



EUROPEAN COMMISSION

CASE DMA.100232
X – Online advertising services

(Only the English text is authentic)

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

Article 3(3) Regulation (EU) 2022/1925

Date: 13/05/2024

This text is made available for information purposes only. A summary of this decision is published in all EU languages in the Official Journal of the European Union.

Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as [...].



EUROPEAN COMMISSION

Brussels 13.5.2024
C(2024) 3156 final

PUBLIC VERSION

Mr Elon Musk
[...]

**Subject: Case DMA.100232 – X – Online advertising services
Letter concerning X Holdings Corp’s notification under Article 3(3)
of Regulation (EU) 2022/1925
Only the English text is authentic**

Dear Sir,

1. INTRODUCTION

- (1) Pursuant to Article 3(4) of Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (“Digital Markets Act” or “DMA”),¹ the Commission shall designate as a gatekeeper an undertaking providing core platform services (“CPSs”) that meet the thresholds set out in Article 3(2) of that Regulation.
- (2) On 1 March 2024, X Holdings Corp. notified the Commission,² pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925, that it meets the thresholds laid down in Article 3(2), points (b) and (c), but not (a), of that Regulation in relation to X Holdings Corp.’s online social networking service X, and online advertising service X Ads (the “Notification”).³
- (3) Together with the Notification, X Holdings Corp. presented arguments, in the event that the Commission would in fact consider all three thresholds in Article 3(2) of Regulation (EU) 2022/1925 to be met, aimed at demonstrating that,

¹ OJ L 265, 12.10.2022, p. 1-66.

² Notification pursuant to Article 3 of Regulation (EU) 2022/1925, Form for Gatekeeper Designation (GD), notified on 1 March 2024 (“Form GD”).

³ Form GD, paragraphs 8 and 9.

although all those thresholds are met in relation to X and X Ads, the requirements listed in Article 3(1) of that Regulation exceptionally are not satisfied due to the circumstances in which both services operate.⁴

- (4) On 5 March 2024, the Commission sent a request for information to X Holdings Corp. pursuant to Article 21(2) of Regulation (EU) 2022/1925 seeking explanations as to the control of Mr. Elon Musk over X Holdings Corp. and asking for a corresponding Power of Attorney or legal address for Mr. Elon Musk.⁵ On 7 March 2024, X Holdings Corp. replied to that request (“X Holdings Corp.’s reply of 7 March 2024”). [...].⁶
- (5) On 25 March 2024, the Commission sent a letter to Mr. Elon Musk and X Holdings Corp. concerning X Holdings Corp.’s notification under Article 3(3) of Regulation (EU) 2022/1925.⁷ In that letter, the Commission set out its preliminary views on the possible designation of Mr. Elon Musk and the companies that he controls (“the Musk Group”) as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 and on its intention to list in the Musk Group’s designation decision the online social networking service X, which individually appeared to constitute an important gateway for business users to reach end users.
- (6) On 4 April 2024, X Holdings Corp. submitted a response to the Commission’s letter of 25 March 2024 (“X Holdings Corp.’s reply of 4 April 2024”).

2. THE UNDERTAKING

- (7) According to the Notification, Mr. Elon Musk is the ultimate controller of the following companies:⁸
 - X Holdings Corp. and its wholly owned subsidiary X Corp., successor to Twitter Inc., are privately held companies ultimately controlled by Mr. Elon Musk. [...].
 - Space Exploration Technologies Corp. (commonly and hereinafter referred to as “SpaceX”), is an American spacecraft manufacturer, launch service provider, defence contractor, and satellite communications company.
 - X.AI Corp., (hereinafter referred to as “xAI”), is an American startup company working in the area of artificial intelligence, with the goal "to understand the true nature of the universe".

⁴ Form GD, Annex 1 and Annex 2.

⁵ European Commission’s Request for Information of 5 March 2024.

⁶ X Holdings Corp.’s response of 7 March 2024 to the European Commission’s Request for Information of 5 March 2024.

⁷ The letter followed up on limited exchanges that took place with X Holdings Corp. prior to its Notification.

⁸ All companies are incorporated in the United States of America.

- Neuralink Corp. is an American neurotechnology company that is developing implantable brain–computer interfaces.
 - The Boring Company is an American infrastructure, tunnel construction services, and equipment company.
- (8) Based on this information and on the information contained in X Holdings Corp.’s response of 7 March 2024, as well as the arguments set out in paragraphs (39) to (45) below, the Commission considers that the undertaking concerned by this Decision comprises all legal entities ultimately controlled by Mr. Elon Musk, namely X Holdings Corp., Space X, The Boring Company, Neuralink Corporation, and X.AI, as well as Mr. Elon Musk.⁹

3. LEGAL FRAMEWORK FOR THE DESIGNATION OF GATEKEEPERS PURSUANT TO REGULATION (EU) 2022/1925

- (9) Article 3 of Regulation (EU) 2022/1925 sets out the rules for the designation of gatekeepers. An undertaking shall be designated as a gatekeeper under that Regulation if it satisfies the requirements set out in Article 3(1) thereof. An undertaking shall be presumed to satisfy those requirements where it meets the quantitative thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925. Pursuant to Article 3(9) of that Regulation, the designation decision shall list the relevant CPSs that are provided by the undertaking and that are an important gateway for business users to reach end users as referred to in Article 3(1)(b).

