12.95 to 12.101), we also consider that airlines' choice of alternative distribution provider is likely to be informed by the need to partner with a credible, committed and experienced

¹⁸¹³ See [Sabre SEC filing form 10-k 2018](#), page 24.

¹⁸¹⁴ See [US Airways, Inc. vs Sabre Holdings Corporation](#), page 40.

¹⁸¹⁵ See [US Airways, Inc. vs Sabre Holdings Corporation](#), page 40.

¹⁸¹⁶ [REDACTED].

provider. Farelogix has an advantage over other providers in this regard, given the range of airlines that it currently supplies and its reputation among airlines as the leading non-GDS provider.¹⁸¹⁷ Smaller, less experienced providers (as well as new entrants) are likely to be at a comparative competitive disadvantage and it will take time and significant commitment to attain scale and reputation similar to that of Farelogix. While some existing non-GDS distribution solutions providers have the potential to grow, we found in chapter 11 that they are unlikely to replace the constraint that Farelogix imposes on GDSs in a timely way.¹⁸¹⁸ We consider that this provides further indication of the difficulties in competing effectively against the GDS business model and in attaining sufficient scale as a provider of distribution solutions, even for providers with an existing presence in the market. Such challenges are even greater for new entrants.

Conclusion on barriers to entry and expansion

12.105 Based on the evidence set out above, we are of the view that the market for airline merchandising solutions is characterised by high barriers to entry and expansion, particularly as a result of the costly and lengthy development process and the need to establish a strong reputation and relationships with airlines.

12.106 We consider that technological barriers in the provision of NDC APIs to distribute airline content have been lowered as a result of the introduction of the NDC standard, but that difficulties remain in developing competitive capabilities, which can require significant upfront investment and requires specific expertise, and that commercial barriers to entry and expansion also represent significant obstacles for new entrants and providers seeking to expand.

12.107 As a result, our conclusion is that entry or expansion would not be timely, likely and sufficient to prevent the SLCs we have identified.

¹⁸¹⁷ Paragraph 11.111.

¹⁸¹⁸ Paragraph 11.118-120.

13. Conclusions

- 13.1 We have concluded that the anticipated acquisition by Sabre of Farelogix, if carried into effect, will result in the creation of a relevant merger situation.
- 13.2 We have concluded that the Merger may be expected to result in an SLC in the supply of merchandising solutions to airlines on a worldwide basis including in the UK.
- 13.3 This SLC would manifest itself through a loss of innovation in merchandising solutions, resulting in reduced customer choice, fewer new features and upgrades being released more slowly. While the nature of innovation means that these effects may take some time to emerge in full, it also means they are likely to have a particularly substantial and long-lasting detrimental impact on customers. Moreover, there would be a much more rapid and immediate impact on the competitive process – namely the ongoing rivalry between firms driving each other's day to day investment decisions. Sabre would immediately abandon its independent effort to develop its merchandising solution, which would in turn reduce the competitive threat faced by rivals (who monitor each other closely) and who would likely cut back their own innovation efforts as a result. This loss of competition will also likely result in higher prices as a result of the loss of a significant competitor in merchandising procurement processes, as Sabre and Farelogix would not compete against each other independently.
- 13.4 We have concluded that the Merger may be expected to result in an SLC in the supply of distribution solutions to airlines on a worldwide basis including in the UK.
- 13.5 This loss of competition would lead to a reduction in innovation in distribution solutions, particularly in terms of the development of GDS pass-through capabilities by the GDSs, to the detriment of all airlines and travel agents across the sector. In the short term, it may also result in the GDSs charging higher prices than they otherwise would do to some airlines, due to a reduction in airlines' ability to redirect volumes away from the GDSs to Farelogix GDS bypass as an alternative channel, particularly because one of the reasons for airlines to adopt GDS bypass is to reduce their distribution costs.

14. Remedies

Introduction

- 14.1 We have concluded that the proposed merger would result in the creation of a relevant merger situation, and that the creation of that situation may be expected to result in an SLC in the supply of merchandising solutions to airlines on a worldwide basis including the UK, and an SLC in the supply of distribution solutions to airlines on a worldwide basis including the UK.
- 14.2 Where the CMA finds an SLC in its final report, it must decide what, if any, action should be taken to remedy, mitigate or prevent that SLC or any adverse effect resulting from the SLC.¹⁸¹⁹
- 14.3 This chapter considers possible remedies to the SLCs that we have identified and sets out our final decision on remedies. It has been prepared after consideration of the written and oral responses received from the merging parties and third parties following the publication of the Remedies Notice, and further representations from the Parties in response to a Remedies Working Paper that we shared with them.
- 14.4 The chapter is structured in the following way:
- a. We first set out the framework for remedies assessment;
 - b. we then assess the effectiveness of each of the remedies options set out in the Remedies Notice and the Parties' proposed behavioural remedies;
 - c. having concluded on the effectiveness of each of these options, we then assess Relevant Customer Benefits, the proportionality of our chosen remedy and set out our proposed method of implementation;
 - d. finally, we set out our Decision on Remedies.

Framework for the assessment of remedies

- 14.5 This section sets out the legislative context that the CMA must apply in considering possible remedies.

¹⁸¹⁹ Enterprise Act 2002, section 36(2).

- 14.6 Pursuant to section 36(2) of the Act, if the CMA decides that an anticipated merger may be expected to result in an SLC, the CMA must decide the following:
- a. whether action should be taken by it under section 41(2) of the Act for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which may be expected to result from the SLC;
 - b. whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which may be expected to result from the SLC; and
 - c. in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- 14.7 The Act requires that the CMA, when considering possible remedial actions, shall *'in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it'*.¹⁸²⁰
- 14.8 To fulfil this requirement, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects. Between two remedies that the CMA considers equally effective, the CMA will then select the least costly and intrusive remedy. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. The CMA may also have regard, in accordance with the Act and the Merger Remedies Guidance,¹⁸²¹ to the effect of any remedial action on any relevant customer benefits (RCBs) arising from the merger.¹⁸²²
- 14.9 The CMA will consider the following four criteria in assessing the effectiveness of a remedy:¹⁸²³
- a. *Impact on the SLC and the resulting adverse effects*: normally, the CMA will seek to restore competitive rivalry through remedies that re-establish the structure of the market expected in the absence of the merger.
 - b. *Appropriate duration and timing*: the CMA will prefer remedies that quickly address the competitive concerns, with the effect of the remedy sustained for the likely duration of the SLC.

¹⁸²⁰ Enterprise Act 2002, section 36(3)

¹⁸²¹ Section 36(4) of the Act (for anticipated mergers) and Merger remedies guidance CMA87, paragraph 3.15.

¹⁸²² [Merger remedies guidance CMA87](#), paragraph 3.4.

¹⁸²³ [Merger remedies guidance CMA87](#), paragraph 3.5

- c. *Practicality*: a practical remedy should be capable of effective implementation, and any subsequent monitoring and enforcement.
- d. *Acceptable risk profile*: the CMA will seek remedies that have a high degree of certainty in terms of achieving their intended effect.

14.10 A detailed description of the factors the CMA will examine in determining what remedial action is to be taken can be found in our Merger Remedies Guidance.¹⁸²⁴

14.11 As set out in the Mergers Remedies Guidance, remedies are conventionally classified as either structural or behavioural:

- a. Structural remedies, such as divestiture or prohibition, are generally one-off measures that seek to restore or maintain the competitive structure of the market by addressing the market participants and/or their shares of the market.
- b. Behavioural remedies are normally ongoing measures that are designed to regulate or constrain the behaviour of merger parties with the aim of restoring or maintaining the level of competition that would have been present absent the merger.

14.12 In merger inquiries, the CMA generally prefers structural remedies over behavioural remedies, because:¹⁸²⁵

- a. Structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
- b. behavioural remedies are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and
- c. structural remedies rarely require monitoring and enforcement once implemented.

Overview of remedies options

14.13 In the Remedies Notice, we set out the following three specific remedies options:

¹⁸²⁴ [Merger remedies guidance CMA87](#), paragraph 3.34. Some remedies, such as those relating to access to IP rights may have features of structural or behavioural remedies depending on their particular formulation.

¹⁸²⁵ [Merger remedies guidance CMA87](#), paragraph 3.46.

- a. prohibition of the merger;
- b. divestiture of part of Sabre and/or Farelogix; and,
- c. divestiture or licensing of software and/or other intellectual property (IP) rights.

14.14 We also stated that the CMA will consider any other practicable remedies that the Parties, or any interested third parties, may propose that could be effective in addressing the SLCs and/or any resulting adverse effects.

14.15 We invited views on aspects of remedy design which might be needed to make a divestiture remedy effective and to ensure that no new competition concerns would arise. These may include requirements relating to the scope of any divestiture package, the process of selecting the assets to be divested, the identification of suitable potential purchaser(s), and the divestiture process including the timing of divestiture.

14.16 In the Remedies Notice, we said that we were not proposing behavioural remedies on their own as we did not, at the time, consider that behavioural remedies would be likely to be effective in addressing the provisional SLCs or any resulting adverse effects.¹⁸²⁶ We said that we would consider any behavioural remedies put forward as part of the consultation.¹⁸²⁷

14.17 In their response to the Remedies Notice, the Parties proposed a set of behavioural remedies (Initial Behavioural Remedies Proposal). These were enhanced in a further submission received after the response hearing (Updated Behavioural Remedies Proposal). We consider these proposals at paragraphs 14.44 to 14.136 below. We have not received any alternative proposals from third parties.

14.18 We next turn to our consideration of different remedy options identified by the CMA and the Parties, starting with prohibition.

