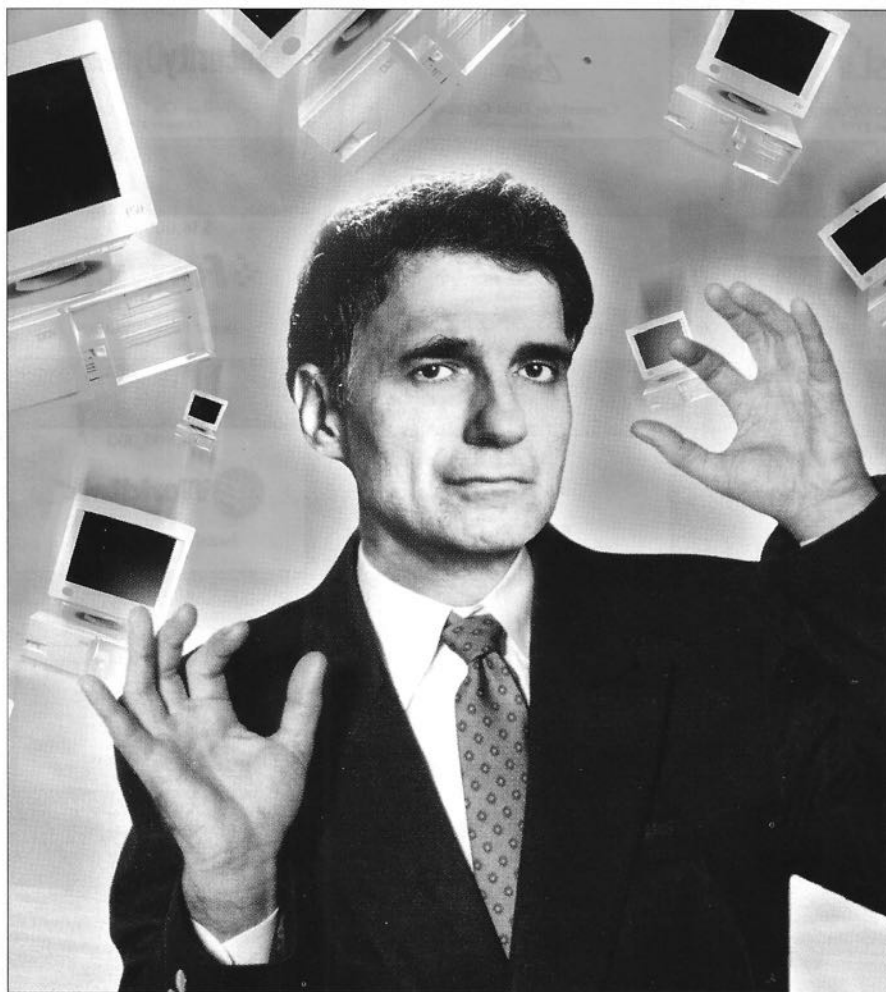


The Reasonable Geek Test

The Department of Justice's investigation of Microsoft has brought consumer advocate Ralph Nader into the digital age. UPSIDE sent columnist David Lytel and contributing writer Gary Rivlin to Nader's "Appraising Microsoft" conference in Washington, D.C., for two different takes on what it had to offer.



BY DAVID LYTEL

Among the more amusing of the periodic invasions of Washington, D.C., by aggrieved citizens was the attempt 30 years ago to levitate the Pentagon. Chants and incantations were invoked to end the war and banish militarism, more or less, or at least to get on the news and provoke people to think about other ways of accomplishing those ends.

And to be honest, that's about what I expected of Ralph Nader's conference here in November called "Appraising Microsoft." Imagine my surprise when I found about 500 well-behaved people gathered to talk about ways to make capitalism work better. What a shock. Of course, there were some protest rally-like moments, including a few presentations that ended with "Don't buy Microsoft!" (I thought I could hear echoes of Cesar Chavez yelling "Don't buy California grapes!") But for the most part, people were methodical and deliberate in their critiques of Microsoft and its marketing and licensing practices. Far more difficult to find was any agreement on what to do about it.

The general consensus was that Microsoft

IMAGE BY KIM STRINGFELLOW

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failed the "reasonable geek" test by beating up on less powerful companies in a number of ways. These included coercive licensing arrangements (forcing

OEMs to pay fees even for machines on which they do not install Microsoft's OS). Then there was coercion of Internet service providers (contract language that says they cannot even imply an alternative browser is available, or the ISP will be pulled from the "connection wizard" in Windows). And finally,

there's the bundling of content with Windows (such as Microsoft getting PC makers to package Encarta with new PCs until it achieves No. 1 ranking in its market, then pulling it from the bundle and selling it as a separate product). And that doesn't even include Microsoft's actions to leverage its OS

You Are Rich, Brother William BY JIM PINTO

*With apologies to
Lewis Carroll*

"You are filthy rich, Bill,
And it's time to fulfill,"
Quoth the devil, "So let's not delay.
You sold me your soul;
You must pay the toll,
And I've come now to take you away!"

"But, I'm not quite done yet!"
Mr. Gates he did fret,
"There's a lot more to do 'fore I'm done!
Netscape is fried
And Novell almost died—
What's your hurry to spoil all the fun?"

