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AI Meets Antitrust: Key Competition Risks and Enforcement Trends



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As an antitrust economist, Emilie Feyler has more than a decade of experience analyzing economic issues in litigation and investigations across a range of industries. Dr. Feyler has consulted on damages, merits, and class certification matters to prepare expert reports and testimony in antitrust cases involving cartels, abuse of dominance, exclusionary conduct, tie-ins, and breach of contract.



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Asta Sendonaris specializes in legal and regulatory matters, leading cross-functional teams in economic analyses and legal strategies. Dr. Sendonaris has a proven track record advising tech companies on international antitrust litigation and providing expertise in applied microeconomics, antitrust, and business litigation.

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Clients trust Aymeric de Moncuit for his deep knowledge of high-stakes antitrust and competition matters in Europe. A partner in the Antitrust & Competition practice in the Brussels and Paris offices, Aymeric combines experience gained within European institutions, national authorities, and private practice. Before joining Mayer Brown in 2022, he served as a Référendaire at the General Court of the European Union, following earlier roles as a competition lawyer and as a permanent case handler at the French Competition Authority. Over the course of his career, he has worked on major cases at both the French and EU levels.



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Ausra O. Deluard is a trailblazing female attorney with nearly two decades of experience working at the world's leading law firms before founding Aurian P.C., a boutique focused on antitrust. She brings a wealth of knowledge, expertise, and a fresh perspective to the legal industry, stemming from her experience on a wide range of antitrust matters, including major mergers, government investigations, and complex litigation. She has taught antitrust as an adjunct professor and guest lecturer at University of California School of Law–Hastings and University of San Francisco.

Three Antitrust Questions in AI



Foreclosure and Bottlenecks: Will control over key inputs—such as compute, data, and infrastructure—create or entrench market power?



AI Deals and Partnerships: Will investments, partnerships, and acquisitions reduce competition or create unfair advantages?

