A Work Project, presented as part of the requirements for the Award of a Master's degree in Finance from the Nova School of Business and Economics.

General Title:

THE ELON MUSK AND TWITTER SAGA: EXPLORING THE MOTIVES AND IMPACTS OF A DISRUPTIVE ACQUISITION

Individual Subtitle:

NAVIGATING THE LEGAL AND FINANCIAL LANDSCAPE OF THE ELON MUSK-TWITTER DEAL

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Abstract (100 words maximum)

In 2022, entrepreneur Elon Musk launched an acquisition of the prominent social media platform Twitter. Fueled by a vision to enhance user experience and allow free speech, Musk embarked on a lengthy, complex process involving public disputes, legal battles, and a termination attempt. The pursuit of Twitter unfolded amidst intense outsider scrutiny and highlighted the intricate interplays of personal motives, behavioral biases, and legal considerations that shape corporate mergers & acquisitions. The proposed acquisition further illuminated the challenges and complexities of navigating such high-stakes transactions, particularly in the face of public attention and legal hurdles.

Keywords:

Mergers & Acquisition (M&A), Twitter, Elon Musk, Material Adverse Effect, Case Study.

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Part A: Case Study

"I made an offer" – these four words, tweeted on April 14th, 2022, marked the beginning of an unprecedented acquisition saga led by Elon R. Musk. Twitter, a predominant social media platform frequented by politicians, journalists, and celebrities alike, had long grappled with financial instability. Advertising, which was its primary revenue stream, was severely impacted by geopolitical tensions and the COVID-19 pandemic. Despite these challenges, Musk appeared undeterred in his intention to purchase, believing in his ability to not only revive Twitter's profitability, but also reshape the landscape of digital discourse. The decision to acquire Twitter defined a new venture for the entrepreneur, leading him away from his core industries. After a long series of events involving intense public scrutiny, unresolved legal battles, and a controversial attempt to terminate the deal, many were left questioning the potential impact and the underlying rationale behind this acquisition.

Twitter, Inc.

In the landscape of 2006, when social media was still in its early stages and mobile technology was on the rise, Jack Dorsey, Biz Stone, Evan Williams, and Noah Glass envisioned a novel approach to online communications. Their brainchild, initially called "Twitrr," was described as "a new mobile service that helps groups of friends bounce random thoughts around".[1] This revolutionary concept laid the foundation for Twitter, an industry giant. From the moment the platform hatched, it took off instantly. By 2022, the volume of tweets reached unprecedented heights, with an average of one billion tweets being sent approximately every two days[2] – a testament to Twitter's unwavering position as a global forum for sharing ideas, news, and personal experiences.

[1] Boyd Myers, Courtney. 2011
[2] Sayce, David. 2022.

Twitter's mission extends far beyond its staggering user base and the sheer volume of content shared; “to give everyone the power to create and share ideas and information instantly, without barriers”.[3] It has emerged as a powerful force for shaping public discourse, fostering social movements, and providing a platform for global conversations to unfold in real-time. Its financial numbers, however, tell a different story. Despite going public on the New York Stock Exchange (NYSE) in 2013 with a market value of around $31 billion, its filings have made it clear that the company struggles to break even, only reaching profitable results in the financial years of 2018 and 2019 (Table 1, Figure 1). To understand why, it is essential to look at Twitter’s business model. Simply put, the platform is free and supported by advertisers, similar to Google and Facebook. However, it has a substantially smaller reach than those companies, diminishing its appeal to those advertisers (Figure 2).[4] This disparity in revenue generation consistently increases each year, especially as new competitors enter the market and modern content consumption formats emerge. Amid these financial challenges, various factors contribute to Twitter's recurring losses. They include the high operating costs incurred due to the complex infrastructure necessary to serve its global user base, its sizable and skilled workforce, substantial investments in ongoing product development and marketing efforts, and the intricate and costly process of content moderation.[5] As a result, Twitter is facing an uncertain future, contingent upon its ability to strike a balance between implementing effective strategies and preserving its long-term objectives.

Elon R. Musk

Born in 1971 in Pretoria, South Africa, Elon Musk’s name is synonymous with entrepreneurship, eccentricity, and controversy. The high-profile businessman had always had an aptitude for

[3] Fox, Justin. 2014.
[4] Kafka, Peter. 2022.
[5] Uță, Iulia-Cristina. 2022.

technology and innovation, which has led him on a long, successful journey of creating and investing in companies such as Zip2 and X.Com (which later underwent a merger and became PayPal). Undoubtedly, however, Musk's most relevant achievements consist of his electric automotive company Tesla, and his aerospace manufacturer SpaceX.

Since his emergence into the world of commerce, Elon Musk has accumulated a series of flourishing investments and mergers under his belt. Known for his keen eye for identifying promising businesses, the media mogul has previously acquired companies such as SolarCity. Though Musk has often been praised for his risk-taking and cutting-edge ideas, he is still highly subject to criticism, even from his own shareholders. Musk has an unconventional communication style and is very active on Twitter, previously having made headlines for opinions and announcements that have caused several market fluctuations and, in extreme cases, landed him in trouble with regulatory government agencies.[6] Additionally, his decision to merge Tesla with SolarCity earned him accusations of conflict of interest,[7] seeing as he was respectively board member and chairman of each company. Despite frequent protests from employees and stockholders, Musk seems to be undeterred in his ambitious visions for the future, often proposing ideas that push boundaries and incite significant publicity, such as his abrupt offer to buy Twitter in April of 2022.

As mentioned, Musk had been a long-time user and supporter of the company in question, even reaching an above 5% stake in it. Adhering to his own personal value of the importance of free speech, Musk has been seen questioning the platform's commitment to this principle (Figure 3, Figure 4), to the point where he announced "giving serious thought" to the possibility of creating a

[6] Referring to the SEC's 2018 Fraud lawsuit against Elon Musk regarding Tesla.
[7]Owens, Jeremy C. 2016.

direct competitor to Twitter.[8] After a series of meetings and negotiations with Twitter officials, where Musk accepted and later gave up a board seat, the news came out that he had officially launched an acquisition of the social-media company.

Timeline of Events (Part I) [9]

31/01/22 Regulatory filings show that Musk bought a little more than 620,000 Twitter shares at $36.83 each, and then continued to accumulate more shares nearly every single trading day until April 1st.

14/03/22 Musk crosses the 5% line in his ownership of Twitter, thus needing to file a 13D (active investor) or a 13G (passive investor) claim under U.S. securities law within 10 days.

25/03/22 In one of his tweets, Musk asks users if Twitter adhered to the principle of free speech: "The consequences of this poll will be important. Please vote carefully." The poll ended with 70.4% of users opting for the "No" option (Figure 3).

04/04/22 Musk's 9.2% stake worth $2.9 billion is revealed in a 13G filing, officially making him Twitter's largest stakeholder. He had saved approximately $143 million by delaying his disclosure.

05/04/22 Twitter CEO Parag Agrawal announces Musk was offered and had accepted a seat on the Board of Directors. Musk amends his SEC filing to 13D.

11/04/22 Musk abandons the board position.

14/04/22 Musk announces his offer to buy Twitter for $54.20 per share.

25/04/22 Twitter enters the Merger Agreement with Musk, Parent and Acquisition Sub and values the deal at $44 billion.

