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12 *Corporation*

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **OAKLAND DIVISION**

16 ELON MUSK et al.,

17 Plaintiffs,

18 v.

19 SAMUEL ALTMAN, et al.,

20 Defendants.

Case No. 4:24-cv-04722-YGR

**DEFENDANT MICROSOFT
CORPORATION’S OPPOSITION TO
PLAINTIFF’S MOTION *IN LIMINE*
NO. 3 TO EXCLUDE X.AI CORP.’S
BUSINESS AND COMPETITIVE
PRACTICES**

Date: March 13, 2026
Time: 9:00 AM
Courtroom: 1 – 4th Floor
Judge: Hon. Yvonne Gonzalez Rogers

Date Action Filed: August 5, 2024
Trial Date: April 27, 2026

1 Plaintiff's MIL #3 (Dkt. 404) seeks to "bar Defendants from prosecuting a distracting
2 'mini trial' on xAI's irrelevant business and competitive practices," by presenting evidence
3 about "xAI's corporate structure, funding, and business and competitive practices." Dkt. 404
4 at 1-2. But the limited evidence that Microsoft seeks to present about *its own business*
5 *practices* has no such purpose and nothing to do with any of those topics.

6 While primarily directed at OpenAI's proposed evidence regarding xAI, Plaintiff's
7 motion also seeks to exclude certain exhibits and evidence regarding Microsoft's hosting on
8 its Azure platform of other AI models, including xAI's Grok. *See* Dkt. 404 at 3; Microsoft DX
9 1539¹ (Dkt. 404-13, letter to shareholders), 1541 (Dkt. 404-11, Microsoft post regarding Grok),
10 1550 (Dkt. 404-12, same). DX 1539 (Dkt. 404-13) is a multi-page letter from Mr. Nadella to
11 Microsoft's shareholders from October 2025 explaining Microsoft's mission and business
12 developments. A single sentence in the seven-page letter references xAI, explaining that
13 Microsoft's newly introduced Azure AI Foundry is "a platform to design, customize, and run
14 powerful AI apps and agents," and "Foundry includes access to more than 11,000 models from
15 partners like OpenAI, Cohere, DeepSeek, Meta, Mistral, xAI, and others, ensuring our
16 customers can choose from the best frontier and open models in one place."² DX 1539 (Dkt.
17 404-13) at -96937. DX 1541 (Dkt. 404-11) is a Microsoft internet post from September 2025
18 titled, "Grok 4 is now available in Azure AI Foundry," and DX 1550 (Dkt. 404-12) is a Post
19 on X from Mr. Nadella stating: "Welcome Grok 4 to Azure AI Foundry!"

20 Plaintiff contends that "Defendants should not be allowed to admit evidence or examine
21 witnesses about the Microsoft/xAI 2025 agreement" as "xAI's commercial dealings are only
22 relevant to the competition claims in Phase Two, as is any inference of Musk's purported
23

24 ¹ Exhibit numbers refer to the revised exhibit list to be submitted with the Trial Readiness Binders. Microsoft's
25 exhibits were renumbered following the initial MIL filings by adding 1500 to the prior number. For example,
26 Microsoft DX 1539 was previously DX 039 when filed at Dkt. 404-13.

27 ² Plaintiff proposed that it would not move to exclude DX 1539 (Dkt. 404-13) to the extent that Microsoft seeks
28 only to describe Microsoft's business model and its hosting of numerous developers' models, which includes
xAI's Grok. But it maintains an objection to the extent that Microsoft seeks to specifically address its hosting of
Grok, as well as to DX 1541 (Dkt. 404-11) and DX 1550 (Dkt. 404-12). This distinction makes no sense and is
impractical, providing little guidance on permissible versus impermissible use of the evidence. For the reasons
set out in this Opposition, Microsoft submits that the motion should be denied as to all of the at-issue exhibits
and regardless of their use.

1 motive to compete with OpenAI.” Dkt. 404 at 3. But Microsoft does not seek to introduce
2 this evidence to show competition between OpenAI and xAI, or anything relating to Phase
3 Two issues. Instead, Microsoft seeks to explain that its business model—consistent with its
4 “platform and tools” approach over the past 50 years—is to provide access to multiple AI
5 models and model makers, including xAI’s Grok.

6 This evidence is plainly relevant. Microsoft’s efforts to compete with other cloud
7 providers like Google and Amazon by making its Azure platform attractive for AI developers—
8 including OpenAI but also others—helps to explain Microsoft’s reasons for its initial
9 investment and commercial relationship with OpenAI. Nadella Tr. (Dkt. 391-61) at 22:7-23:3
10 (ensuring that developers “were always building on our platform” is “core to our Microsoft
11 DNA”).

12 It is also relevant to Musk’s motives and credibility, which is an “appropriate area for
13 examination at trial.” *S. Lake Union Hotel LLC v. F&F Rogers Fam. Ltd. P’ship*, No. C23-
14 1868-KKE, 2025 WL 2495086, at *2 (W.D. Wash. Aug. 29, 2025). Indeed, “[p]roof of bias is
15 almost always relevant.” *United States v. Abel*, 469 U.S. 45, 52 (1984). That Musk has chosen
16 to sue Microsoft for its strategic collaboration with OpenAI, while at the same time xAI has
17 partnered with Microsoft to make Grok available on Azure, is relevant to Musk’s motivation
18 and credibility in asserting a claim against Microsoft.

19 Because Microsoft’s evidence has nothing to do with competition between xAI and
20 OpenAI, or any other Phase Two issue, and it is relevant, Plaintiff’s MIL No. 3 should be
21 denied as to Microsoft trial exhibits DX 1539, 1541, and 1550.

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Dated: February 25, 2026

DECHERT LLP

/s/ Russell P. Cohen

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CERTIFICATE OF SERVICE

The undersigned, counsel of record for Defendant Microsoft Corporation, certifies that on February 25, 2026, a copy of the foregoing document(s) was electronically filed with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to all registered counsel of record.

/s/ Russell P. Cohen
RUSSELL P. COHEN