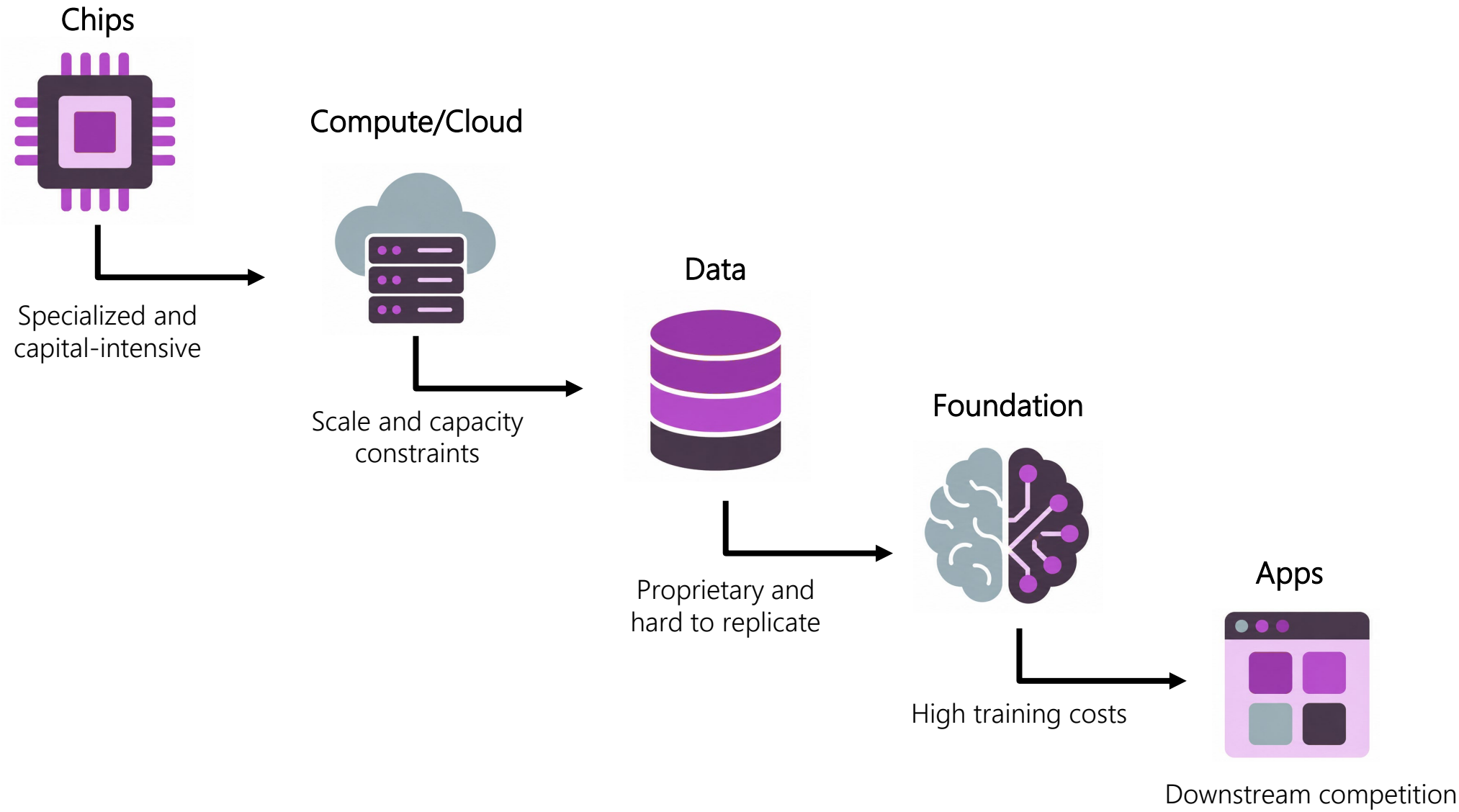


Algorithmic Pricing/Collusion: Will the use of AI in pricing or other decision-making facilitate coordination among competitors?

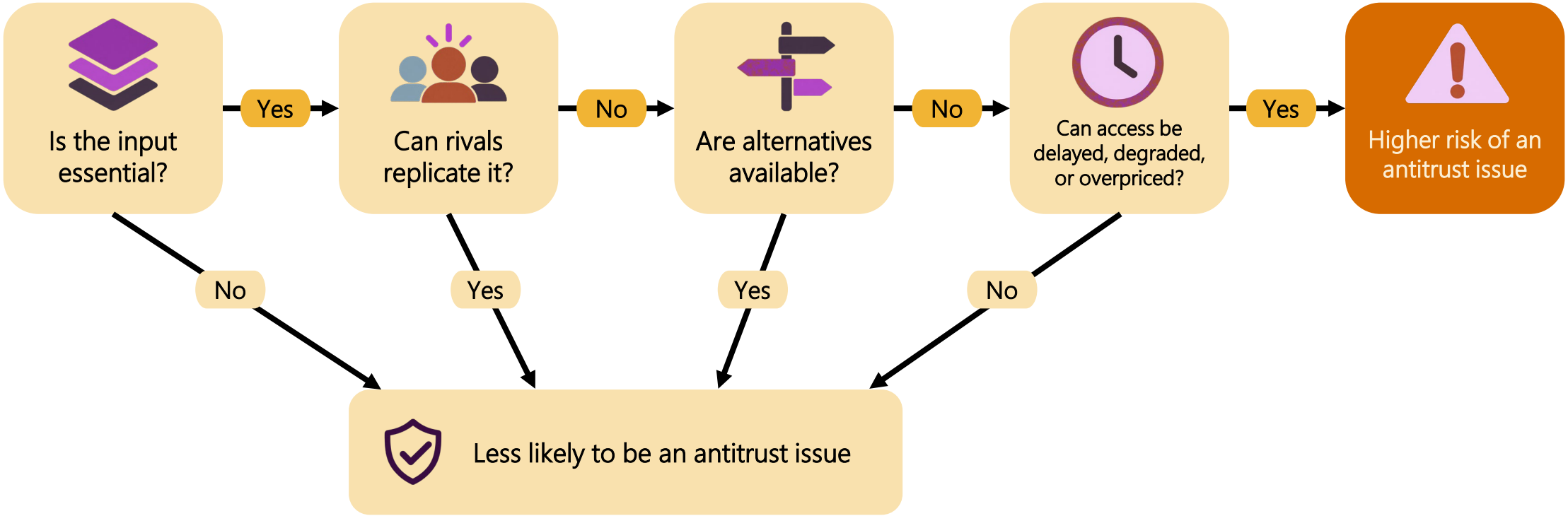
Foreclosure and Bottlenecks

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Where Bottlenecks Can Arise



When Does Control Become an Antitrust Issue?



