

Getting Better at “Algorithmic” Pricing

BY GWENDOLYN J. LINDSAY COOLEY

I. Introduction

People hate algorithmic pricing, dynamic pricing, pricing by artificial intelligence—the whole lot. They hate the idea that some robot is going to pull their credit report, monitor their Facebook messages and price their bottle of wine, “Wiholl T-Shirt Dress,”¹ or apartment, or flight based on their spending habits and stated or imagined desires. And rightly, they also hate the idea that pricing might consider their race or gender. However, when it comes to the future of artificial intelligence pricing, should we worry, “[i]t’s going to be: Whatever you can get away with, it’s legal”²?

The first problem is that we lump together “the whole lot” as algorithmic pricing, but there are nuances there that will either be clarified by savvy legislators on the front end, or through courts doing cleanup crew duties on the back end.

Generally, in antitrust land, when we talk about algorithmic pricing, we narrowly focus on algorithmic collusion and the classic hub and spoke conspiracies as alleged in the US DOJ and State Attorneys General RealPage cases, or the claims rejected by the court in Hotels. These are what Maureen Ohlhausen termed the “Bob” problem, “If Bob can’t do it, then neither can your algorithm.”³

But this is only the tip of the iceberg. The real antitrust issue isn’t just algorithmic collusion—we have the vehicles to get at that: conspiracies are already illegal under §1 of the Sherman Act. The real antitrust issue is that ugly old statute, Robinson Patman, doesn’t reach things that aren’t products, and doesn’t really address consumers—so either we need to amend it or pass a nationwide law like that proposed in Congress by Congressman Casar (D-TX), to ban companies from using AI to set prices or wages based on our personal data⁴ or failing that, we’ll have to rely on the laboratories of democracy, the States.

For those advising clients in this dynamic landscape, while there are practical ways to avoid falling into these traps, don’t advise your clients just yet that “whatever you

can get away with, it’s legal”⁵ because politicians, Attorneys General, and the private bar are watching!

II. Land of Confusion: Gwendolyn’s Rule Number One

In recent years, the question of what can “Bob” do has become trickier as algorithmic pricing has given way to artificial intelligence pricing. While that is the case, and forgive me for being pedantic, many enforcers and members of the antitrust bar incorrectly retain the older name, with the idea that it’s all the same.

It is not the same, and the difference is a crucial one for legal professionals trying to advise clients on where exactly the line is.

In the last five years we have seen a number of enforcers make public comments about the scourge of algorithmic pricing when talking about artificial intelligence. Technologists tend to snicker behind their hands when they hear that. Why? Let’s begin with an important distinction. Artificial Intelligence is not an Algorithm. Artificial Intelligence is distinct from algorithms, because artificial intelligence thinks for itself—it does not just follow a prompt or a formula, it thinks about the entire scope of a problem, it is heuristic—and only loosely follows general parameters.⁶

For completeness sake, beyond algorithms and AI, somewhere in the middle are machine learning or inference-based systems where the computers can learn over time which prices, as in this example, are most successful in terms of speed of uptake or highest margin.

For example, in this context you could prompt an artificial intelligence tool with a very simple formula: You are a landlord in Madison, Wisconsin. Please suggest a price for a newly refurbished two-bedroom rental unit with a dishwasher and in-unit laundry.⁷

With artificial intelligence, it will consider things not in the prompt: how fast do you want to rent this particular unit? Is it in the Atwood neighborhood or near UW Hospital—correctly noting that these are high-demand areas. The AI chatbot will then give you a suggested price:

Option A. Maximum Market Pricing

If in high-demand neighborhoods (Capitol, William-son-Marquette, Atwood, or near UW Hospital), and finishes are modern (stainless steel appliances, luxury vinyl flooring, high-end fixtures):

- List at \$2,100–\$2,300/month
- Expect young professionals, medical residents, or university staff as tenants.

Option B. Competitive Fast-Rent Pricing

If your priority is immediate occupancy and lower vacancy:

- List at \$1,900–\$2,000/month
- You will fill the unit quickly while maintaining strong rental yield.

