

Evolving Theories of Coordinated and Unilateral Conduct in U.S. Antitrust Law in the Era of Rapid AI Deployment

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摘要

人工智慧（AI）的快速部署為美國競爭法制帶來新的課題。本文探討演算法定價工具如何可能促成競爭者間之聯合行為（涉及美國《謝爾曼法》第1條），以及居於市場優勢地位之事業如何利用AI從事限制競爭之單方行為。

本文說明傳統競爭法分析如何要求提出存在協議或合意（meeting of the minds）之證據，方能認定違法聯合行為之成立。文章闡釋源自Bell Atlantic Corp. v. Twombly案之「附加因素」（plus factors）分析架構，亦即於平行行為存在之同時，尚須有足以排除各事業各自獨立決定可能性之間接證據。本文進一步指出，當多家事業使用同一演算法定價工具，而該工具彙整競爭者之機密資料並產出定價建議時，原告與主管機關主張，縱使競爭者間並無直接聯繫，此種做法仍可能構成默契共謀（tacit collusion）而該當聯合行為。

其後，本文分析兩件被告遭指控以演算法定價工具進行合意之重要案例，即RealPage案與Gibson v. Cendyn案。此外，本文亦討論加州對《卡特賴特法》（Cartwright Act）之修法（AB 325法案），該修法將利用競爭者資

料設定價格之演算法定價工具定為當然違法（per se violation），無須舉證有限制競爭或妨礙公平競爭之效果。此一發展相較於聯邦法制下之合理原則（rule of reason）審查標準，顯著擴大了事業之責任範圍。

本文亦探討部署AI工具之位居市場優勢地位事業，可能因自我偏好（self-preferencing）、價格歧視、掠奪性定價行為而受到主管機關調查。文章並援引美國聯邦貿易委員會對亞馬遜所採取之執法行動（指控其利用「Project Nessie」演算法從事限制競爭行為），以及美國司法部對Google提起之反托拉斯訴訟為例，說明主管機關日益願意運用美國《聯邦貿易委員會法》第5條及傳統競爭法執法工具，因應操縱市場之演算法行為。

本文最後指出數項可能提高限制競爭風險之因素，並說明於下列情形風險將較低：事業獨立使用AI工具、僅以自有資料或公開可得資訊訓練模型，並保留其定價決策之自主裁量權。

本文

The proliferation of artificial intelligence

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(“AI”) technologies has disrupted traditional assumptions about monopoly power and unfair competition. AI and machine learning are increasingly being deployed to set prices in real time, often without direct human intervention.

While these technologies create efficiency through data-driven decision-making and speed, they also raise competition law concerns. Through collection of vast amounts of data, AI language learning models can learn pricing strategies of competitors and consumers. When the same AI systems are used across an industry, this can lead to price stabilization or uniform price increases even absent an explicit agreement between competitors.

American antitrust authorities have conventionally investigated collusion where competitors explicitly agree to coordinate prices or allocate markets or customers. But where multiple firms utilize the same algorithmic pricing tool, plaintiffs may argue that the circumstances support an inference of tacit collusion, even though the competitors never communicate directly with one another. Tacit collusion still requires a conscious commitment to a common scheme—a meeting of the minds—which must be inferred from the parties' conduct and other circumstantial evidence. United States federal and state regulators are increasingly testing whether competitors' knowing use of

shared algorithmic pricing systems can satisfy that requirement.

The Legal Framework

Section 1 of the Sherman Act prohibits “[e]very contract, combination...or conspiracy, in restraint of trade.”¹ Courts distinguish between unilateral conduct, which may result in similar market behavior among competitors, and concerted action, which requires a form of mutual understanding or agreement. In information exchange cases, the ultimate question is whether the conduct crosses the threshold into an anticompetitive agreement. Case law has established a basis for inferring an agreement to coordinate prices based on the existence of “plus factors”—circumstantial evidence that tends to exclude the possibility of independent action and suggests collusion. Under a framework developed in *Bell Atlantic Corp. v. Twombly*, a party must plead sufficient factual detail to make the existence of an agreement or “meeting of the minds” not merely conceivable, but plausible.² This requires alleging parallel conduct accompanied by “plus factors,” such as prior collusion, evidence of intent to coordinate, the structure of the market, and whether the information shared is current, specific, bi- or multi-lateral, and competitively sensitive.³

註1：15 U.S.C. § 1.