[8] FE Online. 2022.
[9] Compiled from SEC filings, public releases, and Ahmad, Saleem, and Sanjay Biyani. 2023.

The Merger Agreement [10]

For the sole purpose of this acquisition, Musk created two companies: X Holdings I, Inc (Parent) and X Holdings II, Inc (Acquisition Sub). The transaction was concluded as a reverse triangular merger, meaning Twitter would emerge as the surviving entity from the merger with Acquisition Sub, acting as wholly owned subsidiary of Parent. Subsequently, its stock would be delisted from the NYSE. In this process, stockholders would receive $54.20 in cash for each of their shares.

Musk's initial financing strategy for the acquisition was a novel approach to a leveraged buyout. He amassed a combination of his own personal funds, equity financing, and debt financing,[11] adding up to $46.5 billion (Table 4) to assume the all-cash payment and additional transaction costs associated with the merger. The undisturbed premium of Musk's unsolicited offer for Twitter—before he disclosed his stake in the company— was 38%, and 18% before the merger was announced (Figure 5). The merger agreement serves as the comprehensive legal contract outlining the terms and conditions agreed upon by both parties to complete the acquisition (Exhibit 1).

Motives to Merge

Reflective of his distinctive approach to business, Elon Musk’s pursuit of Twitter stems from equally unconventional motives. A strong advocate for freedom of speech and the right to unconstrained discussion, Musk has strongly campaigned his acquisition as the transformation of the platform to an unfiltered, minimal censorship “digital town square”. During his 2022 TED Talk, the CEO firmly stated that “free speech is a societal imperative for a functioning democracy”.[12] He has also emphasized that his definition of the notion “simply matches the law”, receiving significant

[10] All details regarding this section were extracted from SEC filings.

[11] This is in reference to the original payment structure proposed by Musk. Note that this structure was subject to modification later throughout the deal.

[12] Perrigo, Billy. 2022.

support from his followers. Though noble and non-pecuniary as a rationale, many criticize how this vision could be directly contradictory to content moderation and safety guidelines that ensure a safe environment for Twitter users. Beyond these open dialogue ideals, Musk also envisions himself capable of elevating Twitter beyond its status-quo performance. Purportedly, under his leadership, the company will unlock its suppressed potential, welcoming a new era of high profits and increased users.

Though the entrepreneur was supposedly driven by a broader aspiration to benefit general society, it is essential to recognize that he was also motivated by factors aligning with his own personal and professional objectives. Twitter generates an endless stream of real time information thanks to the magnitude of its user-base, estimated at 362 million users as of 2021 (Figure 6). This data-mine encompasses figures related to market trends, investor sentiment, consumer behavior and perception, etc. Musk can heavily benefit from such knowledge, enabling him to leverage it for his various ventures, including artificial intelligence, sustainable energy, and space exploration. Once famously stating “When something is important enough, you do it even if the odds are not in your favor”,[13] some speculate that the only motive Elon Musk needs to embark on a venture is his own conviction and confidence in himself. All that remains in his way is whether Twitter shareholders believe that his offer creates value for them.

Industry Outlook

The year 2022 was a tumultuous one for the stock market, with the tech sector experiencing a particularly rough ride. The Dow Jones U.S. Technology Index, a benchmark that tracks the performance of major tech companies, plummeted by over 35%. The NASDAQ Composite Index,

[13] Musk, Elon. 2012.

another tech-heavy index, suffered a decline of over 33%.[14] These challenges, which emerged in late 2021, persisted throughout much of 2022, marking the largest stock market downturn since the 2008 financial crisis.[13] The primary culprit behind this decline was a combination of rising interest rates, high inflation, and uncertain economic conditions, which ultimately led to layoffs, hiring freezes, and other cost-cutting measures across the industry.[13] Namely, the geopolitical tensions arising from the Russo-Ukrainian war and the effects of the COVID-19 pandemic lingered, further exacerbating the challenges faced by firms reliant on advertising revenue. These businesses responded by tightening their advertising budgets and prioritized platforms providing the best return on investment.

The risk of market decline, which Musk had assumed sole responsibility for under the merger agreement, materialized shortly after the deal was signed. Within a week, Musk was forced to sell 9.8 million Tesla shares to finance the merger, accepting prices as low as $822.68 per share, a significant drop from the pre-announcement value of $1,005 (Figure 7). Despite his initial tweet declaring "No further TSLA sales planned after today," the downward spiral of Tesla's stock price continued, placing Musk at risk of having to sell even more Tesla shares to secure his pledged payment obligation.

Timeline of Events (Part II) [15]

28/04/22 Elon Musk sold roughly $8.4 billion worth of Tesla shares in the days following his bid to take Twitter private, according to filings with the SEC.

04/05/22 To avoid pledging more Tesla shares, Musk reduced the margin loan and secured more than $7 billion in financing for the deal from 19 investors.

[14] Forbes. 2023.
[15] Compiled from SEC filings and public releases.

06/05/22 A Twitter shareholder filed a complaint alleging that Musk had an understanding with other stockholders to secure their votes for the merger.

12/05/22 Twitter announces a hiring freeze; and two top executives exit the company.

13/05/22 Musk tweets that the acquisition is "temporarily on hold," citing concern over “the prevalence of bot and spam accounts on the platform”. Roughly two hours later, Musk says he's "still committed" to the deal (Figure 8).

24/05/22 Musk and backers canceled the margin loan entirely without informing Twitter, increasing Musk's equity commitment to $33.5 billion.

25/05/22 Twitter shareholders bring a class-action lawsuit against Musk over alleged stock manipulation tied to the tumultuous acquisition process.

06/06/22 Musk threatens to renounce the deal if Twitter doesn't provide additional information about the prevalence of bots on its platform. A Twitter spokesperson stated the information it had been sharing with Musk was "in accordance with the terms of the merger agreement."[16]

07/06/22 A Twitter shareholder filed a complaint seeking records to investigate alleged wrongdoing by the Twitter Board related to the merger and disclosures about daily monetizable active users (mDAUs).

28/06/22 A Twitter stockholder sued the company and its board alleging incomplete and misleading disclosures in the revised preliminary proxy statement, particularly regarding projections and financial analyses.

08/07/22 Musk moves to terminate his acquisition of Twitter, pointing to the issue of bot accounts.[17]

[16] Statement made by Twitter spokesperson to Yahoo Finance.
[17] For additional reading refer to Musk’s lawyers’ emails available in SEC filings.

12/07/22 Twitter sues Musk in the Chancery Court of Delaware, intending to force him to close the deal.

19/07/22 The court determines that the trial should take place in October, granting an expedited timeline for the case.

26/07/22 Twitter files the Definitive Proxy Statement regarding the acquisition.

