ML STRATEGIES

FTC Chair Khan: “We Need to Choose Competition over National Champions” in the AI Age — AI: The Washington Report

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VIEWPOINT TOPICS

- Artificial Intelligence
- AI: The Washington Report

1. Federal Trade Commission (FTC or Commission) Chair Lina Khan spoke at the Carnegie Endowment for Peace at a program entitled “**The Future of American Innovation**” on March 13, 2024. We find her speech notable for its insights into the thinking of the chair of the agency that has been most active in using existing authority to challenge AI practices.
2. Khan’s central argument was that the fostering of “national champions,” or large firms in strategic industries that are protected from certain forms of regulation, slows innovation and is particularly inappropriate to the AI age.
3. The chair asserted that the FTC is in the process of understanding the AI stack and, on the basis of these investigations, will determine whether to “update our toolkit to start addressing the kind of new AI tactics we’re going to be seeing in the marketplace.”

On March 13, 2024, the Carnegie Endowment for Peace hosted Federal Trade Commission (FTC or Commission) Chair Lina Khan for a panel entitled “**The Future of American Innovation**.” The panel discussion, which broadly concerned the state of American innovation, focused heavily on AI, and provided further insight into the Commission’s enforcement stance regarding AI. We find her speech notable for its insights into the thinking of the chair of the agency that has been most active using existing authority to challenge AI practices.

Chair Khan’s Rejection of the “National Champions” Argument

The central argument of Chair Khan’s presentation is that the supposition that national innovation is strengthened by the protection of “national champions” is flawed.

The national champion thesis holds that in core industries, national governments should cultivate domestic firms that will advance the nation’s interest and global competitiveness. Some advocates of this approach hold that due to their strategic importance, national champions should not be subject to as stringent antitrust regulation.

Khan pushed back against this argument, asserting that “we should instead recognize that monopoly power in America today is a major threat to our national interests and global leadership.” The chair argued that relying on a single national champion for a strategic industry can make a nation’s economy more brittle and reduce the chances of breakthrough innovations emerging.

“In a concentrated system a single shock can have cascading effects yielding shortages in products ranging from baby formula to IV bags,” asserted Khan. “Research shows that while monopolies may help deliver marginal innovations and improvements, breakthrough and paradigm-shifting innovations have historically come from the disruptive outsider.”

With regard to AI, Khan argued that it was the antitrust suits against IBM and other potential national champions in the 1970s, ‘80s, and ‘90s that allowed for the emergence of the internet economy, and, eventually, generative AI.

Khan expressed the view that rather than follow the protectionist path charted by Europe and Japan, in the closing decades of the twentieth century, “America instead chose to promote competition, and that choice to bring antitrust lawsuits against IBM and AT&T ended up fostering waves of innovation including the personal computer, the Telecommunications Revolution, and the logic chip. The national champions protected by Japan and Europe meanwhile fell behind and are long forgotten. In the US we bet on competition, and that made all the difference.”

Therefore, for Khan, the commencement of the AI age has made aggressive antitrust enforcement more, rather than less, important. “To stay ahead globally we don’t need to protect our monopolies from innovation: we need to protect innovation from monopolies. We need to choose competition over national champions.”

The FTC’s Current AI Efforts

There is no technology quite so central to the issue of national innovation as AI. In her presentation, Chair Khan discussed and reflected on the Commission’s current efforts on AI. According to Chair Khan, the FTC is presently focused on gathering information regarding the AI economy. “The FTC has really been taking a look across the AI stack from the chips to the cloud to the models to the downstream applications and figuring out the market structure.”

Based on these investigations, the FTC plans to either utilize its existing enforcement authority to police the AI economy or advocate for further legislative reforms. “I think this is a really key moment for us to be understanding what are the key properties across each of these layers. Do we think antitrust and competition will be sufficient to discipline market power and the abuses that can follow, or do we instead need an additional set of policy tools and levers of the kind that we’ve traditionally applied in more of the infrastructure markets,” stated Khan.

Khan asserted that the FTC is actively considering whether the Commission needs to “update our toolkit to start addressing the kind of new AI tactics we’re going to be seeing in the marketplace.”

The vigorous enforcement stance adopted by the FTC regarding AI, explained Khan, is in part shaped by the relatively lax attitude the Commission adopted during the early years of social media. Echoing arguments made by the **Commission’s Consumer Protection Bureau Chief Samuel Levine, in a September 2023 speech**, Khan stated that there’s a “sense that we want to learn from the missed opportunities of Web 2.0.”

“In the early 2000s,” opined Khan, “there was a sense that digital markets are so fast moving that if you are to see problems of market power, that will self-correct, and so the best thing for the government to do is to get out of the way.” In the AI age, Chair Khan’s FTC is seeking to make a clean break with this approach.

An audience member asked Khan whether the FTC is working with other jurisdictions on AI regulation issues. “We’re always really keen to know what our other enforcers are learning, and so whenever we see you know a jurisdiction put out a report or a study with their findings, we will look at that very closely.”

Conclusion: There are (Still) No AI Exemptions on the Books, Says Khan

In her presentation, Khan reiterated the FTC’s stance that a violation of the law does not cease being a violation if committed with AI. An audience member asked Khan under “what circumstance should the exact same activity if it’s committed by a natural human being using no artificial intelligence versus the exact same activity if it’s committed by a natural human being using artificial intelligence be treated differently or punished differently?”

“From the perspective of the FTC we’ve been really focused on making sure that firms know there is no AI exemption from the laws on the books,” asserted Khan. “Price fixing and fraud are illegal under the laws, and so using AI doesn’t get you some type of free pass.”

With the “cover” of **President Biden’s AI Executive Order**, the FTC will clearly — for at least the next year — assert its existing authority under both competition and consumer protection frameworks.**[1]** It is not yet clear whether the recent **arrival of two Republican Commissioners** will affect the Commission’s AI agenda. Previously, Chair Khan had been willing to move forward on 3-2 votes.

We will continue to monitor, analyze, and issue reports on the pronouncements and initiatives of the FTC. Please feel free to contact us if you have questions as to current practices or how to proceed.

Endnotes

[1] President Biden's AI Executive Order **explicitly directs the FTC** to consider "whether to exercise the Commission's existing authorities, including its rulemaking authority under the Federal Trade Commission Act…to ensure fair competition in the AI marketplace and to ensure that consumers and workers are protected from harms that may be enabled by the use of AI."

Authors

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