註2：550 U.S. 544 (2007).

註3：See, e.g., *In re Flat Glass Antitrust Litig.*, 385 F.3d 350, 360 (3d Cir. 2004); *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 661 (7th Cir. 2002); *Petruzzi's IGA Supermarkets, Inc. v. Darling-Delaware Co.*, 998 F.2d 1224, 1244 (3d Cir. 1993); *Mosaic Health, Inc. v. Sanofi-Aventis U.S., LLC, et al.*, 24-598 (2d Cir. Aug. 6, 2025).

As U.S. plaintiffs and enforcement agencies have repeatedly alleged, use of shared algorithmic pricing tools may facilitate an unlawful information exchange or price-fixing agreement under Section 1, especially when the systems rely on data that is not publicly available and contributed by the users themselves, or where the algorithms require competitors to use recommended prices. Under these circumstances, plaintiffs and enforcers argue that companies using the pricing algorithms are no longer acting “independently,” but instead are coordinating through a shared technology. This type of coordination does not necessarily require direct communication between users, because competitors may know that their rivals are using the same AI tool. Indeed, that “everyone else is using it” is often central to the pricing tool vendor's pitch. These concerns are intensified where the AI pricing tool is designed to optimize outcomes through greater user participation.

In response to growing policy concerns over algorithmic pricing, effective January 1, 2026, California amended the Cartwright Act through Assembly Bill 325. The federal Sherman Act typically analyzes algorithmic pricing tools under the rule of reason, meaning that plaintiffs or enforcers must show an anticompetitive effect to prove a violation. But the amended Cartwright Act broadens potential liability, making it a *per se* violation (no need to show anticompetitive harm) to use an algorithmic pricing tool that

uses competitor data to set prices.⁴ In the recent lawsuit *Casciani v. Knowledge Support Systems*, a group of California drivers brought a proposed class action alleging that gasoline retailers violated the amended Cartwright Act by using Kalibrate's AI pricing software to coordinate retail gasoline prices. The plaintiffs argue that by funneling real-time competitor data into a centralized algorithm, the competing gas stations engaged in unlawful coordination to inflate pump prices, bypassing traditional market competition.⁵ The case likely will provide the first judicial interpretations of the new statute.

The growing use of algorithmic pricing technology raises critical questions: when firms outsource pricing to self-learning AI that integrates competitor data and converges on elevated prices, can their use alone constitute coordination? Is there still an “agreement” on price if the AI model (rather than a human being) directs the outcome? Does liability depend on whether competitors know that others are using the same AI model? Does liability flow from the use of competitor's confidential data when the model answers another competitor's questions? Or does liability require agreement on the same set of prompts or an agreement to adopt pricing recommendations of the algorithm across competitors? Cases like *RealPage* and *Gibson* offer critical insight into how courts and regulators are beginning to address these questions.

註4：Cartwright Act, Cal. Bus. & Prof. Code § 16720; CA AB 325, Effective Jan. 1, 2026.

註5：Casciani v. Knowledge Support Systems, Inc., No. 2:26-cv-02211 (E.D. Cal. June 22, 2026).

Foundational Cases on Algorithmic Pricing Coordination

In *RealPage*, the U.S. Department of Justice (“DOJ”) alleged a conspiracy among landlords to fix rent prices using RealPage's algorithmic pricing software.⁶ The DOJ pursued its conspiracy theory under the rule of reason, arguing the shared pricing algorithm facilitated coordinated pricing through confidential data aggregation and revenue optimization, causing rental prices to rise. The DOJ's complaint emphasized how RealPage specifically touted its ability to “raise the tide” for participants. Defendant landlords contributed proprietary data, such as daily rent and occupancy forecast, knowing it would be used to produce recommendations for themselves and their rivals. Accordingly, the DOJ alleged that RealPage encouraged participants to rely on the system not merely as a decision-support tool, but as a means of industry coordination.

