

# Webcast: The Price is Right (or Wrong): An Antitrust Update on the Treatment of Pricing Practices Under Sherman Act Section 2

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The subject of monopoly remains in the news almost every day but the law of monopolization is not just for companies in the headlines. Join us for another installment in our ongoing look at Sherman Act Section 2 monopolization law. Our topic for this panel is unilateral (single-firm) pricing practices, including low (or zero) prices, “high” prices, package prices and the definition of “price” and “pricing practices.” Our speakers will draw on extensive experience in dealing with antitrust enforcers and in litigating Section 2 issues in the trial and appellate courts.

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## Related People

[Daniel G. Swanson](#)

[Cynthia Richman](#)

[Caeli A. Higney](#)

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## PANELISTS:

**Daniel G. Swanson** serves as Co-Chair of Gibson Dunn’s Antitrust and Competition Practice Group and of the Antitrust Section of the International Bar Association. He is a trial and appellate litigator who holds a Ph.D. in economics from Harvard University. Mr. Swanson has litigated dozens of Sherman Act Section 2 monopolization and dominance cases based on a wide range of alleged conduct (e.g., exclusive dealing, refusals to deal, tying and bundling), including the successful defense of predatory pricing charges brought by the Department of Justice in *United States v. AMR Corp.* His practice has a strong focus on the technology sector, network industries, digital platforms, and media and entertainment businesses and he regularly handles antitrust matters involving intellectual property rights. *Chambers USA* gives Mr. Swanson a “Band 1” ranking and has reported that he “has a vast amount of antitrust expertise,” is “a highly regarded trial lawyer with a wealth of experience” and is “a ‘tough opponent’ in civil and criminal litigation.”

**Cynthia (“Cindy”) Richman** is Co-Partner-in-Charge of the Washington, D.C. office of Gibson, Dunn & Crutcher. She practices in the firm’s Litigation Department and is a member of the firm’s Antitrust and Competition Practice Group. Ms. Richman has been repeatedly recognized by her peers for inclusion in *The Best Lawyers in America*® in the field of Litigation: Antitrust and *U.S. Legal 500* has identified her as a “Next Generation Lawyer” in the areas of merger control, cartels and civil litigation/class action defense. In 2019, she was recognized by *Benchmark Litigation* as a “Future Litigation Star” in Washington, D.C. She was also recognized in 2016 by *Law360* as a Rising Star in the Competition category. Ms. Richman has experience handling a wide variety of antitrust matters in a broad range of industries. Her practice includes defending companies before state and federal courts, including appellate courts, in matters alleging a range of antitrust-based claims, such as price-fixing, tying, bundling, exclusive dealing, predatory pricing and other single-firm conduct theories.

# GIBSON DUNN

**Caeli A. Higney** is a senior associate in the San Francisco office of Gibson, Dunn & Crutcher. She currently practices in the firm's Litigation Department and is a member of the firm's Antitrust and Competition Practice Group. Ms. Higney has represented companies before appellate and trial courts in matters alleging a range of antitrust-based claims, including allegations of monopolization and attempted monopolization, tying, bundling, exclusive dealing, refusal to deal, as well as price-fixing claims. For example, Ms. Higney was part of a team that defended a major consumer electronics company in a multi-week antitrust trial against conspiracy claims brought by the U.S. Department of Justice. Ms. Higney successfully obtained dismissal of conspiracy to monopolize and attempted monopolization claims against a major retailer.

**Daniel P. O'Brien** is a Senior Consultant at Compass Lexecon and former Senior Economic Policy Adviser and Deputy Director of the Federal Trade Commission's Bureau of Economics, and former Chief of the Economic Regulatory Section at the Department of Justice's Antitrust Division. While at the FTC, he oversaw the economic analysis in all of the agency's antitrust investigations. He has led investigations across a wide range of industries, including mobile telephone and internet services, car rental services, retail products manufacturing and distribution, software, futures exchanges, banking, wholesale distribution, aerospace, pharmaceuticals, broadcast television, cable and satellite television programming and distribution, academic journals, aluminum manufacturing, and telecommunications, among others. Currently, Dr. O'Brien is working on research regarding conditional pricing practices (share-based discounts, exclusive dealing, and tying and bundling), common ownership by institutional investors, and the economics of privacy and disclosure, all topics motivated by his work at the antitrust agencies and consulting. Dr. O'Brien presents his antitrust research at various conferences and universities around the world.

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