

Insights

IS THE PRICE RIGHT? NEW YORK AND CALIFORNIA ESCALATE LEGAL PRESSURE ON PRICING ALGORITHMS

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SUMMARY

In recent weeks, there have been significant developments in the legal landscape of pricing and pricing algorithm laws in New York and California. In light of the quickly changing law on pricing, clients should be thinking about reviewing their pricing programs with antitrust counsel and taking other practical steps to decrease the likelihood that these programs might be found to violate state antitrust laws.

Recently, California and New York both took significant legislative and legal actions involving pricing algorithms. The results are likely to extend far beyond both states, especially with an ongoing FTC inquiry into the same practices that is likely fueling, either directly or indirectly, many of these states' actions. Clients who use or distribute pricing algorithms should pay careful attention to these changes: we recommend some potential strategies below as part of a broader effort by clients, including consulting antitrust and consumer protection counsel to advise on the specifics of a client's legal obligations and to establish AI governance policies.

California: Two New Antitrust Laws with Significant Effect

In California, on October 6, 2025, Governor Newsom [signed two important bills into law](#): SB 763 and AB 325.

SB 763 increased the fines for criminal and civil violations of the Cartwright Act, California's main antitrust statute. The new law increased the available criminal penalties from \$1 million to \$6 million and created a new civil fine of up to \$1 million. The creation of a new civil fine is especially significant because there have been several highly significant Cartwright Act civil cases in recent years, such as the California Attorney General ("CA AG")'s [suit against Amazon](#) and CA AG's [\\$575 million settlement with Sutter Health](#). With SB 763 in place, it is possible that the next CA AG Cartwright action will come down much harder on a defendant, with a risk of substantial penalties having the potential to alter any analysis between fighting in court or settling.

Meanwhile, AB 325 makes “it unlawful for a person to use or distribute a common pricing algorithm as part of a contract, combination in the form of a trust, or conspiracy to restrain trade or commerce.” It also makes it illegal “for a person to use or distribute a common pricing algorithm if the person coerces another person to set or adopt a recommended price or commercial term recommended by the common pricing algorithm for the same or similar products or services.” “Common pricing algorithm” means any methodology, including a computer, software, or other technology, used by two or more persons, that uses competitor data to recommend, align, stabilize, set, or otherwise influence a price or commercial term.” The definition of “price” includes not only consumer-facing pricing, but also employee or independent contractor compensation.

AB 325 has the potential to significantly expand liability in California and beyond. First, AB 325’s broad language—especially the disjunctive phrase “use or distribute”—creates legal risk for both companies that create and sell pricing algorithms and companies that utilize pricing algorithms. That being said, clients should expect there to be considerable debate over what the term “coerces” means in AB 325, whether that applies to mere recommendations without further action, and what role so-called “dark patterns” will play in determining whether there is coercion.

Moreover, under AB 325, plaintiffs bringing Cartwright Act cases now have a lower pleading burden to state a claim for a state antitrust violation. AB 325 provides that a Cartwright Act plaintiff need not “allege facts tending to exclude the possibility of independent action” and only need to include “factual allegations demonstrating” the plausibility of the “existence of a contract, combination in the form of a trust, or conspiracy.” This change might have been intended to depart from the “obvious alternative explanation” language from the Supreme Court’s decisions in *Bell Atlantic v. Twombly* and *Ashcroft v. Iqbal*. At a minimum, clients should be prepared to face an increase in the amount of private litigation against the use and/or distribution of pricing algorithms.

Last, clients should be aware that the impact of these changes in California law is not limited to companies headquartered or incorporated in California. The Ninth Circuit has held that “the Cartwright Act can be lawfully applied without violating a defendant’s due process rights when more than a *de minimis* amount of that alleged conspiratorial activity . . . took place in California.” That means that actions that a defendant company takes in California, such as maintaining an office, entering into contracts, or even attending meetings may be sufficient for a plaintiff to be able to sustain a Cartwright Act claim against a company. And should the CA AG bring suit using both new laws, there could be substantial risk to a client.