DOJ also settled with RealPage late last year. The consent decree terms required RealPage to stop using competitors' sensitive nonpublic data

and certain pricing practices in its revenue-management software, restrict model training and geographic targeting, eliminate features that could coordinate pricing, avoid collecting or discussing competitively sensitive market information, submit to independent compliance monitoring, and cooperate with the government's related lawsuit against property management companies.⁷ DOJ continues to litigate against some of the landlord defendants, while it has settled with others.⁸ The settling landlords agreed to: refrain from using any anticompetitive algorithm that generates pricing recommendations using its competitors' competitively sensitive data or that incorporates certain anticompetitive features; abstain from sharing competitively sensitive information with competitors; avoid attending or participating in RealPage-hosted meetings of competing landlords; and accept a court appointed monitor if it uses a third-party pricing algorithm that is not certified pursuant to the consent decree.⁹

Private plaintiffs filed a series of parallel cases against RealPage and the defendant landlords, alleging a hub-and-spoke conspiracy, claiming

註6 : *United States et al v. RealPage, Inc.*, 1:24-cv-00710 (M.D.N.C. 2024), Amended Complaint.

註7 : *United States et al v. RealPage, Inc.*, 1:24-cv-00710 (M.D.N.C. 2024), Proposed Final Judgment (Nov. 24, 2025).

註8 : U.S. Dep't of Just. Office of Public Affairs, *Justice Department Reaches Proposed Settlement with Willow Bridge, One of America's Largest Landlords, to Resolve Information Sharing and Algorithmic Coordination Claims* (Jul. 6, 2026), Press Release, <https://www.justice.gov/opa/pr/justice-department-reaches-proposed-settlement-willow-bridge-one-americas-largest-landlords>.

註9 : *United States et al v. RealPage, Inc.*, 1:24-cv-00710 (M.D.N.C. 2024), Proposed Final Judgment (Aug. 8, 2025).

that RealPage (the “hub”) acts as an intermediary between competing landlords (the “spokes”) in the multifamily housing market, taking its clients' commercially sensitive data, running its algorithm against that collective data pool, and then distributing rental pricing recommendations for its clients' individual properties.¹⁰ In December 2023, the court denied defendants' motion to dismiss, allowing plaintiffs' claims to proceed under a rule of reason theory.¹¹ The court found that plaintiffs plausibly alleged a horizontal agreement among the landlords to fix rent prices based on parallel price increases and a set of “plus factors,” such as the fact that the landlords contemporaneously raised prices during periods of high vacancy—a decision that appeared to be inconsistent with their individual economic self-interest. In addition, the court noted that landlord defendants each provided commercially sensitive data to RealPage knowing that their rivals did the same.

Gibson provides a counterpoint to *RealPage*. In *Gibson et al. v. Cendyn Group, LLC et al.*, the plaintiffs alleged that hotels on the Las Vegas Strips used Cendyn, a revenue management software, to inflate hotel room prices.¹² Plaintiffs argued this was an unlawful restraint of trade in

violation of Section 1. Like the *RealPage* plaintiffs, the *Gibson* plaintiffs' first theory is that the defendants entered a hub-and-spoke conspiracy, under which the defendant hotels (the “spokes”) agreed to use the Cendyn software (the “hub”), with the “rim” formed by the tacit agreements between the hotel defendants to use Cendyn's pricing algorithm to set hotel room prices, knowing that their competitors were also using the same software. The second theory plaintiffs raised was that the series of vertical licensing contracts between Cendyn and hotel defendants produced anticompetitive effects in the market for hotel rooms on the Las Vegas Strip.

The district court granted defendants' motion to dismiss, finding that plaintiffs failed to plausibly allege a violation of the Sherman Act under both theories.¹³ Regarding the first theory, the court held that plaintiffs' hub-and-spoke claim was unsupported by facts sufficient to infer a horizontal “rim” agreement. Plaintiffs' case in *Gibson* is distinguishable from the facts in *RealPage*; plaintiffs in *Gibson* alleged neither a pooling of confidential, competitively sensitive data nor any obligation by hotel defendants to follow the algorithm's pricing recommendations.