Prohibition

Description

14.19 This remedy option would involve prohibiting the Parties from going ahead and completing the Merger. This option would therefore prohibit Sabre from acquiring Farelogix.

¹⁸²⁶ Remedies Notice, paragraph 27.

¹⁸²⁷ Remedies Notice, paragraph 28.

Views of the Parties and third parties

- 14.20 In their response to the Remedies Notice, the Parties said that prohibition ‘is not the only comprehensively effective solution to address the SLCs provisionally found by the CMA.’¹⁸²⁸
- 14.21 After the response hearing, the Parties said prohibition ‘would not be a suitable remedy’. They said that ‘while superficially it may address the specific SLC concerns identified by the CMA, in practice it would likely do more harm and undermine competition in the relevant markets’. They said that prohibition would [REDACTED], that it would cause ‘adverse effects on third parties’ and impose potential costs on Farelogix customers [REDACTED] and Sabre customers [REDACTED], and that it would be ‘wholly disproportionate’ as it would deprive customers worldwide of the ‘significant benefits’ expected to arise from the Merger.¹⁸²⁹
- 14.22 We have also received views from some third parties on prohibition. We received one third party response to the Remedies Notice, from American Airlines. American Airlines told us that ‘the only effective remedy... is prohibition of the Merger.’¹⁸³⁰ We subsequently contacted a further 12 airlines (in addition to American Airlines) and seven travel agents (including TMCs) to obtain views on the effectiveness of possible remedies, including the Parties’ Behavioural Remedy Proposal. We received ten responses from airlines (in addition to American Airlines) and six responses from travel agents.
- 14.23 Of the ten airlines that responded, three airlines¹⁸³¹ provided no comment on prohibition as a remedy, and one¹⁸³² told us that it was difficult to assess whether prohibition would be effective. All of the remaining six airlines¹⁸³³ told us that prohibition would be an effective remedy to address the SLCs we have found.
- 14.24 Six travel agents responded to our request for views on possible remedies. Three¹⁸³⁴ did not provide comments on the effectiveness of prohibition. Two¹⁸³⁵ told us that they considered prohibition to be effective (if the CMA’s provisional findings were upheld) and one¹⁸³⁶ told us that it did not consider prohibition to be an effective remedy. This was because it considered that

¹⁸²⁸ [Parties’ response to the remedies notice](#) paragraph 5.1

¹⁸²⁹ [REDACTED]

¹⁸³⁰ [American Airlines’ response to the remedies notice](#) paragraph 1.2

¹⁸³¹ [REDACTED]

¹⁸³² [REDACTED]

¹⁸³³ [REDACTED]

¹⁸³⁴ [REDACTED]

¹⁸³⁵ [REDACTED]

¹⁸³⁶ [REDACTED]

Farelogix, on its own, may not have the resources for the ongoing technological enhancement necessitated by NDC.¹⁸³⁷

CMA assessment of effectiveness of prohibition

14.25 Prohibition of an anticipated merger will generally be an effective remedy as it maintains the structure of a market that would have otherwise been changed by the merger.¹⁸³⁸

14.26 If Sabre is not permitted to acquire Farelogix then the two competitors would be likely to continue to operate and develop their products independently of one another and in line with the levels of competition we have found would operate absent the Merger. This would mean exercising a constraint on each other's prices and on other rivals in the competitive process, and competing through innovation and development of new product features. This would therefore prevent the SLCs that we have found from resulting in any relevant markets.

14.27 Prohibition would therefore comprehensively address all aspects of each SLC that we have identified (and consequently any resulting adverse effects) as it maintains the rivalry that is likely to exist between Sabre and Farelogix.

14.28 Furthermore, our view is that prohibition would:

- a. be timely and of appropriate duration because it would immediately address the competition concerns and address the SLCs effectively through its expected duration;
- b. be practical to implement because implementation is straightforward and clear, without the need for ongoing monitoring or compliance activity; and
- c. have a low risk profile because (given that the Merger is anticipated) it is certain to achieve its intended effect of remedying the SLCs and third parties will not bear any risks that it will not have the requisite impact.

14.29 As such, our view is that prohibition meets the requirements of an effective remedy as set out in the Merger Remedies Guidelines.

14.30 We address the Parties' submission with respect to prohibition preventing benefits of the Merger being realised elsewhere in the world in the section on RCBs and proportionality.

¹⁸³⁷ [REDACTED] response to remedies questionnaire.

¹⁸³⁸ Merger remedies guidance CMA87, paragraph 3.35.

Conclusion on effectiveness

14.31 For the reasons set out above, we conclude that prohibition would be an effective remedy.

Partial divestiture

Description of remedy

14.32 In our Remedies Notice, we said that we would consider whether a divestiture of part of Sabre and/or Farelogix in advance of the Merger would remedy the SLCs that we have found.¹⁸³⁹

14.33 We also said that we would consider whether the divestiture or licensing of software and/or other IP rights would remedy the SLCs that we have found.¹⁸⁴⁰

Views of the Parties and third parties

14.34 The Parties have not proposed a partial divestiture or licensing remedy. At the response hearing Sabre said [✂]¹⁸⁴¹

14.35 Only one third party commented on the effectiveness of partial divestiture or licensing of software/IP rights as a possible remedy. American Airlines considered that neither partial divestiture nor a licensing remedy was likely to be effective in this case.

CMA assessment of effectiveness of partial divestiture

14.36 We stated in the Remedies Notice that a partial divestiture would unlikely be an effective remedy as ‘the large part of Sabre and all of Farelogix is involved in the markets in which we have found an SLC’. This meant that any partial divestiture of Farelogix would not comprehensively address the SLCs that we have found, and ‘any partial divestiture of Sabre may risk breaking the synergies between its business units that CMA considers to be important to future competition’.¹⁸⁴² In addition, we stated in the Remedies Notice that generally a remedy involving divestiture or licensing of software or IP rights

¹⁸³⁹ Remedies Notice, paragraph 13

¹⁸⁴⁰ Remedies Notice, paragraph 18

¹⁸⁴¹ [✂]

¹⁸⁴² Remedies Notice, paragraph 16.

would be less likely to be an effective remedy as these remedies ‘generally have higher risk than a straightforward business divestiture’.¹⁸⁴³

14.37 The Parties have not proposed a partial divestiture or licensing remedy. We have not received any submission or evidence from third parties that would suggest that our view is incorrect and that a partial divestment or licensing remedy would be an effective alternative to prohibition in this case.

Conclusion on effectiveness

14.38 As a result, our conclusion is that partial divestiture or licensing of software/IP rights would not be an effective remedy to the SLCs we have found.

Behavioural remedies

Introduction to behavioural remedies

14.39 Behavioural remedies are ongoing measures that are designed to regulate or constrain the behaviour of merger parties.

14.40 In the Remedies Notice we said that we were not proposing behavioural remedies as the primary source of remedial action, as such remedies did not appear likely to be effective in addressing the provisional SLCs.

14.41 In response to the Remedies Notice, the Parties submitted the Initial Behavioural Remedies Proposal, which they described as ‘a comprehensive set of behavioural commitments’¹⁸⁴⁴. After the response hearing, the Parties submitted an Updated Behavioural Remedies Proposal, which they said enhanced the Initial Behavioural Remedies Proposal.

14.42 The Initial Behavioural Remedies Proposal and the Updated Behavioural Remedies Proposal are referred to together as the Behavioural Remedies Proposal, and we consider this further below.

14.43 We have not received any alternative behavioural proposals from third parties.

Description of the Behavioural Remedies Proposal

14.44 In this section we describe the aspects of the Behavioural Remedies Proposal aimed at addressing the merchandising solutions SLC, and the aspects of the

¹⁸⁴³ Remedies Notice, paragraph 21.

¹⁸⁴⁴ Parties Response to the Remedies Notice paragraph 2.1

Behavioural Remedies Proposal aimed to address the distribution solutions SLC

Behavioural remedies regarding the merchandising solutions SLC

14.45 The Initial Behavioural Remedies Proposal included an undertaking to continue to offer and support FLX M on a PSS agnostic basis.

14.46 The Parties proposed the appointment of a monitoring trustee to oversee compliance.¹⁸⁴⁵

14.47 The Updated Behavioural Remedies Proposal included the following additional proposals in relation to the merchandising solutions SLC:

a. [REDACTED] and

b. [REDACTED]

14.48 The Updated Behavioural Remedies Proposal also provided further details on [REDACTED]¹⁸⁴⁶

14.49 The Updated Behavioural Remedies Proposal provided further details on the undertakings on [REDACTED]

14.50 Sabre also said that [REDACTED]

Behavioural remedies regarding the distribution solutions SLC

14.51 The Initial Behavioural Remedies Proposal included the following commitments with respect to the distribution solutions SLC:

- a. An undertaking to make Farelogix's NDC APIs and FLX OC available at the same or lower prices to those today, and provide at least the current level of support (or more) for these capabilities for a period of time to be mutually agreed upon;
- b. an undertaking to offer all current Sabre GDS customers and all current FLX OC customers the opportunity to extend their existing contract on the same terms for a period of at least three years past the current termination date;

¹⁸⁴⁵ Parties' response to the Remedies Notice paragraph 2.3

¹⁸⁴⁶ [REDACTED]

- c. an undertaking to continue to invest in the development of Farelogix’s NDC API and FLX OC capabilities at levels no less than current levels for a period of time to be mutually agreed upon; and
- d. an undertaking to continue to offer and support Farelogix’s NDC API and FLX OC capabilities to any third parties and all outlets that wish to use them to connect to Sabre, other GDSs, other distribution partners, or directly to travel agents on an agnostic basis for a period of time to be mutually agreed upon.

