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Reuters

Microsoft CEO Bill Gates spoke at the company's annual meeting of shareholders Wednesday.

## Imagining life as a monopolist

**Would judicial oversight cripple  
fast-moving company?**

By Brock N. Meeks  
MSNBC

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WASHINGTON, Nov 10 — If Microsoft-the-monopoly is actually found guilty of violating antitrust laws, life on the company's bucolic, 265-acre Redmond campus could forever change. The easy interaction now the norm among Microsoft colleagues could suddenly turn into cutthroat competitive coding wars, confusion over who has rights to what cappuccino machine and a frazzled army of

lawyers struggling to keep up with ever-morphing court ordered regulations for how business, as a monopoly, must be conducted.

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WHEN AT&T broke up, employees had a major decision to make: where would they work now? Some stayed with Ma Bell, others opted for one of the newly minted “Baby Bells.” All the company’s assets and support services had to be equally split among the new companies.

In the early days of the AT&T breakup, employees in the big gray buildings that housed the computers running the country’s telephone system sometimes painted lines on the floor, to remind them on which side of the room they belonged. Under the breakup rules, workers — some still attached to AT&T, others now with one of the new Baby Bells — suddenly weren’t sure if talking to their former colleagues would violate the court’s orders.

And that was the easy part.

**Justice vs. Microsoft**

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"It was a monumental task to determine who would go where and what pieces went where," said Eddie Herman, who worked as an AT&T public relations district manager during the

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divestiture. “The Bell system was totally integrated and suddenly you’re separating out something like a central office: what part goes to AT&T, what part to the local telephone company, what lines went with which company and things like

that,” said Herman, now a senior editor with Communications Daily.

“Mostly what it [meant] for AT&T and the individual people was a lot of confusion,” Herman said. “Suddenly the company they worked for was no more.”

At the time of the AT&T breakup, the company employed a million people; it was the largest company in the world.

Most of all, it was simply “a huge, huge undertaking,” Herman said. “People told me it was the hardest thing they and the company ever did.”

## **DO NOT PASS GO**

Despite the fact that Microsoft hasn’t yet been found guilty of violating any antitrust laws, the sharks are already circling in the water.

(Microsoft is a partner in MSNBC.)

The Justice Department and the 19 states Attorneys General have been outspoken in saying they will press for the strongest remedy possible if Judge Thomas Penfield Jackson, who is overseeing the case, actually finds Microsoft guilty of violating the law by using its monopoly power to thwart competition and harm consumers.

Breaking the company into parts is widely known to be one of the options being considered by the Justice Department and the states. Other “lesser” remedies include auctioning off the Windows code to create competing “brands” of the operating system, or essentially placing the company in the Internet era equivalent of shackles: forcing it to release ownership of all the underlying API’s (applications programming interface), the essential software “hooks” that define the integration that makes Windows work, and making the company publish its pricing lists.

‘Once the company has been adjudicated a monopolist, Microsoft will have to evaluate that status in considering a wide range of conduct beyond what specifically was challenged and regulated by the court’s order.’

— **ANDY GAVIL**  
Howard University

Sources: Microsoft. U.S. Government Printing Office

Regardless of the remedy, life in the fishbowl of judicial scrutiny would likely be brutal, antitrust experts said.

From the moment a remedy is in place, an icon of cherished corporate culture at Microsoft — the extensive use of e-mail among decision makers — will never be the same, said Glenn Manishin, an antitrust lawyer in Washington, D.C.

“The case [against Microsoft] was proven to a large degree by internal e-mail,” Manishin said. “Microsoft will have to go to ground and keep all their strategic conversations completely secret and not write a word down,” Manishin said. “They’ll have to do this out of fear that in a competitor lawsuit or subsequent government action something that’s written at 2 a.m., which is true at the time but which is said too cavalierly, will be taken out of context,” he said, “Or, God forbid, even worse, that they write down the truth about how they want to use their monopoly power.”