註10 : *In Re: Real Page, Inc., Rental Software Antitrust Litig. (No. II)*, No. 3:23-md-03071 (M.D. Tenn. Sep. 7, 2023), Second Amended Complaint.

註11 : *In Re: Real Page, Inc., Rental Software Antitrust Litig (No. II)*, 709 F. Supp. 3d 478 (M.D. Tenn. Dec. 28, 2023), Order Denying Motion to Dismiss.

註12 : *Gibson v. Cendyn Group, LLC*, No. 2:23-CV-00140-MMD-DJA, (D. Nev. Nov. 27, 2023), Amended Complaint.

註13 : *Gibson v. Cendyn Group, LLC*, No. 2:23-CV-00140-MMD-DJA, 2024 U.S. Dist. LEXIS 83547 (D. Nev. May 8, 2024), Order Granting Motion to Dismiss.

The court also found that the hotel defendants began using Cendyn's revenue management software at different times over a ten-year time span. Based on these factual deficiencies, the court concluded that plaintiffs failed to allege a tacit agreement among the hotel defendants.

Notably, the court compared Cendyn's algorithm to an attorney improving her practice through experience. The software collects data from its various customers to grow its knowledge, just as an attorney accumulates knowledge from previous engagements with clients, but that does not imply that each client is in an “agreement” to share their confidential information with all the others.¹⁴ The court also declined to adopt plaintiffs' second theory of anticompetitive harm, finding that the vertical licensing agreements between hotel defendants and Cendyn did not restrain the hotels' ability to price their hotel rooms.

The district court's decision was affirmed on an appeal to the Ninth Circuit.¹⁵ In an August 15, 2025, decision, the panel held that the licensing agreements with Cendyn did not limit

hotel defendants' economic freedom, as there was no requirement to adopt the algorithm's suggested prices, nor any provision restricting the use of alternative pricing tools.

Another recent example of an algorithmic price fixing lawsuit in the housing industry involves Yardi Systems and several property management companies. Parallel class actions were filed in both the Western District of Washington and in the Superior Court of California, Alameda County.¹⁶ The lawsuit accuses the companies of exchanging competitively sensitive and non-public information using an automated rent pricing software called Revenue IQ. But in October 2025, Judge Markman in California Superior Court ruled in favor of the property managers on summary judgment, finding that the conduct did not violate the Cartwright Act because “Revenue IQ users enter rental price information into the system, but the evidence does not tie any of that information to the generation of price recommendations for other users.”¹⁷ Therefore, the evidence showed that users entered their own information into the

註14 : *Id.* (“The attorney does not share one client's confidential information with another, but over time, she (ideally) gets smarter because of what she has learned from each client engagement she has successfully completed. And in time, clients seek her out because she has, for example, developed expertise in antitrust law. But that does not plausibly suggest that each new client who seeks out the attorney is entering into an agreement with every client she has ever worked with. How could it?”)

註15 : *Gibson, et al. v. Cendyn Group, LLC, et al.*, No. 24-3576, 2025 WL 2371948 (9th Cir. Aug. 15, 2025).

註16 : *In Re Yardi Revenue Management Antitrust Litig.*, No. 2:23-cv-01391-RSL (W.D. Wa. Mar. 5, 2025) Amended Class Complaint; *Victor Mach et al v. Yardi Systems, Inc.*, et al, No. 24-cv-063117 (Cal. Super. Feb. 8, 2024) Complaint.

註17 : *Victor Mach et al v. Yardi Systems, Inc., et al*, No. 24-cv-063117 (Cal. Super. Ct. Oct. 6, 2025) Order Granting Defendants' Motion for Summary Judgment.

application “for their own purposes” such as “gathering data for the landlord about renters and about what properties they are renting” rather than for the anticompetitive purposes alleged by the plaintiffs.

