

Written Statement for the Record

by

Six4Three, LLC

for a hearing before

The House Judiciary Subcommittee on Antitrust, Commercial and Administrative Law

titled

Online Platforms and Market Power, Part II: Innovation and Entrepreneurship

Rep. David Cicilline, Chair

Rep. James Sensenbrenner, Ranking Member

Tuesday, July 16, 2019

Thank you, Chairman Cicilline and Ranking Member Sensenbrenner, and full Committee Chair Nadler and Ranking Member Collins, for your leadership in launching this investigation into anticompetitive practices in the technology industry. We appreciate your acceptance of written testimony from Six4Three, LLC, a small software startup that has been engaged in a lawsuit against Facebook since 2015 alleging violations of California's Unfair Competition Law, among other laws.

On May 24th, 2007, Mark Zuckerberg held Facebook's inaugural f8 event in San Francisco to launch Facebook Platform. Zuckerberg [crowded to the world](#), "With this evolution of Facebook Platform, any developer worldwide can build full social applications on top of the social graph, inside of Facebook. This is good for us because if developers build great applications, then they're providing a service to our users and strengthening the social graph. This is a big opportunity. We provide the integration and distribution and developers provide the applications."

To promote Facebook's new application economy, [the company represented](#) to the entire software industry that with "this evolution of Facebook Platform, we've made it so that any developer can build the same applications that we can." The next week [Facebook released an FAQ](#) promising to respect privacy and to operate its Platform in a reasonable, non-discriminatory and fair manner, noting that "[w]e welcome developers with competing applications, including developers whose applications might compete with Facebook-built applications." Facebook represented that users would decide which products ultimately succeed based on the quality of those products. At the time of this announcement, Facebook had 20 million users.

For more than a decade now, Facebook has [re-affirmed these representations](#) regarding its Platform in thousands of public statements, conferences, hackathons, [training videos](#), blog posts and the like. As a result, many tens of thousands of businesses have invested their capital and labor into building more than 10 million applications on top of Facebook Platform, making it one of [the biggest economies in the world](#), larger than the GDP of many nations.

With more than 10 million tentacles reaching out to consumers as a result of the hard work of the entire consumer software industry, including countless startups and small businesses, Facebook's user growth skyrocketed. Before the launch of Platform, Facebook had been growing at a rate of 100,000 users per day. Shortly after the launch, that rate increased to more than [250,000 users per day](#) – and kept climbing astronomically. Facebook was building its entire business on the back of the hard work of the rest of the software industry, all of whom relied on Facebook's explicit, unambiguous representations about its Platform, just like software developers rely on the statements Apple and Google make regarding the App Store and Play Store, respectively.

Little did we all know, Zuckerberg never intended to keep those promises. Worse still, the developer community that was so instrumental to Facebook's success would soon become the patsy for Zuckerberg's own illegal acts as governments and media confronted the fallout from what we believe is the most devastating privacy-violating, anticompetitive scheme in the history of the software industry – a scheme that Zuckerberg and his top lieutenants continue to conceal to this very day.

The truth is Zuckerberg deliberately designed his Platform from the very beginning in a manner that overrode our privacy settings. In other words, Facebook built its entire business by intentionally and illegally violating our trust. Let's restate that to avoid any confusion: Facebook deliberately ignores your privacy settings when it shares your data with many tens of thousands of partners across the software, advertising, small business, and political landscapes. For instance, when you share a photo with Facebook and say you want only you or only your friends to see it, that choice is respected on Facebook.com and in the Facebook mobile app. But when Facebook sends that photo to partners through its public APIs, the company overrides that privacy setting and tells its partners that photo is public and can be shared with anyone so long as certain default settings are in place. (The situation is even worse with Facebook's private APIs.)