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Avoid underpricing below \$1,800 unless the unit has location drawbacks (no parking, basement-level, or older HVAC).”⁸

Hard-coded algorithms are different. They are programmed by humans, using an if-then scenario and are deterministic: input goes in and output comes out. Prompt: Scan the price of two-bedroom rental units with dishwashers and in-unit laundry in Madison, Wisconsin, and exactly match the highest price.

As a suggestion to avid state and federal legislators across the country, I recommend explicitly referencing that “algorithmic” pricing encompasses everything from hard-coded algorithms through to artificial superintelligence, as well as everything in-between, like machine learning and inference-based systems. And if the concern is that artificial intelligence is doing the pricing, not a human, then the statutes should be called artificial intelligence pricing. As a suggestion to antitrust defense practitioners, it is the language of these statutes that is your loophole: If your client is using an algorithm, and the statute bans AI, then your client has a clear defense.

Reluctantly, I shall refer to “algorithmic” pricing throughout this article despite its inaccuracy, so we know what we are talking about.

Now that we’ve tilted at that semantic windmill, let’s talk about the confused legal landscape.

III. Antitrust 101: The Bob Cases

Discourse amongst antitrust practitioners about individualized and surveillance pricing narrowly orbits around algorithmic collusion and the classic hub and spoke conspiracies alleged in the US DOJ and State Attorneys General RealPage cases, or the ones rejected by the court in the Atlantic City Hotels case. These cases are what former Acting Federal Trade Commission Chairman Maureen Ohlhausen termed the “Bob” problem, “If Bob can’t do it, then neither can your algorithm”⁹, I would add, of course, and neither can your AI or machine-learning system.

To take a brief dive into this narrow orbit, of the handful of decided cases on algorithmic pricing, there are no clear lodestars in this small solar system. We see tried and true decisions: facts matter, and pleading matters. Because many of these cases end at the motion to dismiss phase, we can ascertain that to win plaintiffs must plead: first, how near in time the alleged conspiracy took place; secondly, the level of outsourcing; third, that courts can be persuaded by the price effect; and finally and probably most importantly, the allegations must include where the “algorithm” gets its data—and better for the plaintiffs if the algorithm sets prices from confidential business information.

Starting first with the timing of the conspiracy in *Cornish-Adebiyi v. Caesars Entertainment*, where Cedy’s predecessor—Rainmaker—produced software that used a

pricing algorithm to provide recommendations to hotels in Atlantic City as to how to optimally price their rooms.¹⁰ When analyzing this conduct, the Court looked at the parallel pricing allegations under *Twombly*, and correctly ruled that while parallel conduct is not illegal without plus factors, the Court finds that one must begin with the threshold inquiry about what is parallel. Things occurring simultaneously would certainly be considered parallel, but this case might be at the other extreme. After a “fourteen-year gap, coupled with the pricing authority the Casino-Hotels’ continued to retain and exercise, makes it quite implausible that they tacitly agreed to anything, much less to fix the prices of their hotel rooms.”¹¹

So, facts matter. When did the conspiracy take place? Fourteen years is too long. By contrast, RealPage’s facts are much closer in time. “These clients must also be willing to “outsource [their] daily pricing and ongoing revenue oversight” to RealPage by accepting RealPage’s price recommendations upwards of 80-90% of the time and allowing RealPage to set prices for their properties “as though [RealPage] own[s] them [itself].”¹² Essentially, the court viewed the daily optimal rent prices as a daily conspiracy.

The *RealPage* decision also reflects the Court’s disenchantment with the second characteristic, outsourcing.

Outsourcing pricing only makes sense if you know everyone else is doing it, says the Court in *Duffy v. Yardi*, a decision from December 2024, citing *RealPage*-

[the] most persuasive evidence of horizontal agreement is the simple undisputed fact that each [lessor defendant] provided [Yardi] its proprietary commercial data, knowing that [Yardi] would require same from its horizontal competitors and use all of that data to recommend rental prices to its competitors. . . . It would clearly not be in any individual [lessor defendant’s] economic self-interest to contribute its data to [Yardi] without knowing that it would benefit from its horizontal competitors doing the same.¹³

As more pricing decisions are completely outsourced, not handled internally to the company, that increases the likelihood of plaintiffs prevailing at motion to dismiss phase.

