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CLIENT ALERT

Third Circuit Reinstates Algorithmic Price-Fixing Claims Against Casino-Hotels, Further Defining Antitrust Risks From Algorithmic Pricing And Potentially Teeing Up Supreme Court Review

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On July 29, 2026, the U.S. Court of Appeals for the Third Circuit issued an opinion in *Cornish-Adebiyi v. Caesars Entertainment, Inc.*,[1] reversing a district court's dismissal and reinstating a proposed class-action complaint alleging that six Atlantic City casino-hotels engaged in algorithmic price-fixing in violation of Section 1 of the Sherman Act. The decision potentially creates a conflict with the Ninth Circuit's August 2025 decision in *Gibson v. Cendyn Group, LLC*, affirming a dismissal of analogous claims involving the same pricing software vendor. Although the Supreme Court declined to review *Gibson* earlier this year,[2] the Third Circuit's ruling arguably establishes a circuit split that

1 No. 24-3006, 2026 WL 2182291, at *5 (3d Cir. July 29, 2026).

2 *Gibson v. Cendyn Grp., LLC*, 148 F.4th 1069, 1088 (9th Cir. 2025), *cert. denied*, No. 25-1109, 2026 WL 1052046 (U.S. Apr. 20, 2026) (Mem.).

may well attract future high-court attention. And, in any event, the Third Circuit's decision further establishes rules of the road for those who are considering using AI-assisted pricing software.

Algorithmic Pricing and the Use of AI

Algorithmic pricing refers to the use of automated systems to collect, process, and use market data to determine, recommend, or adjust prices. When combined with artificial intelligence ("AI"), AI-powered pricing employs predictive analysis of large data sets to incorporate real-time changes in market conditions into pricing decisions. These programs are typically trained on data specific to a vendor or market to suggest (and in some cases implement) prices; learning through an iterative process of trial and error and through finding patterns from large volumes of data. AI-powered algorithmic pricing has become increasingly popular because it allows businesses to adjust prices more quickly in response to unexpected changes in market conditions.

The potential for antitrust liability is most acute when competitors feed their proprietary, non-public data into a shared algorithm that then uses the collective pool of information to generate pricing recommendations for all participants, and when participants implement those recommendations automatically, instead of examining each one. This is exactly the issue at play in *Cornish-Adebiyi*.

The *Cornish-Adebiyi* Decision

In *Cornish-Adebiyi*, Plaintiffs—a putative class of casino-hotel guests—alleged that Atlantic City casino-hotels conspired to fix hotel room prices by using Cendyn's "Rainmaker" software, an AI-powered dynamic pricing platform.[3] According to the complaint, each casino-hotel provided its current, non-public room pricing and occupancy data to the Rainmaker platform on a continuous basis, and the algorithm processed this collective data to generate "optimal" room rates for each participating hotel.[4] Those rates were allegedly automatically uploaded into each casino-hotel's room-selling platform, and the defendants accepted the algorithm's pricing recommendations approximately 90 percent of the time.[5] The plaintiffs alleged that such an arrangement violated Section 1 of the Sherman Act because, in their view, the uploading of rates and subsequent use of those rates to generate prices for consumers constituted a price-fixing conspiracy.[6]

The District Court held that plaintiffs failed to sufficiently allege a horizontal agreement among the competing casino-hotels in the alleged hub-and-spoke conspiracy, but the Third Circuit disagreed. The Court emphasized that plaintiffs adequately alleged a coordinated scheme in which non-public information flowed through the hub and was shared back to spokes in a manner designed to eliminate competitive pricing.[7] What made a difference, in the Third Circuit's view, was that each defendant allegedly understood that the algorithm considered non-public data from other defendants, and that defendants nearly always implemented the pricing recommendations.[8] The Court reasoned

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3 2026 WL 2182291, at *5.
4 *Id.*
5 *Id.* at *6.
6 *Id.*
7 *Id.* at *10.
8 *Id.* at *10–11.