The Backing Out

With its enduring popularity and established presence (Figure 9), Twitter, like all its peers, deals with its fair share of bots. These automated accounts, mimicking human users, range from mere inconveniences to outright threats for user's experience, which is why Musk's promise to eradicate them resonated so strongly with the public. The entrepreneur even threatened to walk away from his entire stake in the company his offer wasn't accepted, deeming it "simply not a good investment" without a solution for the problem.[18] However, Twitter pushed back, claiming in a May 2022 filing that less than 5% of their active users were bots.[19] Despite confidential meetings between Musk and representatives, where the bot issue was supposedly addressed, things only escalated.[20] By May 13th, Musk publicly announced a hold on the deal, citing concerns about the legitimacy of Twitter's calculations.[21] This culminated in July with Musk officially terminating the merger agreement, alleging Twitter had "misrepresented" the crucial data used to value the company.[22] However, analysts speculated that he might be using the issue as leverage to lower the acquisition price, similar to tactics employed by others before him (Table 5).[23]

[18] Gilbert, Ben. 2022.
[19] Dang, Shelia. 2022.
[20] From Twitter v. Elon Musk Complaint.
[21] Every company has a different process for calculating mDAUs as it is not standardized in the industry.
[22] Exhibits from SEC Filings.
[23] Klender, Joey. 2022.

Twitter v. Elon Musk

On July 12, 2022, Twitter filed a lawsuit against Elon R. Musk, X Holdings, I. And X Holdings, II., seeking the fulfilment of each of their legal obligations stated in the merger agreement. "Musk refuses to honor his obligations to Twitter and its stockholders because the deal he signed no longer serves his personal interests", Twitter's complaint stated, "Musk apparently believes that he — unlike every other party subject to Delaware contract law — is free to change his mind, trash the company, disrupt its operations, destroy stockholder value, and walk away".[24] Musk's countersuit was initially filed under seal, yet media outlets were already claiming it would be the "trial of the century", with a constant flow of new information in the form of text messages, emails, and transcribed recordings. This kind of evidence can of course be interpreted differently depending on the viewer's stance, thus creating a unique environment for merger arbitrageurs to analyze and try to profit off of the result of the transaction.

The Delaware Court of Chancery will ultimately determine whether Musk remains obligated to complete the acquisition or whether Twitter's failure to fully disclose the extent of the fake account issue, as well as its potential breach of the ordinary course covenant, constitutes a material breach of the merger agreement. If the court finds that Twitter's actions resulted in a company Material Adverse Effect (MAE), it could provide Musk with additional legal basis to terminate the deal. Despite the growing importance of MAE as a critical deal point in M&As, proving that one has taken place or is likely to occur is a notoriously challenging task. Although numerous legal disputes surround the issue, Delaware courts have only once recognized the occurrence of an MAE as a valid reason for terminating a transaction.[25]

[24] Extracted from Twitter v. Elon Musk Complaint.
[25] Referring to Akron, Inc. v. Fresenius Kabi.

Shareholders' Approval [26]

Twitter sent its definitive proxy statement to their shareholders on July 26th, 2022, believing the merger agreement remained effective. The Board unanimously recommended that shareholders vote "FOR" each of the proposals at the special meeting. The proposals were: (a) Adoption of the merger agreement, (b) Approval—on a non-binding advisory basis— of certain merger-related executive compensation, and (c) The adjournment of the special meeting. The statement encompassed important information including the summary of the transaction, the merger agreement, a 'questions and answers' section, and more specifically an appraisal right section.

Those who voted "FOR" would be entitled to receive $54.20 in cash for each share of common stock that they own, without interest and subject to any applicable withholding taxes. However, if Twitter shareholders do not want to be a part of the merger with Musk, they have the right to get their shares appraised and paid for at their fair market value. To do this, they must meet the conditions that include: (a) Not voting in favor of the merger, (b) Demanding an appraisal of their shares before the vote on the merger, and (c) Continuously holding their shares through the effective time of the merger. It remains to be seen which consensus Twitter shareholders will reach, but what is certain is that all stakeholders are eagerly anticipating the conclusion of the saga and speculating on the prospects of the firm, its role in shaping digital discourse, and future transactions

[26] All details regarding this section were extracted from Twitter's Definitive Proxy Statement.

EXHIBITS

Exhibit 1. Summary of Key Contractual Terms in the Merger Agreement

Provision	**Section and Contractual Clause**
Agreement	**Item 1.01** On April 25, 2022, Twitter, Inc. (Twitter) entered into merger agreement with X Holdings I, Inc. (Parent), X Holdings II, Inc. (Acquisition Sub), and, solely for the purpose of certain provisions, Elon R. Musk (Equity Investor).
Material Adverse Effect (MAE)	Defined in **Article I** as any change or circumstance that significantly harms Twitter's business or financial condition, but shall not include general market conditions, legal or economic changes, acts of nature, force majeure events, or specific exclusions like the impact of the merger agreement, actions approved by Parent or Acquisition Sub, market changes, and certain disclosures in Twitter's SEC documents, except for specific disclosures under "Risk Factors" or "Forward-Looking Statements".
Closing Date	**§2.2** The second business day after the satisfaction or waiver of all the closing conditions of the merger.
Merger Consideration	**§3.1** Each issued and outstanding share of Twitter's common stock will be cancelled and converted into the right to receive $54.20 in cash, without interest.
Fairness Opinion	**§4.22** Twitter's Board has received the opinion of Goldman Sachs and J.P Morgan to the effect that the consideration is fair to the Twitter shareholders from a financial point of view.
Due Diligence	**§5.11** Parent and Acquisition Sub have independently evaluated Twitter's business, financial condition, and assets. Their decision to proceed with the merger is based on their own analysis.
Ordinary Course Covenant	**§6.1** Twitter must maintain normal business operations without making significant changes, except when required by law or with Parent's written consent. It should also preserve its relationships with key stakeholders and employees.
Preparation of the Proxy Statement	**§6.2** The Target, with the help of Parent and Acquisition Sub, is responsible for preparing and filing the proxy statement with the SEC.
Closing Efforts	**§6.3** The parties will do their best to ensure the merger happens. They'll obtain necessary approvals and take action to prevent delays or issues, especially with government authorities.
Information Sharing	**§6.4** Twitter must provide Parent's representatives with access to its information and properties while minimizing disruption. However, confidential information is protected. Information obtained can only be used for the merger's purpose, and both parties must sign a confidentiality agreement before sharing any information.
Public Announcements	**§6.8** Parties must consult before issuing public statements. The Equity Investor can issue tweets about the merger, but they must not disparage Twitter or its representatives.
Financing	**§6.10** The parties involved must take necessary actions to secure and complete the financing. Additionally, **§6.11** Twitter must cooperate with Parent, at Parent's expense, to secure financing and deal with existing debt. Cooperation shouldn't disrupt the Company's operations, and certain limitations apply.
Closing Conditions	**§7.1** In order for the merger to proceed, Twitter stockholders must approve of it, all necessary regulatory approvals must be secured, and there should be no legal impediments in specific jurisdictions**.** Additionally, **§7.2** Twitter must meet its obligations as per the agreement, its representations and warranties must hold true except for matters not causing a MAE, and there should be no ongoing MAE affecting Twitter.

Termination	**§8.1** This agreement allows for mutual termination by both parties before the effective date (25/04/22). Either party can terminate it before this time if the merger isn't completed by the termination date (24/10/22), unless due to the other party or with an extension, or if Twitter shareholders don't approve. Twitter can also terminate if Musk or his investors breach their commitments (with a 30-day correction window), if Twitter gets a better offer or if Musk and his investors fail to complete the merger within three business days after the termination date (provided Twitter was ready). Musk can terminate if Twitter breaches its commitments or changes its recommendation to shareholders before the vote. **§8.3** The termination fee is $1 billion to be paid by the party who terminates the agreement.
Governing Law	**§9.8** This agreement shall be governed by the laws of the state of Delaware.
Specific Performance	**§9.9** (a) Parties can seek injunctions and equitable remedies if there are breaches of this agreement, in addition to any legal remedies. (b) Twitter can seek specific performance if certain conditions are met and Parent fails to close the deal on time, it can't seek both specific performance and monetary damages exceeding the Parent Termination Fee.