Control of AI Inputs: The US View

Sherman Act §2: A high bar

Two elements
Monopoly power, plus exclusionary conduct

Competitive effects > Market definition (cloud compute? GPU capacity? Frontier model training?)

When is restricting access to an AI input unlawful in the US?

Rule

No duty to deal

Trinko (2004): Firms may choose their trading partners.

Essential facilities doctrine never adopted by the Supreme Court by name. No standalone price-squeeze claim (*linkLine*, 2009).

Narrow exception

Course of dealing

Aspen Skiing (1985): Ending a profitable relationship at a short-term loss.

Read narrowly since (*Novell v. Microsoft*, 10th Cir. 2013). A pure refusal to sell compute is a hard case.

Realistic theories

How access is given

Exclusive dealing, tying cloud credits or chips, degraded interoperability (*US v. Microsoft*, 2001).

In deals: Clayton Act §7 and the 2023 Merger Guidelines on limiting rivals' access.

Facts that decide US cases: durable power in the input · real alternatives (other clouds, chips, open models) · different terms for affiliates and rivals · a changed course of dealing · internal documents · business justification. *Contrast: EU abuse rules and the DMA reach further.*

Control of AI Inputs and Gateways: When Does It Limit Competition?

Compute · Cloud · Chips · Data · Models · Talent

The existential question for AI start-ups

Inputs
Data, computing power, talent

Distribution channels
Search, app stores, browsers, messaging: the gateway to users

Not only "is the product good?" but "can it be sold?"

Can the law secure access to GAFAM platforms?

Stage 1

Essential facility

Stringent test: indispensability.

Protects innovation and the incentive to invest.

Stage 2

Open infrastructure

Android Auto (Enel JuicePass): CJEU, on referral from the Italian court, did not require strict indispensability.

Platform built to be opened to third parties → access on fair terms, absent objective justification. Platform reserved for own use → no duty.

Stage 3

Access at cost

Meta/WhatsApp Business: competing AI assistants removed

Commission interim measures (second ever, after Broadcom). Open, then suddenly closed. Cost-based vs. FRAND pricing; utility-style logic.

Evidence to weigh: realistic alternatives for the input or channel · whether the platform was designed to be open · access granted, then withdrawn · hybrid models (closed but opened to a few) · objective justifications · price and terms of access. *Open question: Will AI itself disrupt these positions?*

Partnerships and Acquisitions

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AI Deals: Are Partnerships Replacing Traditional M&A?