3.1. The delineation of CPSs

- (10) Article 2, point (2) of Regulation (EU) 2022/1925 lists ten CPS categories, namely: (a) online intermediation services, (b) online search engines, (c) online social networking services, (d) video-sharing platform services, (e) number-independent interpersonal communications services, (f) operating systems, (g) web browsers, (h) virtual assistants, (i) cloud computing services, and (j) online advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by an undertaking that provides any of the CPSs listed in points (a) to (i).
- (11) In order to determine whether a service provided by an undertaking is a CPS that meets the requirement set out in Article 3(1)(b) of Regulation (EU) 2022/1925 it is necessary, as a preliminary step, to proceed to the delineation of this service. To delineate a service, a number of provisions in Regulation (EU) 2022/1925 are of relevance, including in particular the following.
- (12) Section D, paragraph 2, of the Annex to Regulation (EU) 2022/1925 provides that, for the purpose of calculating the number of ‘active end users’ and ‘active business users’ under Article 3(2)(b) of that Regulation:

⁹ Form GD, paragraph 4.

- (a) undertakings shall not identify CPSs that belong to the same category of CPS pursuant to Article 2, point (2), of Regulation (EU) 2022/1925 as distinct mainly on the basis that they are provided using different domain names, whether country code top-level domains (ccTLDs) or generic top-level domains (gTLDs), or any geographic attributes;¹⁰
 - (b) undertakings shall consider as distinct those CPSs that either (i) do not belong to the same category of CPS pursuant to Article 2, point (2), of Regulation (EU) 2022/1925, even if they are offered in an integrated way;¹¹ or (ii) are used for different purposes by either their end users or their business users, or both, even if their end users and/or business users may be the same, even if the CPSs belong to the same category pursuant to Article 2, point (2), of that Regulation, and even if they are offered in an integrated way.¹²
- (13) In light of the foregoing, CPSs may be considered distinct even if they fall within the same category of CPS. In such cases, a relevant criterion for identifying distinct CPSs within the same category of CPS is the purpose for which the service is used by either end users or business users, or both.¹³ Furthermore, different services may constitute a single CPS, if they are used for the same purpose from both an end user and a business user perspective, unless they belong to different categories of the CPSs listed in Article 2, point (2), of Regulation (EU) 2022/1925.
- (14) Moreover, Article 13(1) of Regulation (EU) 2022/1925 provides that no practice by an undertaking providing CPSs which consists of segmenting, dividing, subdividing, fragmenting or splitting those services through contractual, commercial, technical or any other means in order to circumvent the quantitative thresholds laid down in Article 3(2) of that Regulation shall prevent the Commission from designating it as a gatekeeper pursuant to Article 3(4) of that Regulation.
- (15) As Recital (11) of the preamble to Regulation (EU) 2022/1925 points out, that Regulation pursues an objective that is complementary to, but different from, that of EU competition rules, which is to protect undistorted competition on any given market. Consequently, the application of EU competition rules, including competition law precedents, is without prejudice to the application of Regulation (EU) 2022/1925, and vice versa. Accordingly, the delineation of CPSs under Regulation (EU) 2022/1925 has no bearing on the definition of the relevant market for the purpose of applying EU competition rules (and vice versa) and those two types of analyses may thus lead to different results.

¹⁰ Annex to Regulation (EU) 2022/1925, Section D, point 2(a).

¹¹ Annex to Regulation (EU) 2022/1925, Section D, point 2(c)(i).

¹² Annex to Regulation (EU) 2022/1925, Section D, points 2(b) and (c)(ii).

¹³ The same applies when the undertaking provides CPSs in an integrated way.

3.2. The designation of gatekeepers pursuant to Article 3 of Regulation (EU) 2022/1925

- (16) According to Article 3(1) of Regulation (EU) 2022/1925, the Commission is to designate an undertaking as a gatekeeper if it fulfils three cumulative requirements, namely: (a) it has a significant impact on the internal market; (b) it provides a CPS which is an important gateway for business users to reach end users; and (c) it enjoys an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future.
- (17) Article 3(2) of Regulation (EU) 2022/1925 lays down a presumption that those requirements are satisfied where certain quantitative thresholds are met, namely:
- (a) an undertaking is presumed to have a significant impact on the internal market where it achieves an annual Union turnover equal to or above EUR 7.5 billion in each of the last three financial years, or where its average market capitalisation or its equivalent fair market value amounted to at least EUR 75 billion in the last financial year, and it provides the same CPS in at least three Member States;
 - (b) an undertaking is presumed to provide a CPS which is an important gateway for business users to reach end users where it provides a CPS that, in the last financial year, had at least 45 million monthly active end users established or located in the Union and at least 10 000 yearly active business users established in the Union, identified and calculated in accordance with the methodology and indicators set out in the Annex to Regulation (EU) 2022/1925;
 - (c) an undertaking is presumed to enjoy an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future, where the thresholds in point (b) were met in each of the last three financial years.
- (18) Pursuant to Article 3(3) of Regulation (EU) 2022/1925, an undertaking providing CPSs that meets all of the thresholds in Article 3(2) is to notify the Commission without delay and in any event within two months after those thresholds are met, by providing it with the relevant information referred to in Article 3(2). Pursuant to Article 3(4) of Regulation (EU) 2022/1925, the Commission is to designate the undertaking as a gatekeeper without undue delay and at the latest within 45 working days after receiving the complete information referred to in Article 3(3) of that Regulation.
- (19) Pursuant to Article 3(8), first subparagraph, of Regulation (EU) 2022/1925, an undertaking that does not satisfy each of the thresholds laid down in Article 3(2) but meets each of the requirements of Article 3(1) of that Regulation is to be designated as a gatekeeper in accordance with the procedure laid down in Article 17.