APPENDIX

Figure 1. Twitter's Revenue and Profitability Year over Year.

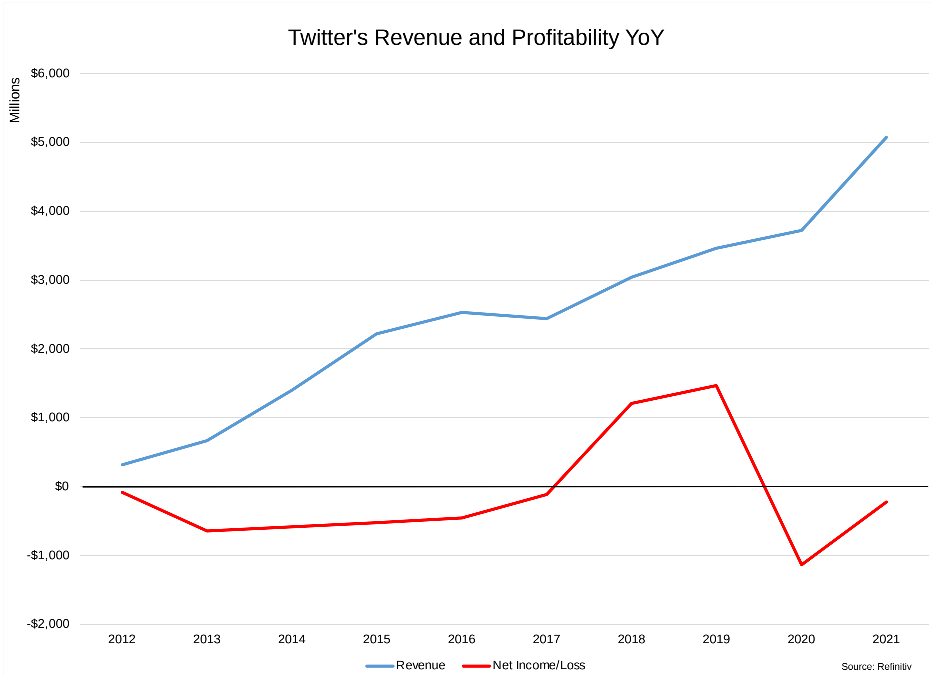


Figure 2. The World's Most Used Social Platforms: The latest global activity figures (in millions) as of April 2021 for a selection of the world's top social media platforms.

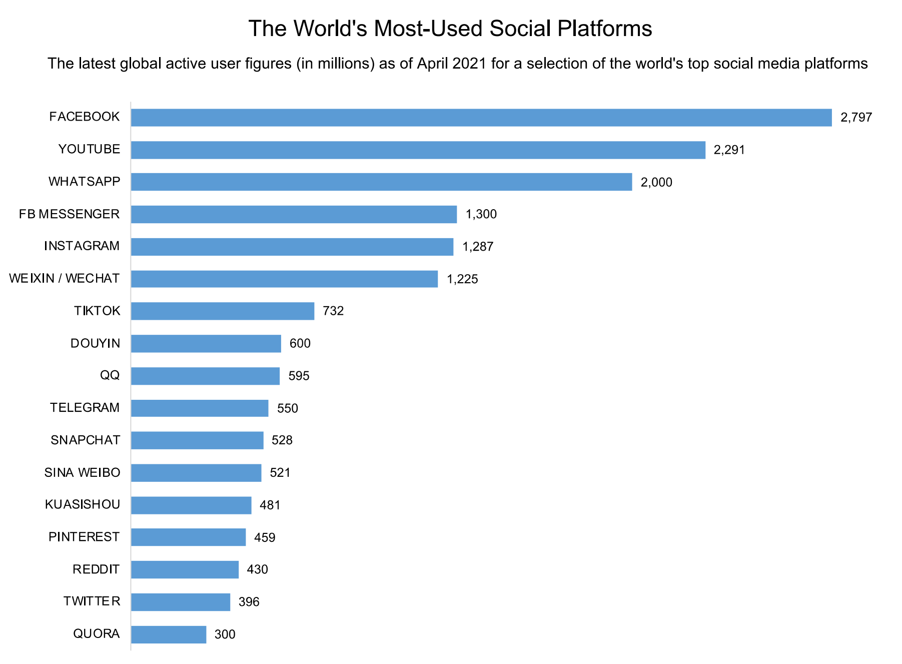


Figure 3. Elon Musk's Poll about Free Speech and Twitter

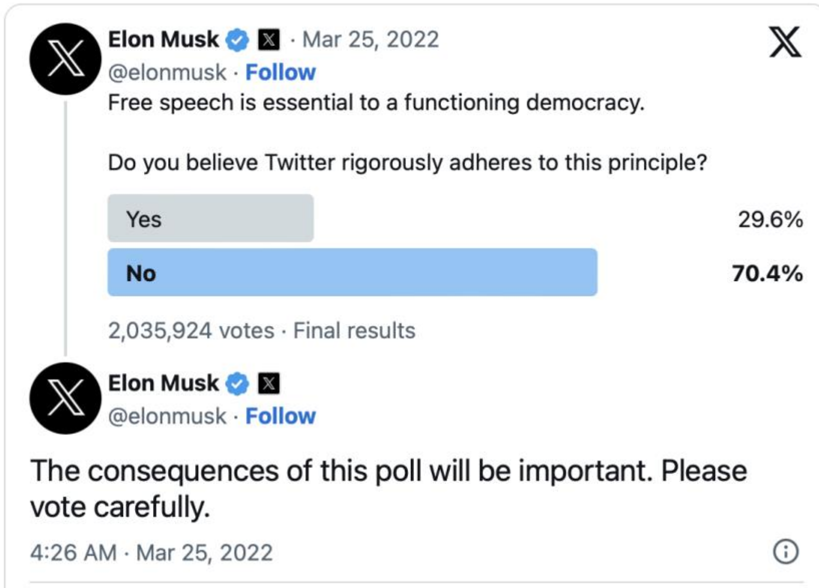
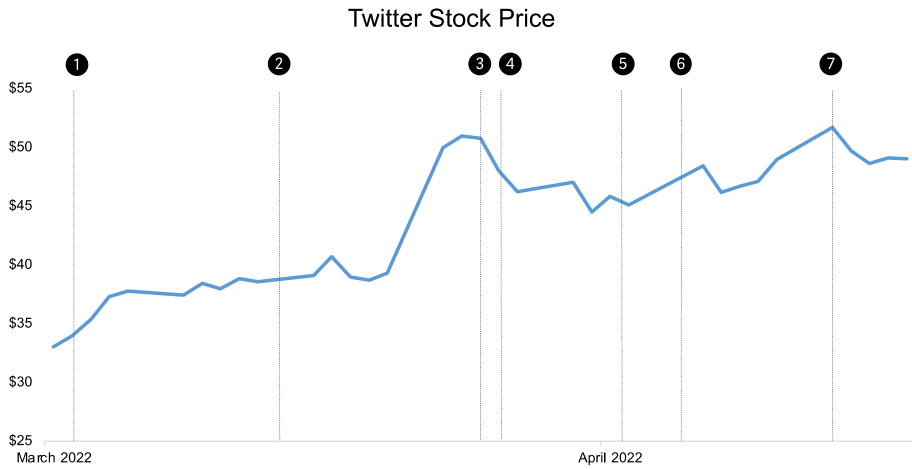


Figure 4. Elon Musk's Reply to Own Tweet about Free Speech and Twitter.