that because dynamic pricing algorithms "tend to rely on the collective input of data to draw patterns and make suggestions," plaintiffs can sufficiently allege that "information exchanges have resulted in collusive pricing and diminished competition" even without specified pleadings of "how the algorithm functions."[9] The Court also found that the plaintiffs sufficiently alleged several other "plus factors" supporting an inference of collusion, including motive to conspire stemming from financial hardship in the years preceding the class period, and conduct against economic self-interest by failing to undercut each other's prices.[10]

Potential Circuit Split

Cornish-Adebiyi is significant enough on its own, but it is even more significant in light of the Ninth Circuit's decision last year in *Gibson*. There, the Ninth Circuit affirmed the dismissal of substantially similar claims brought by Las Vegas hotel guests against many of the same defendants—including Cendyn, the same software provider at issue in *Cornish-Adebiyi*.[11] Plaintiffs in that case brought the same kind of Section 1 claims and alleged broadly similar facts: all the defendants in *Gibson* used the same software, provided it with non-public pricing and occupancy data, and accepted the software's pricing recommendations at a similarly high rate as they did in *Cornish-Adebiyi*.[12] Nevertheless, the Ninth Circuit rejected plaintiffs' theory, finding that even allegations of "consciously parallel conduct," where all defendants were "aware of their competitors' adoption and use of Cendyn's software products," did not clear the threshold for stating a Section 1 claim.[13]

So, given the similar alleged facts and similar theories of liability, what explains the difference between the Third Circuit and the Ninth Circuit's decisions? The most meaningful difference is that in *Cornish-Adebiyi*, the plaintiffs specifically alleged that the software "continuously processes and analyzes . . . non-public, real-time data that the client's participating *competitors* also submit to the platform . . . to generate optimal room rates."[14] The *Gibson* plaintiffs, by contrast, did "not allege that Cendyn pools, shares, or uses the confidential information provided by a given Hotel Defendant into the pricing recommendations it generates for any *other* Hotel Defendant,"[15] and indeed the Ninth Circuit noted that its "analysis might change if Plaintiffs had alleged that Cendyn shared the confidential information of each competing hotel among the licensees."[16] The *Cornish-Adebiyi* plaintiffs also emphasized that Cendyn's price recommendations can only be changed with "a special override to be used only in times of need and extreme circumstances," and that each casino-hotel is scored "on how often it overrides the algorithm's price and forecast recommendation."[17]

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9 *Id.* at *11.
10 *Id.* at *9–10.
11 *Gibson*, 148 F.4th at 1088.
12 *Id.* at 1078.
13 *Id.* at 1083.
14 2026 WL 2182291, at *5.
15 *Gibson*, 148 F.4th at 1078.
16 *Id.* at 1083 n.8.
17 2026 WL 2182291, at *6.

Despite those differences, the obvious question is whether *Cornish-Adebiyi* and *Gibson* combined represent the kind of split between the circuits that may interest the Supreme Court. There are several factors that make *Cornish-Adebiyi* an attractive candidate for Supreme Court review:

- **Divergent outcomes on closely analogous facts**. Both cases involve the same software vendor (Cendyn), the same product (Rainmaker), the same industry (casino-hotels), and similar core allegations—yet the two circuits reached opposite results. This factual alignment makes the split particularly stark and difficult for lower courts to reconcile.

- **Bipartisan enforcement consensus**. The Department of Justice has filed statements of interest and amicus briefs supporting plaintiffs in numerous algorithmic pricing cases including *Gibson* and *Cornish-Adebiyi*, maintaining across both the Biden and Trump administrations that algorithmic price-fixing can constitute a per se violation of Section 1.[18] This cross-administration consistency signals that the federal government views the issue as urgently requiring judicial resolution.