3.3. The rebuttal of the presumptions of Article 3(2) pursuant to Article 3(5) of Regulation (EU) 2022/1925

- (20) Once the conditions for the applicability of the presumptions laid down in Article 3(2) of Regulation (EU) 2022/1925 are met in relation to a CPS, the undertaking concerned is deemed to be a gatekeeper in relation to that CPS, unless the undertaking concerned rebuts these presumptions pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925. Pursuant to the latter provision, an undertaking that meets all the thresholds laid down in Article 3(2) of that Regulation may present, with its notification, arguments to demonstrate that, although it meets all those thresholds, it exceptionally does not satisfy the requirements laid down in Article 3(1) of that Regulation due to the circumstances in which the relevant CPS operates.
- (21) As explained in recital (23) of the preamble to Regulation (EU) 2022/1925, the undertaking concerned bears the burden of adducing the evidence rebutting the presumptions. Moreover, as recital (23) further explains, the arguments taken into account by the Commission in that regard should relate directly to the quantitative criteria laid down in Article 3(2) of Regulation (EU) 2022/1925. Accordingly, any justification on economic grounds such as those related to market definition or to efficiencies should be discarded, because it is not relevant to the designation as a gatekeeper.
- (22) Article 3(5), second subparagraph, of Regulation (EU) 2022/1925 provides that if the arguments submitted are not sufficiently substantiated because they do not manifestly call into question the presumptions set out in Article 3(2) of that Regulation, the Commission may reject the arguments within 45 working days after receiving the complete information referred to in Article 3(3). By contrast, 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 that Regulation.
- (23) In situations in which the Commission considers that the submitted evidence is sufficient to demonstrate that the requirements laid down in Article 3(1) of Regulation (EU) 2022/1925 are not fulfilled, it may accept the rebuttal without opening a market investigation.

4. THE NOTIFIED CPSs

- (24) X Holdings Corp. notified two CPSs that meet the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925: (i) the online social networking service “X” (Section 4.1), and (ii) the online advertising service “X Ads” (Section 4.2).

4.1. The Musk Group's online social networking service X

4.1.1. CPS qualification and delineation

- (25) In the Notification, X Holdings Corp. describes X as a service that “*primarily enables connections and communications between users, across multiple devices, by allowing them to interact through various means, including short text-based posts (formerly “Tweets”), photos, videos, comments, etc.*” X Holdings Corp. further submits that X “*also allows for social interactions through (direct) messages, lists, and communities*”, and that both free and paid features are available for business users and end users.¹⁴
- (26) Article 2, point (2), subpoint (c), of Regulation (EU) 2022/1925 lists online social networking services as one of the categories of CPSs within the meaning of that Regulation. Article 2, point (7), of that Regulation defines an online social networking service as “*a platform that enables end users to connect and communicate with each other, share content and discover other users and content across multiple devices and, in particular, via chats, posts, videos and recommendations*”.
- (27) The Commission considers that the service that X Holdings Corp. provides through X fulfils the definition of online social networking service within the meaning of Article 2, point (7), of Regulation (EU) 2022/1925, since X enables end users to connect and communicate with each other, share content, and discover other users and content across multiple devices. Consequently, X constitutes an online social networking CPS within the meaning of Article 2, point (2), subpoint (c), of Regulation (EU) 2022/1925.
- (28) Based on the information provided by X Holdings Corp. and in line with its view, the Commission considers that X Ads online advertising service is a distinct service from X Holdings Corp.’s online social networking CPS X.
- (29) Consequently, the Commission considers that X constitutes an online social networking service within the meaning of Article 2, point (7), of Regulation (EU) 2022/1925 and, thus, a CPS within the meaning of Article 2, point (2), subpoint (c) of that Regulation.

4.1.2. Threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925 in relation to X

4.1.2.1. The Undertaking's view

- (30) X Holdings Corp. submits that the threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925 is not met by the undertaking concerned within the meaning of Article 3 of Regulation (EU) 2022/1925, which it considers to be limited to X Holdings Corp. In other words, X Holdings Corp. contests that it forms part of a single economic unit together with other legal entities ultimately

¹⁴ Form GD, paragraph 8.

controlled by Mr. Elon Musk.¹⁵ X Holdings Corp. submits that its Union turnover was [$<$ EUR 7.5 billion] in 2022¹⁶ and it reports an estimated fair market value of EUR 19 billion.¹⁷ As a result, X Holdings Corp. contends that it would not, on its own, meet the threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925.

- (31) X Holdings Corp. bases its position on the following arguments:
- (32) First, it argues that when laying down the thresholds in Article 3(2)(a) of Regulation (EU) 2022/1925, the legislature did not consider a situation whereby those thresholds would be met due to the inclusion of legal entities which are “*materially unrelated*” to the entity providing the CPS in question, but are “*controlled by a common natural person via indirect shareholdings*”.¹⁸
- (33) Second, X Holdings Corp. argues that the notion of “undertaking” for the purpose of designating gatekeepers under Article 3 of Regulation (EU) 2022/1925 should be interpreted to cover only undertakings holding “*considerable digital/platform power*”.¹⁹
- (34) Third, X Holdings Corp. argues that the Commission should at least interpret the notion of “undertaking” functionally, or contextually, respectively²⁰ and only consider as part of the undertaking providing the CPS those businesses controlled by Mr. Elon Musk that are active in the EU digital economy and can hence “*cause the harms which the DMA addresses*”.²¹
- (35) Fourth, X Holdings Corp. submits that the combined market value of the Musk Group does not accurately reflect X’s monetisation potential in the Union or its financial capacity. In particular, it argues that X and Space X provide entirely different services to entirely different users, so that there is no gateway effect, and that the undertakings controlled by Mr. Elon Musk “*do not form one financial front, as the DMA presumes*”.²²
- (36) Fifth, X Holdings Corp. contends that “*including other ventures controlled by Mr. Elon Musk would not be in line with the scope of ‘undertaking’ applied in other designation decisions*”, and that taking into account the value of all the undertakings under the ultimate control of Mr. Elon Musk would be arbitrary and inconsistent with the way in which the Commission has applied Article 3(2) of Regulation (EU) 2022/1925 in previous cases.²³ In its reply of