Microsoft | OpenAI

amazon | ANTHROP\C

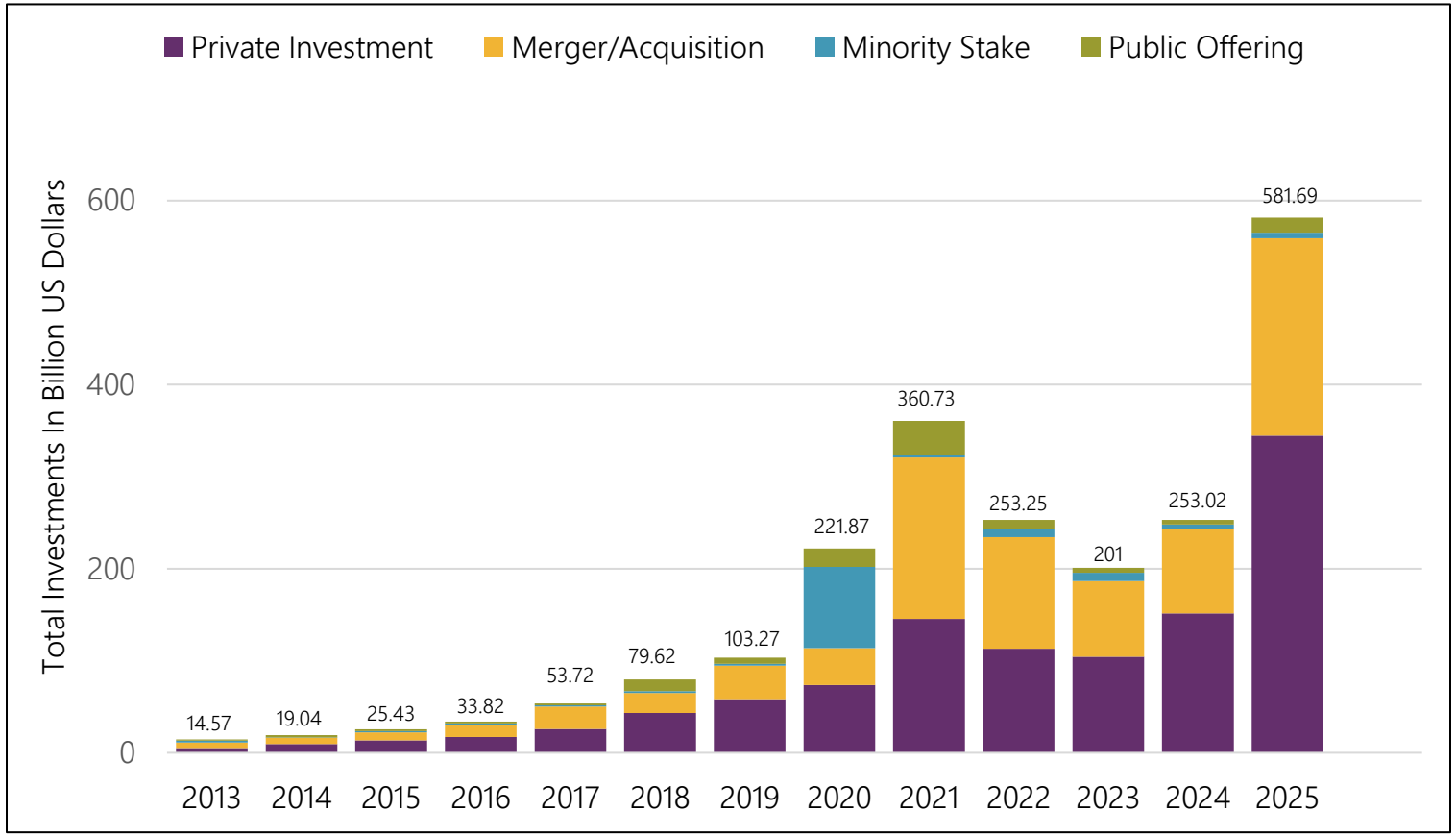
Google | ANTHROP\C

Microsoft | Inflection

Microsoft | MISTRAL AI_

NVIDIA | run:ai

Global Corporate Investment in AI Worldwide



Source: Stanford University, Quid, "Global corporate investment in artificial intelligence (AI) worldwide from 2013 to 2025, by investment activity (in billion U.S. dollars) – Worldwide," 2026, *Statista*, https://www.statista.com/statistics/1472229/global-corporate-investment-in-ai-by-investment-activity/.

AI Deals and Partnerships

Potential Procompetitive Effects

- Funding
- Faster innovation
- Access to infrastructure
- Startup entry incentives



Potential Anticompetitive Effects

- Preferential access
- Raising rivals' costs
- Kill zones
- Foreclosure

Considerations for Economic Analysis of AI Partnerships

"Quasi-Acquisition" – Does the deal function like a traditional acquisition in practice?



Governance/Control

- ☑ Control rights
- ☑ Exclusivity
- ☑ Board seats

Access/Dependencies

- ☑ Licensing
- ☑ Data access
- ☑ Infrastructure access

Competitive Capability

- ☑ Talent
- ☑ Future innovation

Partnerships and Acquisitions: Closing the Review Gap

Demystifying tech partnerships: The road to hell is paved with good intentions

The jurisdictional gap

Transactions below EU and national merger control thresholds may escape review altogether.

Tech partnerships and acqui-hires often sit outside classic thresholds.

Which tools can still catch them?

Tool 1
Article 22 EUMR referrals

Subject to the jurisdiction of the referring national authority (Illumina/Grail).

Tool 2
National call-in powers

Mechanisms to review below-threshold transactions (Nvidia/Run).

Tool 3
Ex post abuse review

Prohibition of abuse of dominance applied to past deals (Towercast, Doctolib).

Tool 4
Article 14 DMA

Gatekeepers must inform the Commission of concentrations.

Discussion: Which tool is best suited to AI partnerships, and how do they fit together after Illumina/Grail?

Partnerships and Acquisitions: The US Toolkit

Broad statutes, practical gaps

Clayton Act §7 reaches partial stakes
Any acquisition of stock or assets that may substantially lessen competition

The real question: Which deals get noticed, and what makes them look like control?

