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NAVIGATING ANTITRUST IN THE AGE OF AI, VIRTUAL OR HYBRID MEETINGS AND REGULATORY SHIFTS: Stay Compliant in a Rapidly Evolving Antitrust Landscape

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TODAY'S AGENDA

- ▶ Price Fixing
- ▶ Information Exchange
- ▶ Price Discrimination
- ▶ Antitrust in the age of Artificial Intelligence

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THE LAW GOVERNING PRICE FIXING

- ▶ The Sherman Antitrust Act of 1890 prohibits contracts, combinations and conspiracies in **restraint of trade** in interstate commerce or with foreign nations.
- ▶ Felony to conspire to *restrain trade*; or to *monopolize* (or attempt to monopolize).

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GOAL OF ANTITRUST STATUTES

- ▶ Protect economic freedom and opportunity by promoting free and fair competition in the marketplace.
- ▶ Benefit to businesses
 - ▶ Opportunity to compete on price and quality, in an open market and on a level playing field without anticompetitive restraints
- ▶ Benefit to American consumers
 - ▶ lower prices, better quality greater choices

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CONSPIRACY/COMBINATION/ COLLUSION - 4 ELEMENTS

- 1. Knowledge:** All members must know that the purpose is to restrain trade
- 2. Common purpose:** At least two members must benefit from the restraint of trade and share a common purpose to restrain trade
- 3. Actual restraint:** The agreement among at least two of the members must actually restrain trade as opposed to merely facilitating restraint
- 4. Intent to restrain trade:** At least two members of the combination must intend to restrain trade

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COLLUSIVE RESTRICTIONS ON TRADE CREDIT GRANTING CAN BE CONSTRUED AS PRICE FIXING

- ▶ Sherman Antitrust Act defines Price Fixing
 - ▶ An agreement, written, verbal or implied (express or implied) among competitors that raises, lowers, or stabilizes prices or competitive terms
- ▶ The Federal Trade Commission defines Price fixing as an agreement among competitors to raise, fix, or otherwise maintain the price at which their goods or services are sold.
- ▶ An agreement among trade credit grantors to fix, or deny credit terms will be construed as Price Fixing

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HYPOTHECTICAL EXAMPLE OF PRICE-FIXING AMONG TRADE CREDIT GRANTORS

- Three competing companies: ACM, DHZ and WTCB decide to engage in a price-fixing scheme by agreeing upon trade credit terms to indirectly control prices and increase their profits.
- **Combination/Conspiracy Elements**
 - **Knowledge:** Secret meetings under the guise of a conference and a private dinner to discuss fixing future credit terms
 - **Common Purpose:** By agreeing to fix credit terms, all three can benefit from higher profit margins. The common purpose is to eliminate competition based on trade credit terms and ensure higher revenues for all three companies.
 - **Actual Restraint:** Agreed credit terms are put into place by all three companies
 - **Clear Intent** is to control the market conditions by eliminating competitive credit terms

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EXAMPLE OF CONSPIRACY to RESTRAIN TRADE

- **USA v. Michael Flynn et al (2019)**
- **Knowledge:** knowingly and intentionally became a member of the conspiracy
- **Common Purpose:** conspiracy to restrain trade by allocating customers
- **Actual Restraint:** substantially affected interstate or foreign commerce
- **Intent:** suppressed and eliminated competition by allocating customers, rigging bids, and fixing prices for insulation contracts
 - Concealed the charged combination and conspiracy by communicating through a disappearing messaging application and using cellular phones for which the registration masked the identity of the users

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PRICE-FIXING LAWSUIT IN THE POULTRY INDUSTRY

- **ALLEGATION** by Department of Justice (DOJ) against Agri Stats, a data analytics firm, of facilitating illegal price fixing among major U.S. meat processors—specifically in the chicken, pork, and turkey sectors.
- Agri Stats **collected** detailed, confidential data from meat companies, including Prices, Production volumes, Labor costs and Facility performance
- **Distributed** this data exclusively **among competitors**, allowing them to: Coordinate price increases, Suppress wages, Reduce supply and Avoid undercutting each other
- Companies involved controlled majority of chicken, pork and turkey production in the U.S.
- **RESULT:** Increase in pork, turkey and chicken prices
Companies like Tyson Foods had significant profit increase - **Litigation Ongoing**

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U.S. DEPARTMENT OF JUSTICE

- U.S. Department of Justice - Antitrust Division
- Former Guidelines (2000) for Collaborations Among Competitors has been withdrawn (2024)
 - The mission of the Antitrust Division is to promote economic competition through enforcing and providing guidance on antitrust laws and principles.
 - Prosecutes Restraint of Trade circumstances

