BEEPER

Written Testimony for the Record of
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The Impact of Consolidation and Monopoly Power on American Innovation

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Chairwoman Klobuchar, Ranking Member Lee and Members of the Committee:

Thank you for the opportunity to testify today. My name is Eric Migicovsky and I am the Founder and CEO of Beeper Inc. We are a one-year-old startup with 20 employees. Beeper is a new chat messaging app that can send and receive messages over 15 established chat networks, including Facebook Messenger, WhatsApp, iMessage, and SMS, in addition to open alternative networks such as the Matrix protocol. Beeper solves the problem of communicating with friends, colleagues and family who are dispersed among a large number of messaging services, none of which interoperate with each other. Beeper makes communication simple and efficient, by giving users one inbox to receive messages and communicate with people, regardless of which platform they're on.

Beeper is my second startup. Previously I founded Pebble. We invented the smartwatch and did $250M in sales. But after trying to compete with the Apple Watch on an uneven playing field, we were forced to sell to Fitbit in 2016. More recently, I was a partner at the VC firm Y Combinator, where I witnessed first-hand the power of innovation in the startup world. Today, I would like to share my experience with some of the challenges new products can encounter in markets dominated by big tech companies.

Overview of the Beeper Product

I started building Beeper because I was tired of having to keep track of all the different chat apps my friends were using. I wanted one single place to chat with everyone I knew. With the help of my team, we launched the beta version of Beeper earlier this year. Our goal is to make Beeper connect seamlessly with every other major chat network, so people can communicate freely, without the friction caused by closed networks that only allow communication between their own users.

Another motivating factor for us is security and privacy. Eighty percent of chat apps do not offer encryption to users. We're building Beeper as an alternative to chat apps run by large social networks that exist to capture more data from their users. Beeper does not monetize data from its users. We simply charge a fee for our service.

Problem

Today, we have several thousand people beta testing Beeper but we're finding it to be increasingly hard to connect Beeper to chat networks run by big tech companies.

Our concerns about a level playing field aren't simply theoretical. In particular, we are worried about Facebook. They take very aggressive actions against companies that attempt to interoperate with their network, like in the case of *Facebook v Power Ventures*[1] where they pursued CFAA, copyright and other claims.

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[1] *Facebook, Inc. v. Power Ventures, Inc.*, 844 F.3d 1058 (9th Cir. 2016), *cert. denied*, 138 S. Ct. 313 (2017).

My goal here today is to support legislation, like Sens. Klobuchar and Grassley's S.2992, the American Innovation and Choice Online Act, Sens. Blumenthal and Blackburn's, S.2710, the Open App Markets Act, House bill HR, 3849, the ACCESS Act, and explain how increased innovation in the chat market would result.

The Big Tech Platforms are Creating Barriers to Interoperability and Innovation in Chat

Chat is now the dominant form of communication. Just ask any teenager if they've sent an email or made a phone call in the last week. Over 3 billion people use chat every day. The major chat apps today are controlled by big tech companies, and unfortunately, because users can't effectively switch apps or communicate between apps, user choice is stifled and the platforms have no incentive to innovate. Most of the popular chat platforms were created over 10 years ago, and even as their user base has grown substantially, the pace of development and innovation has slowed. WhatsApp's most recent new feature was Status, which they copied from Snapchat.

The main reason why there is little innovation in chat is because of the lock-in network effects of the apps run by big tech companies. Users are locked in, because chat platforms don't interoperate: each major chat network operates separately, and their users can't communicate with each other.

If you are on WhatsApp, you can only chat with people who are also on WhatsApp. The simple truth is that most users do not use a specific chat app because of its features or benefits: they use it because their friends are on the same app. The tech platforms exploit this network effect to build their user base and lock people into using their product.

This lock-in makes it practically impossible to switch networks. If you want to communicate with your friends and family, and see their photos, you need to join these services, regardless of whether or not you agree with their policies or like their particular set of features. When WhatsApp changed its privacy policy in January 2021, many people tried to leave the platform. But it's very difficult to convince your group chats to move, and difficult to take your own personal data from Whatsapp to another chat service.

This lock-in network effect also prevents new competitors with innovative ideas from getting off the ground. The recent acquisitions of Quill[2] and Sphere[3] by Twitter are clear examples of nascent companies getting scooped up by big tech companies after running into trouble competing with entrenched network effects.

Apple's iMessage has created a two-tiered system, where people who can afford expensive iPhones enjoy privacy and encryption, and their chat is represented in blue bubbles, while people on other platforms who use SMS are downgraded to a green bubble. This small change in the

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[2] Kim Lyons, *Twitter acquires messaging platform Quill to make DMs suck less,* The Verge (Dec. 7, 2021), theverge.com/2021/12/7/22822184/twitter-quill-messaging-platform-dms-slack.
[3] Manish Singh, *Twitter acquires group chat app Sphere,* TechCrunch (Oct. 20, 2021), techcrunch.com/2021/10/20/twitter-acquires-group-chat-app-sphere.

user interface has surprisingly profound societal impacts. For example, a report[4] shows that Apple has steadily over time decreased the contrast ratio of green bubbles relative to blue bubbles, such that the green bubbles are considerably less readable. iMessage users don't have the ability to alter how the bubbles appear, and don't have any options for sending text messages outside of iMessage.

