AMERICAN ECONOMIC LIBERTIES PROJECT

February 27, 2024

The Honorable Jessica Rosenworcel
Chairwoman
Federal Communications Commissions
45 L Street, NE
Washington, DC 20554

Dear Chairwoman Rosenworcel,

We write regarding Apple's conduct to block the functionality of the messaging application Beeper Mini with Apple's proprietary iMessage system.[1] This move stifles competition and ultimately eliminates accessibility, usability, and interoperability for mobile device users. Because of this, along with the Biden Administration's economy-wide focus on antitrust enforcement, we applaud Commissioner Carr's call for the Federal Communications Commission (FCC) to act and urge the agency to immediately investigate Apple's conduct for potentially violating FCC's Part 14 rules as well as 47 U.S.C. 251.[2]

Apple, one of the largest companies in the world, dominates the mobile-device industry and frequently uses design choices that worsen product quality to thwart competition and exclude rivals from the market.[3] Apple offers iMessage – an exclusive messaging service between users of Apple devices – and short messaging service (SMS) texting – an inferior, decades-old technology – for communicating with non-Apple users. Apple's decision to utilize this antiquated technology has negatively impacted accessibility, usability, interoperability, and security between devices, to push more customers into its user base. For example, text messages between iPhone users are blue and can be interacted with, while text messages with Android users are green and have basic functionality.[4] Aside from feature differences, the use of green bubbles for SMS violates the Web Content Accessibility Guidelines (WCAG) – which are a set of recommendations for making Web content more accessible – with less than half the

[1] Tripp Mickle and Mike Isaac, "Apple's Newest Headache: An App That Upended Its Control Over Messaging," The New York Times, December 22, 2023, https://www.nytimes.com/2023/12/22/technology/apple-iphone-beeper-mini.html.
[2] The White House, "Executive Order on Promoting Competition in the American Economy," July 9, 2021 https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/; Federal Trade Commission, "Interoperability, Privacy, & Security," Technology Blog, December 31, 2023, https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2023/12/interoperability-privacy-security; Federal Communications Commission Commissioner Brendan Carr, C-SPAN, "Government Officials and Stakeholders Speak at Internet Policy Conference," February 12, 2024, https://www.c-span.org/video/?c5106110/user-clip-brendan-carr-applebeeper; Emma Roth, "FCC commissioner wants to investigate Apple over Beeper Mini shutdown," February 12, 2024, https://www.theverge.com/2024/2/12/24071226/fcc-commissioner-brendan-carr-apple-beeper-mini.
[3] Ron Amadeo, "Apple hits "all-time high" smart phone market share, takes #1 spot for 2023," Ars Technica, January 16, 2024, https://arstechnica.com/gadgets/2024/01/apple-hits-all-time-high-smartphone-market-share-takes-1-spot-for-2023/.
[4] Tripp Mickle and Mike Isaac, "Apple's Newest Headache: An App That Upended Its Control Over Messaging," The New York Times, December 22, 2023, https://www.nytimes.com/2023/12/22/technology/apple-iphone-beeper-mini.html.

recommended minimum contrast between the text and background colors.[5] And unlike SMS technology, the industry standard text messaging technology – rich communications services (RCS) – enables end-to-end encryption, which is critical for security and privacy of users. RCS also allows for hi-resolution videos, images, and GIFs, along with improving group messaging capabilities.[6]

In order to maintain their monopolistic position, Apple has refused to make iMessage available on competitor devices or switch from SMS to RCS technology, and it has bullied those that dare to compete.[7] According to Apple's Senior Vice President of Software Engineering Craig Federighi in 2013, "iMessage on Android would … remove an obstacle to iPhone families giving their kids Android phones."[8] And in 2022, Apple CEO Tim Cook advised a conference audience member to "Buy [his] mom an iPhone" when the individual complained about the lack of interoperability between Apple and Android devices.[9] As Google product manager Neena Budhiraja stated, "[m]ost of the mobile world is using RCS, but there is one company [Apple] that's dragging its heels." [10]

