EUROPEAN COMMISSION

Brussels, 1.8.2024
C(2024) 5689 final

Mr Alexander Fanta

DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) NO 1049/2001[1]

Subject: Your confirmatory application for access to documents under Regulation (EC) No 1049/2001 – EASE 2023/7066

Dear Mr Fanta,

I refer to your e-mail of 30 November 2023, registered on 8 December 2023, in which you submitted a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents[2] (hereafter 'Regulation (EC) No 1049/2001'), requesting a review of the initial reply to your application EASE 2023/7066.

Please accept our apologies for the delay in providing you with a reply to your confirmatory request.

1. SCOPE OF YOUR REQUEST

In your initial application of 6 October 2023, addressed to the Directorate-General for Communication Network, Content and Technology (hereafter 'DG Connect') and registered on the same day under the reference number EASE 2023/5854, you requested access to '[a]ll documents related to meetings with Twitter (X) since June 1, 2023. This is meant to include meeting minutes, e-mails, etc.'. You explained that you had 'made a separate request for the risk assessment or risk assessments provided by X (Twitter)

1 OJ L 345, 29.12.2001, p. 94.
2 OJ L 145, 31.5.2001, p. 43.

according to the Digital Services Act [3]' and asked 'to keep these two requests separate from each other'[4].

On 27 November 2023, the Directorate-General for Competition (hereafter 'DG COMP') informed you that your application 'concerns also aspects related to 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 and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)[5]' and that, as a result, your request was split on that date with this department. DG COMP managed your application – for its aspects related to the Digital Markets Acts – under case number EASE 2023/7066.

The present assessment and the ensuing confirmatory decision concern solely the application managed at initial stage by DG COMP, registered under reference number EASE 2023/7066.

In its reply of 28 November 2023, DG COMP explained that the documents requested 'form part of the case file in a pending investigation under Regulation (EU) 2022/1925 (the Digital Markets Act, hereinafter the 'DMA'), in which the procedure may not be considered finalised yet, as long as the decision adopted by the Commission is still subject to possible appeal which might prompt the Commission to reconsider its decision and reopen the case'. The Directorate-General refused their disclosure on the basis of the exceptions set out in the first indent (the protection of commercial interests of a natural or legal person) and third indent (the protection of the purpose of inspections, investigations and audits) of Article 4(2) and in Article 4(3) (protection of the institution's decision-making process) of Regulation (EC) No 1049/2001.

In your confirmatory application of 30 November 2023, you request a review of this position. You argue that 'the spokesperson service confirmed to [you that] "there is no ongoing investigation on X under the DMA"' and assert that '[i]f there is no ongoing investigation, then these documents can hardly be protected by this exception'. With regard to the applicability of the exception laid down in the first indent (the protection of commercial interests of a natural or legal person) of Article 4(2) of Regulation (EC) No 1049/2001, you point to several European Ombudsman decisions indicating that 'not all information about a company is commercially sensitive' and that 'a test should be performed each time to conclude whether the exception applies'. You 'ask the Commission to consider whether this exception actually applies to the documents in question', otherwise said 'to determine whether disclosure would actually undermine the commercial interests of the company'.

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3 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 27.10.2022, p. 1.

4 Your application of 26 September 2023 concerning the public access to 'risk assessment or risk assessments provided by X (Twitter) according to the Digital Services Act' was registered on 27 September 2023 under the reference number EASE 2023/5595 and was attributed to DG Connect.

5 OJ L 265 of 12.10.2022, p. 1.

In addition to the above-mentioned considerations, you assert that there is an overriding public interest in the disclosure of the documents requested. You mention that '[t]here is a considerable public debate about the prevalence of hate speech and disinformation on X' and assert that disclosure of the documents requested would 'likely shine a light' on these public concerns. You 'argue that these "succinct" circumstances, as the court put it in the Pari Pharma case (T-235/15), merit disclosure' and furthermore contend 'that the disclosure of the documents in question specifically must be seen as "pressing concern" as outlined in the ClientEarth case of the European Court of Justice (T-245/11)'.

Lastly, you ask the Commission to provide you with a list of documents falling within the scope of your application.

Your arguments will be addressed in the corresponding sections below.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a review of the reply given at initial stage.

