

2 Microsoft Matters Could Help Shape AI Antitrust Outlook

By **Kylie Kim** (July 20, 2026, 5:20 PM EDT)

On June 1, new details emerged about a Federal Trade Commission investigation into whether Microsoft Corp. uses licensing terms and Microsoft 365 AI integrations to lock in customers.[1]

A parallel theory is already pending in the U.S. District Court for the Northern District of California: In *Bryant v. Microsoft Corp.*, ChatGPT subscribers **allege** that an exclusivity provision let Microsoft restrict OpenAI's compute and inflate the quality-adjusted price of their subscriptions. Microsoft's motion to dismiss was argued on April 9; the decision has not yet been issued.[2]

Neither dispute is about which company has the most powerful model. Much of the public conversation about AI and antitrust is really a conversation about capability, and that focus is understandable. Only a handful of firms can currently fund and build a frontier model.

But capability is not the thing antitrust law polices. Being the best is not a violation. What antitrust scrutinizes is conduct and market structure, and three questions decide those cases: what is the relevant market, what is the concerning conduct, and what is the harm.

These questions are not new. Each has roots in disputes antitrust lawyers have litigated for decades, now applied to an emerging technology. Taking them in turn shows what is really at stake in the Bryant complaint and the FTC's investigation — and how much remains unsettled.

1. What is the relevant market?

Market definition has always been one of antitrust law's most contested issues, and the AI ecosystem complicates it further. A foundation model is neither a traditional product nor a conventional platform — it functions as a product in its own right but also as an input used across downstream applications, from customer service to legal research. That reality makes simplistic references to "the AI market" unhelpful.

Other software markets offer a useful comparison because they have repeatedly forced courts to decide how widely to draw a market's boundaries. A software vendor's real competition often comes not from a technically similar product, but the ones customers can realistically switch to given compatibility, integration and switching costs.

Businesses choosing AI tools are in the same position: They are selecting within an ecosystem rather than buying a stand-alone model, so the competitive constraint on any given model may come from a rival model, a rival application or an incumbent that has added AI features to a product customers already use. Which of those count as substitutes is the question that defines the market.

Bryant shows how much can turn on market definition — and on identifying where the challenged restraint operates — before a case ever reaches discovery. The subscribers plead a single downstream market, consumer generative AI and claim compute is an inherent component of the consumer product, so the Microsoft-OpenAI exclusivity provision directly restrained output and quality in that market.



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Microsoft casts the provision as a vertical supply agreement and contends that the alleged restraint operated in a separate upstream market for cloud compute. This dispute bears on the applicable standard: A horizontal output restraint could trigger per se scrutiny, while a vertical supply agreement would generally be analyzed under the rule of reason.

Market definition is where many antitrust cases are won or lost. The same conduct can be lawful or unlawful depending on how the market is drawn, and AI makes that choice especially powerful: The same technology can be cast as a product, a platform, an input or infrastructure, and each framing points to a different set of rivals and a different result.

Bryant is among the first cases to test this provision — with the Nov. 13, 2025, **decision** in X Corp. v. Apple in the U.S. District Court for the Northern District of Texas offering another example.[3] In the coming AI antitrust cases, the parties may spend as much time arguing about what market they're in as about what the defendant actually did within it.

2. What is the concerning conduct?

Decades of competition law in other industries — semiconductor licensing, operating systems for personal computing, and app stores — offer guidance. Two recurring theories of harm help frame the emerging AI ecosystem: control of critical inputs and control of the rules. Both are at work in the Microsoft matters.

The first theory targets firms that operate at several levels of the same supply chain and use control over an upstream input to shape competition downstream. The AI industry is seeing integration at every layer and in both directions: cloud providers supply the infrastructure that model developers depend on while selling their own AI products, and model developers are pushing downstream into applications and upstream into chips and data centers.

Vertical integration of this kind is lawful, and often procompetitive; the question is whether a firm uses its position at one level to foreclose competition at another.

FTC v. Qualcomm Inc., the U.S. Court of Appeals for the Ninth Circuit's 2020 decision, marks where that line falls, **holding** that aggressive conduct by a dominant firm is not unlawful absent proof of harm to competition itself rather than to a particular rival. The arrangements emerging in AI stay on the lawful side of that line so long as integration reflects efficiency rather than exclusion.

Both Microsoft matters press that theory.

In Bryant, ChatGPT subscribers allege that Microsoft did not merely supply OpenAI with compute; it used the exclusivity provision to control how much computing capacity OpenAI could obtain and from whom.

According to the complaint, that constraint left OpenAI unable to meet demand, delayed access to new models, tightened usage limits and degraded performance. The subscribers allege Microsoft used contractual control over a scarce input to restrict the output and quality of the product that depended on it.

The FTC's investigation appears to press a similar input-leverage concern, asking whether Microsoft's licensing terms make it costlier to run software off its cloud and lock customers in.

The second theory asks whether the entity writing the rules is using that authority to shape competition — the problem that arises when a platform operator also competes with the firms that depend on its platform.

U.S. v. Microsoft Corp., the U.S. Court of Appeals for the D.C. Circuit's 2001 decision, remains the reference point: Control over Windows let Microsoft determine how developers and users reached competing products, including by bundling its own browser and pressuring computer makers not to feature rivals'.

