IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA Plaintiff, v. SABRE CORP., SABRE GLBL INC., FARELOGIX INC., and SANDLER CAPITAL PARTNERS V, L.P., Defendants.	:	C.A. No. 19-1548-LPS REDACTED PUBLIC VERSION (RELEASED APRIL 8, 2020)

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OPINION

April 7, 2020
Wilmington, Delaware

STARK, U.S. District Judge:

INTRODUCTION

The United States Department of Justice ("DOJ" or "government") filed this expedited antitrust action seeking to permanently enjoin the proposed acquisition by Defendants Sabre Corporation and Sabre GLBL Inc. (collectively, "Sabre") of Defendants Farelogix Inc. ("Farelogix") and Sandler Capital Partners V, L.P. ("Sandler") (collectively with Sabre, "Defendants"). Sabre and Farelogix both play roles, which are described in great detail below, in the airline travel industry. The government contends that allowing Sabre to acquire Farelogix, and eliminate Farelogix as an independent entity, would harm competition, and thereby violate Section 7 of the Clayton Act, 15 U.S.C. § 18. DOJ contends Farelogix is an innovative disruptor in the market for "booking services," a market historically dominated by just three global distribution systems ("GDSs"), including Sabre, who have tried to stifle innovation in a market in which they earn billions of dollars annually.

The Court held an eight-day bench trial in January and February 2020. (*See* D.I. 251, 253, 254, 255, 256, 257, 258, 260, 261, 263, 264, 265, 266, 267) ("Tr.")[1] After the trial, both sides submitted detailed proposed findings of fact (D.I. 234, 236) as well as opening and answering briefs (D.I. 233, 235, 241, 242).

Pursuant to Federal Rule of Civil Procedure 52(a), and having carefully considered the entire record in this case, the arguments of the parties, and the applicable law, the Court concludes that DOJ has failed to meet its burden of proof. Therefore, the Court will enter

[1] "Citations to the trial transcript are in the form: "([Witness last name] Tr. [page])."

judgment for Defendants and against the government. The Court will not enjoin Sabre's proposed acquisition of Farelogix.

PROCEDURAL BACKGROUND

DOJ filed its complaint on August 20, 2019. (D.I. 1) On September 26, 2019, the Court scheduled a bench trial to begin on January 27, 2020. (D.I. 31) After consideration of various requests relating to the length of the trial (*see, e.g.*, D.I. 147 at 8, 15 (parties initially asking for two-week trial within three months of case being filed); D.I. 175 at 2 (parties requesting 30 hours per side)), the Court ultimately allocated each side up to 25 hours for its trial presentation (*see* D.I. 197 at 11).

The parties prepared expeditiously and efficiently for trial, raising only two discovery disputes. (*See* D.I. 127 at 2-3) Trial began, as scheduled, on January 27 and was completed, with a full day of closing arguments and questions to counsel, on February 6, 2020.[2]

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[2] It should be understood that the Court is issuing this Opinion in the midst of the global coronavirus (COVID-19) pandemic. As readers today (i.e., April 2020) well understand, we are living through a national emergency, in which courtrooms (although not Courts) are largely closed, and most people (including judges, law clerks, lawyers, and assistants) are working remotely from home.

As of this writing, it is generally known and can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned, that the travel industry, and particularly air travel, has been hit particularly hard by the virus. *See, e.g.*, U.S. Department of the Treasury, *Procedures and Minimum Requirements for Loans to Air Carriers . . . under . . . the Coronavirus Aid, Relief, and Economic Security Act* (March 30, 2020), https://home.treasury.gov/system/files/136/Procedures%20and%20Minimum%20Requirements%20for%20Loans.pdf (last accessed April 7, 2020); Tr. Mar. 30, 2020 teleconference at 4-5; *see generally* Fed. R. Civ. P. 201. Understandably, however, no evidence was presented at trial about the impact of the coronavirus, or how its devastation might itself transform the air travel industry. Therefore, and necessarily, the Court has not considered the potential consequences of the virus in making its findings of fact or conclusions of law. To be clear, the Court's forward-looking analysis does not (and cannot) take into account the current crisis caused by the pandemic.

The Court commends all of the many attorneys on both sides for consistently outstanding performances throughout this litigation and especially at trial.

At trial, the government called the following witnesses,[3] including many who were adverse to DOJ's case:

- Cory Garner, Vice President ("VP") for Distribution and Sales for American Airlines ("AA" or "American") (Garner Tr. 89)
- Michael Radcliffe, Director of Distribution for United Airlines ("United") (Radcliffe Tr. 169)
- Susan Carter, Senior VP of Marketing for Farelogix (Carter Tr. 235)
- Jim Davidson, President and Chief Executive Officer ("CEO") of Farelogix (Davidson Tr. 364)
- Chris Boyle, VP of Corporate Development and Mergers and Acquisitions for Sabre (Boyle Tr. 484)
- Theo Kruijssen, Chief Financial Officer ("CFO") of Farelogix (Kruijssen Tr. 585)
- Sean Menke, President and CEO of Sabre (Menke Tr. 664)
- Gregory Gilchrist, Senior VP Travel Solutions Group for Sabre (Gilchrist Tr. 748)
- Jorge Vilches, former Senior VP of Airline Business for Sabre (Vilches Tr. 785) (by deposition)
- Chris Wilding, Senior VP Airline Line of Business for Sabre (Wilding Tr. 824)
- Dr. Aviv Nevo, economics expert (Nevo Tr. 878)
- Tom Klein, former CEO of Sabre (Klein Tr. 1072) (deposition)

[3] All witnesses testified live at trial, unless otherwise noted.

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