Big Tech has No Incentive to Innovate and Compete Because Users are Locked In

Because the big tech companies already have a guaranteed user base due to the sheer number of users already on their platforms, they have no incentive to compete for users: users are required to join in order to communicate with their friends, colleagues and family members. The lock-in effects of today's chat walled gardens prevents new competitors with innovative ideas from getting a toe-hold in the market.

The big platforms also have limited incentive to compete on privacy, and do not transparently communicate to users how their personal information is being exploited. Users cannot make informed decisions regarding their own data.

Interoperability would increase access to feature-rich, secure, and private networks by enabling users to freely choose chat providers based on features and benefits rather than size of network.

Big Tech is Actively Attempting to Thwart Efforts at Interoperability

Our concerns about a level playing field aren't simply theoretical. Tech platforms have historically taken aggressive action against companies that attempt to interoperate with their network. For example, in the case of *Facebook v. Power Ventures*[5], Facebook used technical blocks, alleged intellectual property infringement, and leveraged the Computer Fraud and Abuse Act[6] to prevent a service from interoperating with it. That service allowed users to communicate with their friends across multiple social media services in one location, which would have fostered greater user choice and competition in the social media space. Since this case, the tech platforms have been emboldened to impede competition by choosing which services may and may not connect with them. This was not an isolated incident. LinkedIn (a Microsoft company), for example, attempted to block a service called HiQ from reading publicly-available information on its website. Although an injunction is currently protecting HiQ, the case remains pending.[7]

Today, we have several thousand people beta testing Beeper, and we're concerned that the powerful chat companies may attempt similar actions against Beeper, for example by attempting to impose unreasonable design constraints or other barriers to interoperability. This would

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[4] S.D.C., *How Apple taught its users to hate Android through subtle design cues,* Medium (Oct. 6, 2020), https://medium.com/@_sdc/how-apple-taught-its-users-to-hate-android-through-subtle-design-cues-518cd7eda80
[5] *Facebook, Inc. v. Power Ventures, Inc.*, 844 F.3d 1058 (9th Cir. 2016), cert. denied, 138 S. Ct. 313 (2017).
[6] 18 U.S.C. § 1030 et seq.
[7] hiQ Labs, I*nc. v. LinkedIn Corp., 938 F.3d 985 (9th Cir. 2019), cert. granted, judgment vacated, No. 19-1116, 2021 WL 2405144 (U.S. June 14, 2021).*

negatively impact the ability of companies like Beeper to deliver services in a way that is most helpful to users.

Big Tech Distorts the Market by Giving Away its Product for Free

Finally, the chat market is a distorted market. Big tech companies give away their chat products for free, because chat is a reliable way to lock users into social platforms for the purpose of mining user data. It certainly does not help that these companies do not transparently communicate to users how their personal data is used.

Beeper's business model is different. We charge users a subscription fee to use our app, aligning interests between us and our users. Invasive data collection does not happen on our platform - Beeper users pay us for a service, and we are transparent about what we offer in return.

Interoperability Would Foster Competition and Innovation, and Provide Consumers Meaningful Choice

Interoperability gives users the freedom to switch chat networks, without sacrificing their personal connections to friends and family. This is fundamental to giving consumers a meaningful ability to choose between platforms based on their competitive features, as opposed to their ability to leverage the size of their existing user base.

This is not a radical nor an unusual concept. Email is interoperable - Gmail users can send emails to Outlook users. This interoperability means that anyone can send anyone else an email, rather than being limited to communicating only with a Google-only or a Microsoft-only network. Recently, new startups, like Superhuman and Hey, have flourished by building new email services on top of the underlying open interoperable email system.

Twenty years ago, if you had an AT&T phone, you could only send a text message to someone who also was on AT&T. SMS made it so anyone with a modern smartphone can message anyone else, opening the door to the world we have now, where chat is the dominant mode of messaging. But unlike SMS, which works on every phone, the services offered by the big platforms do not interoperate or connect with each other.

Solutions

We support a regulatory framework for big tech that promotes a more open Internet and a level playing field, where companies compete with innovative features and benefits. If users don't have a meaningful choice about their participation in a platform, then platforms have no reason to provide features that are in users' best interest. Chat should work like email: where any chat user can message any other, without regard to which platform they are on. This can be done without changing the architecture of chat as it exists today: simply by ensuring the ability of competitors to interoperate. And it can be done without sacrificing security or privacy. Beeper is built on top of an open source chat protocol that is end-to-end encrypted, meaning no one, not even Beeper, can read your messages.

I firmly believe that the package of bills designed to foster competition in tech that this Subcommittee is considering is a critically important step towards securing the type of competition that will enable the next generation of services built on chat to exist. That is why I strongly support Sens. Klobuchar and Grassley's S.2992 American Innovation and Choice Online Act, Sens. Blumenthal, Klobuchar and Blackburn's S.2710 Open App Markets Act, as well as the HR. 3849 ACCESS Act in the House.

Conclusion

Without regulation, large tech companies will continue to dominate, stifle innovation and limit consumer choice. New innovation in the chat space is only possible through robust competition, free from the control of today's digital gatekeepers. Ensuring open and equal competition will sustain and foster innovation, job growth, and a thriving startup community.

Interoperability breeds innovation. Interoperability is a means of allowing the marketplace to address issues of competition and innovation, the challenges caused by big tech companies around issues of privacy, the lack of transparency and lack of user choice – without having to sacrifice security or privacy.

I thank the Subcommittee for its time and interest, and I look forward to assisting in any way that I can.