First, the Secretariat-General notes that your application concerns two documents that are part of the administrative file DMA.100041:

1) the minutes of the virtual meeting held with X on 12 June 2023 and
2) the minutes of the virtual meeting held with X on 16 November 2023.

For the reference period of your application (1 June 2023[6] - 28 November 2023[7]), DG COMP does not hold any other documents related to meetings with X – and thus no 'lobby documents about X(Twitter)' – that fall outside the scope of the investigation in DMA.100041.

Secondly, following the assessment of the initial reply and after considering the arguments brought forward in your confirmatory application, the Secretariat-General regrets to inform you that the public access to these two documents must be refused on the basis of the exceptions laid down in the first indent (the protection of commercial interests of a natural or legal person, including intellectual property) and third indent (the protection of the purpose of inspections, investigations and audits) of Article 4(2) of Regulation (EC) No 1049/2001. Detailed reasons are set out below.

2.1. Protection of commercial interests of a legal person and protection of the purpose of investigations

The first indent of Article 4(2) of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of (…) commercial interests of a natural or legal person, including intellectual property (...) unless there is an overriding public interest in disclosure'.

6 Referred to in your initial application of 6 October 2023.
7 Date of DG COMP's initial reply.

The third indent of Article 4(2) of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of (…) the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure'.

In accordance with the case-law of the Court of Justice, 'a European Union institution may take into account cumulatively more than one of the grounds for refusal set out in Article 4 of Regulation [EC] No 1049/2001 when assessing a request for access to documents held by it'[8]. In the present case, the exceptions relating to the protection of the commercial interests of a legal person and the protection of the purpose of investigations are 'closely connected'.

The European Commission met X representatives virtually on two occasions (on 12 June and 16 November 2023) to discuss whether the undertaking – as provider of the X and X Ads platform service – meets the thresholds set out in the DMA Regulation such that the undertaking to which X belongs could be considered as 'gatekeeper' within the meaning of that regulation. Those meetings were held within the investigation under DMA.100041 and the Commission received a formal notification from X Holdings Corp. on 1 March 2024[9] informing the institution that their core platform services, X and X Ads, meet the DMA thresholds. The documents requested are part of the administrative file DMA.100041, in which effectively the 'investigations' within the meaning of the third indent of Article 4(2) of Regulation (EC) No 1049/2001 are still open.

As indicated in the initial reply from DG COMP, the concept of 'investigations', as referred to in the third indent of Article 4(2) of Regulation (EC) No 1049/2001, has been defined in the case-law of the Court of Justice of the European Union as a structured and formalised Commission procedure that has the purpose of collecting and analysing information in order to enable the institution to take a position in the framework of its functions established by the Treaties[10]. This procedure does not necessarily have to aim for the detection or pursuit of an offence or irregularity, nor does it necessarily have to lead to a formal Commission decision. It is an autonomous concept of EU law which must be interpreted considering, *inter alia*, its usual meaning as well as the context in which it occurs.

Apart from the above, it should be noted that, as recognised by the Court in *Ntouvas v ECDC*[11], the exception laid down in third indent of Article 4(2) of Regulation (EC) No 1049/2001 is not designed to protect the inspections, investigations and audit as such, but their 'purpose'.

In the Secretariat-General's view, the documents requested have been established within the investigation DMA.100041 and form part of its administrative file. Therefore, they should be protected by the general presumption of confidentiality pursuant to third indent of Article 4(2) of Regulation (EC) No 1049/2001.

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8 Judgment of the General Court of 13 September 2013, *Netherlands* v *Commission*, T-380/08, EU:T:2013:480, paragraph 26.

9 See https://digital-markets-act.ec.europa.eu/booking-bytedance-and-x-notify-their-potential-gatekeeper-status-commission-under-digital-markets-2024-03-01_en

10 Judgement of the General Court of 4 October 2018, *Daimler AG v Commission*, T-128/14, EU:T:2018:643, paragraph 131, Judgment of the Court of Justice of 7 September 2017, *France* v *Schlyter*, C-331/15 P, EU:C:2017:639, paragraph 46.

11 Judgment of the General Court of 19 November 2014, *Ntouvas v ECDC*, T-223/12, EU:T:2014:975, paragraph 28.

At the two meetings held with X, the Commission was collecting and analysing information in order to ascertain whether the provider of the X and X Ads platform services met the thresholds set out in the Article 3(2) DMA Regulation such that this provider could be considered as 'gatekeeper' within the meaning of the DSA Regulation.