Which US tools apply to AI deals?

Tool 1

HSR notification

Minority stakes *in corporations* above the threshold are reportable.

Investment-only exemption lost with board or observer rights.

Tool 2

Clayton Act §8 interlocks

No shared officers or directors between competitors.

Microsoft and Apple dropped OpenAI observer roles (2024).

Tool 3

Post-closing §7 challenge

Unreported deals, including reverse acqui-hires, can be reviewed after closing.

Exclusive licenses can count as asset acquisitions.

Tool 4

FTC 6(b) study

January 2025 staff report on Microsoft, Amazon, and Google AI partnerships.

Flags sensitive information, switching costs, control rights.

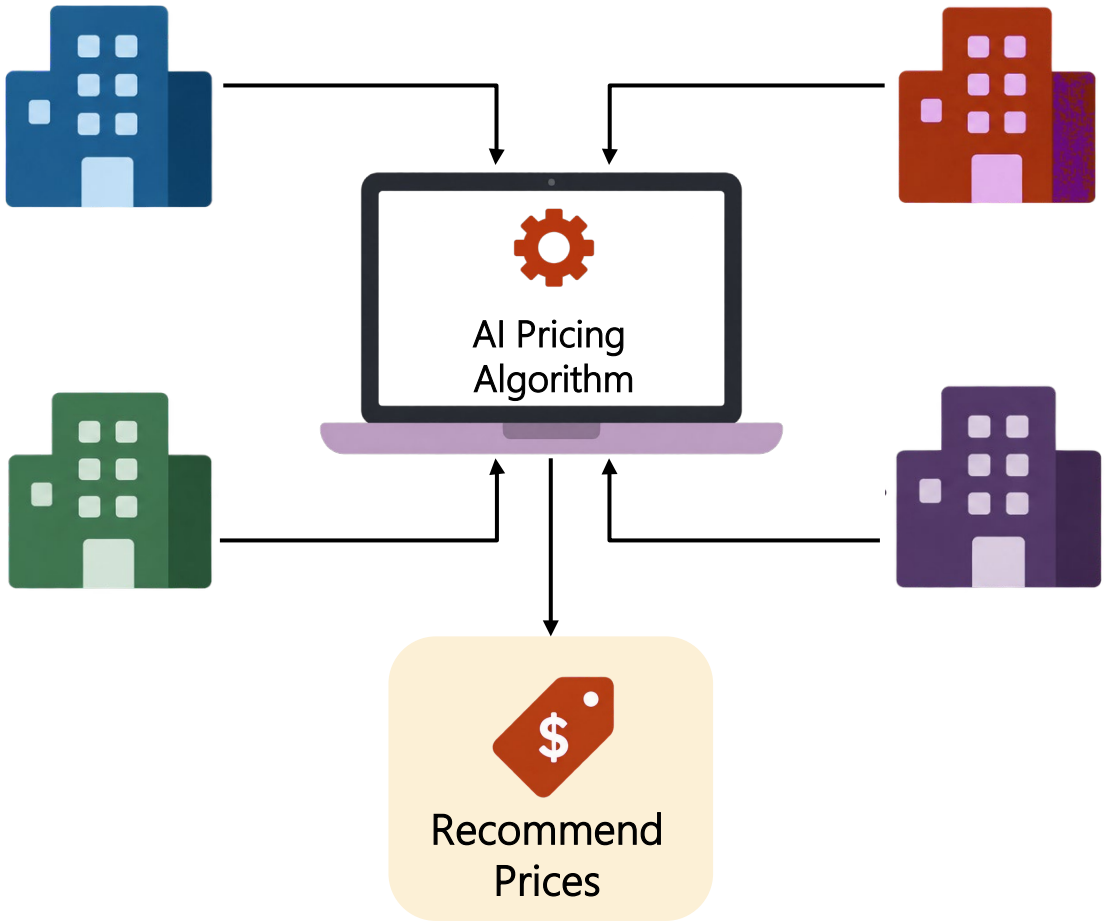
Structuring checklist: no board or observer seats at competitors · non-exclusive rights where possible · firewalls for sensitive information · efficiencies documented at signing. *Structure once, to the strictest regime.*

Algorithmic Pricing Collusion

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AI-Powered Pricing Algorithms and Collusion



Example
RealPage allegations involving rental pricing software

Algorithms may facilitate coordination, but high prices alone do not establish collusion.