14.52 The Parties proposed the appointment of a monitoring trustee to oversee compliance.¹⁸⁴⁷

14.53 The Updated Behavioural Remedies Proposal also provided further details on [REDACTED]¹⁸⁴⁸

14.54 The Updated Behavioural Remedies Proposal provided further details on the undertakings on [REDACTED]

14.55 Sabre also said that [REDACTED].¹⁸⁴⁹

14.56 In the response hearing, Sabre said that the Behavioural Remedy Proposal [REDACTED].¹⁸⁵⁰ [REDACTED].¹⁸⁵¹

14.57 In the Updated Behavioural Remedy Proposal, Sabre said that its undertakings would last for a period of [REDACTED] after completion of the Merger, except for [REDACTED], which were for [REDACTED].

Views of the Parties

14.58 The Parties said that behavioural remedies are ‘the only appropriate and proportionate remedy available to both address the alleged SLC concerns identified and maintain effective competition in the relevant markets.’¹⁸⁵² The Parties said that the Behavioural Remedies Proposal would remove any SLC.¹⁸⁵³

14.59 Regarding the merchandising solutions SLC, the Parties said that the commitment to maintain the interoperability of FLX M would ensure that all current and future FLX M customers would be able to access the full features

¹⁸⁴⁷ Parties’ response to the Remedies Notice paragraph 2.3

¹⁸⁴⁸ [REDACTED]

¹⁸⁴⁹ [REDACTED]

¹⁸⁵⁰ [REDACTED]

¹⁸⁵¹ [REDACTED]

¹⁸⁵² [REDACTED]

¹⁸⁵³ Parties’ response to the Remedies Notice paragraph 3.1

and capabilities of the product regardless of whether they are Sabre core PSS customers. With respect to innovation, the combined entity would be in a position to develop even more rapidly by combining Sabre's global infrastructure and core PSS experience with Farelogix's market-ready product. At the response hearing, Sabre said that the impact of our merchandising SLC 'really crystallises in terms of its adverse impact on the market after three to five years', and that 'there is no finding that the SLC will be perpetual.'¹⁸⁵⁴

14.60 Regarding the distribution solutions SLC, the Parties said that Sabre's GDS and Farelogix's NDC API products would both remain available and that customers would be able to choose between them. They also said that the Merger would result in a third option – the use of the NDC API in conjunction with Sabre's GDS on a pass-through basis. With respect to innovation, the Parties said that the remedy would preserve or increase innovation by ensuring that Sabre would continue to invest in the FLX OC product at no less than current levels.

Views of third parties

14.61 Of the eleven airlines¹⁸⁵⁵ which submitted views to us on remedies, three¹⁸⁵⁶ provided no comment on the Behavioural Remedy Proposal. Five airlines [REDACTED] told us that the Behavioural Remedy Proposal would not be effective. One airline¹⁸⁵⁷ told us that it could be effective but that the proposal would need to be specified in much greater detail. Another airline¹⁸⁵⁸ stated that effectiveness would depend on the duration of the commitments. One airline¹⁸⁵⁹ told us that the Behavioural Remedy Proposal represented an effective remedy but that behavioural remedies in general were onerous to monitor.

14.62 American Airlines said that the behavioural undertakings offered by Sabre would be ineffective in addressing the SLCs. American Airlines told us that, as an independent party from Sabre, Farelogix would continue to act as a disruptor because its interests were not aligned with those of the GDSs, and

¹⁸⁵⁴ [REDACTED]

¹⁸⁵⁵ American Airlines plus the ten airlines that responded to the CMA's requests for views on remedies. See paragraphs 14.22 and 14.23.

¹⁸⁵⁶ [REDACTED]

¹⁸⁵⁷ [REDACTED]

¹⁸⁵⁸ [REDACTED]

¹⁸⁵⁹ [REDACTED]

that this disruptive influence would be lost under the Behavioural Remedy Proposal.¹⁸⁶⁰

14.63 More generally, American Airlines said that behavioural remedies are ‘highly unlikely to have an effective impact’ on the SLCs we have identified, and that ‘such remedies are higher risk and more complex than a divestiture remedy.’¹⁸⁶¹ American Airlines added that it would be difficult to apply an effective behavioural remedy in a dynamic and changing market.

14.64 Of the airlines that commented, [X] told us that it would be difficult to specify pricing and service level commitments for certain aspects of Farelogix’s product offering. For example, [X] told us that it routinely made bespoke change requests that were specific to its own version of FLX OC. [X] told us that prices and service expectations for such requests were subject to bespoke negotiation, depending on the size and scope of the work requested and that establishing benchmarks and monitoring compliance for this type of work would likely prove difficult.¹⁸⁶² [X] told us that it would be difficult to monitor compliance with the Behavioural Remedy Proposal and, in particular, with the commitment to retain current investment levels.¹⁸⁶³ Similarly, [X] told us that it would be difficult to define specific aspects of the proposal and that, even if those aspects could be defined, comprehensive monitoring would prove difficult.¹⁸⁶⁴ [X] told us that the proposal was vague and short-sighted and that it could not be viable for [X] as a customer.¹⁸⁶⁵

14.65 [X] told us that the Behavioural Remedy Proposal could be an effective solution to the SLCs identified by the CMA but that it would need to be specified in much further detail to achieve its aims and to guarantee its long-term application.¹⁸⁶⁶

14.66 Of the six travel agents which provided views on remedies, two¹⁸⁶⁷ told us that they had no comments on the Parties’ Behavioural Remedy Proposal and one¹⁸⁶⁸ told us that it was difficult to say whether a behavioural remedy could be effective in this case. [X] told us that it considered the Parties’ proposal to be adequate to address the CMA’s concerns and that there did not appear to be associated specification, circumvention, distortion or monitoring risks.¹⁸⁶⁹

¹⁸⁶⁰ [X] call note.

¹⁸⁶¹ [American Airlines response to the Remedies Notice](#) paragraph 5.2

¹⁸⁶² [X] call note.

¹⁸⁶³ [X] call note.

¹⁸⁶⁴ [X] response to remedies questionnaire.

¹⁸⁶⁵ [X] response to remedies questionnaire.

¹⁸⁶⁶ [X] response to remedies questionnaire.

¹⁸⁶⁷ [X]

¹⁸⁶⁸ [X]

¹⁸⁶⁹ [X] response to remedies questionnaire.

[X] told us that the Parties' Behavioural Remedy Proposal would represent an effective remedy and a comprehensive solution to the identified SLCs as it maintained Farelogix as an independent, PSS-agnostic provider as well as retaining current pricing, service levels and investment.¹⁸⁷⁰ [X] told us that the Parties' Behavioural Proposal would be effective and comprehensive, subject to defining the duration over which the commitments would apply.¹⁸⁷¹

Our assessment of the Behavioural Remedy Proposal

CMA general approach towards behavioural remedies

14.67 The CMA views competition as a 'process of rivalry between firms seeking to win customers' business over time by offering them a better deal. Rivalry creates incentives for firms to cut price, increase output, improve quality, enhance efficiency, and/or introduce new and better products because it provides the opportunity for successful firms to take business away from competitors, and poses the threat that firms will lose business to others if they do not compete successfully'.¹⁸⁷² Innovation is one aspect over which firms compete and which could worsen as a result of a merger, but the outcomes and effects of innovation are, by their nature, difficult to predict or specify in advance.¹⁸⁷³ Restoring the process of rivalry at source, by re-establishing the structure of the market absent the merger, is normally preferable to measures that seek to predict and then to regulate the ongoing behaviour of the merger parties.¹⁸⁷⁴

14.68 The Merger Remedies Guidance¹⁸⁷⁵ states that the CMA will generally only accept behavioural remedies as the primary source of remedial action in a Phase 2 merger investigation in the limited circumstances where:

- a. divestiture and/or prohibition is not feasible, or the relevant costs of any feasible structural remedy far exceed the scale of the adverse effects of the SLC;
- b. the SLC is expected to have a short duration (eg two to three years) due, for example, to the limited remaining term of a patent or exclusive contract; or

¹⁸⁷⁰ [X] response to remedies questionnaire.

¹⁸⁷¹ [X] response to remedies questionnaire.

¹⁸⁷² [Merger Assessment Guidelines](#), paragraph 4.1.2.

¹⁸⁷³ [Merger Assessment Guidelines](#), paragraph 4.2.3.

¹⁸⁷⁴ [Merger remedies guidance](#), CMA87 paragraph 3.5(a).

¹⁸⁷⁵ [Merger remedies guidance CMA87](#), paragraphs 7.1 to 7.3.

- c. behavioural measures are likely to preserve substantial RCBs resulting from the merger that would be largely removed by structural measures.

14.69 We note that in the current case:

- a. A structural remedy would clearly be feasible, as set out in the section on prohibition in paragraphs 14.19 to 14.31.
- b. We have not found time-limited SLCs, either in terms of when the SLCs start or when they end, and there is no reason to expect they will have a short duration.

14.70 Given our findings on the two criteria in the paragraph above, the assessment of the costs of the structural remedy and of RCBs will be important factors, recognising that costs to the parties are not typically given material weight, and that the burden of proof is on the parties for RCBs. This is set out in paragraphs 14.140 to 14.185. In the following section we assess the effectiveness of the Behavioural Remedy Proposal.