Third, once those pricing decisions are made externally, we also look at the price effect. In *Yardi*, the Western District of Washington held that “Yardi advertised its revenue management software to lessors as a means of increasing rates above those available in a competitive market.”¹⁴ Increasing rates lends itself to proving antitrust injury, and injury in fact.

This was also true of the US DOJ and certain States amended allegations in their RealPage cases.¹⁵ In the RealPage private Multidistrict Litigation case, in December 2023 in the US District Court for the Middle District of Tennessee, the court described the nature of RealPage’s solicitations as promising customers would “out perform the market” by using software that “provide[s] the optimal price to charge

prospective tenants, with both short and long-term goals of increasing revenues by raising rents.¹⁶ As if piquing the presiding court's interest is not enough, it is these price increases on a crucial sector of the economy, rental housing, that increased attention elsewhere, as I discuss below. But back in the courts, there is one final concern.

It may be overstating it, but the final characteristic, sources of data, seems to be determinative. To wit:

Case Name	Source of Data	Prevailing Party at MTD
<i>Duffy v. Yardi</i>	Non-public, confidential ¹⁷	Plaintiff
<i>Cornish-Adebiyi v. Caesars Entertainment</i>	Public ¹⁸	Defendant
<i>Gibson v. Cendyn</i>	Public ¹⁹	Defendant
<i>In re Realpage</i>	Non-Public ²⁰	Plaintiff

For example, because of its reliance on public pricing, even with exposure to some confidential information, in *Gibson v. Cendyn*, the May 2024 Hotels case in Las Vegas, the Court analyzed plaintiff's \$1 hub and spoke conspiracy and found that above all, it was pleaded poorly, particularly as it related to the public nature of the data.²¹ Using logic akin to the *Monsanto v. Spray-Rite* test, where illegal conduct is "more consistent with collusion than with independent action,"²² and comparing the "algorithm"²³ to an attorney getting better with passing time, the court notes that "using data across all your customers for research does not plausibly suggest that one customer has access to the confidential information of another customer—it instead plausibly suggests that Cendyn uses data from various customers to improve its products."²⁴

Certainly there is more to the pleading than just this factor, but this hurdle seems insurmountable for defendants to overcome. The exchange of confidential information amongst competitors, via a vertical intermediary, where the point is to effectuate a conspiracy, is old caselaw from the beginnings of our antitrust laws, exemplified by *Interstate Circuit*²⁵ and its ilk.

So where is the line after analyzing these four cases? Going back to the example above, the former example—of asking ChatGPT how to price your apartment—is quite clearly legal, despite the explicit line in the feedback:

"Avoid underpricing below \$1,800 unless the unit has location drawbacks (no parking, basement-level, or older HVAC)."²⁶

Asking for public pricing advice from a search engine or a chatbot where the user does not know where it gets its data, is the same kind of unilateral action as much as if I had asked *Inquire within Upon Everything* the same question in Victorian times.²⁷ If Bob can do it, then so can a landlord.

The latter example above—the algorithm—is getting closer to the line, and indeed the US Department of Justice

has authored a statement of interest declaring that that may in fact be the line.²⁸ In the Hotels case, the US Department of Justice does not distinguish between these examples finding that that outsourcing (delegation, in their words) is the most important:

"Although direct communications among competitors can establish an agreement . . . there is no rule requiring proof of such communications. Section 1 reaches tacit [and] express agreements, and it prohibits competitors from delegating key aspects of pricing decisionmaking to a common entity, even if the competitors never communicate with each other directly."

These four concerns are reflected in the recent Proposed Final Judgment with Greystar, where the remedies agreed to include limitations on outsourcing pricing,²⁹ no use of non-public pricing of competitors,³⁰ and limitations that implicate potential price effects of landlord rates.³¹ These attempts to hold algorithmic colluders accountable are commendable and it proves that these cases can succeed, particularly when they are well-pleaded with ample evidence of the alleged conspiracy. This is how it should be.