Figure 5. Twitter's Stock Price.



1. March 14 Musk crosses the 5% threshold on shareholding

2. March 25 Musk asks if Twitter adheres to principles of free speech and democracy, adding 'the consequences of this poll will be important'

3. April 4 Musk discloses his 9.2% stake, worth $2.9b

4. April 5 Twitter CEO Parag Agrawal announces Musk will join Twitter Board

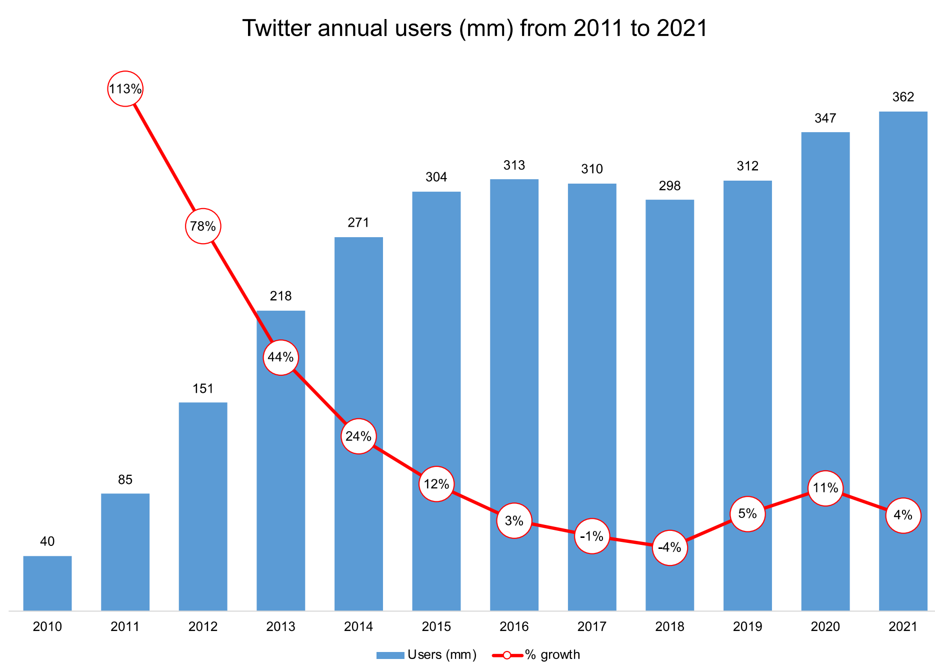
5. April 11 Musk decides not to join board

6. April 14 Musk offers to buy Twitter

7. April 25 Twitter enters the merger agreement with Musk, Parent and Acquisition Sub

Source: Refinitiv, FT Times

Figure 6. Twitter Annual Users (mm) from 2011 to 2021.



Source: Company data, eMarketer Social App Report

Figure 7. Tesla Stock Price.

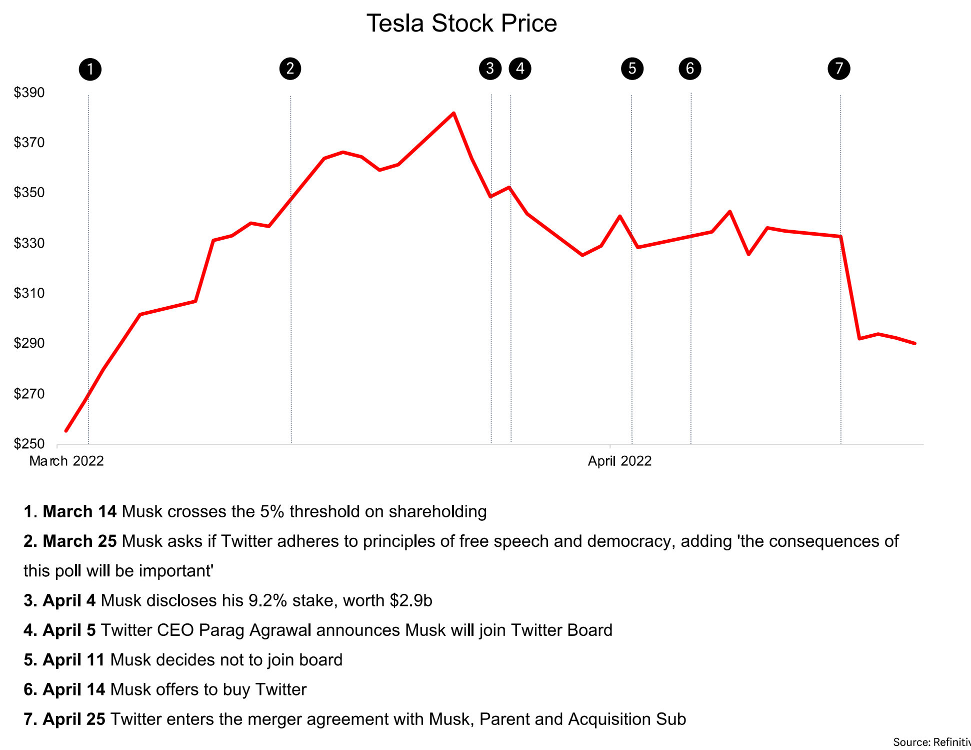


Figure 8. Elon Musk Tweets about Putting Deal on Hold and Later Retracts.

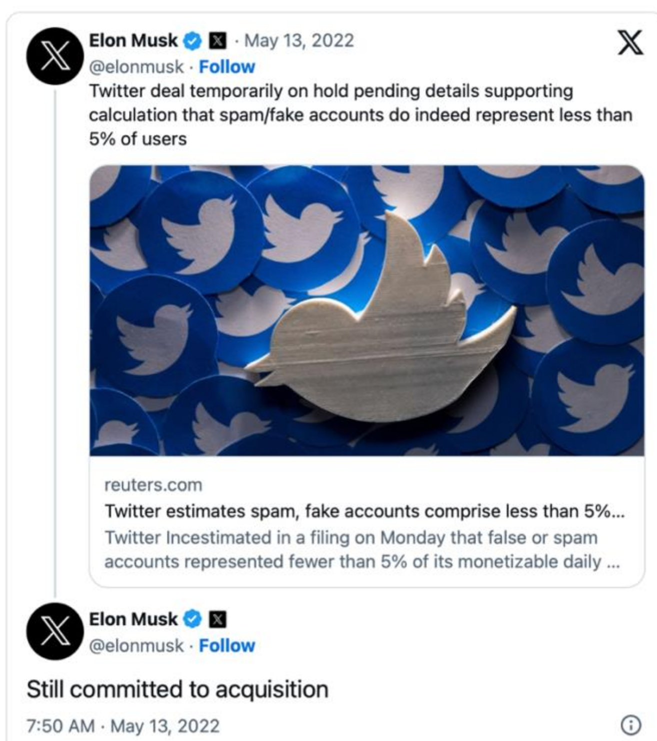


Figure 9. Favorite Social Media Platforms: Percentage of internet users aged 16 to 64 (excluding China) who say that each option is their 'favourite' social media platform as of December 2020