New York: A New Disclosure Requirement

Meanwhile, in New York, the New York Attorney General (“NY AG”) can now enforce a law requiring customers to be informed when a retailer uses algorithmic pricing. In May 2025, the New York state legislature enacted the New York Algorithmic Pricing Disclosure Act, which requires the disclosure of any entity domiciled or doing business in New York to disclose when it sets a price of a specific good or service using a personalized pricing algorithm. (Certain businesses, such as

ride-sharing apps, insurance companies, and certain regulated financial institutions are exempted.) The Act is, however, only enforceable by the NY AG, with civil penalties of up to \$1000 per violation only available after the NY AG issues a cease and desist letter.

Earlier this month, Judge Rakoff in the Southern District of New York entered an [order](#) denying a plaintiff's motion for a preliminary injunction and granting the NY AG's motion to dismiss the complaint claiming that the NY Algorithmic Pricing Disclosure law violated the First Amendment. The court held that the New York law is not unjustified or an undue burden on purely commercial speech, and thus survived a low level of scrutiny. As of this writing, no appeal has been filed, though one would not be surprising.

The New York law is likely more tempered in its impacts than the new California laws. On the one hand, the New York Algorithmic Pricing Disclosure law likely also has a significant geographic reach, as many companies are likely to do business in New York. On the other hand, because there is no private right of action, clients are less likely to face a wave of litigation resulting from the law. Furthermore, the Act's requirement for the NY AG to first issue "cease and desist" letters likely gives companies the chance to add the disclosure before any penalties ensue.

Behind the Scenes: Ongoing FTC Study Inspires State Action

Notably, many of these potentially significant changes in the law of two of the most important U.S. jurisdictions were presaged by the FTC's staff studies into surveillance pricing and pricing algorithms. We previously covered those FTC staff studies [here](#), predicting that these studies would "not be the last words." And while the studies were initiated and issued under the Biden Administration, the dissent from now-Chairman Ferguson [indicated](#) that he supported a final study and predicted that "The American public and Congress will surely value what the Commission ultimately learns and shares as to whether and how consumers' private data may be used to affect their pocketbooks."

New York and California both took inspiration from the FTC's staff studies. In New York, as recounted in Judge Rakoff's decision, an earlier version of the Algorithmic Pricing Disclosure Act directly cited the FTC's preliminary staff reports and the concerns raised therein to address possible consumer protection harms. In California, while AB 325's legislative history does not immediately reveal a direct link to the FTC staff studies, the law directly tracks FTC staff's concerns in those studies that surveillance pricing can result in pricing that is effectively collusive.

Call to Action: Practical Steps for Businesses

So, [what comes next](#)? Thus far, FTC staff has raised the issue, one state has added disclosure requirements, while another state has begun changing its substantive law in response. Given [continued concerns](#) about surveillance pricing harming American's pocketbooks, clients should expect continued focus on this area, with the pattern suggesting the next steps are further state—and potentially federal—laws duplicating or elaborating on these state laws.

To get ahead of these changes, clients that use or distribute pricing algorithms should take immediate action. For example, clients should consider conducting a comprehensive review of their pricing algorithms and the data inputs used in those systems, working closely with antitrust and consumer protection counsel to ensure compliance with both existing and emerging legal requirements. This review should examine not only the algorithms themselves but also the sources of competitor data, the degree of automation in pricing decisions, and any mechanisms that could be construed as coercive under laws like CA's AB 325. Furthermore, this algorithmic pricing review should be integrated into an organization's broader AI governance program, as effective AI governance is becoming essential to mitigate legal, operational, and reputational risks. By establishing robust AI governance frameworks that include regular audits, clear accountability structures, and ongoing legal compliance monitoring, clients can better position themselves to navigate the shifting regulatory landscape while maintaining competitive pricing strategies that comply with evolving antitrust and consumer protection laws.

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