However, is collusion the biggest concern with algorithmic pricing? I think not.

Is it really ok to price your products based on specific information about individuals and competitors? My facebook post likes, or your AI bot's assessment of my age and corresponding medical needs?

As irritating as a conspiracy is, however, it is the consumers, not just competition in the abstract that feel the pinch when algorithmic pricing mechanisms go awry. It is price discrimination by businesses amongst consumers that is the real problem. If I book a hotel, why should my neighbor get it for cheaper on the same day? If I want to rent an apartment, why should my demographics matter to the price I pay? Should I be sending my kids to the grocery store instead of me because they don't make a lot of money?

We have a statute that protects distributors from this kind of price discrimination, but why not for consumers?

IV. Robinson Patman is Not Enough

If our real concern with algorithmic pricing is that it is discriminatory, historically, when we thought about price discrimination, we thought about the Robinson-Patman Act. It is clear that this statute will not work for our plan to deal with algorithmic/ai/dynamic/discriminatory pricing for consumers. Although Robinson Patman has had a recent revival, many antitrust cognoscenti think that it has the potential to raise prices for consumers because if a distributor cannot charge different prices to different customers, he charges the highest price that he can.³²

But this is not why we can't use Robinson Patman. What Robinson Patman does is prohibit price discrimination by a distributor to equally situated retailers (typically), where the effect of the sale reduces competition. Robinson Patman applies "to commodities, but not to services" and "to

purchases, but not to leases.”³³ The sales must be “within approximately the same time period” and of “like grade and quality.”³⁴ And of course, there must be injury to competition. Generally, the customers in a Robinson-Patman action are businesses who buy from a manufacturer or distributor and find that Company A is getting a better deal than Company B for no reason.

With the focus on injury to competition, Robinson-Patman cases are between businesses and not ultimate consumers.³⁵

For ultimate consumers, there are other, new approaches. Congressman Greg Casar of Texas, has proposed H.R. 4640, which would make surveillance pricing illegal, enforceable by the FTC, State Attorneys General, and private parties.³⁶ In his factsheet on the bill, Congressman Casar lists practices including charging riders more for their car service if their phone battery is low, or Kroger having electronic shelving labels to provide individual prices for groceries.³⁷ Legislation to make these practices illegal might help fill the regulatory gaps in Robinson-Patman, because that statute does not focus on consumers.

Of course, like Robinson-Patman (and even without regulation), banning algorithmic pricing may lead to price increases. An analysis done by *The Economist* newspaper found that when responding to widespread criticism of its targeted pricing that raised rates for business travelers v. leisure travelers, Delta Airlines suspended targeted pricing and raised rates for everyone across the board.³⁸

Despite these concerns and because “a single courageous state may, if its citizens choose, serve as a laboratory, and try novel social and economic experiments without risk to the rest of the country.”³⁹ State and local governments have embraced the Robinson-Patman principle, that algorithmic and dynamic pricing exacerbates pricing opacity and perceived unfairness, and have applied it to consumer-facing laws.

V. State Officials are Looking at This Issue

According to the National Conference of State Legislatures, in just the 2025 legislative session, all fifty states and half of the territories have introduced legislation related to artificial intelligence. Over 75 measures have passed.⁴⁰ Most concern pricing discrimination based on illegal category discrimination, such as race and sex, while few focus on whether algorithms are hard coded to fix prices, or whether artificial intelligence is learning to collude because it adaptive and probabilistic.⁴¹ Some bills take the price discrimination concept a step further and target industries that are crucial to local economies. Amongst the hundreds of measures that have been considered nationwide, below are some of the most groundbreaking.

i. New York. New York City was at the forefront of algorithmic pricing discrimination legislation. In 2021, the City passed Local Law 144, that banned the use of automated employment decision tools unless audits to prevent bias were done.⁴²