In another recent case, a class of California plaintiffs sued several nationwide fuel retailers and AI software provider Kalibrate in the Eastern District of California.¹⁸ The lawsuit accuses national gasoline retailers, including Albertsons, BP, Circle K, Marathon, and others of doing business with Kalibrate, and using competitor data to help elevate prices and reduce competition through algorithmic price fixing in violation of the Cartwright Act. “Using real-time data that includes non-public volume data from local rivals, Kalibrate harnesses sophisticated algorithms to model elasticity between stations in a given area and coordinate price increases in a way that individual gas stations otherwise could not accomplish without illegally conspiring...”

Hypothetical Application

The *RealPage* and Gibson cases provide a framework for analyzing algorithmic pricing risks in other industries. Below we consider five hypothetical AI pricing model scenarios and examine the antitrust risk associated with each approach.

Background Hypothetical Facts: ShopHub is a

large e-commerce platform that sells everything from electronics to clothing. It has two main competitors, BuyFast and MegaMart. To remain competitive, ShopHub has decided to use a third-party pricing software called PriceOptima, which uses machine learning to generate price recommendations.

1. Under the first scenario, ShopHub, BuyFast, and MegaMart all enter into licensing agreements with PriceOptima. Executives at each company are aware that their rivals use PriceOptima. Each company shares confidential and commercially sensitive data with PriceOptima, which PriceOptima uses to provide price recommendations to all three companies.

This fact pattern most closely resembles the facts in *RealPage*. In both the DOJ case and the civil litigation, plaintiffs alleged that landlord competitors contributed detailed, confidential data to a centralized algorithmic pricing system that was designed to optimize market outcomes across users. If all three rival e-commerce platforms share non-public data that contributes to pricing such as historical sales data, customer browsing behavior, and inventory levels, the model is actively learning based on the aggregated data. Similarly, in *RealPage*, the algorithm generated rent recommendations based on active and backward-looking lease data. Using this data, PriceOptima's AI model could function as an anticompetitive tool for industry

註18: *Casciani et al. v. Knowledge Support Systems, Inc.*, No. 2:26-cv-02211-CSK (E.D. Cal. Jun. 22, 2026), Complaint.

coordination. This scenario presents significant antitrust risk. Potential plaintiffs could draw on both the DOJ's theory of unlawful information exchange and the private plaintiffs' hub-and-spoke theory from *RealPage*, supported by “plus factors” derived from the companies' pricing conduct, such as elevated pricing of specific items during the same timeframe and market outcomes. Furthermore, the fact that executives at each company are aware that their rivals use PriceOptima is another plus factor that tends to exclude the possibility of independent action.

This scenario also presents antitrust risk under the amended Cartwright Act. Regardless of whether each company is aware that its rivals are using PriceOptima's software, ShopHub could be found liable for entering into a contract, combination, or conspiracy, to restrain trade with BuyFast and MegaMart. The Cartwright Act does not specify that awareness that competitors are using the same algorithm is a requirement for concerted action.

2. In the second scenario, ShopHub, BuyFast, and MegaMart all enter into licensing agreements with PriceOptima, but ShopHub is unaware that its competitors use the same vendor to optimize pricing. PriceOptima's model utilizes both non-public data from its clients and public data scraped from the internet.

In the second fact pattern, each company has an independent vertical relationship with PriceOptima. As part of each vertical relationship, PriceOptima uses its software to aggregate both public and non-public data and

supply individualized pricing recommendations. The difference in this scenario is ShopHub is unaware that BuyFast and MegaMart are also using PriceOptima and that the model incorporates proprietary commercial data of its rivals to create its pricing recommendations. In contrast, RealPage informed both current and prospective clients that it used non-public data from competitors. Even though PriceOptima is using non-public data obtained from ShopHub and its competitors, it would be difficult for potential plaintiffs to allege that ShopHub knows exactly whose non-public data is being used for pricing decisions.

The key distinction between this scenario and the facts of *RealPage* is the lack of an apparent horizontal agreement between ShopHub and its competitors to use PriceOptima. Where there is no direct or circumstantial evidence of a “meeting of the minds,” it is more difficult to allege the existence of a traditional hub-and-spoke conspiracy. However, this scenario still presents antitrust risk. In *RealPage*, the court was especially concerned by the model's use of commercially sensitive data to adjust rental price recommendations. On the other hand, the use of public data for model training and price setting does not raise the same type of competitive concern associated with the use of proprietary data.

