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RESEARCH SUMMARY

Artificial Intelligence and Antitrust Law: A Primer

Artificial Intelligence (AI) embodies rapidly evolving technologies that have the potential to greatly improve human life and economic outcomes. But it also poses a range of challenges for policymakers and antitrust enforcers such as the Federal Trade Commission and the Department of Justice. In "Artificial Intelligence and Antitrust Law: A Primer," Satya Marar shows how we can facilitate AI development and support a pro-innovation economy while mitigating AI's possible harms.

Protecting Competition, Benefiting Consumers

For decades, consumer welfare enhancement has been the goal of antitrust law, with decision-making based on whether a business practice is likely to harm or benefit consumers and the competitive process. This approach has made antitrust law flexible and pragmatic, capable of adapting to emerging technologies like AI.

Recently, however, there have been calls to abandon the consumer welfare standard in favor of protecting competitors and disfavoring large businesses. There have also been calls to broaden the realm of antitrust to include labor rights, environmental regulation, economic "fairness," and other considerations. Such moves would politicize antitrust, increase costs and uncertainty for business, and hinder innovation.

A Cost-Benefit Approach to Antitrust and AI

Enforcement agencies should be mindful of the potential of AI to harm the competitive process and consumers. But they should always appraise costs and benefits when calibrating enforcement approaches.

- Horizontal and vertical mergers, the use of AI algorithms, and business strategies that harm competitors but not consumers or competition—all have the potential to increase competition, promote innovation, and benefit consumers.
- Business practices should be judged case by case by applying the rule of reason to specific markets where there is a potential for concrete, plausible consumer harm.
- Attempts to block mergers should be made on a selective basis that recognizes the limited resources of the agencies and the potential for procompetitive efficiencies such as reduced costs for the business and lower prices for consumers.
- Merger enforcement initiatives should be undertaken when it is likely that the postmerger entity will have both the incentive and ability to engage in anticompetitive conduct.

Such an approach to antitrust and consumer protection will ensure that the United States remains a robust and competitive market for the development of cutting-edge AI technology while also addressing its potential and actual harms.