This groundbreaking ordinance specified that computer-based models that used machine learning, statistical modeling, data analytics, or artificial intelligence that “substantially assists” employment decisionmaking were prohibited unless they used an independent auditor to conduct a bias audit.⁴³ This statute inspired many of the related state and local laws that followed.⁴⁴

ii. Colorado. States truly are the laboratories of democracy, and to be that laboratory, someone needs to go first. For algorithmic pricing, it was Colorado in 2024. Mistakenly billed as “comprehensive AI legislation,” it is specific to algorithmic pricing discrimination, but is industry agnostic, encompassing education, employment, finance and lending, government, health care, housing, insurance, and legal services.⁴⁵ It addresses discrimination that disfavors an individual or group of individuals on the basis of their actual or perceived age, color, disability, ethnicity, genetic information, limited proficiency in the English language, national origin, race, religion, reproductive health, sex, veteran status, or other classification protected by Colorado or the federal government.⁴⁶

As always, with the first legislature out of the gate, some mistakes were made, particularly regarding definitions, and it is in these definitions where the first violations that are charged will likely fail. The Colorado statute violates Gwendolyn’s Rule Number one, because in the definition of “Algorithmic Discrimination” is “the use of an artificial intelligence system [that] results in discrimination . . .” and artificial intelligence is defined as a “machine-based system” that “infers outputs.”⁴⁷ While artificial intelligence and likely machine learning systems would fall under the statute, hard-coded algorithms, despite the title of the statute (which under the rules of statutory construction is not included as part of the definition)⁴⁸ would not be proscribed by the act.

Reservations about language aside, what this statute aims to do—rather than banning this type of pricing altogether—is address concerns about potential discrimination in all sectors of Colorado’s economy, rather than the specific concern raised by other states.

iii. Wisconsin. More typical are states like my own, Wisconsin, where a bill was introduced in March 2025 that addresses one of the biggest drivers of artificial intelligence pricing legislation, and would ban the sale or use of “algorithmic” pricing software to set rental rates for dwelling units.⁴⁹

While there is some work to be done on that bill—there is a circular definition of algorithmic software, for example,⁵⁰ this bill is interesting because it is an attempt to get at why state legislatures are drafting these bills in the first place. While the former statutes are quite clearly attempt to get at the problem of algorithmic pricing, i.e. discrimination, this bill aims to get at the other concern that has driven the uptake of these statutes across the country: published findings that algorithmic software is driving rent prices higher.⁵¹ The White House Counsel of Economic Advisors issued

a report in December of 2024 which found that “coordinated rents from algorithmic pricing cost renters . . . 4% . . . nationally.”⁵²

While alarming, most readers of the report—and indeed most legislatures—failed to notice that it states, “In our analysis, we do not quantify the overall effect of algorithmic pricing on rents, but instead isolate the anticompetitive effect of price coordination.”⁵³ So it is not the algorithm that is the problem, it is the fact that the algorithm is a front for an alleged conspiracy.

Another way to look at this is that we don’t necessarily see low prices in cities where algorithmic pricing software utilization is less common.⁵⁴ Compare New York City (low usage of algorithms, average price for a one bedroom: \$4045),⁵⁵ versus Atlanta (high usage, \$1915)⁵⁶ because high rental prices have complex origins.

We all agree that collusion is bad. However, in the same way that there was a recent vogue to blame high prices in pharmaceuticals on lax antitrust enforcement,⁵⁷ rather than the root cause (*i.e.*, greed); high rents are also multifactorial. Notably: greed, supply and demand, inflation, restrictive building codes, and a generation unable to afford homes, all indicate that rental pricing is more complicated than a simple “antitrust can fix it” model would allow.⁵⁸

Algorithmic pricing statutes, like Colorado’s groundbreaking one, limit discrimination against protected classes.⁵⁹ But they do not ban rent increases. Even Wisconsin’s proposed bill banning all algorithmic pricing in rental markets do not mean that landlords won’t find other ways to raise prices. With an ever-changing local legislative landscape, is it really the case that “[i]t’s going to be: Whatever you can get away with, it’s legal”?