¹⁵ Form GD, paragraphs 17-37, and X Holdings Corp.’s reply of 4 April 2024, paragraphs 4–7.

¹⁶ Form GD paragraphs 37-38. The Form GD specifies that the numbers for 2023 will not be available until February 2024 and will be audited in May 2024. The EU revenue is expected to be below the threshold of EUR 7.5 billion.

¹⁷ Form GD, paragraph 17.

¹⁸ Form GD, paragraph 18.

¹⁹ Form GD, paragraph 19-24.

²⁰ X Holdings Corp.’s reply of 4 April 2024, paragraph 6.

²¹ Form GD, paragraph 25-31, and X Holdings Corp. reply of 4 April 2024, paragraph 5.

²² Form GD, paragraphs 32-34.

²³ Form GD, paragraphs 35-37.

4 April 2024, X Holdings Corp. further submits that, by applying different approaches to the notion of undertaking under Regulation (EU) 2022/1925, the Commission can inflate or deflate that Regulation's scope of application and affect the possibilities of rebutting the presumption laid out in Article 3(2)(a) of Regulation (EU) 2022/1925.²⁴

- (37) Sixth, X Holdings Corp. refers to an expert opinion²⁵ which deals with the notion of undertaking and includes arguments which are, to a large extent, repeated in the Notification and in X Holdings Corp.'s reply of 4 April 2024.²⁶ The opinion is explicitly "*not concerned with providing arguments for a possible rebuttal*", but instead with the notion of "undertaking" used in Article 3(2)(a) of Regulation (EU) 2022/1925.
- (38) X Holdings Corp further indicates that X is being provided in all EU Member States.²⁷

4.1.2.2. The Commission's assessment

- (39) The Commission considers the Musk Group as the undertaking concerned within the meaning of Article 3 of Regulation (EU) 2022/1925 for the following reasons:
- (40) First, Article 2, point (27), of Regulation (EU) 2022/1925 defines an undertaking as an entity engaged in an economic activity, regardless of its legal status and the way in which it is financed, including all linked enterprises, or connected undertakings that form a group through the direct or indirect control of an enterprise or undertaking by another. Article 2, point (28), of Regulation (EU) 2022/1925 defines control as the possibility of exercising decisive influence on an undertaking, within the meaning of Article 3(2) of Regulation (EC) No 139/2004.
- (41) It is clear from these definitions that, for the purpose of designating gatekeepers under Regulation (EU) 2022/1925, an undertaking should be assessed at the level of the ultimate controller and should include all other entities controlled by the same ultimate controller. The direct reference to Regulation (EC) 139/2004 in Article 2, point (28) of Regulation (EU) 2022/1925 also allows the Commission to rely on its merger control decisional practice to apply the notion of undertaking, which consistently considers that the turnover of entirely unrelated activities should be accounted for in the calculation of turnover thresholds if they are controlled by the same entity (be it a physical or natural person).²⁸ This is therefore by no means a novel issue that the legislature has not

²⁴ X Holdings Corp. reply of 4 April 2024, paragraph 7.

²⁵ This opinion was allegedly supposed to be attached to the Notification (Form GD, point 17), but by the 1 March 2024 deadline for submitting the complete Notification, including all annexes, the Commission had not received this attachment. Instead, the document was submitted to the Commission on 4 March 2024.

²⁶ X Holdings Corp.'s reply of 4 April 2024, paragraphs 4–7.

²⁷ Form GD, paragraphs 41.

²⁸ This is the consolidated practice for e.g., the calculation of turnover thresholds for activities controlled by private equity funds.

taken into account. This leads to the conclusion that the fair market value threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925 is to be assessed at the level of the ultimate controller of X Holdings Corp. (namely, the Musk Group), and should take into account all entities controlled by Mr. Elon Musk.