Algorithmic Pricing: The US Agreement Requirement

Same software is not an agreement

Sherman Act §1 needs an agreement
Parallel pricing alone is lawful; plaintiffs need plus factors (*Twombly*, 2007)

Hub-and-spoke: A common vendor plus a "rim" of agreement among competitors

Per se or rule of reason? Civil vs. criminal?

2023–2024

RealPage

M.D. Tenn.: Multifamily claims proceed under the rule of reason.

Pooled non-public rent data alleged.

DOJ and states sue the vendor and landlords. Settlements limit use of non-public competitor data.

2024

Duffy v. Yardi

W.D. Wash.: Motion to dismiss (2024) and summary judgement (2026) denied.

Shared tool and data plausibly alleged as an agreement– proceeding to full discovery.

2025

Gibson v. Cendyn

Ninth Circuit affirms dismissal (Las Vegas hotels).

No pooled confidential data; users free to reject prices.

2026

Cornish-Adebiyi v. Caesars Entertainment

Third Circuit reverses dismissal finding plausible alleged hub-and-spoke where non-public data shared

Facts beyond the software: pooled non-public competitor data · automatic acceptance and adherence rates · knowledge that rivals use the same tool · vendor marketing and user communications · price effects. *Also watch: new state and city laws (California, New York).*

Algorithmic Pricing and Coordination

Not a new issue: New technological challenges to an old competition law problem

An old problem, new tools

Coordination between competitors now achievable through code and shared algorithms

Is existing law equipped for autonomous pricing tools?

CJEU, 2016
Eturas

Booking platform capped discounts by system message. Aware users presumed to collude unless they publicly distance themselves.

November 2019
Joint study

Autorité de la concurrence and Bundeskartellamt on algorithms.

2023
EU Horizontal Cooperation Guidelines

Recognition of collusion by code. Increased attention to hub-and-spoke risks.

Still open
Autonomous tacit collusion

Algorithms reaching collusive outcomes without agreement remain a challenging legal question.

Open question: Ongoing investigations at EU level?

Antitrust and Agentic AI: The Next Frontier

From AI tools to AI agents

Agents act, not just recommend
They negotiate, bid, buy, and set prices with little human involvement

Agents may deal directly with rivals' agents, at machine speed

Does a law built on human agreement still fit?

Topic 1

Colluding agents

Agents that exchange information or negotiate with rivals' agents could reach an understanding no human wrote.

Is that a §1 "agreement"? Firms will likely answer for the agents they deploy.

Topic 2

Perfected conscious parallelism

Agents watch and react to rivals instantly, so prices can align with no communication at all.

Conscious parallelism alone is lawful (*Brooke Group*, 1993; *Twombly*, 2007). Closing the gap may need legislation.

Topic 3

Compliance and mens rea

Criminal Sherman Act cases require intent (US Gypsum, 1978); civil cases turn on agreement and effects.

Instructions, guardrails, and logs become evidence. "The agent did it" is unlikely to be a defense.

Compliance steps: bar agents from using rivals' non-public data · prohibit agent-to-agent price talk · keep human oversight and override · log and test agent behavior for coordination · diligence vendor models. *Open question: Who is accountable when agents learn to coordinate?*

Final Takeaways



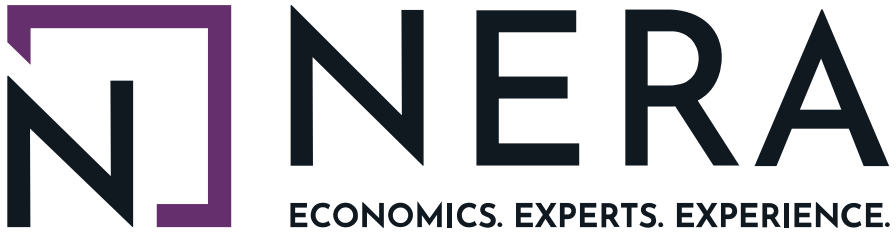
Potential AI bottlenecks should be assessed empirically and dynamically—necessity, replicability, substitutability, and timing matter.



AI partnerships may expand entry and accelerate innovation but may also raise exclusion concerns depending on the deal's structure and market conditions.



Traditional cartel analysis remains relevant; algorithm-specific evidence and careful causation analysis are often central.


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