



EUROPEAN COMMISSION

***CASE DMA.100041 - X***  
***ONLINE SOCIAL NETWORKING SERVICE***

(Only the English text is authentic)

**Digital Markets Act**  
**Regulation (EU) 2022/1925 of the European Parliament**  
**and of the Council**

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Articles 3(5) and 17(3) Regulation (EU) 2022/1925

Date: 13/05/2024

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EUROPEAN COMMISSION

Brussels, 13.5.2024  
C(2024) 3117 final

**PUBLIC VERSION**

Mr Elon Musk  
[...]

**Subject: DMA.100041 – X – ONLINE SOCIAL NETWORKING SERVICE**

**Commission decision opening a market investigation pursuant to Article 16(1), in conjunction with Article 3(5) and Article 17(3), of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector**

**Only the English text is authentic**

Dear Sir,

- (1) Based on the notification of X Holdings Corp. of 1 March 2024 (“the Notification”) made pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925 and X Holdings Corp.’s response of 4 April 2024 to the Commission’s letter of 25 March 2024, the Commission considers that X Holdings Corp., together with all legal entities directly or indirectly controlled by Mr. Elon Musk, X Holdings Corp.’s ultimate controller (hereinafter collectively referred to as the “Musk Group” or “the Undertaking”), meets all the thresholds laid down in Article 3(2) of that Regulation in relation to the following core platform services (“CPS”): (i) its online social networking service X; and (ii) its online advertising service X Ads.
- (2) With its notification, X Holdings Corp. presented arguments, pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925 seeking to demonstrate that, should the Commission consider that it meets all the thresholds in Article 3(2) of that Regulation in relation to its online social networking service X and its online advertising service X Ads, X Holdings Corp. does not satisfy the requirements listed in Article 3(1) of that Regulation in relation to those services.
- (3) In its separate letter of today, the Commission concluded that the arguments presented by X Holdings Corp. pursuant to Article 3(5) of Regulation (EU) 2022/1925 in relation to X Ads not only manifestly call into question but, considered together, clearly and comprehensively demonstrate that the

requirements laid down in Article 3(1)(b), and consequently also the requirements in Article 3(1)(c) of Regulation (EU) 2022/1925, are not satisfied in relation to that service. <sup>(1)</sup>

- (4) By the present Decision, the Commission opens a market investigation pursuant to Article 16(1), in conjunction with Article 3(5) and Article 17(3), of Regulation (EU) 2022/1925 to assess further the arguments presented by X Holdings Corp. calling into question the presumptions laid down in Article 3(2) of that Regulation in relation to its online social networking CPS X.

## **I. THE UNDERTAKING'S VIEWS**

- (5) To rebut the presumptions laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to its online social networking CPS X, X Holdings Corp. puts forward the following arguments pursuant to Article 3(5), first subparagraph, of that Regulation.
- (6) First, X Holdings Corp. argues that X does not constitute an important gateway for business users to reach end users within the meaning of Article 3(2)(b) of Regulation (EU) 2022/1925 for the following reasons: (i) X is not part of a digital/platform ecosystem, (ii) X operates on a small, decreasing scale, and (iii) X's relative user engagement is low and declining. As regards X's scale, X Holdings Corp. provided data showing that X has fewer end users than any other online social networking CPS already designated under Regulation (EU) 2022/1925. As regards, X's user engagement, X Holdings Corp. submitted data showing that X fares worse than most online social networking services along a number of different engagement metrics ([...]). <sup>(2)</sup>
- (7) Second, X Holdings Corp. presents additional arguments relating to (i) a lack of ecosystem benefits <sup>(3)</sup>, (ii) [X's lack of an entrenched position in the EU] <sup>(4)</sup>, (iii) the lack of reflection of the market value of the Musk Group in the monetisation potential or financial capacity of X and (iv) the irrelevance of the market value of the other companies belonging to the Musk Group as not operating on the EU internal market. <sup>(5)</sup>

## **II. THE COMMISSION'S VIEWS**

- (8) According to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925, an undertaking providing core platform services may present, with its notification, sufficiently substantiated arguments to demonstrate that, exceptionally, although it meets all the thresholds laid down in Article 3(2) of that regulation, it does not

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<sup>(1)</sup> See Commission letter of today in Case DMA.100232 – X – Online advertising services, addressed to Mr. Elon Musk, [...], Section 4.2.

<sup>(2)</sup> Notification, Annex I, Section 2.2.