To allow for greater accessibility, usability, interoperability, and security between devices, tech startup Beeper introduced Beeper Mini in 2023. This standalone application enables Android users to communicate with Apple's iMessage users without relying on SMS technology.[11]

---

[5] Kevin Voller, "How Iphone Violates Apple's Accessibility Guidelines," The Medium, July 9, 2018, https://medium.com/@krvoller/how-iphone-violates-apples-accessibility-guidelines-6785172eb343; World Wide Web, "Web Content Accessibility Guidelines (WCAG) 2.2," https://www.w3.org/TR/WCAG22/#background-on-wcag-2, https://www.w3.org/TR/2023/REC-WCAG22-20231005/#contrast-minimum.

[6] Britney Nguyen, "Google uses 30th anniversary of SMS texting to pressure Apple over 'green vs. blue bubble' texting, says iPhones are 'stick in the 1990s'," Business Insider, December 2, 2022, https://www.businessinsider.com/googles-says-iphones-sms-texting-are-stuck-in-the-1990s-2022-12.

[7] Tripp Mickle and Mike Isaac, "Apple's Newest Headache: An App That Upended Its Control Over Messaging," The New York Times, December 22, 2023, https://www.nytimes.com/2023/12/22/technology/apple-iphone-beeper-mini.html; Russell Brandom, "Eddy Cue wanted to bring iMessage to Android in 2013," The Verge, April 27, 2021, https://www.theverge.com/2021/4/27/22406303/imessage-android-eddy-cue-emails-apple-epic-deposition; Emma Roth and Richard Lawler, "Tim Cook Says you're your mom an iPhone' if you want to end green bubbles," September 16, 2022, https://www.theverge.com/2022/9/7/23342243/tim-cook-apple-rcs-imessage-android-iphone-compatibility.

[8] Tripp Mickle and Mike Isaac, "Apple's Newest Headache: An App That Upended Its Control Over Messaging," The New York Times, December 22, 2023, https://www.nytimes.com/2023/12/22/technology/apple-iphone-beeper-mini.html; Russell Brandom, "Eddy Cue wanted to bring iMessage to Android in 2013," The Verge, April 27, 2021, https://www.theverge.com/2021/4/27/22406303/imessage-android-eddy-cue-emails-apple-epic-deposition.

[9] Emma Roth and Richard Lawler, "Tim Cook Says 'buy your mom an iPhone' if you want to end green bubbles," September 16, 2022, https://www.theverge.com/2022/9/7/23342243/tim-cook-apple-rcs-imessage-android-iphone-compatibility.

[10] Britney Nguyen, "Google uses 30th anniversary of SMS texting to pressure Apple over 'green vs. blue bubble' texting, says iPhones are 'stick in the 1990s'," Business Insider, December 2, 2022, https://www.businessinsider.com/googles-says-iphones-sms-texting-are-stuck-in-the-1990s-2022-12; Neena Budhiraja, "Happy birthday and farewell, SMS! It's time for RCS," Google Blog, December 2, 2022, https://blog.google/products/messages/happy-birthday-sms/.

[11] Tripp Mickle and Mike Isaac, "Apple's Newest Headache: An App That Upended Its Control Over Messaging," The New York Times, December 22, 2023, https://www.nytimes.com/2023/12/22/technology/apple-iphone-beeper-mini.html; Beeper Mini, https://www.beeper.com/mini; Beeper Blog, "How Beeper Mini Works," December 5, 2023, https://blog.beeper.com/p/how-beeper-mini-works.

