Paul, Weiss

Client Memorandum

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Third Circuit Revives Algorithmic Pricing Antitrust Claims Against Casino-Hotels

On July 29, 2026, the U.S. Court of Appeals for the Third Circuit reversed the dismissal of a putative class action alleging that several Atlantic City casino-hotels conspired to fix hotel room prices through a shared algorithmic pricing tool in violation of Section 1 of the Sherman Act. The decision in *Cornish-Adebiyi* v. *Caesars Ent., Inc.*, No. 24-3006 (3rd Cir. July 29, 2026), holds that plaintiffs plausibly alleged a horizontal price-fixing agreement facilitated by Cendyn Group's Rainmaker dynamic pricing software.

The *Cornish* decision is the second appellate decision on algorithmic pricing conspiracies and the first appellate decision to squarely address the sufficiency of pleading hub-and-spoke algorithmic pricing conspiracies. In August 2025, in *Gibson* v. *Cendyn Group, LLC*, 148 F.4th 1069 (9th Cir. 2025), in a case involving similar claims, the Ninth Circuit affirmed a lower court's dismissal of similar algorithmic pricing claims. However, notably, the Ninth Circuit in *Gibson* did not address the plaintiffs' hub-and-spoke claim, as the Third Circuit did in *Cornish*, because the *Gibson* plaintiffs had abandoned that claim on appeal.

Other important takeaways from the *Cornish* decision include (1) the emphasis on the sharing of nonpublic data, (2) the importance of industry-specific economics in antitrust cases and (3) the extension of antitrust law's prohibition on competitors' coordinated decision-making to algorithmic tools, as courts and legislatures grapple with emerging technology.

Algorithmic Pricing Background

- **Dynamic pricing algorithms**. As described by the Third Circuit, dynamic pricing algorithms are AI-reliant software systems that automate pricing for sellers. They are trained on data specific to a vendor or market and designed to suggest and sometimes implement prices. They can learn through iterative processes and pattern recognition across large volumes of data. They may use data "related to past, present, and future supply and demand conditions," including data on competitors' public prices, to allow vendors to adjust prices frequently and at lower transaction costs.

- **Not inherently illegal**. The Third Circuit noted that while there is "nothing inherently wrong [or anticompetitive] with using [algorithms] to engage more effectively in commercial activity," leading economists and legal scholars have raised concerns that these pricing algorithms may facilitate price-fixing.

- **Previous client alerts**. We have previously written client alerts on algorithmic pricing here (OECD report on algorithmic pricing), here (California's restrictions on common pricing algorithms), here (New York's restrictions on using algorithms in residential rent setting), here (on the DOJ's settlement in *RealPage*) and here (state legislative developments).

Complaint and District Court's Dismissal

- **Parties**. Plaintiffs are consumers who directly rented guest rooms from the defendant casino-hotels in Atlantic City and allege they paid anticompetitively high prices. The software provider defendant is Cendyn Group, LLC, which acquired the Rainmaker suite of dynamic pricing products in 2019.

- **Allegations**. According to the Consolidated Amended Complaint ("CAC"), each casino-hotel provides its "current, non-public room pricing and occupancy data" to Cendyn's Rainmaker software on a continuous basis. The algorithm then processes this nonpublic commercial data along with similar data provided by their competitors and generates suggested room rates for each participant. Those pricing recommendations are then uploaded into each casino-hotel's property management system. Plaintiffs allege that the defendant casino-hotels accept the algorithm's recommended room rates 90% of the time, resulting in anticompetitively inflated prices.

- **District Court dismissal**. On September 30, 2024, the U.S. District Court for the District of New Jersey granted defendants' motion to dismiss, concluding that plaintiffs did not sufficiently plead the existence of a hub-and-spoke price-fixing scheme, concluding that the alleged conspiracy "lacks a rim" connecting the spokes.

The Third Circuit's Reversal

- **Sufficient parallel conduct**. The Third Circuit found that plaintiffs adequately alleged parallel conduct on two bases:

  - *Contemporaneous use of the algorithm*. First, the casino-hotels' contemporaneous use of Cendyn's pricing algorithm and continuous delegation of pricing to the software during the class period constituted parallel behavior.

  - *Synchronous price and output movement*. Second, the court credited allegations of synchronous price and output movement, specifically, room rates increased by $15 to $60 while occupancy rates meaningfully decreased.

- **Plus factors supporting an inference of agreement**. Beyond parallel conduct, the Third Circuit credited several "plus factors" that tended to demonstrate the existence of an agreement:

  - *Motive to conspire*. Plaintiffs alleged that defendants were incentivized by "an extended period of financial hardship in the years [preceding] the class period," and that structural features of the market—high barriers to entry, lack of reasonable substitutes and high market concentration—were conducive to collusion.

  - *Conduct against economic self-interest*. In the unique context of casino-hotels, where greater room occupancy generates significant casino revenue, economic principles should have compelled at least some defendants to drop room rates to compete for guests. The court noted that "the alleged scheme would only work if casino-hotels could maintain higher room prices knowing that other casino-hotels would not reduce their rates to compete."

  - *Evidence of traditional conspiracy*. The CAC alleged: (i) de facto data exchanges of nonpublic proprietary information through the software that directly impacted pricing decisions; (ii) opportunities to conspire at industry events; (iii) defendants' knowledge of their competitors' relationships with Cendyn; and (iv) a sudden change in long-standing business practices.