14.71 In their response to the Remedies Working Paper, the Parties said that the CMA had recognised in recent publications that ‘behavioural remedies (including, in particular, commitments relating to interoperability) can be effective and pragmatic tools in protecting competition.’¹⁸⁷⁶

14.72 We note that the comments on behavioural remedy cited by the Parties was made in the context of a market study and the CMA’s approach to digital markets. We would note that a type of remedy that might help open up a market where there is a dominant player and network effects is attempting to address an entirely different problem to the one we are seeking to address in this case, namely the loss of competition arising from a merger in markets with different structures to the ones considered in the papers cited by the Parties. As a result, we do not consider the publications cited by the Parties to be relevant to our remedies.

14.73 In addition, we would also note the CMA’s recent ex-post evaluation of merger remedies, which says that in a merger context “[There are] very limited circumstances in which behavioural remedies might be effective and the timescales over which this might be the case, for example, where a merger takes place in a technologically mature sector with an established and well-resourced regulatory regime and where there is clear evidence that the remedies will only be required for a limited period”¹⁸⁷⁷

¹⁸⁷⁶ [redacted]

¹⁸⁷⁷ [Merger remedy evaluations CMA 109](#) paragraph 1.4

14.74 We consider the effectiveness of the Behavioural Remedy Proposal below.

Our assessment of the effectiveness of the Behavioural Remedy Proposal

14.75 This section sets out our assessment of the effectiveness of the Behavioural Remedy Proposal. In line with the Merger Remedies Guidance, we have considered the following key factors:

- a. the impact of the Behavioural Remedy Proposal on the SLCs and resulting adverse effects;
- b. whether the duration and timing of the Behavioural Remedy Proposal is appropriate;
- c. the practicality of the Behavioural Remedy Proposal; and
- d. whether the risk profile of the Behavioural Remedy Proposal is acceptable.¹⁸⁷⁸

14.76 When looking at the risk profile of the Behavioural Remedy Proposal, we had regard to the four main risks associated with behavioural remedies as set out in the Merger Remedies Guidance: specification risks, circumvention risk, distortion risk, and monitoring and enforcement risks.¹⁸⁷⁹

14.77 In considering whether it is possible to develop a behavioural remedy that could be effective in addressing the two SLCs, we identified four fundamental issues.

14.78 These fundamental issues comprise:

- a. the Scope of the Behavioural Remedy Proposal;
- b. whether a behavioural remedy can effectively address the loss of innovation arising from the Merger;
- c. whether a behavioural remedy can continue to be effective in a dynamic and changing market; and
- d. whether a behavioural remedy can be effective for the duration of the SLC and can be implemented in a timely manner.

14.79 We have assessed issues (a) to (c) in terms of their impact on the SLC and resulting adverse effects. We have assessed issue (d) in terms of the duration

¹⁸⁷⁸ [Merger remedies guidance CMA87](#), paragraph 1.8

¹⁸⁷⁹ [Merger remedies guidelines](#), CMA87 paragraph 7.4.

and timing necessary to effectively remedy the SLC. We have also assessed the practicality and risk profile relating to a number of additional more detailed issues relating to the design of the Behavioural Remedy Proposal.

Scope of the Behavioural Remedy Proposal

14.80 We considered whether the Behavioural Remedy Proposal is sufficient in scope to effectively remedy the SLCs identified.

Merchandising solutions

14.81 We have found that the SLC arising from the Merger could result in a loss of innovation in merchandising solutions, resulting in reduced customer choice, fewer new features and upgrades being released more slowly. While the nature of innovation means that these effects may take some time to emerge in full, it also means they are likely to have a far-reaching detrimental impact on customers. Moreover, there would likely be an immediate impact on the competitive process – namely the ongoing rivalry between firms driving each other's day to day investment decisions. Sabre's independent effort to develop its merchandising solution would likely drive further innovation by rivals, but this driver would be lost as a result of the Merger. This loss of competition may also result in higher prices as a result of the loss of a significant competitor in merchandising procurement processes, as Sabre and Farelogix would no longer compete against each other independently.¹⁸⁸⁰

14.82 The Behavioural Remedy Proposal does not address these concerns in any meaningful way. It does not address a fundamental aspect of the merchandising solutions SLC, namely the loss of dynamic competition arising from the development of Sabre's PSS-agnostic, NDC-compatible merchandising solution that has been spurred, in part, by competition with Farelogix. We consider that investment in and development of new products is the result of rivalry including between Farelogix and Sabre. The Behavioural Remedy Proposal therefore does not address our concern about the loss of a new merchandising solution from Sabre that would otherwise have competed with Farelogix's solution (and with other competitors) absent the Merger.

14.83 As a result, we have found that the scope of the Behavioural Remedy Proposal is insufficient to comprehensively address the merchandising solutions SLC we have found.

¹⁸⁸⁰ See paragraphs 11.101 and 11.102

Distribution solutions

- 14.84 As with the SLC in the provision of merchandising solutions, the Behavioural Remedy Proposal does not address the adverse effects we have found regarding the provision of distribution solutions.
- 14.85 The Merger removes Farelogix as a supplier of distribution solutions that is independent of the GDSs. We have found that Farelogix is a material competitive threat to the GDSs. This loss of competition would lead to a reduction in innovation in distribution solutions, including a reduced incentive for the development by GDSs of pass-through capabilities, to the detriment of all airlines and travel agents across the sector. It may also result in the GDSs charging higher prices to some airlines than they otherwise would by reducing airlines' ability to redirect volumes away from the GDSs to alternative channels, particularly because one of the reasons for airlines to adopt GDS bypass is to reduce their distribution costs.
- 14.86 The Behavioural Remedy Proposal includes undertakings to extend contract terms for existing customers of both Parties and to maintain and continue to offer Farelogix's distribution solutions. These undertakings do not adequately address the incentive for an independent Farelogix to compete to meet airlines' evolving needs with respect to NDC content absent the Merger.
- 14.87 They also do not address the rivalry that would, in the absence of the Merger, drive Sabre to develop its GDS pass-through solution. For example, without the Merger, Sabre would have continued to face competition from Farelogix who provides GDS bypass solutions to airlines which in turn represents a revenue threat to Sabre. In this scenario, Sabre would be likely to respond by competing more intensely in price and/or in accelerating its development of GDS pass-through and/or NDC API. That competitive dynamic would be lost as a result of the Merger. We have found that Sabre has the incentive to protect its GDS business, which is otherwise under threat from Farelogix, and this threat is enhanced by Farelogix's strong position in merchandising. The Behavioural Remedy Proposal does not address this dynamic competition in developing NDC enabled distribution solutions that we have identified.
- 14.88 As a result, we have found that the scope of the Behavioural Remedy Proposal is insufficient to comprehensively address the distribution solutions SLC we have found.

Addressing the loss of innovation resulting from the Merger

- 14.89 An effective remedy must comprehensively address the loss of innovation arising from the SLCs. Innovation in both relevant markets can take many

forms. A non-exhaustive list of examples might include a technical advancement; a more efficient way of servicing customer needs; a better way to offer a holistic service to customers; or finding a way to lower costs and therefore prices for customers.

Merchandising solutions

- 14.90 We have found that, among other things, the merchandising solutions SLC would lead to a reduction in innovation in the relevant market, meaning that fewer new features are likely to be developed and they may be released more slowly. We found that Farelogix was recognised as an innovative competitor in both markets. In merchandising solutions we expect that, in the absence of the Merger, Sabre would innovate to develop a credible PSS-agnostic and NDC-compatible offering to compete with Farelogix and others.
- 14.91 The Behavioural Remedy Proposal contained an undertaking to [REDACTED]. However, there are no undertakings [REDACTED]
- 14.92 At the response hearing, Sabre suggested that [REDACTED]. This evidence is summarised at paragraph 14.56. More detail was provided in the Updated Behavioural Remedy Proposal. However, we also heard evidence around the [REDACTED].¹⁸⁸¹ The Parties subsequently submitted that [REDACTED]. The Parties did not submit any specific proposals to address how these inherently contradictory matters might be reconciled.
- 14.93 In addition, as the Parties point out, Sabre has a fiduciary duty to its shareholders to manage its assets, including Farelogix. We consider that fundamental aspects of Farelogix's competitive offer, such as funding, governance, recruitment of key staff, back-office integration, terms with customers and bid strategies, would either be controlled by Sabre, or by Farelogix management which would be accountable to, and appointed and remunerated by, Sabre. Furthermore, the creation of a truly independent Farelogix with which other parts of the Sabre business would compete to innovate new products would, in effect, be the situation in the absence of the Merger and so would appear to contradict the central rationale for Sabre acquiring it.
- 14.94 As a result, we have found that the Behavioural Remedy Proposal is insufficient to comprehensively address the loss of innovation and related incentives to compete arising from the merchandising solutions SLC we have found.