<sup>(3)</sup> Notification, Annex I, Section 2.1.

<sup>(4)</sup> Notification, Annex I, Section 3.

<sup>(5)</sup> Notification, Annex I, Section 1.

satisfy the requirements listed in Article 3(1) thereof due to the circumstances in which the relevant core platform service operates.

- (9) Pursuant to Article 3(5), third subparagraph, of Regulation (EU) 2022/1925, if the undertaking presents sufficiently substantiated arguments manifestly calling into question the above-mentioned presumptions, the Commission may open a market investigation pursuant to Article 17(3) of Regulation (EU) 2022/1925.
- (10) The Commission takes the view that X Holdings Corp. has presented certain arguments which, considered together, are sufficiently substantiated so as to manifestly call into question the presumptions laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 in relation to the online social networking CPS X. In particular, X Holdings Corp.'s arguments that X operates on a relatively small scale and is characterised by low and decreasing user engagement manifestly call into question X's role as an important gateway for business users to reach end users.
- (11) As regards X's relatively small scale, the various end user data points from a number of sources submitted by X Holdings Corp. suggest that X is of small scale both in relative, i.e. compared to other online social network services, and in absolute terms.<sup>(6)</sup> For example, according to the data submitted by X Holdings Corp. reflecting the number of average monthly active recipients in the Union of certain providers of online platforms published pursuant to the transparency obligations under Article 24 of Regulation (EU) 2022/2065, it is demonstrated that X is currently ~133% smaller than each of Facebook and Instagram, ~60% smaller than LinkedIn, and ~27% smaller than TikTok.<sup>(7)</sup> While such data may be relevant to rebut the presumption that X constitutes an important gateway for business users to reach end users within the meaning of Article 3(1)(b) DMA, the Commission notes that other data provided by X Holdings Corp. on the number of end users across different online social networking services shows considerable discrepancies depending on the source. Moreover, X Holdings Corp. has not submitted comparative data on the number of end users in line with the definition of that notion in Regulation (EU) 2022/1925.
- (12) As regards to X's low and decreasing user engagement, X Holding Corp. has submitted several relevant metrics that jointly may be considered as appropriate to give a robust and differentiated indication of user engagement on the online social networking CPS X.<sup>(8)</sup> Those metrics suggest that engagement on X is considerably lower than that on other relevant online social networking services. For example, according to the data submitted by X Holdings Corp., the average engagement rate of X in 2023 was around 90 times lower than that of TikTok, around 15 times lower than that of Instagram, and around two times lower than that of Facebook.<sup>(9)</sup> The Commission considers that these indications may be

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<sup>(6)</sup> Notification, Section 2.2.1.

<sup>(7)</sup> Reply by X Holdings Corp. of 4 April 2024, point 15.

<sup>(8)</sup> Notification, Sections 2.2.1 and 2.2.2.

<sup>(9)</sup> Reply by X Holdings Corp. of 4 April 2024, point 22.

relevant to rebut the presumption that X constitutes an important gateway for business users to reach end users within the meaning of Article 3(1)(b) DMA.

- (13) For these reasons, the Commission considers that it is appropriate to open a market investigation pursuant to Article 17(3) of Regulation (EU) 2022/1925 in relation to the online social networking CPS X to further verify the arguments submitted by X Holdings Corp. pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925. The market investigation will aim to determine whether, in light of those arguments, although the Musk Group meets all the thresholds laid down in Article 3(2) of that Regulation in relation to X, the Musk Group exceptionally does not satisfy the requirements laid down in Article 3(1) of Regulation (EU) 2022/1925 in relation to that CPS due to the circumstances in which it operates.

### **III. CONCLUSION**

- (14) For the reasons set out above, the Commission considers that X Holdings Corp. has presented sufficiently substantiated arguments manifestly calling into question the presumptions laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to online social networking service X.
- (15) The Commission therefore considers that it is appropriate to open a market investigation pursuant to Article 16(1) and Article 17(3) of Regulation (EU) 2022/1925. The market investigation will aim to determine whether, in light of the arguments submitted by X Holdings Corp. pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925, although the Musk Group meets all the thresholds laid down in Article 3(2) of that Regulation in relation to the online social network CPS X, due to the circumstances in which that CPS operates, the Musk Group exceptionally does not satisfy the requirements laid down in Article 3(1) of Regulation (EU) 2022/1925 in relation to the online social networking service X.

Done at Brussels,

*For the Commission*

Signed  
Thierry Breton  
Member of the Commission