

## Checklist for Developing or Using Pricing Algorithm or Revenue Management Software

Recently, the antitrust agencies have brought several enforcement actions against companies that develop or use pricing algorithm software (e.g., revenue management software). The agencies are concerned that this software facilitates pricing coordination among competitors or otherwise artificially inflates pricing, and therefore, the agencies have prioritized investigating the development and use of this kind of software.

The agencies analyze various factors to assess whether pricing software might violate the antitrust laws. Based on these factors and the agencies' recent actions, we have developed the questions below to assess whether the pricing software you are developing or using might raise antitrust risks.

- ☐ Does the pricing software:
  - ☐ rely on confidential commercially sensitive data such as pricing, costs, sales volumes or occupancy rates, or customer lists?
  - ☐ use real-time or future pricing data?
  - ☐ provide a default or recommended price (even if only a "starting" price)?
- ☐ Is the pricing software only available to those who input confidential data?
- ☐ Is the pricing software restricted to one side of the market (e.g., only suppliers or only buyers)?
- ☐ Is the pricing software marketed to raise, stabilize, or maximize price/profit?
- ☐ Is it known which other companies use or provide data to the software?
- ☐ Is the pricing software promoted as more valuable with collective adherence (e.g., works better if "everyone does it")?
- ☐ Does the software automatically decide prices or follow its recommendations?

To confirm, a "yes" answer to any of the above does not mean the antitrust laws have been violated. It only means the antitrust risk *might* be heightened.

On these issues, consult with Wilson Sonsini Antitrust Partners, [Brent Snyder](#), [Jeff VanHooreweghe](#), [Jindrich Kloub](#), or anyone within the [Antitrust and Competition Group](#) at Wilson Sonsini.

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