- (42) Second, X Holdings Corp.’s following claims are irrelevant for defining the notion of “undertaking” according to the applicable legal provisions: (i) that the interpretation of the notion of “undertaking” in Article 3(2)(a) of Regulation (EU) 2022/1925 should incorporate a case-by-case analysis of “*economic*”, “*digital*”, or “*platform power*”, taking into account the elements listed in Article 3(8) of that Regulation; (ii) that the Commission should adopt a “*functional interpretation*” of the notion of “undertaking”, whereby the scope of Regulation (EU) 2022/1925 would be limited to services active in the EU digital economy; and (iii) that there is a lack of a “*gateway effect*” and formation of a “*financial front*”. Consequently, those claims are also irrelevant to assess whether the threshold in Article 3(2)(a) of Regulation (EU) 2022/1925 is met.
- (43) Third, contrary to what X Holdings Corp. claims, the Commission did not exclude in its non-designation letter to Samsung Electronics offline activities for the purpose of calculating the market capitalisation of that undertaking pursuant to Article 3(2)(a) of Regulation (EU) 2022/1925. As clearly required by Regulation (EU) 2022/1925, and in line with the other designation decisions it adopted on the same date, the Commission considered the average market capitalisation of Samsung Electronics Co Ltd in 2022, including all its subsidiaries. As can be inferred from the magnitude by which the EUR 75 billion threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925 was exceeded in that case (the decision refers to a market capitalisation of EUR 316.7 billion), it was not necessary for the Commission to conduct a detailed analysis of the exact perimeter of the undertaking concerned.
- (44) Fourth, as regards the expert opinion submitted by X Holdings Corp. with the Notification, to the extent that it includes arguments not repeated in the Notification, those arguments are unconvincing. In the first place, even assuming X.AI and Space X/Starlink²⁹ do not qualify as forming part of a digital value chain, being “*powerful across more than one dimension of the digital value chain*” is not a pre-requisite for designation as a gatekeeper. In the second place, as explained above, whether there is “*a link between the scope of the economic entity and the prohibited conduct*” is irrelevant for the purpose of delineating the perimeter of the undertaking concerned.
- (45) Fifth, as indicated by X Holdings Corp., Mr. Elon Musk controls X Holdings Corp., Space X, The Boring Company, Neuralink Corporation, and X.AI (together, the “Musk Group”).³⁰ Mr. Elon Musk has the possibility of exercising decisive influence on these entities conferred to him by ownership rights and contracts. The Musk Group can therefore be considered to form a single relevant

²⁹ Form GD, paragraph 3.

³⁰ Form GD, paragraphs 3 and 4.

undertaking within the meaning of Article 2, point (27), of Regulation (EU) 2022/1925.³¹

- (46) According to the information provided in the Notification, the Musk Group meets the threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925,³² exceeding in the last financial year an equivalent fair market value of EUR 75 billion.
- (47) In addition, the online social networking CPS X meets the requirement laid down in Article 3(2)(a) of Regulation (EU) 2022/1925 of being offered in at least three Member States.
- (48) For these reasons, the Commission considers that the Musk Group meets the threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925 in relation to X.

4.1.3. Threshold laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 in relation to X

- (49) X Holdings Corp. acknowledges that, in case the Commission were to consider the Musk Group to constitute the relevant undertaking, X would meet the monthly active end user threshold of 45 million users and the yearly active business user threshold of 10 000 users laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 and provides the following explanations.³³
- (50) As regards end users, X Holdings Corp. provides the number of estimated monthly active logged-in users for 2021, 2022, and 2023 (see below).³⁴

Table 1: Logged-in monthly active end users of X established or located in the Union in each of the last three financial years

Year	Monthly active end users of X's online social networking services
2023	[> 45 million]
2022	[> 45 million]
2021	[< 45 million]

Source: Form GD, paragraph 47

³¹ It cannot be excluded that Mr. Elon Musk directly or indirectly controls within the meaning of Article 3(2) of Regulation (EC) No 139/2004 further entities than those mentioned in this paragraph, which would subsequently be part of the group of undertakings under his ultimate control within the meaning of Article 2, point (27), of Regulation (EU) 2022/1925. This issue can however be left open for the purposes of this letter, as the relevant thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 are met in any event.

³² Form GD, paragraph 40.

³³ Form GD, paragraph 12.

³⁴ Form GD, paragraph 47.

- (51) Based on a ratio of logged-in / logged-out end users, which X Holdings Corp. estimates by taking into account the latest Average Monthly Active Recipients of the Service (hereinafter referred to as “AMARS”)³⁵ calculation available for the 45 days prior to X Holdings Corp.’s Form GD submission, X Holdings Corp. acknowledges that the number of active end users established or located in the Union will likely have exceeded the threshold of 45 million monthly active end users for each of the three consecutive years 2021, 2022, and 2023.³⁶
- (52) As regards X’s yearly active business users, X Holdings Corp. submits that the 10 000 average yearly business user threshold was likely exceeded during each of the last three financial years. To arrive to this conclusion, it submits having used the number of “Professional Accounts”, which encompasses the categories of “Business” and “Creator” and which, following the methodology laid out in Annex E of Regulation (EU) 2022/1925, are all to be considered as business users.³⁷
- (53) For these reasons, the Commission considers that the Musk Group meets the thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 in relation to X.

4.1.4. Threshold laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 in relation to X

- (54) X Holdings Corp. submits that X has met the monthly active end user threshold of 45 million users and yearly active business user threshold of 10 000 users, laid down in Article 3(2)(b) of Regulation (EU) 2022/1925, in each of the last three financial years, as required by Article 3(2)(c) DMA.³⁸
- (55) The Commission therefore considers the Musk Group to meet the threshold laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 in relation to X.
- (56) As regards the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925, it is not necessary to determine whether X Holding Corp.’s approach to identifying and estimating monthly active end users and yearly active business users of the online social networking CPS X is sufficiently inclusive, in line with the relevant definition in Section E of the Annex to Regulation (EU) 2022/1925, given that the aforementioned thresholds are met, based on the information provided in the Notification.³⁹

³⁵ Form GD, paragraphs 55 and 56.

³⁶ Form GD, paragraph 48.

³⁷ Form GD, paragraphs 49 and 50.

³⁸ Form GD, paragraph 12.

³⁹ Section E of the Annex to Regulation (EU) 2022/1925 specifies the methodology for identifying and calculating active end users and active business users of online social networking services.