Furthermore, it can be noted that Article 20(2) of the DMA Regulation provides that the Commission may exercise its investigative powers under this regulation before opening proceedings related to the gatekeepers' compliance (Article 8) or non-compliance (Article 29) with DMA obligations.

The investigation DMA.100041, the purpose of which is to ascertain whether the provider of the X and X Ads platform services meets the thresholds set out in Article 3(2) of the DMA Regulation, is comparable and has strong procedural similarities with other types of Commission investigations aimed at assessing the compliance with EU law of the undertakings' functioning, such as the antitrust proceedings under Articles 101 of the Treaty on the Functioning of the European Union[12] (hereafter 'TFEU') and the proceedings applicable to mergers, set out in Regulation (EC) No 139/2004[13]. Article 1(1) of the DMA Regulation provides that its purpose is 'to contribute to the proper functioning of the internal market by laying down harmonised rules ensuring for all businesses, contestable and fair markets in the digital sector across the Union where gatekeepers are present, to the benefit of business users and end users'. In the DMA investigations, similarly to these other types of investigations in the field of competition, any decision of the European Commission has to be based on a complex assessment of facts collected during an investigation concerning Union or foreign undertakings. While it is true that there are differences in the nature and conduct of the antitrust, merger control, and DMA procedures, the fact remains that the commercial interests of those undertakings, which are protected in all these procedures, are similar.

Against this background, it is important to note that:

- Regarding the antitrust investigations, the Court of Justice held on several occasions that the disclosure, on the basis of a request submitted pursuant to Regulation (EC) No 1049/2001, of documents from an administrative file regarding the application of Article 101 TFEU would undermine the system of procedural rules set up in Regulations No 1/2003[14] and 773/2004[15], and in particular the rules on confidentiality and access to the file. The Court stated that there is, with regard to the exception related to the protection of the purpose of investigations, a general presumption that the disclosure of documents in such cases would undermine the purpose of the privileged access rules introduced by

[12] OJ C 202, 7.6.2016, p. 47.

[13] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the Merger Regulation), OJ L 24, 29.1.2004, p. 1.

[14] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 (now 101 and 102) of the Treaty, OJ L 1, 4.1.2003, p. 1.

[15] Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 (now 101 and 102) of the Treaty, OJ L 123, 27.4.2004, p. 18.

the procedural rules set out by those regulations[16]. The Court also found that the disclosure of documents in such cases would, in principle, undermine both the protection of the purpose of inspections and investigations as well as the protection of the commercial interests of the undertaking(s) party to the proceedings, which are closely linked in such a context[17]. It should additionally be mentioned that the General Court further acknowledged that, having regard to the nature of the interests protected, this presumption applies regardless of whether an application for access to documents concerns a proceeding that has already been closed or a proceeding that is pending[18].

- With regard to the procedure for review of concentrations, the Court of Justice stated that 'such general presumptions are applicable to merger control proceedings because the legislation governing those procedures also lays down strict rules as regards the treatment of information obtained or established in those proceedings'[19]. The Court acknowledged that '(…) generalised access, on the basis of Regulation [(EC)] No 1049/2001, to the documents exchanged in (…) a (merger) procedure between the Commission and the notifying parties or third parties would (…) jeopardise the balance which the European Union legislature sought to ensure in the merger regulation between the obligation on the undertakings concerned to send the Commission possibly sensitive commercial information to enable it to assess the compatibility of the proposed transaction with the common market, on the one hand, and the guarantee of increased protection, by virtue of the requirement of professional secrecy and business secrecy, for the information so provided to the Commission, on the other'[20]. The Court recognised that the Commission is entitled to apply also in the context of merger control proceedings a general presumption that the disclosure of the documents exchanged with the notifying parties and with third parties in the context of such proceedings undermines, in principle, the protection of the commercial interests involved and the protection of the purpose of investigations

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16 Judgment of the General Court of 13 September 2013, *Netherlands v Commission*, T-380/08, ECLI:EU:T:2013:480, paragraphs 30-31 and 38-40; Judgment of the Court of 27 February 2014, *Commission v EnBW Energie Baden-Württemberg*, C-365/12P, EU:C:2014:112, paragraphs 81-88; Judgment of the General Court of 7 October 2014, *Schenker v Commission*, T-534/11, EU:T:2014:854, paragraphs 48-55; Judgment of the General Court of 28 March 2017, *Deutsche Telekom AG v Commission*, T-210/15, EU:T:2017:224, paragraphs 37-43.