VI. What Should Practitioners Advise their Clients About This?

In an uncertain landscape where legislators are flailing in the dark to attempt to solve a problem they clearly don’t fully understand, how should you advise your clients about how to comply with state pricing laws and to avoid potential antitrust liability?

There are some practical things that can be done. First, attorneys should ensure that their clients who create or use systems like these are defining pricing benchmarks for themselves, and not sharing them. What does that mean? Set limits. No huge price increases day over day, set a price ceiling for your products in your AI/Algorithm system.

Secondly, as the CMA advises, encourage accountability by keeping a human in the loop.⁶⁰ This will help ensure that things are both working smoothly for the business and that pricing hasn’t gotten out of control. This person will also serve as a useful point of contact if antitrust enforcers or class plaintiffs come knocking.

Third, as any good technologist will tell you, there needs to be random sampling, stratified checks, and audits of your pricing system. This is easier than ever before because of

AI-assisted coding, and can ensure that price anomalies are caught early, and there are no million-dollar cans of tuna being sold by your system. Having an internal governor both ensures that companies can extract maximum value and also proves an excellent defense when plaintiffs lawyers try to show that your client intended to conspire with its competitors because its algorithm exactly matches its competitor’s price.

While we don’t have clear caselaw on what kinds of systems are under the most scrutiny in hub and spoke conspiracy allegations, facts matter. To the extent that your clients are attempting to market their products as allowing everyone to raise prices—courts have not looked favorably upon that, and so managing marketing impulses may be in order. Have your clients consider which products should be about capturing share rather than extracting maximum prices. Similarly, blending public and non-public competitor information to determine pricing has been frowned upon, so one might advise clients to create internal firewalls that are demonstrable (or articulatable) in court.

Advising clients about complying with state statutes and local ordinances: for now, most importantly, don’t use protected characteristics to price discriminate. This also generally seems like a good idea for humanity.

Turning to our elected officials, my humble advice for states and municipalities that look to ban undefined “algorithms” for use in pricing is not as straightforward, other than to use proper definitions. And they should know that these are an imperfect solution, as *The Economist* found, and are unlikely to result in price reductions, so should not set themselves up for future criticism when these bills fail to achieve the desired end of lower rental prices. Perhaps legislatures can pitch them as “taking reasonable steps to ensure a fair marketplace” rather than an inexpensive one.

VII. Conclusion

We are in uncharted waters now on “algorithmic” pricing. Smart lawyers are advising their clients on what will look best when they inevitably get called before a federal judge, while keeping a close eye on the algorithmic collusion cases. While there are not yet bright lines, and a patchwork of laws around the country, showing that companies have taken practical steps to safeguard against collusion and discrimination should help when the government comes to call.

There are no perfect solutions for businesses and for consumers here, either. Many of these statutes may not achieve their desired ends.

While legislatures at the local, state, and federal level are taking steps to ensure that businesses are accountable, businesses need to make sure that they hold themselves accountable. In the meantime, consumers should remain vigilant and might consider sending their teenagers to the grocery store rather than the person with the Amex Black card, just in case. ■