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FEDERAL TRADE COMMISSION

- The mission of the Federal Trade Commission (FTC) concerning antitrust is to promote and protect competition in the marketplace in order to benefit consumers and prevent anticompetitive behavior.
 - The Federal Trade Commission Act, enacted in 1914, established the FTC and granted it the authority to prevent unfair methods of competition and unfair or deceptive acts or practices in commerce.
 - The FTC enforces antitrust laws in the United States, primarily
 - Sherman Antitrust Act
 - Federal Trade Commission Act
 - Robinson Patman Act

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FTC ADMONISHMENT

- ▶ Price fixing relates not only to prices
- ▶ Antitrust scrutiny (by the FTC) may occur when competitors discuss the following topics:
 - ▶ Present or future prices
 - ▶ Pricing policies
 - ▶ Promotions
 - ▶ Bids
 - ▶ Costs
 - ▶ Capacity
 - ▶ Terms or conditions of sale, including credit terms
 - ▶ Discounts
 - ▶ Identity of customers
 - ▶ Allocation of customers or sales areas
 - ▶ Production quotas
 - ▶ R&D plans

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RECENT ACTIVITY BY U.S. DEPT. OF JUSTICE & FEDERAL TRADE COMMISSION

- Stopped Mergers that would have been injurious to consumers
- Ongoing Litigation against Google
- Litigation against Amazon
- Litigation against generic drug companies and a cancer treatment center
- Price Fixing suit against one of the nation's largest chicken producers

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FTC v. AMAZON

- Suit Commenced 9/27/2023 Federal Court
- Federal Trade Commission and 17 state Attorneys General - joined by 18th AG and Puerto Rico
- Statutes cited:
 - Federal Trade Commission Act
 - Sherman Antitrust Act
 - Applicable state laws

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FTC v. AMAZON ALLEGATIONS

- Amazon has seized control over much of the online retail economy
- Harms hundreds of thousands of businesses who rely on Amazon to reach them
 - Steep sellers' fees
 - "We have nowhere else to go and Amazon knows it"
- Amazon deploys a sophisticated surveillance network of web crawlers that constantly monitor the internet, searching for discounts that might threaten Amazon's empire.
- When Amazon detects elsewhere online a product that is cheaper than a seller's offer for the same product on Amazon, Amazon punishes that seller.
- This is done to prevent rivals from gaining business by offering shoppers or sellers lower prices
- Virtually all sellers must use Amazon's proprietary and coercive FBA ("Fulfillment by Amazon") to reach Amazon's enormous base of U.S. shoppers

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FTC v. AMAZON STATUS

- October 2024 ruling on Motion to Dismiss
 - Some states' claims dismissed
 - FTC statement after ruling "The ways Amazon illegally maintains its monopolies and the harm they cause—including suppressed competition and higher prices for shoppers and sellers—will be on full display at trial."
- Trial slated for October 2026

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SECOND FTC LAWSUIT v. AMAZON

- Commenced in 2023
- The Complaint charges that Defendants violated antitrust laws and committed deceptive practices in connection with Defendants' marketing and sale of its Amazon Prime subscription to consumers.
- Action against Amazon and several Executives of Amazon
- Settlement in September 2025
- \$2.5 Billion
- Governance and oversight for 3 - 10 years

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EXCHANGE OF CUSTOMER INFORMATION AND THE ANTITRUST LAWS DURING MEETINGS

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CREDIT TERMS = PRICE

Catalano Inc. v Target Sales
(SCOTUS 1980)

“Extending interest-free credit for a period of time is equivalent to giving a discount equal to the value of the use of the purchase price for that period of time.

Thus, credit terms must be characterized as an inseparable part of the price”

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CASELAW SPECIFICALLY PERMITS THE EXCHANGE OF CREDIT INFORMATION

- ▶ Cement Manufacturers (US Sup Court 1925) - gathering and disseminating information ... free to act upon or not...cannot be held ... an unlawful restraint upon commerce
- ▶ Maple Flooring Mfrs.’ Ass’n (US Sup Court 1925) - The public interest is served by certain information exchanges - competition does not become less free merely because the conduct of commercial operations becomes more intelligent through the free distribution of knowledge of all the essential factors entering into the commercial transaction
- ▶ Burtch v. Milberg Factors 3rd Cir 2011) - Allegation that illegal price fixing existed among Factor, garment manufacturers and garment retailers (Citing Cement Manufacturers - gathering and disseminating information ... free to act upon or not...cannot be held ... an unlawful restraint upon commerce