Under California law, it is unlawful to use or sell a pricing algorithm as part of a contract, combination, or conspiracy to restrain trade, or to coerce another person to adopt or adhere to pricing recommendations from such an algorithm.

Therefore, even if competitors are unaware that their rivals are utilizing the same pricing software, the fact that each company uses that software presents an antitrust risk under the amended Cartwright Act. The amended Cartwright Act also prohibits the use of a common pricing algorithm to recommend prices and has the effect of stabilizing or coordinating prices based on the use of competitor data. Therefore, ShopHub could face antitrust liability in California based on its contract with PriceOptima. When entering a contract with PriceOptima, ShopHub should ask questions about how the software creates its pricing recommendations. If ShopHub learns that the model uses competitively sensitive information from competitors, ShopHub should ask about the possibility of creating a version of the PriceOptima model that only inputs its own data. This way, ShopHub can mitigate risk under the Cartwright Act by maintaining the ability to set its own prices instead of automatically adopting the model's recommendations based on competitor data.

3. Under the third scenario, ShopHub, BuyFast, and MegaMart each use PriceOptima to optimize pricing on their e-commerce platforms. They input publicly available data to the model for use in pricing recommendations, and PriceOptima only uses confidential data for model training. ShopHub starts using PriceOptima five years after BuyFast and MegaMart.

In the third fact pattern, ShopHub and its competitors each use PriceOptima for the same

purpose, but the model bases its price recommendations solely on public data (i.e., prices displayed on each company's website or app, product descriptions, SKUs, inventory available signals, and new product launch announcements). The companies feed confidential information to the model for purposes of training. Therefore, the model improves over time through machine learning. In addition, ShopHub began using the model five years after its competitors.

This scenario aligns most closely with the facts in *Gibson*. In that case, the court rejected the notion that companies' independent use of an AI model alone constitutes an unlawful information exchange simply because it gets "smarter" over time by learning from prior users' confidential data. The court in *Gibson* also weighed the fact that the hotel defendants adopted use of the Cendyn software at different points over a ten-year time span. Where there is no agreement to supply the model with competitively sensitive information during the same timeframe, it is difficult to conclude that users are involved in an unlawful information exchange under federal law.

In *Gibson*, each hotel acted independently to create a vertical agreement with Cendyn for the use of its revenue management software. The facts are similar here. Although the model will improve over time and might produce parallel pricing outcomes, antitrust liability requires evidence of an agreement and a restraint of trade, which is lacking when companies simply adopt a pricing model that improves with experience but never directly provides pricing recommendations based on competitors' confidential information.

Therefore, this scenario is unlikely to create antitrust exposure under federal law.

This outcome of this scenario is uncertain under California law. The amended Cartwright expressly weighs the use of proprietary data as a factor in considering liability for an information exchange. Thus, the fact that ShopHub receives each retailer's confidential data for training purposes cannot be dismissed as irrelevant to the issue of liability merely because the model also inputs public information. Liability could attach if ShopHub and its rivals collectively began using PriceOptima as part of a contract, combination, or conspiracy to restrain trade, or if one company coerced the others to adopt or adhere to the model's outputs. ShopHub's adoption of PriceOptima five years after its competitors weighs against an inference that the retailers engaged in a single express agreement to coordinate pricing under federal law. But that timing is not dispositive under the amended Cartwright Act.

Even if the model were to recommend parallel price increases for each company's similar product offerings, ShopHub could argue that parallel price increases are a result of market factors rather than coordination. ShopHub could also argue that it independently adopted the software and neither agreed with competitors to exchange data nor committed to follow the model's recommendations. Although these facts could weigh against federal liability, these factors still do not determinatively help ShopHub escape liability under California law.

4. Under the fourth scenario, ShopHub and its

competitors each use the same general-purpose AI model, ChatGPT, to optimize pricing on their e-commerce platforms. They input confidential data on their private server.