Epic Games Inc. v. Apple Inc. updated the idea for app stores a generation later, in 2023, when the Ninth Circuit **rejected** Epic's tying claim under the Sherman Act, but upheld the finding that Apple's

anti-steering rules violated California's Unfair Competition Law and forced Apple to let developers point users to outside payment options.[4]

Foundation models raise a version of the same question: a handful of firms control access to the models others build on, through API terms and usage policies, and whether those terms are applied neutrally or tilted toward the platform owner's own products is the issue the Windows and App Store cases were built to test.

The FTC's investigation puts a concrete version of this question in play for the AI industry, asking how companies compete with AI features bundled into established products like Microsoft 365 — a question that echoes the leveraging theory that put the company in court a generation ago.

3. What is the harm?

The AI policy debate often proceeds as though future market outcomes are already apparent. Antitrust litigation works differently. A regulator can focus its attention on structures that might shape competition years from now, but a court wants evidence tying specific conduct to concrete effects — and a prediction about where AI markets are headed, however sophisticated, is still a prediction.

What gives the Bryant subscribers' theory its force is a before-and-after most antitrust plaintiffs never have. When Microsoft loosened the exclusivity in 2025 and let OpenAI route some traffic to Google's cloud, the plaintiffs say that the API token price of a high-end OpenAI model fell almost immediately — by roughly 80%.

The updated Microsoft-OpenAI partnership terms announced on April 27 may provide further evidence bearing on the relationship between cloud access and API token prices, should the subscribers survive the motion to dismiss.[5] That is the kind of evidence the harm question rewards: Change the challenged term, and watch the price move. It turns an abstract theory into something a court can see.

But Microsoft's motion shows how contested concrete effects can be. The flat monthly fee the subscribers actually paid never moved; the alleged steep drop was in the per-token rate that developers pay and that these subscribers never bought. To bridge the gap, the subscribers rely on a quality-adjusted-price theory: a constant price bought a degraded product, so the real price rose even as the sticker price held.

Microsoft answers that OpenAI made independent product choices and that any service degradation reflected an industrywide scramble for scarce AI chips, not anything specific to its deal with OpenAI — which moves the fight from whether the harm occurred to whether it caused the harm.

The FTC's inquiry faces a steeper version of the same problem. Its apparent theory — that Microsoft's licensing and bundling raise rivals' costs and make switching harder — describes a mechanism of harm, but it arrives without Bryant's natural experiment.

The investigation is still gathering information, and if it results in enforcement action, a court would eventually want proof that price, output, quality, or innovation had actually moved or is likely to move, not just a plausible account of how it might. In a market where today's leader can become tomorrow's also-ran, that evidence is hard to assemble.

Conclusion

The Microsoft matters show that AI antitrust won't be decided by capability alone. Better models or deeper integration may just reflect smart investment or a product customers prefer; antitrust enters only when a firm uses such advantages to weaken competition. This is why Bryant and the FTC investigation may diverge despite sharing a defendant.

The Bryant subscribers must survive the pleading rules, tying a compute arrangement to a subscription injury and explaining why a flat monthly price still reflects an overcharge. The FTC has more room to probe whether licensing, bundling and interoperability are making Microsoft's advantages more durable.

But even an agency case has to convert worries about market structure into proof of anticompetitive effects. Microsoft's centrality to AI is not itself unlawful; what matters is whether its conduct narrows the options available to customers and rivals in a way that harms competition.

The first wave of AI antitrust cases may be less about new doctrine than about applying old principles to an unfamiliar industry. The doctrine already exists; what's untested is how it maps onto the AI stack and the latter's impact on customers. Microsoft currently sits at the center of that question, which is why these matters are closely watched. They are an early test of whether antitrust law can distinguish ordinary competition to supply the AI ecosystem from conduct that distorts how that competition unfolds.

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[1] Lauren Feiner, Microsoft Could Be the Next Big Tech Antitrust Target The Verge (June 1, 2026) <https://www.theverge.com/policy/940220/microsoft-ftc-antitrust-investigation-cloud-ai>; Taryn Plumb, FTC Broadens Microsoft Probe to Cloud, AI, and Software Bundling, CIO (June 1, 2026), <https://www.cio.com/article/4179587/ftc-broadens-microsoft-probe-to-cloud-ai-and-software-bundling.html>.

[2] Amy Miller, Microsoft Wants ChatGPT Subscribers' US Claims Sent to Arbitration or Dismissed, MLEX (Apr. 10, 2026), <https://www.mlex.com/mlex/antitrust/articles/2463818/microsoft-wants-chatgpt-subscribers-us-claims-sent-to-arbitration-or-dismissed>.

[3] X Corp. v. Apple Inc., 4:25-cv-00914, (N.D. Tex.).

[4] These core antitrust holdings fall outside the scope of the U.S. Supreme Court's June 30, order granting certiorari.

[5] Microsoft, The Next Phase of the Microsoft-OpenAI Partnership, Microsoft Blog (Apr. 27, 2026), <https://blogs.microsoft.com/blog/2026/04/27/the-next-phase-of-the-microsoft-openai-partnership/>.