- ¹ Apparently, this is the number one bestseller on Amazon as of this writing, Roy, Hailey, “Amazon’s No. 1 Amazon’s No.1 Best-Selling New T-Shirt Dress Is ‘Cool for This Summer Heat’—and It’s on Sale Right Now” <https://people.com/wiholl-t-shirt-dress-deal-amazon-july-2025-11777999>
- ² Sorkin, Andrew Ross, *DealBook*, quoting Robert W. Mann, airline industry analyst. New York Times, July 26, 2025. <https://www.nytimes.com/2025/07/26/business/dealbook/personalized-pricing.html>
- ³ Ohlhausen, M. “Should we fear things that go beep in the night?” FTC Public Statements, May 23, 2017, available at: https://www.ftc.gov/system/files/documents/public_statements/1220893/ohlhausen_-_concurrents_5-23-17.pdf
- ⁴ H.R. “Stop AI Price and Wage Gouging Act of 2025,” available at https://drive.google.com/file/d/1HQoQhvfVv8p0XmOdDliWTnmd2YM_za07/view
- ⁵ Sorkin, *DealBook*, 1.
- ⁶ E.g., “phrase your answers in bullet points,” or God forbid, “with emojis.”
- ⁷ Chat GPT Conversation, June 30, 2025.
- ⁸ *Id.*
- ⁹ Ohlhausen, M. “Should we fear things that go beep in the night?” at 10.
- ¹⁰ *Cornish Adebiji v. Caesars Ent., Inc.*, No. 1:23-CV-02536 KMW-EAP, 2024 WL 4356188 (D. N.J. Sept. 30, 2024).
- ¹¹ *Id.* at 5.
- ¹² *In re RealPage Rental Software Antitrust Litigation*, 709 F.Supp.3d 478, 493 (2023), *internal citation omitted*.
- ¹³ *Duffy v. Yardi*, 758 F.Supp. 3d 1283, 1293 (W.D. Wash. 2024).
- ¹⁴ *Yardi* at 1292.
- ¹⁵ See e.g. U.S. Dept. of Justice, Press Release “Justice Department Sues Six Large Landlords for Algorithmic Pricing Scheme that Harms Millions of American Renters,” Jan. 7 2025, <https://www.justice.gov/usao-mdnc/pr/justice-department-sues-six-large-landlords-algorithmic-pricing-scheme-harms-millions>.
- ¹⁶ *In re RealPage Rental Software Antitrust Litigation*, 709 F.Supp.3d 478, 493 (2023).
- ¹⁷ *Id.* at 1292
- ¹⁸ *Cornish Adebiji* at 2.
- ¹⁹ *Gibson v. Cendyn Grp., LLC*, No. 2:23-CV-00140-MMD-DJA, 2024 WL 2060260, *3 (D. Nev. May 8, 2024), *aff’d*, 148 F.4th 1069 (9th Cir. 2025).
- ²⁰ *In re RealPage*, at 493, *internal citation omitted*.
- ²¹ See *Gibson*, at 3.
- ²² *Monsanto v. Spray-Rite*, 465 US 752 (1984).
- ²³ Almost certainly a machine learning system.
- ²⁴ *Gibson*, at 5.
- ²⁵ *Interstate Circuit v. U.S.*, 306 US 208 (1939).
- ²⁶ See n. 8.
- ²⁷ Philp, Robert Kemp, editor. *Enquire Within Upon Everything*. Houlston and Sons, 1856.
- ²⁸ Statement of Interest, United States, *Cornish Adebiji v. Caesars*, 23-CV-02536 KMW-EAP, Dkt. 96 (D. N.J. March 28, 2024).
- ²⁹ See Proposed Final Judgment, *U.S. v. Greystar Mgmt. Svcs.*, 24-CV-00710 WLO-JLW, Dkt. 152, 8, (M.D.N.C. Aug. 8, 2025). <https://www.justice.gov/opa/media/1410741/dl> (no use of revenue management software that requires acceptance of prices)
- ³⁰ *Id.* at 7.
- ³¹ See *Id.* at 8 (no price floor).
- ³² Sokol, Daniel, “Analyzing Robinson Patman,” George Washington Law Review, Vol. 83:2064, Nov. 2015, available at: <https://www.gwlr.org/wp-content/uploads/2016/01/83-Geo-Wash-L-Rev-2064.pdf>
- ³³ Federal Trade Commission, “Price Discrimination: Robinson-Patman Violations,” available at: <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/price-discrimination-robinson-patman-violations>
- ³⁴ *Id.*
- ³⁵ See e.g. *Lupia v. Stella D’oro Biscuit*, 586 F2d 1163 (1978), this is a typical Robinson-Patman Act claim between plaintiff bakery delivery company and defendant manufacturer of bakery products.