Under these facts, ShopHub and its competitors are not using PriceOptima. Instead, ShopHub, BuyFast, and MegaMart are each using a general-purpose AI model. However, unlike the public version of the model, the version each company uses is installed on a private server. The model is frozen in time as of the date of installation and is trained solely on the individual company's own data. As a result, each model operates independently, without ingesting confidential input from competitors or third parties. The model's price recommendations are based solely on the data that each company feeds into the model.

This scenario significantly minimizes antitrust risk under federal law. Unlike *RealPage*, there is no pooling of confidential information and no third-party intermediary facilitating data exchange or pricing alignment. Even if the model recommends similar prices for specific products that each company sells, that parallelism cannot be linked to tacit coordination. A court would likely utilize similar reasoning that the court used in *Gibson*: independent use of an AI tool that does not transmit competitively sensitive data between users does not support an inference of conspiracy.

This fact pattern also presents minimal risk under the amended Cartwright Act. Although each retailer enters into a licensing agreement to

use the same general-purpose AI model, the model is deployed in a private environment and trained solely on the retailer's own data. Unlike the algorithmic pricing systems targeted by the amended Cartwright Act, the model does not ingest, rely upon, or generate pricing recommendations based on competitors' confidential information. Accordingly, the mere existence of a licensing agreement for the same AI model should not, standing alone, give rise to liability under the Cartwright Act. Absent an agreement among competitors to coordinate pricing or a model that utilizes competitors' data to generate pricing recommendations, the retailers' independent use of private AI instances is likely to remain lawful under both federal and California law.

5. In the final scenario, ShopHub, BuyFast, and MegaMart each agree to use a general-purpose AI model for pricing alignment, not on their private servers, but the public version. The companies agree on specific prompts and types of data input and agree to use the recommended price outputs.

This scenario presents significant antitrust risk under both federal and California law. Even though ShopHub and its competitors are using a general-purpose AI model, there is evidence of coordination between the companies to use the model for price-alignment purposes. This behavior essentially outsources the price-setting function of a price-fixing conspiracy to the model itself. However, the conspiracy still exists between ShopHub, BuyFast, and MegaMart because they have agreed in advance to use the

model in parallel for the same purpose. This set of facts mirrors the theory of anticompetitive harm in the private plaintiff action in RealPage, where plaintiffs argued that the landlord defendants created a hub-and-spoke conspiracy with RealPage, where the “rim” of a hub-and-spoke conspiracy was inferred from coordinated reliance on the same pricing recommendations, drawn from shared data inputs. This scenario also creates an inference of a horizontal agreement to outsource pricing to an AI model. This fact pattern also creates exposure under the amended Cartwright Act because coordinated reliance on an AI pricing algorithm is a direct violation of California law.

Unilateral Use of AI Pricing

To date, U.S. antitrust enforcement of artificial intelligence has focused on pricing collusion, where AI tools facilitate coordination among competitors. However, the risks of a firm's unilateral development of algorithms will become increasingly relevant as companies try to use AI pricing tools to maximize profits. The traditional understanding of abuse of dominance in antitrust law involves a dominant firm setting prices or engaging in anticompetitive conduct that independently harms competition. When a firm with market power utilizes AI technology, it can engage in self-preferencing, price discrimination, and predatory pricing.

Self-preferencing refers to the favorable treatment of a company's own or affiliated

products and services over those of competitors, undermining competition based on the merits. Although the impact of self-preferencing is not always inherently anticompetitive, the main risk lies in leveraging dominance in one market to exclude rivals in related or complementary markets.

Price discrimination presents a different concern. AI pricing tools may enable firms to segment customers with unprecedented precision by analyzing purchasing history, browsing behavior, location, or willingness to pay. While charging different prices to different customers is not inherently unlawful, antitrust concerns arise where a dominant firm's pricing strategy is used to exclude rivals, reinforce market power, or otherwise harm the competitive process. AI's ability to adjust prices dynamically and at scale may significantly enhance a firm's ability to implement such strategies.