¹⁸⁸¹ [REDACTED]

Distribution solutions

- 14.95 We have found that innovation is a key dimension of competition in the distribution solutions market. We have found that the distribution solutions SLC would lead to a reduction in innovation, particularly in terms of the development of GDS pass-through capabilities by the GDSs, to the detriment of all airlines and travel agents across the sector. In the short term, it may also result in the GDSs charging higher prices than they otherwise would do to some airlines, due to a reduction in airlines' ability to redirect volumes away from the GDSs to Farelogix's GDS bypass as an alternative channel, particularly because one of the reasons for airlines to adopt GDS bypass is to reduce their distribution costs.¹⁸⁸²
- 14.96 The Behavioural Remedies Proposal attempts to address the adverse effect of the SLC on innovation. In particular, the Parties have proposed that Sabre will continue to invest in the development of Farelogix's NDC API and FLX OC capabilities at investment levels no less than current levels. [REDACTED]. We also note Sabre's evidence at the response hearing, and subsequently, regarding [REDACTED].
- 14.97 However, we also note that the Behavioural Remedy Proposal does not include [REDACTED]. Our concerns over the ability to give Farelogix sufficient independence post-Merger for merchandising, which we summarise in paragraphs 14.92 to 14.94, also apply to distribution solutions.
- 14.98 As set out above, the CMA views competition as a process of rivalry between competing firms. We consider that it is important to ensure that rivals continue to have the incentive to compete and innovate. Our view is that the Behavioural Remedies Proposal is not effective in replicating the incentives to compete and to innovate that would exist absent the Merger. In particular, the Behavioural Remedies Proposal does not address the lost incentive on Sabre to innovate and to compete with Farelogix in developing NDC solutions, as discussed above. As a result of the Merger, Sabre would benefit if customers switched to the GDS-bypass distribution channel using Farelogix solutions, thereby eliminating a source of competition. In addition, under Sabre's ownership, Farelogix has no incentive to develop its products independently from Sabre. We have found that airlines valued Farelogix as a non-GDS provider of distribution solutions which are not designed with benefits to the GDS in mind, and this would be lost as a result of the Merger.
- 14.99 The points we have made on Sabre's independence in paragraphs 14.92 to 14.94 also apply to distribution solutions.

¹⁸⁸² See paragraph 11.130

14.100 As a result, we have found that the Behavioural Remedy Proposal is insufficient to comprehensively address the loss of innovation and related incentives to compete arising from the distribution solutions SLC we have found.

Effectiveness of a behavioural remedy in a changing market

14.101 We have found that the airline industry is undergoing lengthy and complex changes, with airlines looking to take greater control of their retailing and distribution functions. We found that this had given rise to demand for suppliers with alternative technologies and business models, and that the process of change appeared to have much further to evolve in the future.

14.102 Behavioural remedies generally address the outcomes arising from an SLC rather than dealing with the problem at source. In a market that is expected to change significantly in the future, a comprehensive behavioural remedy must be capable of adapting to market changes, thereby retaining its effectiveness.

14.103 The Merger Remedies Guidance says that “Markets that are subject to frequent change in products or supply arrangements may be particularly prone to specification risk if the definition of required conduct is vulnerable to such changes.”¹⁸⁸³ We consider that both the merchandising and distribution solutions markets are evolving, with new product features and distribution channels being developed or likely to be developed in future. These are difficult to predict, and so may give rise to the specification risk set out in the Merger Remedies Guidance.

14.104 We noted Sabre’s evidence at the response hearing. It said that ‘in a dynamic market our remedies are attractive because they effectively hold the ring. They enable other suppliers to innovate and customers to make considered choices about which supplier they wish to use... in other words they protect against the adverse effects of the SLC and facilitate the evolution of the dynamic market.’¹⁸⁸⁴

14.105 Sabre also said ‘[y]ou have a period when things may evolve in the market that we cannot necessarily foresee. We cannot foresee it and nor can you. In our analysis you found an SLC... but we should all recognise that things might evolve in the market during the period and might mean that if you

¹⁸⁸³ [Merger remedies guidance](#), CMA87 paragraph 7.4(a).

¹⁸⁸⁴ [redacted]

looked again in five years' time it would have a different complexion.¹⁸⁸⁵ It said that this supported the case for its 'flexible' remedies.

14.106 We note the Parties' submission that their remedy allows third party suppliers to innovate and customers to choose between suppliers. It is unclear how the remedy would promote this innovation and choice with Farelogix and Sabre products under common ownership, or how the remedy would impact other suppliers. In fact, we have found that the Merger will lead to less choice for customers, and less innovation.

14.107 We disagree with Sabre's claim that the dynamism of the market makes their remedy suitable. The CMA does not have jurisdiction to amend or impose different remedies once a remedy proposal has been implemented, and so an effective remedy needs to be robust to changes in the market. Dynamic and changing markets such as the ones affected by the Merger will, by their nature, have an increased probability of unforeseen changes. This is a key reason why ongoing behavioural remedies may not be suitable in dynamic markets.

Merchandising Solutions

14.108 With respect to merchandising solutions, the Behavioural Remedy Proposal does not, in our view, adequately address the high risk that changes in market circumstances will render it ineffective.

14.109 The Behavioural Remedy Proposal sets out a static set of commitments on price, service and product development. [REDACTED]. It also does not capture or reflect the improvements in efficiency that we would expect to see, and be passed onto customers, in this market.

14.110 As a result, we have found that the Behavioural Remedy Proposal does not take sufficient account of future changes in the merchandising solutions market and therefore is unlikely to be effective for the duration of the SLC.

Distribution solutions

14.111 The distribution solutions market has similar characteristics to the merchandising solutions market. As a result, our concerns with the merchandising remedies set out in paragraphs 14.108 to 14.110 also apply to the distribution remedies, which have similar features.

¹⁸⁸⁵ [REDACTED]

14.112 As a result, we have found that the Behavioural Remedy Proposal does not take sufficient account of future changes in the distribution solutions market and therefore is unlikely to be effective for the duration of the SLC.

Duration of the SLC and timing

14.113 We require that ‘remedies must address the SLC effectively throughout its expected duration’.¹⁸⁸⁶ Behavioural remedies are more likely to be accepted when the SLC is expected to have a short duration.¹⁸⁸⁷ This is because the risks of circumvention, market distortion and monitoring increase over time, making it more likely that the remedy will be ineffective.

14.114 In 2019, the CMA published an evaluation of 18 merger cases, including five with behavioural remedies or price controls.¹⁸⁸⁸ The evaluation showed ‘that with painstaking and intensive implementation, they [behavioural remedies] can operate satisfactorily for a limited period in narrowly defined circumstances. This is more likely to be the case where the company already operates in a regulated environment and where the CMA is able to delegate aspects of monitoring to an expert third party’.

14.115 The report continues: ‘Even in circumstances that may be relatively favourable to behavioural remedies, our experience of evaluating and reviewing this type of remedy indicates that it is very unlikely to be possible to design behavioural remedies that will be effective indefinitely without creating substantial distortion risks. It needs to be clear, at the time of accepting a behavioural remedy, that a future event is likely to arise that would remove the need for the remedy’.¹⁸⁸⁹

14.116 The Merger Remedies Guidance also states that ‘remedies that act quickly in addressing competitive concerns are preferable to remedies that are expected to have an effect in the long term or where the timing is uncertain’.¹⁸⁹⁰

Merchandising solutions

14.117 At the response hearing, Sabre said that the impact of our merchandising SLC ‘really crystallises in terms of its adverse impact on the

¹⁸⁸⁶ [Merger remedies guidance](#), CMA87 paragraph 3.5(b).

¹⁸⁸⁷ [Merger remedies guidance](#), CMA87 paragraphs 7.2.

¹⁸⁸⁸ [CMA48 Understanding past merger remedies](#)

¹⁸⁸⁹ [CMA48 Understanding past merger remedies](#) paragraph 1.5(b)

¹⁸⁹⁰ [Merger remedies guidance](#), CMA87 paragraph 3.5(b).

market after three to five years', and that 'there is no finding that the SLC will be perpetual.'¹⁸⁹¹

14.118 The SLC that we have found, and its adverse effects, does not end after a limited period. We have considered future market developments and our analysis has not identified any event or change that is likely to limit the duration of the SLCs. Accordingly, the conditions resulting in the SLC and its adverse effects could persist for an indefinable period of time and as such the remedy needs to be robust enough to be effective throughout this period regardless of how long it is. Given the risks associated with behavioural remedies identified above in circumstances where the SLC is not expected to have a short duration, we do not think that the Behavioural Remedy Proposal will be effective at addressing the SLC, not least because it will only be in force for [X] years.

Our Assessment

14.119 The Behavioural Remedy Proposal is insufficient to comprehensively address adverse effects arising from the merchandising solutions SLC we have found for the duration of that SLC.

Distribution solutions

14.120 Our assessment in paragraph 14.118 also applies to the distribution solutions SLC that we have found. The Parties currently compete in this market and so the Merger will remove this competition, leading to a lessening of innovation and, potentially, increases in prices. It is also highly unlikely that the SLC will have been comprehensively addressed by the end of [X] years that the Behavioural Remedy Proposal will have been in force.

Our Assessment

14.121 The Behavioural Remedy Proposal is insufficient to comprehensively address adverse effects arising from the distribution solutions SLC we have found for the duration of that SLC.

Practicality and risk profile

14.122 We considered the practicality and risk profile of the Behavioural Remedy Proposal. In so doing, we had regard to the four main risks

¹⁸⁹¹ [X]

associated with behavioural remedies as set out in the Merger Remedies Guidance.¹⁸⁹² specification risk; circumvention risk; distortion risks; and monitoring and enforcement risks.

14.123 While we would not expect the Behavioural Remedy Proposal to be specified in detail at this stage, we found a number of concerns that, in our view, cannot be effectively dealt with through more detailed specification. Most importantly, we do not consider that the Behavioural Remedy Proposal, or indeed any behavioural remedy, could be specified to effectively address the loss of competition arising from the Merger. Further concerns with specification include the setting of a benchmark price for new customers, and the definition and specification of levels of customer support. These benchmarks set levels of inputs, when what customers are concerned with are the quality of the outputs. In addition, the Parties' commitments on Farelogix's independence are rudimentary and presented in broad terms only. In summary, the nature of competition and customer relationships in this market, and the qualitative aspects of innovation and customer support lead to significant specification risks.