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RECENT COURT CASE INVOLVING EXCHANGE OF INFORMATION

- ▶ *In re Frozen Potatoes Antitrust Litigation*
- ▶ Plaintiffs allege that competing potato producers
 - ▶ Sent competitive sales and volume data to a shared analytics program - with the expectation that
 - ▶ The competitors would receive comparative reports on each other's performance - and then
 - ▶ The competitors used those reports to guide market behavior
- ▶ DOJ Issued a Statement of Interest stating that information sharing, with the mutual expectation that competitors will do the same, can itself established a concerted action under the Sherman Act
 - ▶ The same benchmarking program was used by competitors
 - ▶ Competitors maintained high prices based on information obtained
 - ▶ Defendants assert that "mere information exchanges are presumptively lawful under the rule of reason unless a plaintiff plausibly alleges facts showing that the information exchange facilitated price fixing."

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ANTITRUST COMPLIANCE AT ALL TIMES

- ▶ Credit information exchanged by email (or fax) is under the same rules as that exchanged at credit group meetings
- ▶ A trade creditor should be cognizant that any credit information exchanged must be done in accordance with Federal Antitrust guidelines.
- ▶ Telephone exchange of information is **NOT RECOMMENDED**
 - ▶ There can be no discussions of any prices, terms, company policies or credit lines.
 - ▶ Remarks must be confined to present and completed transactions only, with no mention of any future plans of action.
 - ▶ All information exchanged is strictly confidential and not to be disclosed to anyone else

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VIRTUAL OR HYBRID MEETINGS AMONG CREDIT GRANTORS

- Written Agenda is a Must
- Antitrust Compliance Statement should contain additional verbiage regarding the virtual meeting format
 - Each member should reaffirm the written agreement that was signed (see below)
- Accurate and Concise Minutes must be taken & Maintained
- All participants should be in a private setting, with closed office doors (or bedroom or living room doors closed) so that no outsider can listen in to the meeting
- Participants must keep their cameras on during the entire meeting. This will ensure that only properly entitled people are in the room. This will also ensure that the participants are actively engaged in the meeting and not multi-tasking

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MANDATES FOR VIRTUAL ATTENDEES

- ▶ Proper Identification:
 - ▶ NAME - MEMBER NUMBER - COMPANY NAME
 - ▶ Recited orally if not readily visible on screen
- ▶ NO Recordings of any kind
 - ▶ No member should be making/keeping a permanent record of meeting conversations
 - ▶ No photographs should be taken
 - ▶ No dictation tools of any kind
- ▶ Disable AI

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EXCHANGE OF INFORMATION SCENARIO

- ▶ Company A received word from its customer of a pending sale and received an offer to pay off its balance at a reduced percentage and over a period of time
 - ▶ NTCR showed customer as a “Very Low Risk”
 - ▶ Payments had only recently slowed down
- ▶ NACM Affiliate was contacted to convene an expedited meeting to exchange information on this customer
- ▶ NACM Affiliate contacted Antitrust Counsel to be present at the meeting

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SCENARIO CONT'D.

- ▶ Antitrust Counsel for the trade creditors contacted customer and was referred to its Attorney
- ▶ During meeting, information was gathered
 - ▶ “Yes” or “No” - Did you receive a letter with an offer from this customer
 - ▶ Has the customer informed you about the sale
 - ▶ Company A shared the information provided by the customer
- ▶ Trade creditors were advised to make independent, unilateral decisions as to how each of them would continue to do business with the customer based on the information gathered.
- ▶ No agreement was reached among the creditors.

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PERMISSIBLE INFORMATION

- ▶ Members may report customer credit information
 - ▶ COD
 - ▶ Credit withdrawn
 - ▶ Credit hold
 - ▶ Bankruptcy
 - ▶ “Doors are closed”
 - ▶ “Ceased operations”

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PERMISSIBLE DISCUSSIONS

- ▶ Delinquent account information -NO discussion of *future* (i.e., intent).
- ▶ Exchange of factual credit information
 - ▶ Do NOT give credit limit information
- ▶ Reports of placement for collection
 - ▶ ONLY if you have actually placed the account
- ▶ Reports of initiation/continuation of lawsuit
 - ▶ ONLY if the lawsuit is actually commenced and/or continuing