However, since the launch of Beeper Mini in early December, Apple has utilized its vast resources to kill the application, which threatens Apple's monopolistic position. Less than a week after the service was launched, Apple admitted to blocking Beeper Mini, citing security and privacy concerns for iMessage users.[12] This led to a back and forth between the two companies, with Apple changing its iMessage system multiple times as Beeper Mini found workarounds throughout the month of December 2023.[13] Ultimately, Beeper CEO Eric Migicovsky shared that the company was abandoning the Beeper Mini application, as the company "can't win a cat-and-mouse game with the largest company [Apple] on earth."[14]

While enforcers of our competition laws—the Federal Trade Commission and Department of Justice—are investigating Apple's conduct for potential antitrust violations,[15] the FCC has both the authority and obligation to investigate Apple's potentially illegal conduct, as it likely also violates several FCC rules. Specifically, the actions taken by Apple to degrade Beeper Mini's functionality may have violated FCC's Part 14 rules, which guarantee access to advanced communications services and equipment by people with disabilities.[16] The statute requires that "covered providers," including Apple, "shall not install network features, functions, or capabilities that impede accessibility and usability."[17] Apple's changes to iMessage to block Beeper Mini clearly impede accessibility and usability for non-Apple users.

As Commissioner Carr noted in his speech, Apple's conduct may also violate the interconnection requirements of 47 U.S.C. 251. This statute requires telecommunications carriers, including Apple, "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers" amongst other duties.[18] Apple's moves to impede Beeper Mini's functionality with iMessage directly prevents interconnection between carriers, likely violating this section.

The Biden Administration's focus on promoting competition, including the groundbreaking Executive Order, set a new priority to reinvigorate competition in the American economy.[19] The telecommunications and technology sectors are a key focus of this effort, and thus we applaud Commissioner Carr's recent comments about the potential anticompetitive conduct of Apple with regard to Beeper Mini along with calls for the FCC to investigate. As such, we strongly

---

[12] Tripp Mickle and Mike Isaac, "Apple's Newest Headache: An App That Upended Its Control Over Messaging," The New York Times, December 22, 2023, https://www.nytimes.com/2023/12/22/technology/apple-iphone-beeper-mini.html; https://9to5google.com/2023/12/09/apple-beeper-mini-imessage/.
[13] Dallas Thomas, "RIP Beeper Mini: iMessage on Android app removed from the Play Store," Android Police, January 12, 2024, https://www.androidpolice.com/beeper-mini-removed-from-play-store/.
[14] Beeper Blog, "Beeper – Moving Forward," December 21, 2023, https://blog.beeper.com/p/beeper-moving-forward.
[15] Ben Lovejoy, "As Beeper Mini broken for most, lawmakers call for antitrust investigation," 9to5Mac, December 18, 2023, https://9to5mac.com/2023/12/18/beeper-mini-broken-antitrust/.
[16] 47 CFR, Part 14.
[17] 47 CFR, 14.20(a)(4).
[18] 47 U.S.C. 251(a)(1).
[19] The White House, "Executive Order on Promoting Competition in the American Economy," July 9, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/.

urge you to immediately open an investigation into Apple's conduct and take enforcement actions as appropriate.[20]

Signed,

Accountable Tech
American Economic Liberties Project
Main Street Alliance
NextGen Competition
Open Markets Institute
The Revolving Door Project
Tech Oversight Project
X-Lab
Y Combinator

CC:

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

The Honorable Jonathan S. Kanter
Assistant Attorney General for the Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

The Honorable Brendan Carr
Federal Communications Commissions
45 L Street, NE
Washington, DC 20554

The Honorable Geoffrey Starks
Commissioner
Federal Communications Commissions
45 L Street, NE
Washington, DC 20554

The Honorable Nathan Simington
Commissioner
Federal Communications Commissions

[20] Emma Roth, "FCC commissioner wants to investigate Apple over Beeper Mini shutdown," February 12, 2024, https://www.theverge.com/2024/2/12/24071226/fcc-commissioner-brendan-carr-apple-beeper-mini.

45 L Street, NE
Washington, DC 20554

The Honorable Anna M. Gomez
Commissioner
Federal Communications Commissions
45 L Street, NE
Washington, DC 20554