4.1.5. Arguments pursuant to Article 3(5) of Regulation (EU) 2022/1925 in relation to X

- (57) Together with the Notification, X Holdings Corp. presented, pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925, arguments summarised in the decision opening a market investigation referred to in paragraph (60) below aimed at demonstrating that, even if it were to meet all the thresholds laid down in Article 3(2) of that Regulation in relation to X, it exceptionally would not satisfy the requirements listed in Article 3(1) of that Regulation due to the circumstances in which X operates.⁴⁰ In its response of 4 April 2024 to the Commission's letter of 25 March 2024, X Holdings Corp. further substantiated those arguments.
- (58) For the reasons set out in the decision opening a market investigation, the Commission considers that X Holdings Corp. has submitted sufficiently substantiated arguments which manifestly call into question the presumption laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to the Musk Group's online social networking CPS X which warrant the opening of a market investigation pursuant to Article 17(3) of Regulation 2022/1925.

4.1.6. Conclusion for the online social networking service X

- (59) As set out in paragraphs (25) to (56) above, the Commission concludes that X constitutes an online social networking CPS within the meaning of Article 2, point (2), subpoint (c), of Regulation (EU) 2022/1925 and that the Musk Group meets all the thresholds set out in Article 3(2) of that Regulation in relation to that CPS.
- (60) Pursuant to Article 3(5), third subparagraph, of Regulation (EU) 2022/1925, the Commission has decided to open a market investigation, pursuant to 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.

4.2. The Musk Group's online advertising service X Ads

4.2.1. CPS qualification and delineation

- (61) In its Notification, X Holdings Corp. notified X Ads as an online advertising service CPS. According to X Holdings Corp., X Ads falls within the meaning of article 2, point (2), subpoint (j) of Regulation 2022/1925 and meets the thresholds laid down in Article 3(2)(b) and (c) of that Regulation.⁴¹ X Ads comprises all advertising services, tools, features, interfaces, and functionalities that ultimately serve to expose end users to advertisements on X, and in

⁴⁰ Form GD, Annex 1.

⁴¹ Form GD, paragraph 59.

consideration of Annex D, second paragraph, should be considered as a distinct CPS from its online social networking service CPS X.⁴²

- (62) Article 2, point (2), subpoint (j), of Regulation (EU) 2022/1925 lists online advertising services as one of the categories of CPSs within the meaning of that Regulation. According to that provision, online advertising services include *"any advertising networks, advertising exchanges and any other advertising intermediation services"*.
- (63) To be designated as gatekeeper in relation to an online advertising CPS, Article 2, point (2), subpoint (j), of Regulation 2022/1925 requires the undertaking providing those advertising services to provide at least one other CPS listed in Article 2, point (2), subpoints (a) to (i), of that Regulation.
- (64) In line with X Holding Corp.'s view, the Commission considers that X Ads constitutes an online advertising service within the meaning of Article 2, point (2), subpoint (j), of Regulation (EU) 2022/1925. X Ads comprises all advertising services, tools, features, interfaces and functionalities that interact with each other, the ultimate purpose of which is exposing end users to ads on X's own user-facing online social networking service. The Commission further considers that X Ads constitutes an online advertising CPS distinct from X Holding Corp.'s online social networking CPS X.

4.2.2. *Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to X Ads*

4.2.2.1. The Undertaking's view

- (65) X Holdings Corp. submits that if the Commission were to consider the Musk Group as the relevant undertaking, it would meet the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to X Ads.
- (66) As regards the threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925, X Holdings Corp. submits that this threshold is not met by the undertaking concerned within the meaning of Article 3 of Regulation (EU) 2022/1925, which it considers to be X Holdings Corp. (see paragraphs (31) to (37)).⁴³ However, X Holdings Corp. acknowledges that, in case the Commission were to consider the Musk Group to constitute the relevant undertaking, the threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925 would be met by that undertaking.⁴⁴
- (67) As regards the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925, X Holdings Corp. submits that X Ads had, in each of the last three financial years, at least 45 million monthly active end users established or

⁴² Form GD, paragraph 59.

⁴³ Form GD paragraphs 17-37.

⁴⁴ Form GD, paragraphs 40, 41, 48-49 and 59-60.

located in the Union, and more than 10 000 yearly active business users established in the Union.⁴⁵

- (68) More specifically, as regards X Ads' monthly active end users established or located in the Union, X Holdings Corp. submits that the figures it has provided for its online social networking service X (see paragraphs (50) to (51)) are also the best available figures to estimate X Ads' monthly active end users. Based on these figures, X Holdings Corp. acknowledges that the number of active end users established or located in the Union will likely have exceeded the threshold of 45 million monthly active end users for three consecutive years in 2021, 2022, and 2023.⁴⁶
- (69) As regards X Ads' yearly active business users established in the Union, X Holdings Corp. submits the best estimate figures shown in the
- (70) Table below.

Table 2: Yearly active business users of X's online advertising services

Year	Yearly active business users of X's online advertising services
2023	[> 10 000]
2022	[> 10 000]
2021	[> 10 000]

Source: Form GD, Section 5.2, paragraph 60

4.2.2.2. The Commission's assessment

- (71) As set out in paragraphs (39) to (45), the Commission considers that the Musk Group is the relevant undertaking within the meaning of Article 2, point (27), of Regulation (EU) 2022/1925 for the purpose of calculating the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925.
- (72) Based on the information provided by X Holdings Corp., the Commission considers that the Musk Group meets the fair market value threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925, as well as the requirement laid down in that provision that the CPS at issue, i.e., the online advertising service X Ads, is offered in at least three Member States.⁴⁷
- (73) Moreover, based on the information provided by X Holdings Corp.,⁴⁸ the Commission considers that the Musk Group's online advertising service X Ads meets the average monthly active end user and the average yearly active

⁴⁵ Form GD, paragraph 12.