17 Judgment of the General Court of 28 March 2017, *Deutsche Telekom AG v Commission*, T-210/15, EU:T:2017:224, paragraph 30; Judgment of 7 July 2015, *Axa Versicherung v Commission*, T-677/13, EU:T:2015:473, paragraph 39; Judgment of the General Court of 7 October 2014, *Schenker v Commission*, T-534/11, EU:T:2014:854, paragraph 57; Judgment of the Court of Justice of 27 February 2014, *Commission* v *EnBW*, C-365/12 P, EU:C:2014:112, paragraph 93; judgment of 13 September 2013, *Netherlands* v *Commission*, T-380/08, ECR, EU:T:2013:480, paragraph 34.

18 Judgment of the General Court of 13 September 2013, *Netherlands v Commission*, T-380/08, ECLI:EU:T:2013:480, paragraph 43; Judgment of the General Court of 7 October 2014, *Schenker v Commission*, T-534/11, EU:T:2014:854, paragraph 58; Judgment of the General Court of 28 March 2017, *Deutsche Telekom AG v Commission*, T-210/15, EU:T:2017:224, paragraph 45.

19 Judgment of the Court of 28 June 2012, *Commission v Agrofert Holding a.s.*, C-477/10 P, ECLI:EU:C:2012:394, paragraph 59; Judgment of the Court of Justice of 28 June 2012, *Commission v Éditions Odile Jacob SAS*, C-404/10 P, EU:C:2012:393, paragraph 118.

20 Judgment of the Court of 28 June 2012, *Commission v Agrofert Holding a.s.*, C-477/10 P, ECLI:EU:C:2012:394, paragraph 62; Judgment of the Court of Justice of 28 June 2012, *Commission v Éditions Odile Jacob SAS*, C-404/10 P, EU:C:2012:393, paragraph 124.

relating to those proceedings[21]. The general presumption of confidentiality applies irrespective of whether the request for access concerns a control procedure that is already closed or a pending procedure[22].

The essence of the reasoning employed by the Court of Justice in the above-mentioned case-law establishing a general presumption of non-disclosure for documents belonging to antitrust and merger files must also be applied in DMA investigations, given that the DMA Regulation contains specific provisions on access to the file and confidentiality:

1) Article 34(4) sets out the right of the 'gatekeeper, undertaking or association of undertakings concerned' to have access to the Commission's file, 'under terms of disclosure, subject to the legitimate interest of undertakings in the protection of their business secrets'. It follows that third parties do not, under such proceedings, have any right of access to the documents in the Commission's file. The Commission Implementing Regulation (EU) 2023/814[23] sets out more details about the right of access to the file.

2) Article 36 sets out an obligation to observe the professional secrecy and sets out in paragraph 1 that '[t]he information collected pursuant to this Regulation shall be used for the purposes of this Regulation'. Paragraph 4 further provides that '(...) the Commission, the competent authorities of the Member States, their officials, servants and other persons working under the supervision of those authorities and any natural or legal person, including auditors and experts appointed pursuant to Article 26(2), shall not disclose information acquired or exchanged by them pursuant to this Regulation and of the kind covered by the obligation of professional secrecy'. The natural and legal persons submitting information under the DMA Regulation have a legitimate right to expect that the information they supply to the Commission on an obligatory or voluntary basis will not be disclosed to the public. As mentioned in the reply of DG COMP, careful respect by the Commission of its obligations regarding professional secrecy creates a climate of mutual confidence between the Commission and undertakings, under which the latter cooperate by providing the Commission with the information necessary for its investigations.

Applying by analogy the above-mentioned reasoning followed by the Court of Justice in antitrust proceedings and proceedings applicable to mergers, the Secretariat-General notes that the DMA Regulation and Regulation (EC) No 1049/2001 have different aims and do not contain any provision expressly giving one regulation primacy over the other.

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21 Judgment of the Court of 28 June 2012, *Commission v Agrofert Holding a.s.*, C-477/10 P, ECLI:EU:C:2012:394, paragraph 84; Judgment of the Court of Justice of 28 June 2012, *Commission v Éditions Odile Jacob SAS*, C-404/10 P, EU:C:2012:393, paragraph 123.