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PERMISSIBLE DISCUSSIONS

- ▶ Reports of judgment obtained
- ▶ Reports of other factual information **provided** by customer
 - ▶ Bankruptcy information, **ONLY** if confirmed
 - ▶ Sale of all or a portion of the business **ONLY** if confirmed
- ▶ Exchange of contact information
 - ▶ Accounts payable personnel
 - ▶ Corporate officers
 - ▶ New buyer

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Non-Permissible Discussions

- ▶ Credit Terms
- ▶ Group Boycott
 - ▶ Whether or not to continue to sell to a particular customer
 - ▶ Whether to participate in an involuntary petition in bankruptcy
- ▶ Price Fixing
- ▶ Market or Territory Allocation
- ▶ Future Intentions

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Independent Exchange of Information Format

- ▶ If telephonic, record the call
- ▶ If by email or fax, keep a copy of the request and the response
- ▶ Provide only the information requested
 - ▶ Do not volunteer additional information
- ▶ Do **NOT** give credit limit information

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ELECTRONIC CREDIT EXCHANGE

- ▶ More common than ever before
- ▶ Antitrust Rules still apply
- ▶ Request for references
 - Giving references
- ▶ Electronic data lasts forever

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ELECTRONIC CREDIT EXCHANGE

RECOMMENDED LANGUAGE ON ELECTRONIC TRANSMISSIONS

This Credit Reference is provided at the request of _____ and is based upon information maintained in my file as a result of my company's experience with _____.

No judgment or recommendation concerning credit decisions is given or implied by this information. The recipient must determine its own credit decision. The data contained in this report is for information purposes only.

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ELECTRONIC CREDIT EXCHANGE

REQUIRE AFFIRMATION IN ADVANCE

- ▶ The credit information you are about to view electronically is accurate information contained in my records and you are requesting same in order to determine the creditworthiness of _____
- ▶ You may make **one** printed copy of this Electronic Information for your own use. You may not distribute, transmit or otherwise circulate the Electronic Information to anyone else.

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ELECTRONIC CREDIT EXCHANGE

CREATE MANDATORY CONSENT

- ▶ I have read and understand this Use Agreement and Agreement to be bound by its terms
- ▶ Lock mechanism to disable anyone from proceeding without accepting restriction

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GROUP BOYCOTTING

- ▶ Concept of *sufficient market power*
- ▶ Hallmarks of illegal group boycott:
 1. Denial of access to a competitively useful commodity or service
 2. *Collective* refusal to deal
- ▶ Group boycotting can exist even through action of only one party

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INVOLUNTARY PETITION IN BANKRUPTCY

- ▶ CAN BE DEEMED A GROUP BOYCOTT
- ▶ MUST NOT BE DISCUSSED BEFOREHAND
- ▶ Petitioning Creditors must not have claims which are subject to *bona fide disputes* as to dollar amount or liability
- ▶ Petitioning Creditor(s) can be penalized (fees & costs) for an improper involuntary petition in bankruptcy

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INVOLUNTARY PETITION IN BANKRUPTCY - PROPER AND NECESSARY STEPS

- ▶ Make Independent Decision
- ▶ Get Company Authorization
- ▶ Retain Attorney
- ▶ Seek Other Creditor(s)

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PRICE DISCRIMINATION ISSUES

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ROBINSON PATMAN ACT (1936)

- ▶ The Robinson-Patman Act was designed to prevent discriminatory practices adversely affecting free competitive enterprise, to preserve competition generally, and to protect small businesses which are usually unable to buy in quantity against large competitors.
- ▶ Equally unlawful for any person engaged in commerce to “knowingly induce or receive a discrimination in price”

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ROBINSON PATMAN ACT (1936)

- ▶ The Robinson-Patman Act of 1936 makes it
 - ▶ Unlawful to “discriminate in price between different purchasers of commodities of like grade and quality”... where the
 - ▶ Effect of such discrimination may be substantially
 - ▶ to **lessen competition** - or
 - ▶ Tend to **create a monopoly** - or
 - ▶ To injure, **destroy or prevent competition** with any person who either grants or knowingly receives the benefit of such discrimination, or with the customers of either of them

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PRICE DISCRIMINATION UNDER THE ROBINSON-PATMAN ACT

- ▶ No necessity for agreement, combination, association or conspiracy - only needs one entity
- ▶ At least two transactions must have occurred
- ▶ Price Discrimination includes:
 - ▶ **different price to different purchasers of physical goods**
 - ▶ **inequitable discounts or rebates**
 - ▶ **differences in terms and conditions of sale**
 - ▶ **preferential credit terms [Credit Terms Equals Price]**
- ▶ Simply speaking - makes it illegal to sell the same or similar products at different prices to competing purchasers when competition will be impacted