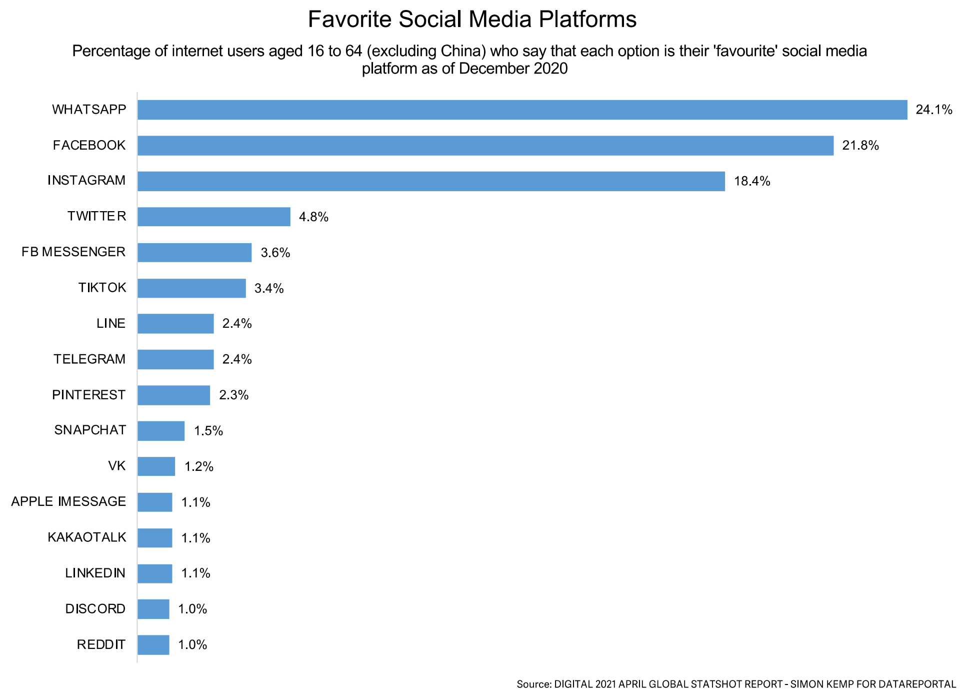


Figure 10. Elon Musk tweets about Breaking NDA.

Figure 11. Elon Musk Replies to Twitter's CEO Thread about mDAUs concerns.

Parag Agrawal @paraga · May 16

Now, we know we aren't perfect at catching spam. And so this is why, after all the spam removal I talked about above, we know some still slips through. We measure this internally. And every quarter, we have estimated that <5% of reported mDAU for the quarter are spam accounts.

95 214 2,313

Parag Agrawal @paraga · May 16

Our estimate is based on multiple human reviews (in replicate) of thousands of accounts, that are sampled at random, consistently over time, from *accounts we count as mDAUs*. We do this every quarter, and we have been doing this for many years.

63 199 2,212

Parag Agrawal @paraga · May 16

Each human review is based on Twitter rules that define spam and platform manipulation, and uses both public and private data (eg, IP address, phone number, geolocation, client/browser signatures, what the account does when it's active...) to make a determination on each account.

253 316 3,298

Parag Agrawal @paraga · May 16

The use of private data is particularly important to avoid misclassifying users who are actually real. FirstnameBunchOfNumbers with no profile pic and odd tweets might seem like a bot or spam to you, but behind the scenes we often see multiple indicators that it's a real person.

177 384 2,621

Parag Agrawal @paraga · May 16

Our actual internal estimates for the last four quarters were all well under 5% – based on the methodology outlined above. The error margins on our estimates give us confidence in our public statements each quarter.

165 214 2,065

Parag Agrawal @paraga · May 16

Unfortunately, we don't believe that this specific estimation can be performed externally, given the critical need to use both public and private information (which we can't share). Externally, it's not even possible to know which accounts are counted as mDAUs on any given day.

1,076 590 3,892

Elon Musk
@elonmusk

Replying to @paraga

💩

1:03 PM · May 16, 2022 · Twitter for iPhone

Figure 12. Proxy Card Sent to Twitter Shareholders.

TO VOTE, MARK BLOCKS BELOW IN BLUE OR BLACK INK AS FOLLOWS:

D86931-TBD

KEEP THIS PORTION FOR YOUR RECORDS

DETACH AND RETURN THIS PORTION ONLY

THIS PROXY CARD IS VALID ONLY WHEN SIGNED AND DATED.

TWITTER, INC.

The Board of Directors recommends you vote FOR proposals 1, 2 and 3.	**For**	**Against**	**Abstain**
1. To adopt the Agreement and Plan of Merger (as it may be amended from time to time, the "Merger Agreement") dated as of April 25, 2022, by and among X Holdings I, Inc., X Holdings II, Inc., Twitter, Inc., and, solely for the purposes of certain provisions of the Merger Agreement, Elon R. Musk.	☐	☐	☐
2. To approve, on a non-binding, advisory basis, the compensation that will or may become payable by Twitter to its named executive officers in connection with the merger.	☐	☐	☐
3. To approve any proposal to adjourn the Special Meeting, from time to time, to a later date or dates, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting.	☐	☐	☐

NOTE: In their discretion, the proxyholders will vote on such other business as may properly come before the Special Meeting. **If no direction is made, this proxy will be voted FOR proposals 1, 2 and 3.**

Please sign exactly as your name(s) appear(s) hereon. When signing as attorney, executor, administrator, or other fiduciary, please give full title as such. Joint owners should each sign personally. All holders must sign. If a corporation or partnership, please sign in full corporate or partnership name by authorized officer.

Signature [PLEASE SIGN WITHIN BOX] Date Signature (Joint Owners) Date

D86932-TBD

TWITTER, INC.
Special Meeting of Stockholders
September 13, 2022
This proxy is solicited by the Board of Directors

The stockholder(s) hereby appoint(s) Parag Agrawal, Ned Segal and Sean Edgett, or any of them, as proxies, each with the power to appoint his substitute, and hereby authorize(s) them to represent and to vote, as designated on the reverse side of this proxy card, all of the shares of common stock of TWITTER, INC. ("Twitter") that the stockholder(s) is/are entitled to vote at the Special Meeting of Stockholders to be held at 10:00 a.m., Pacific time, on September 13, 2022 (together with any postponements, adjournments or other delays there, the "Special Meeting"). The Special Meeting will be held virtually at: www.virtualshareholdermeeting.com/TWTR2022SM.

This proxy card, when properly executed, will be voted in the manner directed herein. If no such direction is made, this proxy will be voted in accordance with the Board of Directors' recommendations.