22 Judgment of the Court of 28 June 2012, *Commission v Agrofert Holding a.s.*, C-477/10 P, ECLI:EU:C:2012:394, paragraph 66; Judgment of the Court of Justice of 28 June 2012, *Commission v Éditions Odile Jacob SAS*, C-404/10 P, EU:C:2012:393, paragraphs 118, 121 and 124.

23 Commission Implementing Regulation (EU) 2023/814 of 14 April 2023 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2022/1925 of the European Parliament and of the Council, OJ L 102, 17.4.2023, p. 6.

Therefore, it is necessary for the Commission to make sure that each of these regulations is applied in a manner which is compatible with the other and which enables a coherent application of them[24].

The documents requested are part of an administrative file of a procedure governed by the DMA Regulation and relevant for its implementation and enforcement. Therefore, the right of access to it is also governed by the restrictive rules for the use of documents in such DMA procedure, referred to above. These considerations must be taken into account in interpreting the first and third indents of Article 4(2) of Regulation No 1049/2001. If persons other than those with a right of access under the DMA Regulation, or those who enjoy such a right in principle but have not used it or have been refused access, were able to obtain access to documents on the basis of Regulation (EC) No 1049/2001, the access system introduced by the DMA Regulation would be undermined.

Furthermore, having regard to the objective of an investigation launched by the Commission into whether specific undertakings meet the thresholds set out in Article 3(2) of the DMA Regulation – which is ultimately to guarantee a competitive and fair digital sector, *inter alia* by setting out clear obligations and prohibitions for large online platforms, banning unfair practices, etc. – the Commission is very likely to gather, in the context of such a proceeding, commercially sensitive information concerning the undertaking that provides such core platform services (in particular commercial strategies). As a result, disclosure of documents relating to such a proceedings can indeed undermine the protection of the commercial interests of those businesses.

The exceptions relating to the protection of commercial interests and the protection of the purpose of investigations are therefore, in such a procedure under DMA Regulation, closely connected.

As mentioned above, the Court acknowledged the existence of the general presumption of confidentiality in relation to requests for disclosure of documents in a file relating to a procedure pursuant to Article 101 TFEU or a file concerning merger control proceedings. The Court also acknowledged that the Commission is entitled to presume that disclosure of such documents will, in principle, undermine the protection of the commercial interests of the undertakings involved in those proceedings, as well as the protection of the purpose of investigations relating to such proceedings within the meaning of the first and third indents of Article 4(2) of Regulation (EC) No 1049/2001. In the Secretariat-General's view, as mentioned in DG COMP's initial reply, the requests for disclosure of documents in a DMA investigation must benefit, by analogy, from the same treatment as the aforementioned cases and thus from the application in this case of a general presumption of non-disclosure arising from those exceptions laid down in Article 4 of Regulation (EC) No 1049/2001. This presumption applies regardless of whether the request for access concerns DMA proceedings that have already been closed or proceedings that are pending.

[24] See also the Judgment of the General Court of 3 May 2018, *Malta v Commission.*, T-653/16, ECLI:EU:C:2018:241, paragraph 137 and the case-law cited therein.

Furthermore, it should be noted that, in the above-mentioned cases relating to a procedure pursuant to Article 101 TFEU or a file concerning merger control proceedings, when a general presumption of confidentiality applies for the purposes of the application of the exceptions provided for in the first and third indents of Article 4(2) of Regulation No 1049/2001, the Court acknowledged in its case-law that it is not necessary for the Commission to carry out a specific, individual examination of the document(s) in a file covered by this presumption. It is not necessary thus to perform the examination referred to in your confirmatory application and 'determine whether disclosure would actually undermine the commercial interests of the company'.

For the reasons detailed above, in the Secretariat-General's assessment, there is a real and non-hypothetical risk that the disclosure of the documents requested would undermine the protection of the purpose pursued by the Commission's investigations in the file DMA.100041 and their follow-up, as well as the protection of X's commercial interests.

