X's online social networking service not designated as gatekeeper

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The Digital Markets Act (DMA) establishes criteria for designating companies as "gatekeepers" in the digital market. Gatekeepers are entities that: (i) have a significant impact on the internal market, (ii) provide core platform services (CPS) that serve as important gateways for business users to reach end users, and (iii) enjoy an entrenched and durable market position (Article 3(1) DMA).

Additionally, companies meeting certain turnover thresholds are presumed to be gatekeepers (Article 3(2) DMA).

From March 2024 onwards, the European Commission and X started discussing the designation of two of X's services as CPS under the DMA: its online social networking service and its online advertising service (X Ads).

During the spring of 2024, X invoked Article 3(5) of the DMA to argue that, despite meeting the quantitative thresholds (Article 3(2) DMA presumption), it does not satisfy the gatekeeper criteria. The Commission accepted X's arguments regarding X Ads, concluding that this service does not meet the designation requirements. However, discussions continued regarding X's online social networking service.

Still in the spring of 2024, to rebut its designation as a CPS provider, X presented indicators that its online social networking service is not an important gateway for business users to reach end users. X argued that it operates on a small and decreasing scale with low and declining user engagement. According to data provided by X, its platform is smaller than other platforms: (i) approximately 133% smaller than each of Facebook and Instagram, (ii) about 60% smaller than LinkedIn and, (iii) around 27% smaller than TikTok. The Commission noted considerable discrepancies in data sources but did not further investigate this argument. However, it deemed X's metrics on low and decreasing user engagement relevant in potentially rebutting the gatekeeper presumption.

Consequently, on 13 May 2024, the Commission launched a market investigation to determine whether X's online social networking service exceptionally failed to satisfy the DMA requirements, given the arguments challenging the gatekeeper presumption.

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On 16 October 2024, following the market investigation, the European Commission concluded that X's rebuttal arguments regarding its online social networking services should be accepted.

Case DMA.100041 – X online social networking service

https://digital-markets-act-cases.ec.europa.eu/cases/DMA.100041

Regulation (EU) 2022/1925 of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act – DMA)

https://eur-lex.europa.eu/eli/reg/2022/1925/oj

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