Continued and to be signed on reverse side

Table 1. Twitter Income Statement

CONSOLIDATED STATEMENTS OF INCOME

	12 months ended				
	Dec, 2017	Dec, 2018	Dec, 2019	Dec, 2020	Dec, 2021
Advertising Services	2,110.0	2,617.4	2,993.4	3,207.4	4,505.7
Data Licensing and Other	333.3	425.0	465.9	509.0	571.8
Revenue	2,443.3	3,042.4	3,459.3	3,716.3	5,077.5
Cost of revenue	860.9	965.3	1,137.1	1,366.4	1,797.5
Gross Profit	1,582.4	2,077.1	2,322.3	2,350.0	3,280.0
Selling, General & Admin	997.1	1,072.7	1,273.8	1,450.3	1,760.3
Selling & Marketing	714.5	773.1	913.9	887.9	1,176.0
General & Administrative	282.6	299.7	359.9	562.4	584.3
Research & Development	552.0	555.3	682.4	873.0	1,246.7
Other Operating Expense					
Total Operating Expense	1,549.1	1,628.0	1,956.1	2,323.3	3,007.0
Operating Income (Loss)	33.3	449.1	366.2	26.7	273.0
Non-Operating (Income) Loss	71.7	26.8	(15.2)	68.8	19.8
Interest Expense, Net	60.9	21.4	(19.5)	64.7	15.5
Other Non-Op (Income) Loss	10.9	5.4	4.4	4.1	4.3
Pretax Income (Loss), Adjusted	(38.4)	422.3	381.3	(42.1)	253.1
Abnormal Losses (Gains)	57.0	(1.3)	(8.8)	8.8	664.3
Legal Settlement					809.5
Restructuring	(5.4)	(4.3)	(0.2)		
Sale of Investments	62.4	3.0	(8.6)		
Unrealized Investments				8.8	(101.4)
Insurance Settlement					(43.8)
Pretax Income (Loss), GAAP	(95.4)	423.5	390.1	(50.9)	(411.1)
Income Tax Expense (Benefit)	12.6	(782.1)	(1,075.5)	1,084.7	(189.7)
Current Income Tax	19.1	19.7	47.0	20.3	39.1
Deferred Income Tax	(6.4)	(801.7)	(1,122.5)	1,064.4	(228.8)
Net Income, GAAP	(108.1)	1,205.6	1,465.7	(1,135.6)	(221.4)

Source: Bloomberg

Table 2. Twitter Consolidated Balance Sheets.

CONSOLIDATED BALANCE SHEETS

	12 months ended				
	Dec, 2017	Dec, 2018	Dec, 2019	Dec, 2020	Dec, 2021
Assets					
Cash & Cash Equivalents	1,638.4	1,894.4	1,799.1	1,988.4	2,186.5
ST Investments	2,764.7	4,315.0	4,840.0	5,483.9	4,207.1
Accounts & Notes Receivable	664.3	788.7	850.2	1,041.7	1,217.4
Other ST Assets	254.5	112.9	130.8	123.1	307.3
Total Current Assets	5,321.9	7,111.0	7,620.1	8,637.1	7,918.4
Property, Plant & Equip, Net	773.7	885.1	1,728.9	2,423.9	3,277.3
LT Investments	27.6	25.8	77.7		
Other LT Assets	1,289.3	2,140.7	3,276.7	2,318.0	2,863.9
Total Noncurrent Assets	2,090.6	3,051.5	5,083.3	4,742.0	6,141.1
Total Assets	7,412.5	10,162.6	12,703.4	13,379.1	14,059.5
Liabilities & Shareholders' Equity					
Payables & Accruals	469.9	508.2	591.5	797.2	1,040.9
Accounts Payable	171.0	145.2	161.1	194.3	203.2
Accrued Taxes	36.1	39.7	46.0	40.4	47.8
Other Payables & Accruals	262.8	323.2	384.4	562.6	789.9
ST Debt	85.0	965.4	170.4	1,095.6	222.3
Other ST Liabilities	28.4	42.8	70.6	60.0	80.7
Total Current Liabilities	583.3	1,516.3	832.5	1,952.8	1,343.9
LT Debt	1,708.8	1,755.3	3,118.3	3,388.6	5,324.2
Other LT Liabilities	73.2	85.4	48.3	67.6	84.2
Total Noncurrent Liabilities	1,782.0	1,840.7	3,166.5	3,456.2	5,408.5
Total Liabilities	2,365.3	3,357.0	3,999.0	5,409.0	6,752.3
Additional Paid in Capital	7,750.5	8,325.0	8,763.3	9,167.1	8,432.1
Treasury Stock				(5.3)	(5.3)
Retained Earnings	(2,671.7)	(1,454.1)	11.6	(1,125.7)	(1,002.3)
Other Equity	(31.6)	(65.3)	(70.5)	(66.1)	(117.3)
Total Equity	5,047.2	6,805.6	8,704.4	7,970.1	7,307.2
Total Liabilities & Equity	7,412.5	10,162.6	12,703.4	13,379.1	14,059.5

Source: Bloomberg

Table 3. Twitter Consolidated Statements of Cash.

CONSOLIDATED STATEMENTS OF CASH

	12 months ended				
	Dec, 2017	Dec, 2018	Dec, 2019	Dec, 2020	Dec, 2021
Net Income	(108.1)	1,205.6	1,465.7	(1,135.6)	(221.4)
Depreciation & Amortization	395.9	425.5	465.5	495.2	544.8
Non-Cash Items	575.6	(380.7)	(626.9)	1,673.4	339.4
Chg in Non-Cash Work Cap	(32.2)	89.3	(1.0)	(40.1)	(30.1)
Cash from Operating Activities	831.2	1,339.7	1,303.4	992.9	632.7
Change in Fixed & Intang	(123.0)	(470.9)	(522.7)	(864.2)	(1,003.1)
Net Cash From Acq & Div		(33.6)	(29.7)	(48.0)	(32.7)
Other Investing Activities	6.4	(1,551.1)	(563.6)	(648.4)	1,088.4
Cash from Investing Activities	(116.5)	(2,055.5)	(1,116.0)	(1,560.6)	52.6
Dividends Paid					
Cash From (Repayment) Debt	(102.8)	1,059.6	(301.7)	976.9	269.5
Cash (Repurchase) of Equity	33.4	219.5	43.2	(184.4)	(698.5)
Other Financing Activities	(9.0)	(301.0)	(27.7)	(37.2)	(43.8)
Cash from Financing Activities	(78.4)	978.1	(286.2)	755.3	(472.8)
Effect of Foreign Exchange Rates	9.9	(14.3)	4.6	(4.0)	(13.1)
Net Changes in Cash	646.2	248.0	(94.2)	183.6	199.4

Source: Bloomberg

Table 4. Initial Twitter offer Payment Structure.[1]

Intitial Twitter Offer Payment Structure

Equity Financing	**$21 Billion**
Debt Financing	**$25,5 Billion**
Margin Loan Facility	$12,5 Billion
Senior Secured Term Loan Facility	$6,5 Billion
Senior Unsecured Bridge Loan Facility	$3 Billion
Senior Secured Bridge Loan Facility	$3 Billion
Senior Secured Revolving Facility	$500 Million
Total	$46,5 Billion

Source: SEC Filings

[1] $44 billions for the acquisition and $2,5 billions for additional fees.

Table 5. Recut Deals after Buyer Calls Material Adverse Clause.

