

Microsoft may split three ways

■ Two anti-Microsoft industry groups suggest that the company split into three — not two — parts

By Michael J. Martinez
The Associated Press

WASHINGTON — A suggestion by a pair of anti-Microsoft industry groups to divide the company into three parts may have changed the dynamic of the drawn-out legal battle over the government's attempt to break up the software giant.

The proposal for a three-way split, instead of the two-way breakup suggested by the Justice Department, came unexpectedly in a packed courtroom. Company lawyers flinched and observers looked on in amazement as U.S. District Judge Thomas Penfield Jackson expressed his admiration for the industry groups' friend-of-the-court brief.

Now, the Justice Department must decide how to play its next card, with its revised breakup plan due in Jackson's court Friday.

The initial Justice Department plan called for the breakup of Microsoft into two pieces — one governing the Windows operating systems for personal computers and large corporate servers, and the other governing the popular Microsoft Office suite, the Internet Explorer Web browser and Microsoft's various Internet properties.

The two industry groups, the Software and Information Industry Association and the Computer and Communications Industry Association, supported the government's breakup plan, but suggested the judge go one step further by spinning off Internet Explorer into a third company.

The groups noted that Jackson had found Internet Explorer was a key in Microsoft's crushing of its competitors. The judge ruled April 3 that Microsoft violated antitrust laws.

Alternatively, the industry groups said, Microsoft's Internet Explorer browser could remain with the applications company, but the computer source code used to create the browser should be made "open source," meaning it would be part of the public domain for anyone to use and alter as they see fit.

"To allow a Microsoft successor to use the browser as a point of leverage (or a means of protection) for its dominant applications suite would reward Microsoft for its illegal conduct, even if the benefits did not accrue to the operating systems business," the groups said in their brief.

Jackson took both sides by surprise Wednesday when he cut off further debate on remedies against Microsoft. He asked the Justice Department to provide a revised version of its plan, taking into account issues brought up in court, by Friday afternoon.

Microsoft stock fell 6 percent, or by \$4.06 1/4, to a 52-week low of \$61.50 a share at the close of regular trading Thursday on the Nasdaq Stock Market.

Last month, Jackson found Microsoft committed several violations of the Sherman Act, the primary federal antitrust law, through anti-competitive acts designed to maintain its monopoly over operating systems, the software used to run the basic functions of personal computers.

The Justice Department doesn't have to include the three-way breakup option in its revised plan, and DOJ officials would not com-

ment on what revisions they would make.

However, the judge can make any changes he sees fit after the department submits its plan. Microsoft has until Tuesday to respond to the revisions, after which Jackson could issue a final order in the case at any time.

Herb Hovenkamp, law professor at the University of Iowa and a leading antitrust authority, said Jackson could make substantial changes in the government's remedy proposal, including a wholly different breakup plan.

"There is some Supreme Court case law that suggests that all the judge has to do in the initial stage is order a breakup and state in fairly rough terms what that breakup is going to be like and not worry about the details," Hovenkamp said. "Then as you go through the appeals process, and if the breakup, in principle, is affirmed, then the details can be worked out later."

Microsoft, however, is betting that the U.S. Court of Appeals will be a far more favorable venue. Microsoft attorneys said that Jackson's refusal to allow additional testimony on the breakup plan is simply one more weapon in its appeals arsenal.

"This case will now be decided at the court of appeals, and we will be raising issues of procedure in our appeal, as well as issues of fact and law," said William Neukom, Microsoft's general counsel. Microsoft has promised to appeal the case as soon as Jackson issues his final order.

The two industry groups that proposed the three-way breakup have been a strong voice for Microsoft's competitors.

Five slain, two harmed in New York restaurant

■ Officers, who have yet to find the killers, arrived after the two survivors freed themselves and called police

NEW YORK — Two men walked into a Wendy's restaurant at closing time and bound, gagged and shot five employees to death during an apparent robbery. Two other workers were wounded, one critically.

One of the wounded workers managed to call police after the Wednesday evening shootings in the Flushing section of Queens, not far from Shea Stadium. Officers using bloodhounds hunted for the killers, described as two men ages 18 to 20.

Arriving officers saw the two wounded employees and broke through the locked glass door to help them, Chief of Detectives William Allee said at a news conference.

The other five were found in a basement walk-in refrigerator, their hands bound behind their backs and their mouths taped shut. Some victims had bags placed over their heads. Four died at the scene and the fifth died soon after arriving at a hospital.

"We believe the motive was robbery," Allee said. He would not say whether money was taken.

Police said the gunmen entered the restaurant just before its scheduled closing time of 11 p.m. Authorities said it took nearly two hours for the two survivors to par-

tially free themselves and call 911 from a basement telephone. Then one helped the other up the stairs, where they collapsed on the floor.

All seven workers — one woman and six men, ranging in age from 18 to 44 — were shot in the head, authorities said. One of the survivors was in critical condition, the other in stable condition.

The Flushing neighborhood, home to many immigrants, is believed to have the second largest Asian population in the nation outside of San Francisco. The restaurant is on bustling Main Street, the hub of a community that includes Koreans, South Asians and Chinese.

"This is usually such a calm neighborhood. We all live together peacefully here. This is very shocking," said Mathew Liu, 35, who lives and works in the neighborhood.

A blue police van circled the block today, broadcasting pleas for help in identifying the gunmen. Hundreds of curiosity-seekers, many with shocked expressions, jammed the sidewalks opposite the restaurant, while police officers tried to clear the area.

The murder rate in New York City has risen 12.4 percent in the first three months of this year after plunging recently to levels not seen since the 1960s. There were 667 murders last year, a dramatic decline since the city's all-time high of 2,290 in 1990.

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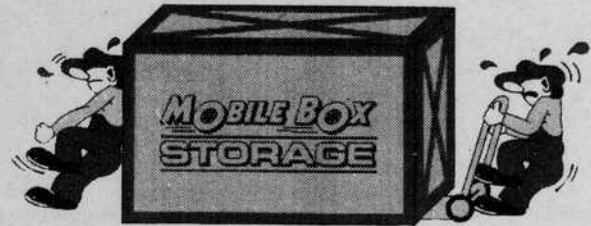
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