We developed custom software in 2013 that demonstrated this fact beyond any shadow of doubt. Our software compared the data we were able to access via the APIs against the data that was uploaded as "public" by the same users. The result shocked us to our core: more than 90% of the data Facebook told partners was public had in fact been uploaded to Facebook with a privacy setting more restrictive than "public". We documented this in a Medium post titled "[Deceit by Design: Zuck's Dirty Secret He Doesn't Want You to Know](#)". This flawed design is the root cause behind Facebook's enabling of Cambridge Analytica, as well as many other privacy issues over the years.

Zuckerberg personally and maliciously designed Facebook Platform to work this way. It wasn't a bug or an accident. And because Facebook tells all its partners that it maintains proper privacy controls, Zuckerberg has remarkably made every single company relying on Facebook data unwittingly complicit in his own privacy-violating scheme. Zuckerberg did this to make a range of industries – like the software, advertising, marketing, and election industries – completely dependent upon Facebook.

His deliberately flawed platform design has fostered a dependency on harvesting consumer data at a level of breadth across industries, a level of scale across people, and a level of intimacy into our deepest desires and prejudices that is simply unprecedented in human history. It has given Zuckerberg the leverage to do whatever he pleases – to wipe out competition almost overnight across an entire software category, to curry favor with politicians who then enact favorable laws, to frame our debates in the media and civil society (including those that criticize Facebook!), and even to decide the fate of national elections.

For Facebook, becoming the [handmaiden to authoritarianism](#) was a modest price to pay for global domination. Zuckerberg didn't step into those shoes naively or accidentally. He didn't wake up one morning and say: "Aw shucks, look at how my idealistic platform can be abused! Whatever am I going to do?!" He not only designed it to be abused; he was the chief abuser. Thanks to the courageous efforts of journalists like Carole Cadwalladr, the most prominent political casualties of Facebook's path to domination are well-known – the Brexit vote and the 2016 U.S. Presidential election. But there are other casualties, just as insidious and devastating to the stability of our society, that remain hidden from view, like the anticompetitive effects that have reverberated across the entire software industry.

The casualty at the heart of Six4Three's case is the death of over 40,000 companies worldwide and the associated destruction of free and competitive software markets. Put simply, Zuckerberg intentionally and maliciously destroyed more than 40,000 businesses in 2014 and 2015 for reasons that had nothing to do with privacy, even though he has lied to the U.S. government for years, including during testimony to Congress in the spring of 2018, regarding his motivations and justifications for those decisions.

We have recounted in a Medium post titled "[U.S. v. Facebook: A Playbook for SEC, DOJ and EDNY](#)" the sequence of events that we allege lies at the crux of Facebook's monopolization of a wide range of software markets. It begins with the collapse of Facebook's desktop advertising business right around its IPO as a result of the ascendance of the smartphone. As of early 2012, Facebook had built its entire business for desktop computers and was generating exactly zero revenues from phones. Zuckerberg's failure to anticipate how rapidly the smartphone would become the dominant computing platform had sent Facebook's advertising business into a fatal tailspin.

Zuckerberg and Sandberg felt they had no choice but to weaponize the trust of 2 billion users and the reliance of tens of thousands of businesses to begin extorting companies in a pay-to-play scheme that forced them to buy mobile ads upon threat of Facebook breaking their products.

This is how Facebook transitioned its advertising business away from desktop computers and into phones, which now makes up well over 90% of the company's revenues.

In 2012, Facebook decided to wipe out roughly 85% of its potential competition and to pick its own winners in virtually every consumer software category. It is in the context of this scheme that Facebook identified Instagram and later WhatsApp as acquisition targets. Facebook needed to own and monetize your experience on your phone without having to actually build its own phone. The data of two billion people and the reliance of 40,000 businesses were the assets it weaponized to achieve that goal.

