Congress Should Reject Proposed AI Antitrust Exemption

Problems with Collaboration on Adversarial Threats and Security Risks Act (S.5105/H.R.9914)

AMERICAN ECONOMIC LIBERTIES PROJECT

Earlier this month, *Semafor* reported that an antitrust exemption for artificial intelligence (AI) labs may be attached to the Senate's National Defense Authorization Act (NDAA) bill. The provision appears to be based on S.5105, the Collaboration on Adversarial Threats and Security Risks Act (CATSRA), sponsored by Sens. Adam Schiff (D-CA) and Jim Banks (R-IN). Companion legislation (H.R. 9914) has been introduced in the House by Reps. Robert Latta (R-OH) and George Whitesides (D-CA).

This effort has been explained as an extension of the Cybersecurity Information Sharing Act of 2015 (CISA) for AI labs.

In reality, CATSRA goes far beyond the CISA 2015 antitrust exemption and would immunize anticompetitive–even unsafe–conduct from AI labs from legal liability.

CATSRA extends the antitrust exemption far beyond CISA.

- CISA protected companies sharing cyber threat information with each other.
- CATSRA's Section 3(a)(2) is far broader, protecting companies coordinating to delay or limit release, deployment, or use of AI—and doesn't say whose AI.
  - The bill is not limited to competitors voluntarily holding back their own releases.
  - For example, it could allow Big Tech firms to collude to block new releases from startups that are safer and pose a competitive threat to incumbents.

CATSRA removes CISA's guardrails against pretextual collusion.

- CISA made clear that sharing information for cybersecurity purposes did not excuse price-fixing, market allocation, or boycotting.
- CATSRA uses that language only for the information-sharing provision.
  - The coordinated-delay provision has no such limitation.
  - Anticompetitive conduct by AI labs would be insulated from antitrust liability.

CATSRA sets vague parameters to limit coordination by AI labs, making the AI exemption ripe for exploitation.

- CISA focused on defined cybersecurity threats to specific systems.
- CATSRA only requires the "potential" for AI to pose a risk.
  - This includes a model being hard to "oversee, evaluate, monitor, or control" or improving its own capabilities.
  - Coordinated delays can be justified merely on an AI lab wanting to identify, evaluate, or analyze risks.
  - The vague parameters in the bill's definitions are ripe for pretextual exploitation.

CATSRA jeopardizes whistleblower protections.

- CISA expressly preserved whistleblower protections under other laws.
- CATSRA does not, creating ambiguity that might deter whistleblowers from coming forward, even when they're warning about AI risks and harm.

CATSRA includes no meaningful government oversight or review.

- CISA included a 10-year sunset period ensuring Congressional review.
- CATSRA does not sunset. Although the coordination-delay provision requires giving notice to government enforcers, that could be satisfied without giving enforcers any advance time to review or act.