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PRICE DISCRIMINATION UNDER THE ROBINSON-PATMAN ACT

- ▶ Only applicable to sale of tangible goods
- ▶ Not applicable to services or other intangible items
 - ▶ NOT applicable to transportation or broadcast since neither transportation nor broadcast services involve tangible goods

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NOT PRICE DISCRIMINATION

- ▶ Price differences resulting from cost of manufacture, sale or delivery
- ▶ Price differences resulting from quantities being sold
- ▶ Choosing who will be your customer/Refusing to sell to a particular potential customer
- ▶ Price changes from time to time resulting from
 - ▶ Changing conditions affecting the market or marketability of the goods
 - ▶ E.g. perishable goods, obsolescence of seasonal goods
 - ▶ Global Pandemic
 - ▶ Sales in good faith in discontinuance of business in the goods concerned

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REFUSAL TO SELL

- ▶ 1919 lawsuit against Colgate & Co.
- ▶ Colgate threatened to withhold products
- ▶ Colgate policy terminated any wholesaler or retailer that did not comply with Colgate policy
- ▶ U.S. Supreme Court held the “Colgate Doctrine”

Purpose of antitrust statute is to “preserve the right of freedom of trade. In the absence of any purpose to create or maintain a monopoly, the act does not restrict the long-recognized right of a manufacturer engaged in any entirely private business, freely to exercise its independent discretion as to two parties with whom it will deal.”

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FTC LAWSUIT on PRICE DISCRIMINATION

- ▶ FTC v. SOUTHERN GLAZER’S WINE AND SPIRITS, LLC
- ▶ FTC sued U.S. Distributor of wine and spirits “alleging the company violated the Robinson-Patman Act, harming small, independent businesses by depriving them of access to discounts and rebates, and impeding their ability to compete against large national and regional chains. This loss of competition ultimately harms consumers on choice and price”
- ▶ Southern sold to “mom and pop” businesses at drastically higher prices than those charged to large chains
- ▶ Motion to Dismiss was Denied in April 2025
- ▶ Litigation is Ongoing

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FTC LAWSUIT REGARDING PRICE DISCRIMINATION

- ▶ FTC v. PEPSICO, INC.
- ▶ FTC sued PepsiCo alleging that the second-largest food company in the world has engaged in price discrimination by providing one customer - Walmart - with unfair pricing advantages, while raising prices for competing retailers and customers.
- ▶ The Complaint alleged that PepsiCo offered Walmart special product promotions, discounts, promotional payments, allowances, and services that were not made available to other retailers on proportionally equal terms.
- ▶ PepsiCo succeeded in having the Litigation Dismissed in May 2025

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PERMISSIBLE ACTIVITIES

- ▶ Credit Term Changes
- ▶ Price Changes to Meet Competition, etc.
 - ▶ Must be in good faith
 - ▶ Must follow guidelines
 - ▶ Must be well-documented
- ▶ Placement of account for collection or suit - if internal records merit this (**NOT** because others are doing so)

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PERMISSIBLE ACTIVITIES

- ▶ Any Decision to Refuse to sell to/deal with a particular customer
 - ▶ Must be unilateral
 - ▶ Must be an independent decision

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MEETING COMPETITION DEFENSE

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MEETING COMPETITION DEFENSE What to do When Your Customer wants Special Terms

- A trade creditor can rebut an allegation of price/credit discrimination by
 - Showing that his special terms to any customer or customers
 - Was made in good faith
 - To meet an equally low price/special credit term of a competitor

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INVESTIGATE BEFORE YOU ACT

- ▶ Run a credit report
- ▶ Check with your credit group to ascertain what is happening with other vendors
- ▶ Review customer's financials
 - ▶ Determine if this pushback is due to some more serious financial issue of the customer

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ALTERNATIVES TO CHANGING CREDIT TERMS

- ▶ Offer a discount for prompt pay
- ▶ Charge and collect interest for slow pay
- ▶ Switch to electronic payments
- ▶ Accept credit card payments
- ▶ Customers with contracts must adhere to contract terms or be in breach

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UNIFIED COMPANY DECISION

- ▶ Credit
- ▶ Sales
- ▶ Finance
- ▶ Legal

All must be involved in the decision to fight back or accept the customer’s push back on terms

