ML STRATEGIES

Does Trump's AI Action Plan Handcuff the FTC and Antitrust Enforcement? — AI: The Washington Report

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VIEWPOINT TOPICS

- Artificial Intelligence
- AI: The Washington Report

- With its existing authority, the Federal Trade Commission was considered a likely situs for federal regulatory and antitrust enforcement vis-à-vis AI. However, instead President Trump's AI Action Plan directs the FTC to revisit and potentially roll back Biden-era investigations, consent decrees, and enforcement actions if they are found to "unduly burden AI innovation" — a move that could unwind consumer protections and compliance mandates tied to deceptive AI tools, privacy risks, and anti-competitive behavior. Moreover, it raises the question as to how far the FTC (and Antitrust Division) will be required to stand down to permit the administration's AI vision to succeed.
- Under President Biden, the FTC aggressively targeted AI misuse through initiatives like *Operation AI Comply*, a major *6(b) inquiry* into AI company partnerships, and an expanded enforcement mandate aimed at curbing deceptive practices and protecting consumer data in AI-driven platforms.
- This review directed by the Action Plan could directly affect antitrust scrutiny and AI governance, softening regulatory pressure on tech mergers and weakening guardrails around chip programs, foundation model investments, and AI infrastructure – especially under new Trump-appointed FTC leadership aligned with deregulatory priorities.

AI Action Plan Could Lead to Abandoning FTC's AI Consumer Protection Practices

On July 23, the Trump administration released the **AI Action Plan** highlighting new key implementations to further AI innovation, infrastructure, and international dominance by the United States. One particular directive would appear to require walking back previous FTC actions that the Federal Trade Commission (FTC) took in the protection of consumers within the AI sector. The Action Plan directs the FTC to review all investigations commenced under the Biden administration to "ensure that they do not advance theories of liability that unduly burden AI innovation." Additionally, the agency is to review all final orders, consent decrees, and injunctions, and "modify or set aside" any that also may burden AI innovation.

To some, this newly mandated review is seen as "another signal of AI deregulation at the federal level" and a "free-for-all for the most connected companies to get a reprieve from having to follow the law." This could create potential rollbacks of AI enforcement led by the FTC under the Biden administration such as Operation AI Comply, which targeted deceptive AI advertising, a series of 6(b) inquiries examining the data practices of major foundation model developers, and a broad omnibus resolution giving FTC staff extended authority over emerging AI threats. These efforts were aimed at ensuring transparency and to show "whether investments and partnerships pursued by dominant companies risk distorting innovation and undermining fair competition." It would suggest that the administration has concluded that the priorities embedded in the Action Plan should override much, if not most, of the antitrust and consumer protection enforcement in this space.

Under President Biden, the FTC took an aggressive stance on mergers and strategic investments, examining deals of "acquihiring" and AI solutions. While companies were scrutinized for their competitive and labor implications, such actions may be more favorably viewed or entirely reversed under the AI Action Plan's approach. Consent decrees and injunctions from AI-related enforcement cases might be diluted or invalidated to reduce perceived regulatory burdens on AI companies in order to chase the goals laid out in the Action Plan.

For innovators and AI companies, the plan calls for fewer restraints and more flexibility to experiment, partner, and scale. For consumers, however, it brings concerns about the possible rollback of protections against unfair, unsafe, or biased practices. And for market competition, it opens the door to renewed consolidation among tech giants, with less scrutiny of whether strategic hires or deals stifle innovation or workforce diversity.

Beyond AI enforcement rollback, this scale of deregulation aligns with President Trump's initiatives to increase AI infrastructure. A less interventionist FTC could correspond with lessened state AI regulations, accelerated infrastructure projects, and relaxed export controls on chips and compute resources.

This brings concerns about the volume of potential rollbacks on past AI enforcement, as "any company with a lawyer is going to be able to argue with the FTC that being under investigation is going to impede AI innovation."

How Far Will This Approach Actually Extend and Affect Enforcement and Regulatory Decisions?

Obviously, actions will speak louder than words. The coming months will provide more clarity as to whether the administration will prioritize the AI Action Plan and what the effects of that prioritization will be. The fears that are being expressed have been stoked by several instances where antitrust enforcers' litigation positions were overridden by non-antitrust decision makers, such as the HP-Jupiter settlement, and the abandonment of the pending Amen Travel merger.

Two bellwethers to watch that may provide some guidance on this potential tension. First, the antitrust enforcers have been increasingly concerned with early stage acquisitions in the tech space as reducing the potential for innovation and competition; it is in fact at the heart of the FTC's current litigation against Meta. Will those theories be invoked in antitrust reviews of AI acquisitions and licenses, where deal volume is quite high?

Second, the Antitrust Division has a pending investigation of Nvidia, examining whether it improperly acquired or misused market power with respect to AI chips. Nvidia sales to China and revenue sharing with the government have been a subject of White House attention. In this atmosphere, what will happen to the antitrust investigation?

We will continue to monitor, analyze, and issue reports on these developments. Please feel free to contact us if you have questions about current practices or how to proceed.

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