

Can the FTC Regulate AI Without Help From Congress?

A photograph of a modern building's curved glass facade, showing multiple stories of windows reflecting the sky. The building is on the right side of the frame, curving away from the viewer.

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By: Michael L. Keeley

While there has been a great deal of attention on the need to regulate Artificial Intelligence (before our self-driving cars and smartphones conspire to eliminate the humans), it's less clear which regulator -- if any -- has the power to do so. The FTC, led by Chair Lina Khan, has asserted authority under existing antitrust and consumer protection laws to take on AI. But other than specific acts of monopolization or deceptive conduct by specific companies, it's hard to see how the FTC can regulate AI under current law.

Wisely, Chair Khan has flagged that Congress should consider legislation to set the boundaries around what AI can and cannot lawfully do. In other areas, like mergers, the FTC has been reluctant to acknowledge that its powers do not necessarily reach all the conduct that it wants to police.

Ultimately, it will be the courts that have the last word -- perhaps when an AI company becomes a target of FTC enforcement action.

“There is no AI exemption to the laws on the books,” Khan said, stressing that her agency already had the authority to rein in AI.

“It’s no secret that there are defendants that are pushing certain arguments about FTC’s authority,” she added, alluding to disputes over the reach of the agency’s ability to police anticompetitive conduct.

Still, she said it would be helpful for Congress to add additional “bright-line” rules about what practices are permitted, what practices are prohibited. “I think could provide a lot more clarity,” she said.

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