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GUIDELINES TO ESTABLISH THE MEETING COMPETITION DEFENSE

- ▶ Reasonably believe the situation is of competitive necessity
- ▶ Believe that granting a lower price will meet the lower price of a competitor
- ▶ Make substantial effort to verify actual price or credit terms
 - ▶ DO NOT CONTACT COMPETITOR

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VERIFY EXISTENCE OF COMPETITIVE OFFER

- Any and all records relating to threats to stop buying from you
- Reports from other customers of similar discounts
- Efforts to corroborate by seeking documentary evidence
- Documentation as to an appraisal of the reasonableness of the competitor's offer in terms of available market data
- Past experience of the seller with the buyer

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WHEN ALL ELSE FAILS: CREATE AN INTERNAL RECORD

- The Name of competitor making offer and date of offer
- Name of the Customer
- Terms and conditions of the offer
- Source of the Information
- A statement as to why you believe your source
- Details as to what investigation was conducted

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ANTITRUST IN THE AGE OF ARTIFICIAL INTELLIGENCE

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ALGORITHMIC PRICING & ANTITRUST CONCERNS

- ▶ Pricing Algorithms are rules or mathematical models that are used by businesses to set the price of a product or service, using data such as demand, competitor prices, costs or customer behavior to determine optimal prices

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BROAD ANTITRUST CONCERNS

- ▶ AI-driven real-time pricing makes coordination easier even without explicit agreements
- ▶ Self-learning algorithms may converge on collusive pricing spontaneously

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COMMON PRICING ALGORITHMS

- ▶ Cost-Plus Pricing Algorithm
- ▶ Dynamic Pricing Algorithm
- ▶ Competitive Pricing Algorithm
- ▶ Value-Based Pricing Algorithm
- ▶ Demand-Based (Elasticity) Pricing Algorithm
- ▶ Personalized Pricing Algorithm
- ▶ Bundle Pricing Algorithm
- ▶ Auction-Based Pricing Algorithm
- ▶ Machine-Learning Pricing Algorithm

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DOJ STATEMENT OF INTEREST ON ALGORITHMS

- ▶ *In re RealPage, Rental Software Antitrust Litigation No. II (2023)*
- ▶ “Algorithms are the new frontier. And, given the amount of information an algorithm can access and digest, this new frontier poses an even greater anticompetitive threat than the last.”
- ▶ “...competitors’ joint use of common algorithms can remove independent decision making.”
- ▶ “It makes no difference that prices are fixed through joint use of an algorithm instead of by a person, just as sharing information through an algorithmic service should be treated the same as sharing information through email, fax machine, or face-to-face conversation.”

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Algorithm and AI Scrutiny

- ▶ Both the DOJ and FTC have explicitly addressed AI in antitrust enforcement, making clear that AI and algorithmic tools are analyzed under existing antitrust law, with scrutiny focused on whether such systems reduce independent decision-making or facilitate coordination among competitors

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DOJ and FTC Viewpoint

- ▶ **Existing antitrust laws fully apply to AI and algorithms**
No new “AI antitrust rules” have been created.
- ▶ **Technology labels do not matter**
DOJ and FTC analyze **economic effect**, not whether a tool is called “AI,” “algorithmic,” or “analytics.”
- ▶ **AI can amplify traditional antitrust risks**
Especially where systems:
 - ▶ aggregate competitor data
 - ▶ align recommendations or strategies
 - ▶ reduce independent decision-making

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What is Being Watched

- ▶ **Behavior, not intent**
Does the system reduce competitive uncertainty or align outcomes?
- ▶ **Information sharing**—direct or automated
Sharing competitively sensitive data through AI or software is treated the same as human-to-human exchanges.
- ▶ **Stand-alone liability** is possible
Information sharing itself can violate Sherman Act §1 if it produces anticompetitive effects—even without an explicit price-fixing agreement.

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Intersection of Credit Functions with AI Risk

- ▶ **Credit-Related Tools Under Scrutiny**
 - ▶ Credit benchmarking platforms
 - ▶ Shared delinquency or payment-experience databases
 - ▶ AI-assisted credit scoring or limit-setting tools
 - ▶ Predictive collection prioritization systems
 - ▶ Vendor “industry norm” dashboards

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California - First State to Expressly Outlaw “Common Pricing Algorithms”

- ▶ AB325 - Effective 2026
- ▶ Outlaws “Common Pricing Algorithms” that
 - ▶ Use Competitor Data
 - ▶ Recommend prices or key commercial terms
 - ▶ Facilitate coordinated behavior

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