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FTC Chair Khan Emphasizes Vigilance in Antitrust Oversight of AI Industry

FEBRUARY 6, 2024

Chair Lina Khan of the Federal Trade Commission (FTC) recently addressed the FTC's first Technology Summit on Artificial Intelligence. In her opening remarks, she expressed excitement about the event, highlighting the diverse expertise of the panelists and commending the efforts of the Office of Technology.

Chair Khan acknowledged the rapid deployment of artificial intelligence tools, bringing attention to the awe-inspiring breakthroughs in various fields. However, she also noted concerns about AI's potential to turbocharge fraud, automate discrimination, and entrench surveillance, raising fundamental questions about power and governance in the industry.

Drawing parallels with historical instances of market concentration, Chair Khan emphasized the need to avoid concentrating control over key AI tools in the hands of a few dominant firms. She referenced past missteps, such as the consolidation of power during the Web 2.0 era, which led to adverse consequences including privacy violations and harm to independent journalism.

To address these concerns, Chair Khan announced a market inquiry into investments and partnerships between AI developers and major cloud service providers. The FTC aims to scrutinize whether such ties enable undue influence or privileged access, potentially undermining fair competition across AI layers.

Chair Khan outlined three key principles guiding the FTC's approach to AI oversight. First, the agency focuses on aligning business models with legal requirements, ensuring that algorithmic refinement does not compromise privacy or security. Second, the FTC seeks to align liability with capability and control, holding actors accountable for law-breaking upstream in the AI stack. Third, the agency emphasizes crafting effective remedies to address underlying business incentives and establish clear rules for AI inputs.

Chair Khan highlighted recent cases, such as the order against Rite Aid, where the FTC banned the use of facial recognition tools after privacy concerns emerged. The agency is keen on setting boundaries for content used in scraping and model training to protect against potential abuses of generative AI models. She also underscored the agency's commitment to leveraging its experience and expertise to strike a balance between unlocking AI's potential benefits and safeguarding against potential harms through vigilant enforcement of antitrust and consumer protection laws.

Given the FTC's active focus on artificial intelligence, industry leaders should consider expanding antitrust compliance training to include training on AI-related regulations and legal risks. As they develop their growth strategies, participants in the artificial intelligence and machine learning markets should consider the FTC's consolidation and bottlenecking concerns. Winston's Artificial Intelligence Strategy Group brings together attorneys across practices with years of experience advising on issues at the intersection of antitrust, IP, and technology who can help clients manage the shifting regulatory landscape.

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