- ³⁶ H.R. 4640 (2025).
- ³⁷ Congressman Casar, “Stop AI Price Gouging and Wage Fixing Act” One-Pager, available at: <https://drive.google.com/file/d/1xJ3K-8L23-00XRtFS-zUIBHiCo8feD5/view>
- ³⁸ The Economist, “Airlines’ favourite new pricing trick,” July 22, 2025.
- ³⁹ *New State Ice Co. v. Leibmann*, 285 US 262 (1932).
- ⁴⁰ National Conference of State Legislatures, Accessed on July 26, 2025 available at: <https://www.ncsl.org/technology-and-communication/artificial-intelligence-2025-legislation>
- ⁴¹ See *Id.*
- ⁴² NYC Automated Employment Decision Tools, Frequently Asked Questions, available at <https://www.nyc.gov/assets/dca/downloads/pdf/about/DCWP-AEDT-FAQ.pdf>
- ⁴³ *Id.*
- ⁴⁴ See Birkeland, Bente, “As Colorado refines its law on AI discrimination, privacy and user consumer groups urge policymakers to give it teeth,” CPR News, Dec. 10, 2024 available at <https://www.cpr.org/2024/12/10/colorado-refines-ai-discrimination-law/>.
- ⁴⁵ See, Tobón C. and Hanson, J., “Colorado Enacts Artificial Intelligence Law,” Shook, Hardy, and Bacon (May 21, 2024), <https://www.shb.com/intelligence/client-alerts/pds/may-2024-tobon-hansen-colorado-ai-law>.
- ⁴⁶ Colorado Revised Stat. 6-1-1701(1)(a).
- ⁴⁷ Colorado Revised Stat. 6-1-1701(1)(a)and (2).
- ⁴⁸ *Brotherhood of Railroad Trainmen v. Baltimore RR*, 331 US 519, 528-529 (1947) (“[M]atters in the text which deviate from those falling within the general pattern are frequently unreflected in the headings and titles. Factors of this type have led to the wise rule that the title of a statute and the heading of the section cannot limit the plain meaning of the statute.”).
- ⁴⁹ Wis. S.B. 142 (2025).
- ⁵⁰ “Algorithmic software includes a product or device that incorporates algorithmic software.” Wis. SB 142 §2 (1)(a).
- ⁵¹ Calder-Wang, S., and Kim, G.H. “Algorithmic Pricing in Multifamily Rentals: Efficiency Gains or Price Coordination?” April 2023, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4403058.
- ⁵² Council on Economic Advisors, “The Cost of Anticompetitive Pricing Algorithms in Rental Housing,” Dec. 17, 2024, available at <https://bidenwhitehouse.archives.gov/cea/written-materials/2024/12/17/the-cost-of-anticompetitive-pricing-algorithms-in-rental-housing>
- ⁵³ *Id.* Fig. 1. Emphasis added.
- ⁵⁴ *Id.*
- ⁵⁵ Rental Market Trends in New York, NY (one bedroom) available at: <https://www.apartments.com/rent-market-trends/new-york-ny/> (last visited September 28, 2025).
- ⁵⁶ Rent Price Summary for Atlanta, Georgia (one bedroom) available at <https://www.zumper.com/rent-research/atlanta-ga> (last visited September 28, 2025).
- ⁵⁷ See e.g., AFSCME et al., Letter to Chair Lina Khan, re: FTC2022-0015, Comments in Support of 6(b) Study into Large Pharmaceutical Benefit Managers (PBM) Practices (May 25, 2022), available at <https://publicinterestnetwork.org/wp-content/uploads/2022/05/Consumer-and-Patient-Advocacy-FTC-Comments-on-Study-of-PBMs-May-25-2022.pdf>
- ⁵⁸ Cooley, G.J.L., “What is the Future of Antitrust? Reflections on PPI’s 2025 Antitrust Policy Conference,” PPI, July 31, 2025, <https://www.progressive-policy.org/what-is-the-future-of-antitrust-reflections-on-ppis-2025-antitrust-conference/>.
- ⁵⁹ Colo. Rev. Stat. § 6-1-1701 et seq. (2024)
- ⁶⁰ Competition and Markets Authority, “CMA AI Strategic Update” April 29, 2024, available at: <https://www.gov.uk/government/publications/cma-ai-strategic-update/cma-ai-strategic-update>.