“Once the company has been adjudicated a monopolist, Microsoft will have to evaluate that status in considering a wide range of conduct beyond what specifically was challenged and regulated by the court’s order,” said Andy Gavil, an antitrust law professor at the Howard University School of Law.

“You take a company like Aspen Ski company, which is the last time the Supreme Court agreed that somebody should wear the scarlet letter ‘M’ on their corporate forehead,” Gavil said. “Aspen has basically had to constantly go back for additional antitrust counseling with their lawyers over a long period of time to evaluate a wide range of conduct that has nothing to do with the specific conduct of that case,” Gavil said. (Aspen Ski Company owned three of four ski resorts in its area. The court ruled that Aspen’s decision to cut the unrelated mountain out of its ski-pass deals was made purely to injure competition, and therefore violated the Sherman Act.)

Peter Huber, a senior fellow at the Manhattan Institute, writing in the Wall Street Journal, says, “Once the remedying begins, it won’t soon end.” Huber argues that complex judicial solutions “invariably kick off endless rounds of follow-up bickering.”

At even the most innocent of turns, Microsoft-as-monopoly will find itself at the beck and call of governmental oversight.

“From a policy standpoint, the rules will tend to morph and expand geometrically,” Manishin said, “because any kind of conduct remedy gets the court in the role of governing... Which means that every time they have to pee they would have to ask, ‘Judge, may I?’ ”

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Whenever Microsoft wants to make inroads into a new market, the court will have to approve. If one of its competitors objects, Judge Jackson — like Judge Harold Green, who oversaw the breakup of AT&T, before him — will be asked to make a ruling.

Microsoft will find itself having to “pass a regulatory hurdle for what really should be just a business decision,” Manishin said.

### **CRIPPLING EFFECT**

At Microsoft’s annual shareholder meeting Wednesday, Chairman Bill Gates said that no company should “accept those kinds of limitations on their ability to innovate, and that’s what is at the heart of this case.”

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### **STORY** [Microsoft rallies shareholders at meeting](#)

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Gates then foreshadowed what life as a monopoly would be like on the Microsoft campus: “Software developers would end up having to focus on questions like, ‘Is there anyone else doing something similar? If so, we can’t improve this product in that way. Is our innovation going to force competitors to work harder? If so, then we can’t improve the product in that way. Someone might file a lawsuit. Are we providing these features at too low a price, are they too good? Then someone might complain.’ ”

With Microsoft having to compete on “Internet time,” working under court ordered constraints “would make it impossible for them ever to compete on the merits in any market,” Manishin said, “because they would be so slow that even where they weren’t using their monopoly power, the fear of judicial scrutiny and the extra legal layers of approval would mean they couldn’t react to market trends, even where they wanted and tried to comply with the rule of fair use of power.”

In short, Manishin said, such governmental oversight would “cripple” the company “and it would get the government involved in the shorts of the software industry.”

### **MILLENNIUM MICROSOFT**

Gates believes his company already has suffered the indignities of nearly a decade of governmental scrutiny. And given that the prospect of another couple decades of such oversight is likely even more unpalatable, some experts are

suggesting Gates take matters into his own hands and become the architect of Microsoft's breakup.

Such a move isn't without precedent. AT&T drew up its own breakup plan after the motion to have its antitrust lawsuit dismissed was rejected by the court. Reading the handwriting on the wall, the company decided to keep the most competitive businesses, long distance and equipment manufacturing, and let its newly created "Baby Bells" carry the baggage of operating as monopolies.

Gates could do likewise, experts have recently suggested, and in doing so, craft a plan for how the "Baby Bills" would operate in the new millennium; his game, his rules, said Manishin.

"If Gates really believes that [government action against him] has been as costly a burden as he has said, it can only get worse," Manishin said. "Therefore the way to end it quickly is to end it quickly. And he's in control of that."

Huber, in the Wall Street Journal editorial, says the same: "Bill Gates should orchestrate the breakup himself, while he can still shape its terms and timing."

In other words, Gates should "seize control of the moment, carpe diem," Manishin said, "and write the future for a new Microsoft and make himself billions in the process... if only his ego will allow him that luxury."

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