- **National significance and novelty**. Algorithmic pricing is rapidly becoming ubiquitous across industries—from hospitality and airlines to rental housing, retail, and healthcare. The question of when the shared use of such tools crosses the line into an antitrust violation under Section 1 has profound implications for the modern economy.

At the same time, there are considerations that could lead the Supreme Court to deny a petition from the *Cornish-Adebiyi* defendants:

- **Factual and legal differences**. Though the facts are closely analogous, it did make a difference that the *Cornish-Adebiyi* plaintiffs alleged that the software at issue used all participants' pricing data to set prices, while the *Gibson* plaintiffs did not. What is more, *Cornish-Adebiyi* alleged a hub-and-spoke conspiracy, which is what the Third Circuit focused on, while the plaintiffs in *Gibson* abandoned their hub-and-spoke allegations on appeal.

- ***Cornish-Adebiyi*'s procedural posture**. *Cornish-Adebiyi* was decided on a motion to dismiss, and ultimately the Third Circuit's remand will plunge the parties into factual discovery. Though it is not always the case, the Supreme Court generally prefers to grant certiorari in cases where the facts have been fully developed.

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[18] *See* Statement of Interest of the United States, *Cornish-Adebiyi v. Caesars Ent., Inc.*, No. 23-cv-02536, 2024 WL 4356188 (D.N.J. Sep. 30, 2024); Brief for the United States as Amicus Curiae in Support of Plaintiffs-Appellants, *Gibson*, 148 F.4th 1069 (No. 24-3576); *see also* Statement of Interest of the United States, *In re MultiPlan Health Ins. Provider Litig.*, 789 F. Supp. 3d 614 (N.D. Ill. 2025) (No. 24-cv-06795) (reiterating the DOJ's position that joint use of common pricing algorithm and information exchange can violate Section 1 of the Sherman Act).

- **Further percolation**. The Supreme Court will also frequently permit circuit splits to percolate further, instead of granting the first case where a split appears, on the theory that letting more of the appellate courts weigh in will provide a richer well of legal thought to draw from when the Supreme Court does choose to resolve the split.

Implications

Even if the Supreme Court were to deny review of the cert petition that is likely forthcoming in *Cornish-Adebiyi*, the Third Circuit's decision—and the resulting circuit split—carries significant practical implications for companies in any industry that use, or are considering using, pricing software that may incorporate data from multiple competitors.

- **Differing standards across different jurisdictions**. At a fundamental level, the Third Circuit's permissive pleading standard makes it substantially easier for plaintiffs to survive a motion to dismiss in jurisdictions that follow its reasoning. Companies using shared algorithmic pricing tools who are vulnerable to suit in the Third Circuit, as well as in any court that follows its reasoning, should anticipate increased class-action exposure. By contrast, the Ninth Circuit's standard is more defendant-protective.

- **Red flags of potential antitrust violation**. Non-public data sharing is a critical red line; if you are using a pricing tool that aggregates your pricing data with that of your competitors' and then uses that aggregated data to determine prices, you may face heightened litigation risk, particularly in the Third Circuit. That may be all the more the case if you comply with the algorithm's recommendations at a high rate, and if the recommendations are automatically implemented, instead of requiring human approval at each step.

- **The enforcers are watching**. The DOJ's amicus participation in both the *Gibson* and *Cornish-Adebiyi* cases, as well as the DOJ's decision to file suit in *RealPage*,[19] make it clear that the antitrust enforcers are keeping a close eye on algorithmic pricing as a potential enforcement area.

- **Broad applicability**. While these cases involve casino-hotels, the legal principles apply to any industry where competitors use a common algorithmic pricing tool: airlines, car rentals, retail, multifamily housing, healthcare, and beyond.

The members of our antitrust team will continue monitoring these developments and are available to provide additional guidance.

[19] *United States v. RealPage, Inc.*, No. 1:24-cv-00710 (M.D.N.C. filed Aug. 23, 2024).

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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