- **More specificity about algorithm's functions not required at the pleading stage**. The court rejected the District Court's requirement that plaintiffs plead with more specificity how the algorithm functions, noting that this was "tantamount to expecting Plaintiffs to explain how Cendyn's proprietary software works without affording the discovery required to do that." The court held that at the pleading stage, that level of detail about Cendyn's operations "is neither required nor appropriate."

- **Retention of final pricing authority is not dispositive**. Defendants argued that because each casino-hotel retained final pricing authority and could override Cendyn's recommendations, plaintiffs failed to show that the casino-hotels delegated pricing decisions. The Third Circuit rejected this argument, holding that "[p]rices are fixed when they are agreed upon," irrespective of whether conspirators always adhere to them and that the alleged 90% compliance rate supports an inference of agreement.

Contrast with the Ninth Circuit's Decision in *Gibson* v. *Cendyn*

In August 2025, in *Gibson* v. *Cendyn Group, LLC*, 148 F.4th 1069 (9th Cir. 2025), the Ninth Circuit affirmed a lower court's dismissal of similar algorithmic pricing claims. The claims also involved casino hotels (Las Vegas Strip hotels, instead of Atlantic City) and Cendyn's same Rainmaker software. However, in *Cornish*, the Third Circuit focused its reasoning on the hub-and-spoke claim, while the Ninth Circuit in *Gibson* did not address that claim, as plaintiffs had abandoned it.

- **Hub-and-spoke claim**. In *Cornish*, the Third Circuit sustained the hub-and-spoke conspiracy claim as plausible based on circumstantial evidence and plus factors. In *Gibson*, the district court dismissed the hub-and-spoke claim, and the plaintiffs abandoned the claim on appeal, leaving only their theory that individual licensing agreements caused anticompetitive harm "in the aggregate." Therefore, the Ninth Circuit in *Gibson* did not meaningfully address the hub-and-spoke claim. However, even in light of that major divergence, the following distinctions in the cases are notable:
  - *Information sharing*. The Third Circuit found that allegations the casino-hotel defendants understood that nonpublic pricing and occupancy data were being shared through the platform were sufficient to infer an exchange of competitively sensitive information. The Ninth Circuit, by contrast, noted that while the *Gibson* plaintiffs allege the hotel defendants provide Cendyn with their own nonpublic pricing and occupancy data, which is then used to generate recommendations, plaintiffs "do 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." (emphasis in original).
  - *Retained pricing authority*. The Third Circuit held that retained pricing authority was not dispositive, finding that the alleged 90% compliance rate supported an inference of agreement. The Ninth Circuit reasoned that because the software did not require hotels to implement its recommendations, the licensing agreements did not restrain any hotel's ability to price its hotel rooms. However, in a footnote, the Ninth Circuit noted that competing hotels could have agreed to abide by Cendyn's recommendations, but that agreement would be a hub-and-spoke conspiracy, which was waived in this case.

Practical Takeaways

- **Second appellate case on algorithmic pricing; first to squarely address adequacy of hub-and-spoke pleading**. *Cornish* and *Gibson* both deal with similar underlying facts (Cendyn software in a casino-hotel setting) yet had different outcomes; however, the Ninth Circuit in *Gibson* did not address the hub-and-spoke claim, because those plaintiffs abandoned that claim. As the case law continues to develop, it will be worth monitoring whether other courts follow the Third Circuit's reasoning on parallel conduct and plus factors, the level of specificity required about the operation of the algorithm and the relevance of whether defendants retain pricing authority.

- **Emphasis on nonpublic data**. The Third Circuit heavily emphasized the nonpublic nature of the commercial data allegedly being sent to Cendyn.

- **Market-specific factors matter in antitrust cases**. The Third Circuit emphasized the unique economics of casino-hotels, where room occupancy drives casino revenue, affecting incentives to maintain high room prices at the cost of declining occupancy.

- **Antitrust jurisprudence and legislation in the age of AI**. The Third Circuit said that "existing antitrust jurisprudence may not be fully equipped to tackle future developments in technology" but made clear that the Sherman Act's goal of ensuring "independent centers of decision-making" applies with full force to algorithmic coordination. Note, however, that states (including New York and California) have begun legislating to restrict or regulate the use of algorithmic pricing.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Katherine B. Forrest
+1-212-373-3195
kforrest@paulweiss.com

Benjamin Gris
+1-202-223-7313
bgris@paulweiss.com

Melinda Haag
+1-628-432-5110
mhaag@paulweiss.com

Katharine R. Haigh
+1-212-373-3607
khaigh@paulweiss.com

Benjamin Miller
+1-202-223-7482
bmiller@paulweiss.com

Djordje Petkoski
+1-202-223-7315
dpetkoski@paulweiss.com

Jacqueline P. Rubin
+1-212-373-3056
jrubin@paulweiss.com

Jesse Solomon
+1-202-223-7312
jsolomon@paulweiss.com

Eyitayo "Tee" St. Matthew-Daniel
+1-212-373-3229
tstmatthewdaniel@paulweiss.com

Aidan Synnott
+1-212-373-3213
asynnott@paulweiss.com

Brette Tannenbaum
+1-212-373-3852
btannenbaum@paulweiss.com

Sabin Chung
+1-202-223-7354
sachung@paulweiss.com

Zuzanna Knypinski
+1-202-419-7128
zknypinski@paulweiss.com

Yoosun Koh
+1-628-432-5127
ykoh@paulweiss.com

Robert J. O'Loughlin
+1-212-373-3343
roloughlin@paulweiss.com

Associate Chizoba D. Wilkerson and Senior Knowledge & Innovation Attorney Timothy J. Haney contributed to this Client Memorandum.