⁴⁶ Form GD, paragraphs 58 and 59.

⁴⁷ Form GD, paragraph 40.

⁴⁸ Form GD, paragraph 58-61.

business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 in relation to X Ads.

- (74) Finally, based on the information provided by X Holdings Corp.,⁴⁹ the Commission considers that the Musk Group's online advertising service X Ads meets the requirement laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 that the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 were met in each of the last three financial years.
- (75) As regards the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925, it is not necessary to determine whether X Holding Corp.'s approach to identifying and estimating monthly active end users and yearly active business users of the online advertising CPS X Ads is sufficiently inclusive, in line with the relevant definition in Section E of the Annex to Regulation (EU) 2022/1925, given that the aforementioned thresholds are met based on the information provided in the Notification.⁵⁰

4.2.2.3. Conclusion

- (76) Based on the information provided by X Holdings Corp., the Commission concludes that X Ads constitutes an online advertising CPS within the meaning of Article 2, point (2), subpoint (j) of Regulation 2022/1925 that meets the thresholds laid down in Article 3(2) of that Regulation.

4.2.3. *Arguments pursuant to Article 3(5) of Regulation (EU) 2022/1925 in relation to X Ads*

- (77) Together with its Notification, X Holdings Corp. put forward, pursuant to Article 3(5) of Regulation (EU) 2022/1925, a number of arguments that, in its view, demonstrate that the requirements laid down in Article 3(1) of Regulation (EU) 2022/1925, and, in particular, the requirements listed in Article 3(1)(b) of that Regulation are not satisfied in the case of X Ads, even though the thresholds laid down in Article 3(2) of that Regulation are met by the Musk Group in relation to its X Ads CPS.⁵¹

4.2.3.1. The Undertaking's view

- (78) X Holdings Corp.'s main arguments demonstrating that X Ads exceptionally is not an important gateway for business users to reach end users, and therefore does not satisfy the requirement laid down in Article 3(1)(b) of Regulation (EU) 2022/1925, can be summarised as follows.

⁴⁹ Form GD, paragraph 58-61.

⁵⁰ Section E of the Annex to Regulation (EU) 2022/1925 specifies the methodology for identifying and calculating active end users and active business users of online advertising services.

⁵¹ Form GD, Annex 2, paragraph 16.

- (79) First, X Holdings Corp. argues that the Musk Group does not have any digital platform ecosystem that affects the importance of both X and X Ads as a gateway.⁵² X Holdings Corp. considers in this regard that the ‘Musk ecosystem’ does not create beneficial effects for X’s operations, outlining that the other companies of the Musk Group are independent and not complementary to the services offered by X.⁵³
- (80) Second, X Holdings Corp. submits that X Ads has a too small and decreasing scale in terms of share of advertising spend in the Union to constitute an important gateway in the market for online advertising.⁵⁴ X Holdings Corp. submits that X Ads has a small scale as an online advertising service in the EU, in absolute and relative terms, linked to its historic focus on brand advertising rather than performance advertising.⁵⁵
- (81) Third, X Holdings Corp. presents additional arguments relating to a lack of platform power,⁵⁶ the lack of reflection of the market value of the Musk Group in the monetization potential or financial capacity of X Ads,⁵⁷ and the irrelevance of the market value of the other companies belonging to the Musk Group as not operating on the EU internal market.⁵⁸

4.2.3.2. The Commission’s assessment

- (82) For the reasons set out below, the Commission considers, in line with Article 3(5), third subparagraph, of Regulation (EU) 2022/1925, that X Holdings Corp. has provided sufficiently substantiated arguments demonstrating that, exceptionally, even though the presumptions laid down in Article 3(2) are met, the requirement laid down in Article 3(1)(b) of Regulation (EU) 2022/1925 is not satisfied, due to the circumstances in which X Ads operates. Consequently, the Commission considers that there is no need for it to designate the Musk Group as a gatekeeper in relation to X Ads, without it being necessary to open a market investigation pursuant to Article 3(5), third sub-paragraph, in combination with Article 17(3) of Regulation (EU) 2022/1925, in that regard.
- (83) First and foremost, X Ads’ scale is very limited relative to the overall scale of activities of online advertising services in the Union. This appears clearly from the data provided in the Notification. First, X’s “Share of Wallet”⁵⁹ on the digital ads market was estimated at between [0-5%] in each of the biggest EU

⁵² Form GD, Annex 2, paragraphs 21-39.

⁵³ Form GD, Annex 2, paragraph 25.

⁵⁴ Form GD, Annex 2, paragraphs 40-52.

⁵⁵ Form GD, Annex 2, paragraph 41.

⁵⁶ Form GD, Annex 2, paragraphs 10-14.

⁵⁷ Form GD, Annex 2, paragraphs 15-16.

⁵⁸ Form GD, Annex 2, paragraph 17.