Zuckerberg began testing a way to force companies to buy mobile ads they otherwise would not have bought by threatening to break their products if they didn't do so. Once these tests began to work, he directed his team to identify more than 40,000 companies that relied on Facebook Platform. He then requested that his team use Facebook's power as judge, jury and executioner of the Platform to make them an offer they literally couldn't refuse: "If you don't purchase mobile ads or funnel all your user data to us, we'll label you a bad actor, shut you down and destroy your business! But, if you do, we'll funnel you highly valuable user data without any user consent or privacy controls, and we'll destroy most of your competition. How much are our mobile ads worth now?".

The businesses who got this message, either implicitly or explicitly, were in fact the lucky ones. Most of the more than 40,000 businesses who relied on Facebook's most popular APIs never even had this chance to be extorted. They were simply excluded from the market and all their hard work went to zero overnight. We outlined for the FTC how it could get to the bottom of this scheme in a Medium post titled "[Response to FTC Task Force on Anti-Competition: 3 Investigative Tactics to Ferret Out Facebook's Fraud](#)".

Most of these 40,000 businesses still have no idea their demise was simply collateral damage in Zuckerberg's extortion scheme to grow his mobile ads business faster than any other business in history. Virtually all of those 40,000 businesses were playing by Facebook's rules and abiding by all laws. Those 40,000 businesses had hundreds of thousands, if not millions, of employees, investors, and families who depended on them for their livelihood.

As far as we can tell, no one has stood up for these businesses. Not even the businesses themselves. This is perhaps the most powerful evidence of Facebook's monopoly power. Everyone in the consumer software industry knows they are playing a game only Facebook can win, but they still have no other choice but to play – and to pray that next time things will be different. But as long as Zuckerberg and Sandberg are in charge of Facebook, things will never be different. Zuckerberg and Sandberg have caused an irreversible systemic dwarfing of the entire consumer software industry, and any venture capitalist who says otherwise is delusional, in denial, or lying.

Facebook's decade-long string of apologies, excuses, delays and deflections stem from its deliberately flawed privacy design, and the associated horse-trading and covert selling of user

data, that made virtually every major industry dependent on Facebook. Over this time, Facebook has gone from excuses and apologies to intentional lies and malicious deceptions. It evades government reviews. It fosters crimes and frauds by repeatedly violating our rights.

These violations fuel its dominant position over the world's personal information and the many industries and governments that rely on it. Facebook has facilitated and encouraged nefarious actors to masterfully exploit the dependency Zuckerberg fostered in order to destabilize the European Union, the United Kingdom and the United States governments – and thereby the entire global political and economic order.

Meanwhile, Facebook's denials and deflections have tied policymakers into knots, confusing the debate around competition and privacy to the point where governments are demanding entirely contradictory actions in the same breath. Most policymakers don't even realize they are contradicting themselves when they require Facebook to lock down its data, on the one hand, but also to enable users to switch to competitive services, on the other. We have outlined how Facebook has framed the choices of policymakers to its advantage in a Medium post titled "[Last Week's Federal Privacy Hearings: A Debate Framed by Facebook's False Choice](#)".

This is why we have risked it all to hold Facebook accountable. Someone *must* get to the bottom of how Zuckerberg set fire to the entire consumer software industry – and how we all let him get away with it. Someone has to do this not just to correct the historical record, but to help ensure our collective future. Only by understanding exactly how Facebook got away with all this for so long can we legislate and enforce policies that appreciate the fundamental interplay between privacy and competition.

Only by getting to the bottom of Zuckerberg and Sandberg's crimes and frauds can we pierce through their obfuscations and deflections. We will never legislate a more equitable, free and competitive future until we do so, because their playbook is always one step ahead. They are smarter than all of us. They are better resourced than all of us. They know how to steer policy outcomes with an invisible hand. They've done it time and time again. The old rules of engagement and investigation have already failed – the question is simply whether investigators adapt too late to a set of rules worthy of the opponent being investigated.

