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New FTC Resolution Confirms Commission's Intent to Regulate AI and Paves the Way for Future Investigations and Enforcement Actions

Minding Your Business on **December 5, 2023**

Making do on its promise to "use every tool" in its arsenal to regulate artificial intelligence ('AI"), the Federal Trade Commission ("FTC") unanimously approved a resolution on November 21, 2023 authorizing the use of compulsory process in non-public investigations involving AI-related products and services.

The FTC's most-used compulsory tool is the "civil investigative demand" or "CID." Akin to a subpoena, a CID enables the FTC to request the production of a wide range of information, documents, and testimony from a company that is alleged to have engaged in "unfair or deceptive" business practices.

The Resolution – which is effective for ten years – pre-authorizes the use of compulsory process in connection with a broad topic of investigation, making it easier for the FTC to issue discovery demands in connection with investigations relating to AI.

In reporting on the Resolution's approval, the FTC reiterated its concerns that "AI can raise competition issues in a variety of ways, including if one or just a few companies control the essential inputs or technologies that underpin AI." It also noted that, while AI may have some beneficial uses, "it can also be used to engage in fraud, deception, infringements on privacy, and other unfair practices."

The Resolution confirms the Commission's focus on AI and demonstrates that the FTC is poised to enforce its powers under Section 5 of the FTC Act in the space.

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