⁵⁹ Form GD, Annex 2, paragraph 43. EU Markets include France, Spain, Germany, Italy, the Netherlands, Ireland, Poland, Sweden, Belgium and Portugal. See internal data annexes of Form GD, Annex 2, “Market Factpack”.

markets in 2023.⁶⁰ Second, X's European share in terms of digital ad spend was [0-5%] in 2022.⁶¹

- (84) Moreover, in the last 15 months, X Ads has faced a decline in number of advertising business users, as well as a decline in pricing ([SPECIFIC PRICE METRIC])⁶², and a year-on-year revenue decline of [35-40%] for EU revenue.⁶³ This decline follows an opposite trend to the current overall industry trend.⁶⁴
- (85) Based on this evidence on the low and decreasing scale of usage by business users, the Commission considers that X Ads is not an important gateway for business users to reach end users.
- (86) In addition, the factors listed below further support X Holdings Corp.'s contention that X Ads is not an important gateway for business users to reach end users.
- (87) In the first place, advertising on X Ads mainly consists of brand advertising, as opposed to direct response advertising which requires superior targeting and measurement of advertising tools.⁶⁵ According to X Holdings Corp., brand advertising is typically offered to large companies with a strong bargaining power that have access to many possible advertising alternatives, while direct response advertising is offered by players like Meta and Google to a large array of smaller businesses which depend on this service for large amounts of their traffic. As X Holdings Corp. explains, [...].⁶⁶
- (88) In the second place, [...].⁶⁷
- (89) In the third place, advertisers seem to consider it more [...] as compared to competing services, for example Alphabet's or Meta's online advertising services.⁶⁸ Unlike those undertakings, who also offer online advertising intermediation services, X Ads only offers first-party advertisement on the X online social networking CPS and does not offer advertisement options across multiple first-party and third-party properties (as, for instance, Alphabet, Meta

⁶⁰ Form GD, Annex 2, paragraph 43. "Share of wallet" corresponds to X's revenue as a share of the total digital ad market in the relevant geographic area, based on market data by Magna. See internal data annexes of Form GD, Annex 2, "Market Factpack".

⁶¹ Form GD, Annex 2, paragraph 42; while this includes revenues from non-EU European markets, there is no indication that X's market share in the EU market differs significantly.

⁶² Form GD, Annex 2, paragraph 51.

⁶³ Form GD, Annex 2, paragraph 51, comparing Q3 2022 with Q3 2023.

⁶⁴ Form GD, Annex 2, paragraphs 44, 51, 52.

⁶⁵ Form GD, Annex 2, paragraph 59: "Brand advertisers are typically most concerned with ensuring their message reaches their target audience, while maintaining control of where their brand appears, and the cost per impression of their ads."; "Direct response advertisers are generally looking to drive a high volume of conversions at the lowest possible price, and therefore are not as concerned with marketing their brand."

⁶⁶ Form GD, Annex 2, paragraph 61.

⁶⁷ Form GD, Annex 2, paragraph 61.

⁶⁸ Form GD, Annex 2, paragraphs 59-63, 75.

or Amazon do). As opposed to those undertakings, X Ads is therefore unable to collect user data for the purpose of verifying advertising effectiveness across several first and third-party properties.⁶⁹ While integrated advertising platforms may be able to verify a user's journey between an ad click and a conversion across their own and third parties' properties, X Ads does not have the same possibility with just one property [...].⁷⁰

- (90) Each of these arguments further supports the finding that advertisers in the Union do not currently consider X Ads as an important gateway for business users to reach end users.
- (91) X Holdings Corp.'s arguments assessed above in paragraphs (82) to (89) directly relate to the thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 and, considered together, they demonstrate that, exceptionally, despite meeting those thresholds, due to the circumstances in which X Ads operates, the requirements laid down in Article 3(1)(b) of that Regulation are not satisfied.
- (92) Taking account of the fact that the criteria in Article 3(1) of Regulation (EU) 2022/1925 are cumulative, the Commission considers that a detailed assessment of the remaining arguments that X Holding Corp. advanced in relation to X Ads under Article 3(5) of that Regulation is not necessary, since the reasons set out above, considered together, already demonstrate that X Ads, exceptionally, even though it meets the presumptions laid down in Article 3(2), does not satisfy the requirements laid down in Article 3(1)(b) and, consequently, also Article 3(1)(c) of Regulation (EU) 2022/1925, due to the specific circumstances in which it operates.
- (93) The Commission's assessment is based on the current facts and the situation of X Ads at the point in time of this Decision. The Commission will keep monitoring any relevant developments in relation to X Ads.

4.2.4. *Conclusion for X Ads*

- (94) Given that the arguments presented by X Holdings Corp. pursuant to Article 3(5) of Regulation (EU) 2022/1925 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, it is not necessary for the Commission to open a market investigation pursuant to the procedure laid down in Article 17(3) of Regulation (EU) 2022/1925.
- (95) In the light of the above, the Musk Group shall not be designated as a gatekeeper in relation to X Ads pursuant to Article 3(4) of Regulation (EU) 2022/1925.

⁶⁹ Form GD, Annex 2, paragraphs 47, 59.

⁷⁰ Form GD, Annex 2, paragraphs 47, 50, 59, 60.

5. CONCLUSIONS

- (96) The Commission has decided to open a market investigation pursuant to Article 16(1) and 17(3) of Regulation (EU) 2022/1925 into whether the Musk Group should be designated as a gatekeeper pursuant to Article 3(4) of that Regulation in relation to its online social networking CPS X.
- (97) The Commission concludes that the Musk Group is not to be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to its online advertising service X Ads. That conclusion is without prejudice to the possibility that the Commission may reconsider or amend this Decision, pursuant to Article 4(1) of Regulation (EU) 2022/1925, should there be any substantial change in any of the facts on which it is based, or if this Decision was based on incomplete, incorrect, or misleading information.

For the Commission

Signed
Thierry BRETON
Member of the Commission