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# FTC Tech Summit Highlights Enforcement Priorities for Artificial Intelligence

- On January 25, 2024, the Federal Trade Commission (FTC) hosted a virtual Tech Summit on competition and consumer protection issues in artificial intelligence (AI) industries.
- Commission officials stated their intent to use the FTC's investigative and enforcement authority to address competitive conditions in industries with inputs key to AI – such as semiconductors and cloud services – as well as generative AI itself.

The FTC's 2024 Virtual Tech Summit signaled that the FTC intends to strengthen its competition and consumer protection enforcement with regard to artificial intelligence, advanced algorithms and the hardware underlying those products. The Summit featured remarks from Chair Lina Khan, Commissioners Rebecca Slaughter and Alvaro Bedoya, and Bureau Directors Henry Liu and Sam Levine, as well as panelists including academics, technologists, journalists and private practitioners, on the state of competition in the emerging industry.

Chair Lina Khan's remarks began with her call to update the FTC's tools of enforcement for new and emerging technologies. These technologies, she said, can be used to "turbo charge" fraud and privacy violations, and automate discrimination and bias. She emphasized her view that the FTC must make policy choices early in the development of AI to prevent a handful of dominant firms from concentrating control of these tools. Chair Khan provided examples of what the current administration considers to be "missteps" of the past, including allowing mergers in the aerospace, social media and journalism industries. In response to those past practices, the FTC, under its current leadership, has launched an inquiry into generative AI investments and partnerships, issuing compulsory requests for information to several major technology companies, pursuant to its authority under Section 6(b) of the FTC Act to conduct market studies. Khan further used her remarks to highlight three key enforcement principles for the agency going forward: (i) staying focused on how business models drive incentives; (ii) aligning liability with capability of control, looking across the supply chain to determine which actor is causing the law breaking and (iii) creating more bright line rules for liability.

Commissioner Slaughter's remarks further asserted that a "hands off" approach of the government at the beginning of the big data, advertising technology and social media era caused harms to consumers. While the agency is playing "catch up" in those sectors, Commissioner Slaughter said, her view is that it is early enough in the development of AI technology that the FTC can work to prevent the entrenchment of dominant players. Commissioner Slaughter said that harms to competition in the emerging AI industry could arise out of limited access to computer processing power, semiconductors and AI training data. As tools to combat these harms, Slaughter said that the FTC will use its Section 6(b) authority to investigate transactions that do not trigger Hart-Scott-Rodino (HSR) premerger notifications and its authority under Section 5 of the FTC Act to prevent the use of [unfair methods of competition](#).

Commissioner Bedoya spoke about the risks associated with allowing AI to automate bias or discrimination, and called for transparency into the data companies are using to train their AI. He called this an issue of “basic fairness” and asserted his view that, from a competition standpoint, companies making the best technology should prevail on the merits, and not merely those with the greatest scale or power.

Bureau of Competition Director Henry Liu and Bureau of Consumer Protection Director Sam Levine closed out the Summit with remarks that echoed those of the Commissioners. They also suggested that the FTC has learned from prior eras of what they consider to have been inadequate action in new technology markets, and that the FTC intends to use all available tools to fight market concentration, entrenched monopolies and consumer harm.

The thematically aligned remarks of the Commissioners and Bureau Directors signal that the agency intends to be active in enforcing the competition and consumer protection laws in artificial intelligence, advanced algorithms and related hardware industries. Companies in those industries can expect not only a continued vigorous review of HSR premerger notification filings, but also scrutiny of certain transactions that do not trigger HSR notification. The FTC has made clear its view that these transactions could nonetheless violate antitrust law and therefore warrant intervention by the agency. Moreover, the FTC’s broad interpretation of the scope of its authority under Section 5 of the FTC Act could lead the agency to challenge conduct not covered by the Sherman or Clayton Acts.

The FTC is not the only federal agency keeping a close eye on AI issues. Close on the heels of the Virtual Tech Summit, Assistant Attorney General Jonathan Kanter announced on January 31, 2024 that the Department of Justice (DOJ) antitrust division has “numerous” active investigations into artificial intelligence companies, suggesting the FTC and DOJ are working in parallel.

Businesses undertaking investments, partnerships and other transactions in these industries should evaluate potential antitrust concerns regardless of whether the transaction would require HSR notification. The Virtual Tech Summit is a reminder that companies working in artificial intelligence should consult counsel early and often with respect to significant competitive decisions or model or platform development.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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