"You gave me that plea
When I gave you for free
IBM on its knees!" Satan teased.
"You keep wanting more
Than Rockefeller before—
Pray when will you ever be pleased?"

"That was just at the start!"
Billy clutched at his heart,
"I thought I had done that myself!
You helped just a bit
With that OS/2 shit,
And you put Sculley back on the shelf."

"How much more do you need?"
The devil decreed.
He spat out some fire and cursed.
"I gave you all the applause
That Windows was yours
When Apple invented it first!"

"That was only a bone!"
Said Bill with a groan,
"It took me three tries 'fore we got it!
And then Win 95
Barely kept us alive—
You let Netscape grow to unknot it!"



"Netscape was not
My domain, you forgot,"
Satan spat. "You got lazy, and late!
Besides, I was the guy
Who let Apple fry
And gave you Jobs' head on a plate!"

"Now you wait just a bit!"
Said young Billy, and spit,
"Who brought on NetPC and Java?
This monopoly stuff,
Isn't that quite enough?
Do I need fire and brimstone and lava?"

"This Java's a shove
From the big guy above!"
Says the ghoul as his fiery breath fades.
Bill replied, "We can stop it,
We'll easily drop it,
It won't work with Explorer upgrades!"

"Please give me more time,
I am still in my prime!"
Pleaded Billy, "I've lots more to do!
Tweak Ellison's nose,
Stomp on Justice's toes,
WebTV and then Hollywood, too!"

"Next we'll make a mess;
We'll take over the press
Move the White House to Redmond—the best!
That just leaves the Church,
That's the end of your search!"
And Satan was really impressed!

"Your plan is sublime,
I'll give you more time."
And the fiend disappeared with a nod.
Said young Bill with a smile,
"Just give me a while."
When the devil was gone ... he called God.

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dominance into browser dominance.

Yet, while a reasonable geek is likely to find these to be unfair practices, he or she is likely to come up blank on whether dominance is a naturally occurring phenomenon in high-tech markets. The argument is that technology products create "winner take all" markets subject to what is called the "tipping" or "bandwagon" effect. As a result, either by network effects or amortization effects, something that gets ahead tends to accelerate and drive other alternatives from the market.

If there is solid theory behind this idea—which allegedly is a logical outgrowth of the fact that the per-unit cost of software is essentially zero—then the U.S. government has to do some serious work rewriting the rules for fair competition. This is a bigger problem than the narrower question of what to do about

Microsoft. But there is quite a distance between believing this theory and proving it, and the journey will occupy economists for a generation.

In the meantime, some serious businesspeople face some serious problems. The most compelling speakers against Microsoft were its competitors in the real estate, automobile sales and travel markets. There are potentially huge savings for consumers in making these markets more efficient, if free markets are allowed to operate. Only a force as powerful as Microsoft, claim its critics, could help keep up high fees for realtors, or ensure that preferential placement on online ticketing systems went to the airlines that were its business partners. Alliances in the online world can be hidden: For example, most consumers have no idea that it's possible to buy words from search engine companies to produce targeted ads.

As Nader put it, the nature of the competitive threat is different here. It is not merely a case of Microsoft entering

an adjacent industry, but one in which Microsoft may be able to pull an entire industry (such as banking) into the software arena. When banking becomes a software business, what banker would be able to compete with the world's savviest software company?

The key argument against Microsoft (with which the DoJ apparently now agrees) is that in violation of section 2 of the Sherman Act, Microsoft has willfully used monopoly power in one market to gain competitive advantage in a second, even though its leverage was legally attained. And while Nader's conference wasn't designed to resolve the issue, it is a step toward establishing the idea that something can be done about it—that this uniquely American but almost moribund law could actually be enforced.

Like the Yuppies outside the Pentagon, getting people to imagine the future they would prefer to live in has to be the first salvo fired in any battle worth winning. ■

Nader 0, Microsoft 0

BY GARY RIVLIN

Jeremy Eisenberg sat poised, with his pen hovering over his legal pad. A trial attorney for the U.S. Department of Justice's Antitrust Division, Eisenberg hoped Ralph Nader's much ballyhooed "Appraising Microsoft" conference in November would feed him bits of evidence and new leads for the government's case against the software giant. He dutifully scribbled down the name of each speaker to take the podium, but soon dropped his pen and sank

back into his chair. From where he sat, each was another dud.

"A general lack of content," Eisenberg complained about Nader's bash during a break near the end of the two-day conference. Sitting beside him was a DoJ economist named David Reitman. "Too many cranks," Reitman said, looking to the heavens as if for a reprieve.

It's long been said that Ralph Nader is surprisingly all-business for a consumer activist. He's a humorless man who wears a perpetual frown, as if he

is shouldering all the world's woes. He speaks in the plodding tones of a government bureaucrat. And, as a consumer advocate whose preferred venue for justice has always been the courts, his stock-in-trade is the brass-tacks specifics any lawyer needs to make his or her case. Throughout most of his conference, Nader sat at the podium dressed in a conservative suit, hunched over a pad, madly taking notes. But what Nader may have been taking down is anyone's guess, in a conference

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