



The Price Isn't Right: How Algorithms Might Be Costing You

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AI tools can set prices for competing businesses, sometimes illegally raising costs for consumers. Discover how algorithmic pricing works, the risks of collusion, and the role of State Attorneys General in ensuring fair markets.

Introduction

Competitors in several key industries have turned to the [same algorithmic pricing tools](#) to set their prices. Consumers, civil society organizations, and state Attorneys General have raised concerns that this amounts to anticompetitive behavior in violation of the Sherman Antitrust Act and related state laws. The operators of algorithmic pricing tools as well as [landlords](#), [hotel operators](#), and others reliant on algorithmic pricing tools counter that their behavior lands on the right side of the law. They maintain that they do not have an obligation to follow pricing recommendations and that such recommendations are the product of publicly available information--in other words, each user could reach the same recommendation as the tool if they wanted to.

What is algorithmic pricing?

Pricing algorithms have been around for several years. [These algorithms](#) "can quickly monitor market conditions, including behavior of rival retailers, and autonomously adjust prices in near real-time." Retailers often developed their own algorithms to maximize revenue regardless of the market conditions. [Amazon famously relied on a pricing algorithm](#) to fluctuate its diaper prices to put pressure on competitors.

New, third-party algorithms go a step further than proprietary algorithms by allowing several competitors to share information in a centralized fashion. RealPage is one such tool. [As summarized in a complaint filed by the federal Department of Justice](#) (DOJ) and several state AGs, "RealPage sells software to landlords that collects nonpublic information from competing landlords and uses that combined information to make pricing recommendations." For its part, RealPage itself has touted the prospect that its tool will help landlords drive "every possible opportunity to increase price even in the most downward trending or unexpected conditions." Here's how the DOJ describes [RealPage's pricing process](#):

Landlords, who would otherwise be competing with each other, submit on a daily basis their competitively sensitive information to RealPage. This nonpublic, material, and granular rental data includes, among other information, a landlord's rental prices from executed leases, lease terms, and future occupancy. RealPage collects a broad swath of such data from competing landlords, combines it, and feeds it to an algorithm. Based on this process and algorithm, RealPage provides daily, near real time pricing

“recommendations” back to competing landlords. These recommendations are based on the sensitive information of their rivals. But these are more than just “recommendations.” Because, in its own words, a “rising tide raises all ships,” RealPage monitors compliance by landlords to its recommendations.

Players in other industries, such as in [health care, live ticketing](#), and hoteling, have been accused of relying on similar tools to increase revenue across the market, while squeezing consumers.

How might algorithmic pricing violate the law?

Several legal theories have been raised in response to an uptick in algorithmic pricing. One theory is that the company behind the algorithm itself may operate a monopoly by virtue of being the sole or dominant pricing tool in the market. Another theory is that the users of a common pricing tool are colluding with one another. For sake of illustration, the DOJ and its state Attorneys General co-plaintiffs asserted the following claims against RealPage:

- Violation of Section 1 of the Sherman Act by Unlawfully Sharing Information for Use in Competitors’ Pricing;
- Violation of Section 1 of the Sherman Act Through Vertical Agreements with Landlords to Align Pricing;
- Violation of Section 2 of the Sherman Act Through Monopolization of the Commercial Revenue Management Software Market; and,
- Violation of Section 2 of the Sherman Act Through Attempted Monopolization of the Commercial Revenue Management Software Market

State laws may also apply to improper use of algorithmic pricing tools. [The DC Office of the Attorney General filed](#) an independent complaint against RealPage and other large landlords under the DC Antitrust Act. Similarly, [the Arizona Attorney General relied on](#) the Arizona Uniform State Antitrust Act and the Arizona Consumer Fraud Act in a complaint against RealPage and landlords.

Observers expect the Trump Administration’s FTC and DOJ leaders to sustain the regulatory attention being paid to algorithmic pricing. This is an area for antitrust and consumer protection advocates to watch closely.

How State Attorneys General can protect consumers:

State Attorneys General have a number of options to pushback against illegal uses of pricing algorithms. As demonstrated above, they may bring state and federal claims against the host and users of an algorithm. They may also make use of their investigatory powers to gather more information about potentially illegal uses of such algorithms. Finally, and critically, they can collaborate with other offices and consumer groups to learn about the economic harms brought about by illegal uses of pricing algorithms.

To learn more, consider reading the following (inclusion of a reading is not an endorsement):

- Zach Brown & Alexander MacKay, Are online prices higher because of pricing algorithms?, Brookings (July 7, 2022), <https://www.brookings.edu/articles/are-online-prices-higher-because-of-pricing-algorithms/>

- Marco Bertini & Oded Koenigsberg, The Pitfalls of Pricing Algorithms, Harv. Bus. Rev. (Oct. 2021), <https://hbr.org/2021/09/the-pitfalls-of-pricing-algorithms>
- Hannah Garden-Monheit & Ken Merber, Price fixing by algorithm is still price fixing, Federal Trade Commission (Mar. 1, 2024), <https://www.ftc.gov/business-guidance/blog/2024/03/price-fixing-algorithm-still-price-fixing>
- Jeanine Miklós-Thal, AI, Algorithmic Pricing, and Collusion, Simon Business School (Apr. 24, 2024), <https://simon.rochester.edu/blog/deans-corner/ai-algorithmic-pricing-and-collusion>
- Algorithmic Pricing: Understanding the FTC's Case Against Amazon, Carnegie Mellon (Oct. 13, 2023), <https://www.cmu.edu/news/stories/archives/2023/october/algorithmic-pricing-understanding-the-ftcs-case-against-amazon>