As a result, the Secretariat-General concludes that all documents requested must be withheld based on the on the general presumption of non-disclosure arising from the exceptions set out in the first indent (the protection commercial interests of a natural or legal person, including intellectual property) and third indent (the protection of the purpose of inspections, investigations and audits) of Article 4(2) of Regulation (EC) No 1049/2001.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

Although it is for the Commission to weigh up the different interests, in fact it is for the applicant to refer to specific circumstances that show that there is an overriding public interest, which would justify the disclosure of the documents concerned[25]. According to the case-law, when doing so the applicant must, on the one hand, demonstrate the existence of a public interest likely to prevail over the reasons justifying the refusal of the documents concerned and, on the other hand, demonstrate precisely in what way disclosure of the documents would contribute to assuring protection of that public interest to the extent that the principle of transparency takes precedence over the protection of the interests which motivated the refusal[26].

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[25] See e.g. Judgment of the General Court of 5 December 2018 in Case T-312/17, *Campbell*, EU:T:2018:876, paragraph 58, Judgment of the General Court of 26 July 2023, *Troy Chemical Company BV v Commission*, quoted above, paragraph 110.

[26] Judgment of the General Court of 9 October 2018, *Anikó Pint* v *Commission*, T-634/17, EU:T:2018:662, paragraph 48; Judgment of the General Court of 23 January 2017, *Association Justice & Environment, z.s* v *Commission*, EU:T:2017:18, paragraph 53; Judgment of the General Court of 5 December 2018, *Falcon Technologies International LLC* v *Commission*, T-875/16, EU:T:2018:877, paragraph 84.

In your confirmatory application, you indicate that '[t]here is a considerable public debate about the prevalence of hate speech and disinformation on X, as has been discussed in a recent study published by the European Commission. Public figures such as the mayor of Paris have started to leave the platform over those concerns. The documents in question likely shine a light on matters related to these concerns, including regulatory action'.

After having assessed your arguments, the Secretariat-General takes the view that they do not establish the existence of an overriding public interest in the disclosure of the documents concerned. They are general considerations about a 'public debate' and assert a general need for transparency and accountability, including that of a 'regulatory action'. Such arguments cannot provide an appropriate basis for establishing that the principle of transparency was in this case especially pressing and therefore capable of prevailing over the reasons justifying the refusal to disclose the documents in question[27].

Furthermore, it should be noted that the documents requested were gathered in the context of an analysis by the Commission as to whether X could be considered as 'gatekeeper' within the meaning of the DMA Regulation. Your arguments do not indicate how the public disclosure of the documents in question would benefit the public interest 'about the prevalence of hate speech and disinformation on X' and why such public interests would be so pressing that it overrides the need to protect them. On the contrary, in the Secretariat-General's view, such disclosure would undermine the ongoing investigations into the application and enforcement of the DMA Regulation, which effectively aims to guarantee a competitive and fair digital sector for the benefit of business users and end users.

Moreover, the Secretariat-General has not been able to identify any public interest capable of overriding the interests protected by the first and third indents of Article 4(2).

Within this context it should be noted that the European Commission ensures that the public is informed about the progress of specific DMA cases through regular publication of press releases. In the case at hand, the public was informed about the formal notification from X on 4 March 2024[28] and subsequently received updates regarding the file with X on 13 May 2024[29].

It is thus necessary to conclude that an overriding public interest has not been demonstrated in this particular case.

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27 Judgment of the Court of Justice of 14 November 2013, *Liga para a Protecção da Natureza (LPN) and Republic of Finland* v *Commission*, Joined Cases C-514/11 P and C-605/11 P, EU:C:2013:738, paragraph 93.

28 https://ec.europa.eu/commission/presscorner/detail/en/mex_24_1307

29 https://ec.europa.eu/commission/presscorner/detail/en/IP_24_2561

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, the Secretariat-General has considered the possibility of granting partial access to the documents requested.

However, it follows from the assessment above that the documents falling within the scope of your request are entirely covered by the exceptions laid down in first and third indents of Article 4(2) of Regulation (EC) No 1049/2001. As stated by the Court of Justice[30], where the documents requested are covered by a general presumption of non-disclosure, such documents do not fall within an obligation of disclosure, in full, or in part.

5. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may bring proceedings before the General Court and/or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

For the Commission
Ilze JUHANSONE
Secretary-General

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION

[30] Judgment of the Court of Justice of 28 June 2012, *Commission v Éditions Odile Jacob SAS*, C-404/10 P, EU:C:2012:393, paragraph 133.