Six4Three is now beginning the fifth year of its litigation against Facebook but, thanks to the obstructionist tactics of Facebook's army of lawyers, we still don't have a trial date, even though California law requires a case to go to trial by its fifth year. Not a single case concerning this sprawling illegal conduct has ever gone to trial. Zuckerberg has never had to face a jury or answer questions under penalty of perjury regarding the conduct at the heart of our case. Neither has a single one of his current executives or board members, most of whom we allege were aware of and complicit in this devastating anticompetitive scheme.

According to Facebook, the 2014 and 2015 changes to its Platform were all about giving users "[more control](#)". But the changes actually prevented users from porting their networks to competitive services, thus giving people less control to replace Facebook with a competitive

product or to have a say in how their data is used. Instead, Facebook's 2014/15 changes took that control away from all of us and gave it to Facebook.

The media reports relying on the evidence from our case seized by the government of the United Kingdom make clear that Facebook's narrative around why it made those 2014/15 changes is hogwash. We allege they made these changes in order to cover up their secretive selling and horse-trading of the data of two billion people without privacy controls and to wipe out roughly 85% of their potential competition.

The most remarkable part of this story is not even that Facebook has managed its Platform in a way that deliberately violates privacy for so many years. It's that when the inevitable reports and investigations ensued, Zuckerberg and Sandberg successfully blamed the very people responsible for their success for their own privacy violations in order to wipe out virtually all of Facebook's competition across the entire consumer software industry – all while buying or building their own replacement products in photo, video, messaging, contact management, dating, e-commerce, local news and numerous other software markets. In other words, Zuckerberg and Sandberg brilliantly positioned Facebook to benefit immensely from the fallout of their own illegal scheme, and policymakers applauded them for it!

Until we all get to the bottom of exactly how Facebook's two most senior executives abused our trust, broke our laws, and managed to get away with it for so long, we will never be able to move forward as a society. The United Kingdom engaged in extraordinary measures to obtain just a small portion of the evidence in our case. The United Kingdom Parliament served multiple subpoenas on Six4Three and cited us with contempt and potential imprisonment, invoking authority we were later told has not been used in hundreds of years, in order to hold Facebook accountable for its crimes and frauds. The United Kingdom did this because Zuckerberg has refused to answer its questions or comply with its lawful orders for well over a year.

Now Zuckerberg is unable even to travel to the United Kingdom or Canada as both nations have stated they will hold him in contempt and compel him to answer questions about the very conduct at the heart of Six4Three's case. Can this contempt of legal process by the people entrusted with the entire world's personal information continue? What does it say about our society when those who control humanity's most sensitive information cannot even step foot on the soil of two leading Western democracies? How have we let this become the new normal? What are Zuckerberg and Sandberg hiding?

We pray the Subcommittee has the courage and tenacity to pursue the truth no matter the cost. Uncovering exactly how Zuckerberg and Sandberg defrauded us all is the only way to prevent their ongoing efforts to implement the same illegal playbook across other areas of Facebook's business, like its messaging and cryptocurrency platforms.

Getting to the bottom of all this is the only way we can live in a world where technology can actually coexist with democracy; where billions of people can exercise real control over their data while also feeling confident in its security; where a business can grow on a level playing field

without a large platform interfering the moment that business actually competes successfully; where elections can proceed with integrity, accountability and transparency; and where the stability of the entire global political and economic order doesn't rest on the unethical schemes and malicious profit motives of a handful of the wealthiest people in world history.

That future for our children and grandchildren is certainly worthy of our sacrifice. That is why we wake up every morning continuing this fight, even though Facebook will stop at nothing to silence us and quash our First Amendment rights by threatening us with trumped up criminal contempt charges simply for complying with the lawful orders of the United Kingdom. Will the United States government permit Facebook to retaliate against businesses and employees who come forward or will the government offer them protection against Facebook's intimidation, harassment and threats? We urge the Subcommittee to take all steps necessary to foster an environment where individuals are required to speak freely and truthfully, and further to follow the lead of Canada and the United Kingdom so as to make abundantly clear that no half-trillion-dollar public company and no billionaire CEO or COO is above the law and beyond the reach of the United States of America.