AI likewise may amplify predatory pricing. Machine-learning algorithms can rapidly identify opportunities to price below an appropriate measure of cost in targeted geographic areas, customer segments, product categories, or even to individual customers to discipline or eliminate competitors. Under established U.S. antitrust law, however, predatory pricing requires more than aggressive price competition. A plaintiff must demonstrate that the challenged prices were below cost and that the defendant had a dangerous probability of recouping its losses through supracompetitive pricing after

competitors have been weakened or excluded.

Regulators are beginning to recognize how AI may give dominant firms the ability to engage in these forms of anticompetitive conduct. A prominent example is an action brought by the FTC and 17 state attorneys general against Amazon for exclusionary conduct in two markets—the online superstore that provides online marketplace services to sellers.¹⁹ The complaint included allegations concerning its internal pricing tool known as Project Nessie—an algorithm Amazon allegedly used to engage in self-preferencing and predatory pricing. According to the FTC, Amazon used anti-discounting measures to punish sellers and deter online retailers from offering lower prices than Amazon, and then automatically raised Amazon's prices to prompt similar adjustments by competitors, thereby inflating market prices. The FTC contends that this conduct constitutes an unfair method of competition in violation of Section 5 of the FTC Act. In September 2024, the Western District of Washington rejected Amazon's motion to dismiss the FTC's central federal antitrust claims, including the Section 5 allegation tied to Project Nessie. The court ruled that the FTC had plausibly alleged anticompetitive intent, noting that Amazon implemented the algorithm after determining it could raise prices with minimal risk that consumers would find lower prices elsewhere if it targeted products sold by competitors already matching Amazon's prices. The case—set for trial

註19：Complaint [Public Redacted Version], *Federal Trade Commission v. Amazon.com Inc.*, Case No. 2:23-cv-01495-JHC (W.D. Wash.), ECF No. 114, 358-360.

in October 2026—may define how US law treats algorithmic conduct that manipulates market outcomes without collusion. As AI pricing tools become more common, regulators may increasingly look to Section 5 of the FTC Act to challenge strategies that traditional antitrust tools might not reach.

Similarly, Google came under scrutiny for its self-preferencing practices in a lawsuit brought by the DOJ and several state attorneys general challenging Google's conduct in the digital advertising technology markets. The complaint alleged that Google used self-preferential algorithms and restrictions within its advertising technology stack to favor its own products and disadvantage rivals. In April 2025, the U.S. District Court for the Eastern District of Virginia held that Google had unlawfully acquired and maintained monopoly power in the open-web display publisher ad server market and the open-web display ad exchange market. The court concluded that Google used exclusionary conduct to entrench its dominance across key layers of the digital advertising supply chain. Although the court has not yet determined an appropriate remedy, the liability decision illustrates how algorithmic design choices and platform architecture can be used by a dominant firm to engage in self-preferencing and exclude competitors.

Conclusion

The rapid integration of artificial intelligence into pricing and market operations marks a

pivotal moment for U.S. antitrust law. As algorithmic tools become more sophisticated and commonly used, they are reshaping the very conditions under which competition occurs. The cases against RealPage, Amazon, and Google illustrate how AI can both facilitate coordination among competitors and enable dominant firms to entrench their market power.

Traditional antitrust doctrines, grounded in human intent and explicit agreements, are being tested by systems capable of independent learning and dynamic adaptation. Courts and regulators are beginning to recognize that algorithmic conduct can produce anticompetitive outcomes even in the absence of direct communication or conscious parallelism. The challenge for regulators will be to distinguish between legitimate efficiency enhancing innovation and algorithmic behavior that substitutes code for collusion or amplifies monopoly control.

Recent legislative and enforcement developments—such as California's amendment to the Cartwright Act and the FTC's reliance on Section 5 to address unfair methods of competition—signal a willingness to expand the analytical and statutory tools available to address AI-driven harms. Yet, the path forward remains uncertain. Policymakers will need to balance the benefits of automation and data-driven efficiency against the risks of market manipulation and structural exclusion. Antitrust law must evolve to ensure that AI serves as a mechanism for competition—not a means of coordinating or consolidating market power.