



US DOJ, FTC weigh in on hotel room algorithmic price-fixing case

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MLex Summary: The US Department of Justice and the Federal Trade Commission filed a statement of interest in a case alleging that competing casino hotels violated Section 1 of the Sherman Act by unlawfully agreeing to use a pricing algorithm to set prices. The agencies said they were submitting their statement to summarize the applicable legal principles for claims of algorithmic price-fixing and to address two legal errors that the defendants appeared to make in their motion to dismiss.

Statement and document follow below:

Justice Department and Federal Trade Commission File Statement of Interest in Hotel Room Algorithmic Price-Fixing Case

Statement of Interest Explains That Hotel Companies Cannot Use Algorithms to Evade Antitrust Laws

WASHINGTON – The Justice Department joined by the Federal Trade Commission (collectively the “Agencies”), filed a statement of interest with the District of New Jersey in the case of *Cornish-Adebiyi v. Caesars Entertainment*, which explains that hotels cannot collude on room pricing and cannot use an algorithm to engage in practices that would be illegal if done by a real person.

Companies across the economy are increasingly using algorithms to determine their prices. When a small group of algorithm providers can influence a major segment of a market, competitors are better able to use the algorithm provider to facilitate collusion. This risk is even greater as markets have become more concentrated across a wide range of industries. Algorithms that recommend prices to numerous competing hotels make it harder for travelers to comparison-shop for the best rate.

In their statement, the Agencies highlight two key aspects of competition law. First, plaintiffs do not need to identify direct communications between competitors to allege an agreement under Section 1 of the Sherman Act, particularly when they allege that an algorithm provider that works with the competitors is acting in concert with them. Competitors cannot lawfully cooperate to set their prices, whether via their staff or an algorithm, even if the competitors never communicate with each other directly. Second, an agreement to use shared pricing recommendations, list prices or pricing algorithms is still unlawful even when co-conspirators retain some pricing discretion. Setting or recommending initial starting prices can still violate the antitrust laws even if those are not the prices that consumers ultimately pay.

The Agencies have a strong interest in protecting consumers from algorithmic collusion, and their statement provides guidance to any firm that uses an algorithm to set prices. The Agencies recently filed a statement of interest in an algorithmic price-fixing case in the residential housing market, and the Justice Department’s Antitrust Division filed a statement of interest and memorandum of law in another real estate algorithmic price-fixing case last year. The division also has an ongoing case alleging that a middleman orchestrated a yearslong conspiracy to share pricing and other sensitive information among meat processing competitors.

Attachment(s):

[DOJ and FTC statement of interest.pdf](#)

Related Portfolio(s):

[Antitrust - MGM Resorts - Cesars - Wynn - Cendyn - Litigation over alleged price-fixing regarding Atlantic City hotels \(US\)](#)

Areas of Interest: Antitrust

Industries: Consumer Products, Professional Services

Geographies: North America, United States

Topics: Price-fixing