

# What Is the Standard of Causation of Monopoly?

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BY ANKUR KAPOOR

**C**OURTS AND COMMENTATORS have struggled for over a century to delimit precisely what conduct may run afoul of Section 2 of the Sherman Act.<sup>1</sup> One facet of this struggle that has received much less attention is the standard for proving causation of monopoly, i.e., how strongly must one show that the challenged conduct in fact created or maintained a monopoly in violation of Section 2.<sup>2</sup> Although the U.S. Supreme Court has never addressed this question,<sup>3</sup> the D.C. Circuit has. In *United States v. Microsoft*,<sup>4</sup> the D.C. Circuit held en banc that the government need only have made the relatively weak showing that Microsoft's conduct reasonably appeared capable of significantly contributing to monopoly power. By contrast, a panel of the court held, in *Microsoft v. Rambus*,<sup>5</sup> that the government's case failed precisely because it did not show that Rambus's conduct was a but-for cause of monopoly.

The court's answers appear contradictory, but the decisions in these cases provide a valuable lens through which to sharpen the focus on how standards of proof for this critical element of monopolization can advance antitrust policy without unduly interfering with normal competitive processes.

## **Microsoft**

In *Microsoft*, the D.C. Circuit affirmed the trial court's holding that Microsoft unlawfully maintained its monopoly in personal computer operating systems by engaging in numerous anticompetitive acts preventing the effective distribution of Netscape's Navigator Web browser and Java programming language, which might have threatened Microsoft's monopoly by creating a



logic of a but-for causation standard in selecting a remedy,  
however, does not necessarily apply to establishing liability.

**Conclusion**

The D.C. Circuit rulings in *Micr s*

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in part in factors other than a particular exclusionary act, no  
government seriously concerned about the evil of monopoly  
would condition its intervention solely on a cYe[fhJYI[fhJYy[fgJYn[fhJfchlgnjNeNø

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