14.124 The specification risks are compounded by circumvention risks, and in particular the risks that the Parties will introduce new pricing structures or degrade Farelogix's solutions in ways that are not capable of being specified in a behavioural remedy commitment. This risk has not been adequately addressed in the Behavioural Remedy Proposal.

14.125 We have also identified distortion risks from the Behavioural Remedy Proposal which may override market signals on price and product development.

14.126 Furthermore, we have found significant monitoring and enforcement risks that are inherent to the complex and evolving nature of the market. The Parties' proposal to appoint a monitoring trustee does not mitigate these risks significantly, and places additional burdens on customers to ensure the Parties' compliance with their commitments.

Summary of assessment on effectiveness of the Behavioural Remedy Proposal

14.127 In this section we set out a summary of our assessment of the effectiveness of the Behavioural Remedy Proposal.

¹⁸⁹² [Merger remedies guidelines](#), CMA87 paragraph 7.4.

- 14.128 First, we have considered the impact of the Behavioural Remedy Proposal on the SLCs and their adverse effects.
- 14.129 The scope of the Behavioural Remedy Proposal is substantially smaller than the scope of the SLCs. Irrespective of any merits that the proposal may have, its lack of sufficient scope means that it cannot comprehensively remedy the problems we have found.
- 14.130 An effective remedy must comprehensively address the loss of innovation and potential price rises arising from the SLCs. The Behavioural Remedy Proposal does not address the lost incentives on the Parties to compete with each other through innovating and developing new products, and it is unclear to us how any behavioural remedy could be specified and enforced to deal with this loss of innovation effectively.
- 14.131 We also consider it unlikely that a behavioural remedy would be able to deal comprehensively and effectively with the significant ongoing changes in the markets for merchandising and distribution solutions.
- 14.132 We have assessed whether the Behavioural Remedy Proposal can be effective for the duration of the SLC. We have found no clear end date for the SLC, so the Behavioural Remedy Proposal would have to be effective for a significantly longer period of time than the [X] years proposed. The Merger Remedies Guidance and experience of previous cases has shown that it is extremely unlikely that the Behavioural Remedy Proposal, would be effective over such a long duration in a dynamic market.
- 14.133 We have also assessed the practicality and risk profile of the Behavioural Remedy Proposal. We found significant risks relating to the accurate specification of the remedy, the potential for circumvention, distortions in market outcomes arising from the remedy, and difficulties in monitoring and enforcing the commitments proposed by the Parties. These risks significantly undermine the potential of the Behavioural Remedy Proposal to comprehensively remedy the SLCs we have found.
- 14.134 The Merger Remedies Guidance states that generally the CMA will only consider behavioural remedies when structural remedies are not feasible, the SLC(s) are time-limited, or there are significant RCBs that would be lost with a structural remedy but may be preserved with a behavioural remedy. We have a structural remedy, prohibition, which is feasible, and both SLCs are not time-limited. We consider RCBs in the section starting at paragraph 14.140.

14.135 The Merger Remedies Guidance also says that we will seek remedies that have a high degree of certainty of achieving their intended effect.¹⁸⁹³ Each of the issues listed above would, on their own, present significant risks to the effectiveness of the remedy. Taken together, and considering the limited scope of the Parties' remedy, we find substantial shortcomings in the Behavioural Remedy Proposal which renders it extremely unlikely to be effective.

14.136 In conclusion, we have found that the Behavioural Remedy Proposal would not be an effective remedy to the SLCs we have found, either individually or together.

Conclusions on remedy effectiveness

14.137 We have decided that the following remedy would be effective in remedying the SLCs and adverse effects that we have found:

- a. Prohibition of the Merger.

14.138 We have concluded that the following remedies would not be effective:

- a. partial divestiture;
- b. divestiture or licensing of software and/or other IP; and
- c. the Parties' Behavioural Remedy Proposal.

14.139 Having identified which remedies would be effective, we next consider whether there are any RCBs which should affect our decision on remedies, before considering the issue of proportionality.

Relevant customer benefits (RCBs)

14.140 When deciding on remedies, the CMA may have regard to the effects of remedial action on any RCBs. In this sub-section, we consider whether there are any RCBs (within the meaning of the Act) that should be taken into account in our remedy assessment.

14.141 An effective remedy to an SLC, such as prohibition in this case, could be considered disproportionate if it prevents customers from securing substantial benefits arising from the Merger, where these benefits outweigh the SLC and any resulting adverse effects. Insofar as these benefits constitute

¹⁸⁹³ [Merger remedies guidelines](#), CMA87 paragraph 3.5(d)

RCBs for the purposes of the Act, the statutory framework allows us to take them into account when we decide whether any remedy is appropriate.

14.142 RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy. The CMA may modify a remedy to ensure retention of an RCB or it may change its remedy selection. For instance, it may decide to implement an alternative effective remedy, or it may decide that no remedy is appropriate.

Framework for assessment of RCBs

14.143 Guidance states that the 'merger parties will be expected to provide convincing evidence regarding the nature and scale of RCBs that they claim to result from the merger and to demonstrate that these fall within the Act's definition of such benefits.'¹⁸⁹⁴ We therefore consider that the burden of proof of whether RCBs arise from a merger falls on the merging parties.

14.144 The Act defines RCBs as a benefit to relevant customers in the form of lower prices, higher quality, or greater choice of goods or services in any market in the UK, or greater innovation in relation to those goods or services. For these purposes, relevant customers are direct and indirect customers (including future customers) of the merger parties at any point in the chain of production and distribution - they are not limited to final consumers.

14.145 In addition, in the case of completed mergers, to be properly considered as an RCB under the statutory definition, the CMA must believe that:

- a. The benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and
- b. the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.

14.146 When assessing the Parties' evidence on the claimed benefits, the CMA must therefore ask itself whether each claimed benefit has or may be expected to accrue as a result of the merger ((a) above), and, whether that benefit was, or is, unlikely to accrue without the merger or a similar lessening of competition ((b) above). With regard to the latter, in practice the CMA will consider whether the merger parties' evidence is sufficient to demonstrate that

¹⁸⁹⁴ [Merger remedies guidelines](#), CMA87 paragraph 3.20

the claimed benefit could not be achieved by plausible less anti-competitive alternatives to the merger.

Parties' and third parties' views on RCBs

14.147 In our Remedies Notice, we invited views on the nature of any RCBs and on the scale and likelihood of such benefits and the extent (if any) to which these were affected by different remedy options.¹⁸⁹⁵

14.148 In their response to the Remedies Notice¹⁸⁹⁶, the Parties proposed the following RCBs:

- a. The Merger would make competition more robust in NDC retailing and would drive broader adoption and delivery of NDC content (RCB1).
- b. Sabre, by acquiring a PSS-agnostic merchandising solution, would be able to offer a compelling solution to the significant majority of airlines that currently use Amadeus's core PSS and will be able to better serve those airlines that prefer to procure their merchandising solution alongside their core PSS (RCB2).
- c. The Merger would accelerate the delivery of NDC content through the GDS, increasing competition as well as promoting price transparency and inter-brand competition among airlines (RCB3).

14.149 At the response hearing, the Parties confirmed that the proposed RCBs were the same as the efficiencies that they had previously proposed as countervailing factors to the Merger.¹⁸⁹⁷

14.150 The following sections set out the Parties' evidence on RCBs in more detail.

RCB1: more robust competition in NDC retailing

14.151 In their response to the Remedies Notice, the Parties said that '[b]y combining Sabre's global infrastructure with Farelogix's market-ready FLX M product, the Merger will allow the combined company to immediately offer a scalable PSS-agnostic merchandising engine that can generate NDC-enabled intelligent offers.'¹⁸⁹⁸

¹⁸⁹⁵ Remedies Notice

¹⁸⁹⁶ Response to the Remedies Notice paragraphs 4.2-4.7

¹⁸⁹⁷ [redacted]

¹⁸⁹⁸ Parties' response to the Remedies Notice paragraph 4.3

14.152 At the response hearing, Sabre said that integration of the Parties' systems would allow them to provide end-to-end capabilities and [REDACTED], which would not be possible if they were separate companies. This would benefit airlines and passengers who were subject to schedule changes.¹⁸⁹⁹

14.153 Sabre also said at the response hearing that it intended to [REDACTED].¹⁹⁰⁰ After the response hearing, the Updated Behavioural Remedies Proposal said [REDACTED]¹⁹⁰¹

RCB2: Offering a compelling solution to Amadeus core-PSS customers and others

14.154 In their response to the Remedies Notice, the Parties said that even though [REDACTED], it could make short-term improvements to the interoperability of the products, such as exchanging legal and technical information.

14.155 In their response to the Remedies Working Paper, the Parties said that the Behavioural Remedy Proposal would 'spur innovation in rivals, not reduce it' and would provide a 'particularly strong' incentive on Amadeus.

RCB3: Accelerating the delivery of NDC content through the GDS

14.156 In their response to the Remedies Notice, the Parties said that Sabre had no economic incentive to limit investment in GDS pass-through, and that the Behavioural Remedy Proposal ensures that the FLX OC product is available for GDS pass-through, increasing competition amongst Sabre, Amadeus and Travelport, as well as promoting price transparency and inter-brand competition among airlines.

14.157 At the response hearing, Sabre said that '[t]he benefits the airline will see as a result of this merger is our ability to be able to align and deliver quickly on the capabilities that airlines are focused on.'¹⁹⁰²

Third party views

14.158 We received a number of responses from airlines regarding benefits of the Merger. The views put to us by airlines correspond with the RCBs submitted by the Parties.

¹⁸⁹⁹ [REDACTED]
¹⁹⁰⁰ [REDACTED]
¹⁹⁰¹ [REDACTED]
¹⁹⁰² [REDACTED]

- 14.159 Three airlines¹⁹⁰³ told us that they did not consider there to be any relevant customer benefits arising from the Merger.
- 14.160 [X] told us that it considered there to be insufficient benefits that could arise from the Merger to offset the impact of the SLC, including the removal of the main disruptor to the GDSs.¹⁹⁰⁴
- 14.161 Six airlines did think that there might be some benefits. [X] told us that Sabre's acquisition of Farelogix would help provide Sabre PSS customers with a proven, integrated and timely merchandising solution.¹⁹⁰⁵
- 14.162 [X] told us that the Merger would benefit customers by introducing NDC content into the Sabre GDS and creating an end-to-end NDC solution.¹⁹⁰⁶ [X]¹⁹⁰⁷ [X] told us that the Merger would make Sabre a stronger competitor to Amadeus, enabling Sabre to put pricing pressure on Amadeus to the benefit of airlines.¹⁹⁰⁸
- 14.163 [X] told us that there were benefits of scale and that, as a large entity, Sabre could continue to invest in Farelogix and could make investments that Farelogix would not be able to make on its own. However, [X] added that this was difficult for it to assess.¹⁹⁰⁹ [X] also told us that enhanced investment in Farelogix's capabilities may be a benefit of the Merger.¹⁹¹⁰
- 14.164 Six travel agents also made submissions to us regarding relevant customer benefits.
- 14.165 [X] told us that the Merger would enable Sabre to effectively integrate NDC into its GDS but also stated that, while [X] was not aware of any specific alternatives, 'there may be other solutions' that would enable effective implementation of NDC in the Sabre GDS.¹⁹¹¹
- 14.166 [X] told us that the Merger would bring a scalable NDC solution to market¹⁹¹² and [X] told us that the Merger would make competition more robust in NDC and would drive broader adoption and delivery of NDC content.¹⁹¹³ [X] told us that Sabre had been lagging behind on NDC and that

¹⁹⁰³ [X]
¹⁹⁰⁴ [X] putback response, received 3 April 2020.
¹⁹⁰⁵ [X] response to remedies questionnaire.
¹⁹⁰⁶ [X] response to remedies questionnaire.
¹⁹⁰⁷ [X] email to the CMA dated 13 March 2020.
¹⁹⁰⁸ [X] response to remedies questionnaire.
¹⁹⁰⁹ [X] response to remedies questionnaire.
¹⁹¹⁰ [X] response to remedies questionnaire.
¹⁹¹¹ [X] response to remedies questionnaire.
¹⁹¹² [X] response to remedies questionnaire.
¹⁹¹³ [X] response to remedies questionnaire.

the Merger would enable it to compete better with other suppliers.¹⁹¹⁴ However, [X] also stated that it would consider any GDS to be able to bring on board NDC for [X] to consume on the GDS platform.¹⁹¹⁵

14.167 [X] told us that existing solutions were unable to meet the needs of the corporate travel market and that the Merger was more likely to enhance the speed to market of a scalable NDC solution than the current model.¹⁹¹⁶

14.168 Similarly, [X] told us that the Merger would accelerate delivery of Sabre's NDC capabilities.¹⁹¹⁷ [X] stated that, were the merger to be prohibited, Sabre would be required to find an alternative strategy, [X].¹⁹¹⁸ [X] added that prohibition would necessitate Sabre considering building its own technology or partnering with another technology company. [X] told us that [X] there were no other players as established or as entrenched with the same number of major carriers as Farelogix.¹⁹¹⁹

Our assessment of RCBs

14.169 Based on the parties' submissions above, we have assessed the three RCBs identified by the parties. The Parties have submitted that these benefits are expected to arise as a result of the Merger and so would be lost by its prohibition.

14.170 We note that the Parties' proposed RCBs are similar to the efficiencies that they proposed and were considered as part of our SLC assessment. This assessment is set out in paragraphs 12.3 to 12.44.

RCB1: More robust competition in NDC retailing

14.171 The Parties have submitted that the Merger will make competition 'more robust' in NDC retailing, owing to the end-to-end capability that the integration of Sabre and Farelogix's solutions would provide. Our assessment of the Merger has found the opposite – that without the Merger Sabre would have the ability and incentive to invest in NDC-enabled merchandising solutions. Indeed, this is the basis for our finding of an SLC in the supply of merchandising modules. We consider that in this counterfactual it can be expected that competition in NDC-enabled retailing will be more robust

¹⁹¹⁴ [X] response to remedies questionnaire.

¹⁹¹⁵ [X] response to remedies questionnaire.

¹⁹¹⁶ [X] response to remedies questionnaire and putback response.

¹⁹¹⁷ [X] response to remedies questionnaire.

¹⁹¹⁸ [X] response to remedies questionnaire.

¹⁹¹⁹ [X] response to remedies questionnaire.

through Sabre's own investment in it. Given this, we consider that the benefits of more robust competition in NDC retailing would be unlikely to result from the Merger.

14.172 We also note that Sabre has expressed [REDACTED].¹⁹²⁰ We therefore consider that, even if the benefits were likely to accrue as a result of the Merger, it is unclear whether and how the claimed benefits of integrating Sabre and Farelogix's solutions may be expected to accrue within a reasonable period of the Merger.

14.173 The Parties also submitted that relevant customer benefits would arise as a result of Sabre's ability to provide a more stable operating environment and to improve the system performance of Farelogix. However, we have found that Farelogix would plausibly be expected to improve its stability and system performance through less anti-competitive ways absent the Merger. (see paragraphs 9.203 to 9.207). We do not therefore consider that the benefits of a more stable Farelogix operating environment would be unlikely to accrue absent the Merger.

14.174 In addition, the Parties have not provided evidence of how Sabre expects to achieve any [REDACTED]. For these reasons, it is unclear when and how any such benefit may be expected to accrue, as a result of the Merger.

14.175 For the reasons set out above, we do not consider that the Parties' claimed benefit of more robust competition in NDC retailing, including by improving Farelogix's stability and system performance, qualifies as an RCB for the purposes of the Act.

RCB2: Offering a compelling solution to Amadeus's core-PSS customers and others

14.176 We now turn to the second claimed RCB - that Sabre would be able to offer a more compelling solution to airlines using Amadeus' or others' PSS and better serve airlines which prefer to procure merchandising alongside their core PSS.

14.177 We have found that, in the absence of the Merger, Sabre would likely have developed its own credible PSS-agnostic and NDC-compatible merchandising solution. Furthermore, the Farelogix merchandising solution is

¹⁹²⁰ Paragraph 12.30.

already available to customers using any PSS. We have also found no evidence to support the Parties' assertion that innovation in the market would increase as a result of the Merger and we note that Sabre has stated that it expects [redacted]. As a result, we consider that it is not clear that this claimed benefit may be expected to accrue within a reasonable period as a result of the Merger.

14.178 In addition, given our finding that Sabre would become a credible provider of merchandising solutions in the counterfactual, neither do we consider that this benefit would be unlikely to accrue without the Merger.

14.179 For these reasons, the Parties' claimed customer benefits arising from the merged entity's ability to offer a more compelling solution to airlines do not qualify as an RCB for the purposes of the Act.

RCB3: Accelerating the delivery of NDC content through the GDS

14.180 We do not consider the Parties' claim (quoted in paragraph 14.156) that the Behavioural Remedy Proposal maintains the availability of the FLX OC product to be relevant to our analysis of RCBs. We have found the Behavioural Remedy Proposal to be ineffective – the purpose of our RCB assessment is to analyse benefits of the Merger that would be lost under our proposed remedy of prohibition.

14.181 While some travel agents have suggested that the Merger might accelerate delivery of NDC content, we have not received clear evidence on how the 'acceleration' of content delivery would be achieved. As set out in our assessment of rivalry-enhancing efficiencies, where the Parties submitted similar claims of NDC content acceleration, the Parties' submissions were limited to general statements and assertions only. We have not seen specific details nor evidence demonstrating that the Merger will lead to accelerated GDS pass-through of NDC content, nor how any such acceleration would compare to what would be expected in the counterfactual. In this context, we note that [redacted].

14.182 Similarly, the Parties told us that this acceleration would increase competition amongst Sabre, Amadeus and Travelport, and promote price transparency and inter-brand competition among airlines, but did not provide supporting evidence to demonstrate the form or timing of any such benefits, as required to demonstrate that the RCBs test is satisfied. While we note the views expressed to us by a number of travel agents in this regard, we

consider that the potential benefits outlined in these submissions are anecdotal and unsubstantiated.

14.183 As a result, we consider that it is unclear whether the Parties' claimed customer benefits arising from the accelerated delivery of NDC content through the GDS may be expected to accrue within a reasonable period as a result of the Merger. We also consider that it is not clear that this benefit would be unlikely to accrue without the Merger. The Parties' claimed customer benefits relating to NDC content acceleration therefore cannot be considered an RCB for the purposes of the Act.

Conclusion on RCBs

14.184 The burden of proof of whether RCBs arise from a merger is on the merging parties. The Merger Remedies Guidance states that the 'merger parties will be expected to provide convincing evidence regarding the nature and scale of RCBs that they claim to result from the merger and to demonstrate that these fall within the Act's definition of such benefits.'

14.185 We have considered whether the claimed benefits of the Merger identified by the Parties and third parties constitute RCBs for the purposes of the Act. On the basis of the analysis set out above, we conclude that there are no RCBs arising from the Merger.

The proportionality of effective remedies

14.186 In paragraphs 14.137 to 14.139 we summarised our conclusions on which remedies would be effective in addressing the SLCs and the resulting adverse effects. We set out below our assessment of, and conclusions on, proportionality.

Framework for assessment of proportionality of merger remedies

14.187 Having decided which of the remedy options would be effective in addressing the SLC and resulting adverse effects, the CMA then considers the costs of such remedies. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. If the CMA is choosing between two remedies which it considers will be equally effective, it will select the remedy that imposes the least cost or that is least restrictive (we call this the 'least onerous effective remedy'). In addition, the CMA will seek to ensure that no

remedy is more onerous than necessary or disproportionate in relation to the SLC and its adverse effects.¹⁹²¹

14.188 When considering potential costs of remedies, the CMA's considerations may include (but are not limited to):¹⁹²²

- a. distortions in market outcomes;
- b. compliance and monitoring costs incurred by the Parties, third parties, or the CMA; and
- c. the loss of any RCBs that may arise from the Merger which are foregone as a result of the remedy.

14.189 The costs of a remedy may be incurred by a variety of parties, including the merger parties, third parties, the CMA and other monitoring agencies. As the merger parties have the choice of whether or not to proceed with the merger, the CMA will generally attribute less significance to the costs of a remedy that will be incurred by the merger parties than the costs that will be imposed by a remedy on third parties.¹⁹²³

14.190 When the CMA identifies the least onerous effective remedy, it then considers whether this remedy would be disproportionate to the SLC and its resulting adverse effects. In doing so, the CMA compares the costs to the proposed remedy with the scale of the SLC and its adverse effects (eg if the costs of the remedy are likely to be greater than the likely scale of adverse effects).¹⁹²⁴

Views of the parties

14.191 The Parties said that their remedy proposal was also a comprehensively effective solution, and that unlike prohibition it preserved the claimed RCBs, which it said were 'significant in scale and nature.'

14.192 The Parties also said that even if we found prohibition to be the only comprehensively effective solution, it would not be proportionate or 'reasonable and practicable' (as defined in section 36(3) of the Act), given that

¹⁹²¹ [Merger remedies guidelines](#), CMA87 (13 December 2018), paragraph 3.6.

¹⁹²² [Merger remedies guidelines](#), CMA87 (13 December 2018), paragraph 3.10.

¹⁹²³ [Merger remedies guidance CMA87](#), paragraph 3.8.

¹⁹²⁴ [Merger remedies guidelines](#), CMA87 (13 December 2018), paragraph 3.6.

it would prevent the merger being implemented anywhere in the world, when the CMA's concern was only focused on UK consumers.¹⁹²⁵

14.193 At the response hearing, Sabre said that if the Merger were to be cleared in the US and if we considered the Behavioural Remedy Proposal was a 'near miss' in terms of its effectiveness, then we should choose it over a more effective remedy because the UK was the only part of the world where the Merger was not permitted.¹⁹²⁶

14.194 After the response hearing, the Parties made reference to the ongoing litigation between Sabre and the US DOJ. The Parties said that 'it would be inappropriate for the CMA to continue its investigation, including consideration of remedies, without taking into account the implications of the Delaware Court judgment and ensuring that the outcomes of the US and UK processes are appropriately aligned.'¹⁹²⁷

Assessment of proportionality

14.195 We start by addressing the Parties' submission that the CMA should take into account the US court judgment. On 7 April the US Court cleared the Merger. Although in general terms there may be good reasons for agencies investigating the same merger in a global market to coordinate, where they can, on evidence gathering and investigatory steps, as well as to harmonise on remedies in the event both jurisdictions have identified the same or largely similar competition concerns, it is not incumbent on the CMA (and nor in some cases will it be legally or practically possible, or desirable from a policy perspective) to come to the same substantive outcome as other jurisdictions, or vice versa. This is because:

- a. the Act obliges us to decide whether an SLC within any market or markets in the UK may be expected to arise from the merger, and if we consider that is what the evidence before us shows is the likely result, we are then required to decide whether action should be taken to remedy such SLC and in deciding that consider the need to achieve as comprehensible a solution as is reasonable and practicable; and
- b. different jurisdictions might operate under materially different legal systems, which may involve different substantive legal tests, jurisprudence, decisional practice or guidance;¹⁹²⁸ and/or may involve fundamentally different enforcement models. In this regard, the UK has

¹⁹²⁵ Response to Remedies Notice paragraphs 5.1-5.2

¹⁹²⁶ [REDACTED]

¹⁹²⁷ [REDACTED]

¹⁹²⁸ For example, see [2013] CAT 13, Akzo Nobel N.V. v Competition Commission

adopted an administrative system of decision making whereas some other jurisdictions, such as the US, have adopted a prosecutorial system.

- c. decisions on SLCs and remedies are taken by a group of panel members that are independent and who are required to reach independent findings on the basis of a fair and objective assessment of the evidence before them.

Identification of the least onerous, effective remedy

14.196 As discussed in paragraph 14.137 above, we have concluded that prohibition would be the only effective remedy to the SLCs we have identified. Accordingly, we consider that prohibition would represent the least costly effective remedy.

14.197 We considered the Parties' views as set out in paragraphs 14.191 to 14.194. We do not consider the Behavioural Remedy Proposal to be a 'near miss'. Our conclusions (set out in paragraphs 14.127 to 14.136) show that it is extremely unlikely to be effective. Therefore, we have excluded the Behavioural Remedy Proposal from our proportionality assessment.

Is the remedy disproportionate to the SLCs and / or adverse effects?

14.198 We now consider, in line with the Merger Remedies Guidance and general principles of reasonableness and proportionality, whether prohibition will result in disproportionate costs that exceed the scale of the SLCs and their adverse effects or a disproportionate loss of RCBs such that it would not be proportionate for the CMA to take this step as a form of remedial action despite it being the only effective remedy.¹⁹²⁹

14.199 A prohibition of an anticipated merger is unlikely to result in significant operational costs (e.g. from unwinding agreements or selling assets),¹⁹³⁰ and by preventing the proposed structural changes to the market, it would negate any risk of distortions in market outcomes while incurring no compliance or monitoring costs.

14.200 The adverse effects arising from the SLCs are significant, and are set out in paragraphs 13.2 and 13.3. The Merger removes a strong independent

¹⁹²⁹ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraphs 1.10-1.11.

¹⁹³⁰ We note that, as the Parties had the choice of whether or not to proceed with the Merger, the CMA will generally attribute less significance to the costs of a remedy that will be incurred by the Parties than costs that will be imposed on other relevant entities. [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 1.10.

supplier in a changing marketplace for products that are used by significant numbers of business and leisure travellers.

14.201 The relevant costs of prohibition in this case are the RCBs foregone as a result of prohibiting the Merger. Our assessment of RCBs is set out in paragraphs 14.140 to 14.185 and we have concluded that there are no RCBs, as defined by the Act. We have not identified or received any evidence of other costs that we should take into account.

14.202 The Parties have submitted that prohibiting the Merger would, in practice, result in more harm and undermine competition (see paragraph 14.21 and paragraphs 14.191 to 14.195 above). We were not persuaded by this assertion - as stated above we have not been able to identify any costs, RCBs foregone (other than those mentioned in paragraph 14.201) or other relevant factors that might arise as a result of prohibiting the Merger.

14.203 Based on the above, our view is that it is clear that the costs associated with prohibition of the merger are low, while the adverse effects on customers which would be expected to arise from the identified SLCs are likely to be substantial. We note that prohibition of the Merger is by nature an intrusive intervention. However, given the low level of costs (and lack of other effective remedy), we consider that this intrusion is justified to prevent customer detriment through the lessening of competition.

14.204 Therefore, we conclude that prohibition as a remedy is proportionate in relation to the SLCs and their adverse effects.

Conclusion on proportionality

14.205 On the basis of our reasoning as explained above, we conclude that prohibition is the least costly effective remedy and is not disproportionate to the SLCs and their adverse effects.

14.206 We also conclude that prohibition represents a proportionate remedy to the SLCs we have identified.

Remedy implementation

14.207 Having identified the prohibition of the Merger as an effective and proportionate remedy option, we now consider its implementation.

14.208 With regard to the scope of the prohibition, in line with our Guidance, we have decided that Sabre should be prohibited from subsequently acquiring the assets or shares of Farelogix or acquiring any material influence over them. Our Guidance states that the CMA will normally limit this prohibition to a

period of 10 years.¹⁹³¹ We find no compelling reason to depart from the Guidance in this case by seeking a shorter or longer prohibition period.

14.209 The CMA has the choice of implementing any final remedy decision either by accepting final undertakings pursuant to Section 82 of the Act if the Parties wish to offer them, or by making a final order under Section 84 of the Act. Either the final undertakings or the final order must be implemented within 12 weeks of publication of our final report (or extended once by up to 6 weeks under exceptional circumstances),¹⁹³² including the period for any formal public consultation on the draft undertakings or order as specified in Schedule 10 of the Act.

14.210 In this case, we would propose to implement the prohibition remedy by making an Order under section 84 of the Act, which would prohibit the Merger and prevent the Parties from attempting to merge within the next ten years. However, we would consider accepting undertakings under section 82 if the Parties wish to offer them.

Decision on remedies

14.211 In light of the above, we have decided that prohibition of the merger represents the only effective remedy to the SLCs that we have found. We have also found that this remedy is proportionate in relation to the SLCs and their adverse effects.

¹⁹³¹ [Merger remedies guidelines](#), CMA87 (13 December 2018), paragraph 5.10.

¹⁹³² Section 82 (final undertakings) and Section 84 (final order) of the Act.