Recut Deals after Buyer Calls Material Adverse Clause

Date	Buyer	Seller	Notice	Resolution
11/25/19	LVMH	Tiffany & Co.	09/09/20	Deal recut at a 3% lower price
01/12/20	Woodward	Hexcel	04/06/20	Mutual termination; no termination fees
02/03/20	CanCap / ACC	Rifco	03/27/20	Mutual release and settlement; $1.5 million paid to Rifco
02/06/20	Advent international	Forescout Technologies	05/15/20	Deal recut at a 15% lower price
02/10/20	Simon Property	Taubman Centers	06/10/20	Deal recut at an 18% lower price
02/12/20	Cast & Crew Indie Services	Oberman Tivoli & Pickert	04/06/20	Settlement (terms not disclosed); suit voluntarily dismissed
02/18/20	Amherst Holdings	Front Yard Residential	05/04/20	Deal terminated, Amherst to pay $100 million (cash payment, equity investment, and loan facility)
02/18/20	1-800- Flowers.com	Bed Bath & Beyond	04/01/20	Deal recut at a 3% lower price
02/20/20	Sycamore Partners	L Brands	04/22/20	Mutual termination and agreement to settle; no termination fees

Source: Guhan Subramanian & Caley Petrucci, Deals in the time of Pandemic, Columbia Law Review (2021)

Part B: Teaching Note

SYNOPSIS

On April 14th, 2022, Elon R. Musk (Equity Investor) publicly announced his offer to purchase Twitter, Inc. (Target). On October 27th of the same year, the deal was concluded for a sum of $44 billion, declaring itself one of the biggest leveraged buyouts in history. This case study places focus on the process and the motives that led to the creation of X Corp, the surviving entity of the reverse triangular merger between X Holdings I, Inc (Parent) X Holdings II, Inc (Acquisition Sub) and Twitter, Inc. It begins by citing the history of Twitter and its position as a dominant platform in the average social media consumer's bundle, followed by a brief analysis of the company's complicated financial situation. Next, it introduces Elon Musk and his prominent career and presence in the tech industry, then links his abundant use of Twitter to his interest in purchasing the platform. Emphasis will be placed on the rationale that led to the proposal of the merger from the acquirer's part, and the logic that would incentivize the target either to accept or deny it and allow students to discuss the legal aspects of the merger, including understanding the merger agreement, the alleged breach of clauses that led to the Twitter v. Elon Musk lawsuit and a compelling example of the intricate relationship between merger arbitrage and the acquisition process.

POSITIONING

This case study is designed for a course or module focusing on Mergers & Acquisitions or equivalent topics, specifically on a master's level. In preparation for the case, students should have some basic understanding of notions and methodology directly pertaining to the field of M&A, including deal structure, valuation, corporate governance, leveraged buyouts and case law.

Under this assumption, students will be asked to utilize their critical thinking in order to analyze certain concepts and come out with insightful conclusions, as well as create their own valuation models. Alternately, the instructor will need to provide prior explanation about the basics of certain valuation methodologies including discounted cash flow (DCF) and multiples valuations (comparable company analysis and precedent transactions).

LEARNING OBJECTIVES

Following their reading of this case study, students will:

- Analyze the reasoning for the merger, including the acquirer's and target's strategic and financial motives. Students will develop a deeper and different understanding of the rationale behind corporate decision-making and governance.
- Assess Twitter's competitive landscape and the impact of the acquisition on its stock price, to gain practical insights into the relationship between corporate developments and financial markets.
- Formulate a recommendation on whether the acquisition is in the best interests of Twitter's stakeholders, thus developing the ability to make informed and persuasive arguments based on sound analysis.
- Participate in in-class discussion, debates, and roleplays simulating the conditions of the merger, hence applying concepts learned throughout the lesson and improving their proficiency and confidence in defending their stance, while considering the role of public communication and media in influencing merger outcomes and stakeholder views.
- Engage in a comprehensive discussion of the challenges and potential risks associated with outlining merger agreements utilizing real-world examples.

SUBSTANTIVE ANALYSIS AND TEACHING PROCESS

i. Introduction

A fair assumption is to be made that this case study will be presented throughout the course of at least two separate classes, each with a minimum duration of one and a half hours. The following information will prove a helpful guide towards determining an appropriate teaching process for the students. This teaching note will be accompanied by examples of board plans that the instructor can feel free to refer to.

The instructor can initiate the discussion by prompting students of their general knowledge of Twitter as a whole. Drawing from the case study's content, they should be able to reflect on Twitter's history of profitability concerns, and its positioning within the dynamic social media landscape (Figure 1). The charts provided in the appendix (Figures 2, Figure 3) will assist them in comprehending the significance of user acquisition and retention within this industry, specifically the fact that Twitter depends almost entirely on advertising revenue, which is highly reliant on the two previously mentioned factors. Instructors should encourage students to identify elements that affect the company's current financial situation, which may include a decline in advertising proceeds, slow user growth, high competition from other social platforms and high cost associated with content moderation (Figure 4).

In order to transition through topics and encourage discussion with students, the following list of standard questions is proposed. The instructor is free to modify them as they please:

- Do you use Twitter? How often? Why?
- What social media platform do you use the most and what type of content do you consume?
- How does Twitter compare to its competitors in terms of user growth and engagement?
- What are the key factors that have contributed to Twitter's profitability issues?

- What are Twitter's biggest cost drivers?
- Does it come as a surprise that Twitter struggles with profitability?
- What are the key competitive advantages and disadvantages of Twitter in the social media landscape?

At this moment, it is appropriate to transition into a brief exploration of Elon Musk's influence and the importance of his involvement. Though Musk is a well-known figure to most people in the targeted age group of this case study, it is still necessary to introduce him and indicate the companies he is involved with as either founder, chief manager, or significant shareholder. These include Tesla, SpaceX, Neuralink, SolarCity, and more. It is advised to highlight his status as an active investor in the business world and his previously concluded acquisitions, with the goal of showcasing that Twitter is not his first venture. The next step would be to reveal Musk's stated interest in Twitter, ironically declared on the platform itself (Figure 5).

The following list of standard questions is proposed. The instructor is free to modify them as they please:

- How many of you heard of or followed this merger?
- What do you know of Elon Musk, in terms of business prowess? How did you come to know of him?
- Did it come as a surprise to you that Musk launched an offer for Twitter? Can you think of any other examples of mergers that came to be under similar consequences?

ii. Deal Structure

Discussing the structure of the deal is an essential step in understanding the case. If the instructor recognizes students are not familiar with different types of mergers, specifically reverse triangular mergers (Figure 6), it's recommended they refer them beforehand to additional reading[1] or provide a brief overview of the legal, financial, and strategic aspects involved in the matter. Notably, data suggests that there is a growing trend of companies using reverse mergers (Figure 7), and this structure may be particularly well-suited for companies in the technology sector (Figure 8). To illustrate this, consider examples from recent years: Dell's $67 billion merger with VMware in 2015 and Broadcom's $59 billion merger with Avago Technologies in 2017. Instructors should make students aware of the pros and cons of a company being private in order for them to apply these findings within the context of Twitter. As they delve deeper into the lesson, they will be able to analyze the potential benefits and drawbacks of corporate restructuring from the perspective of various stakeholders.

The following list of standard questions is proposed. The instructor is free to modify them as they please:

- Why would Elon Musk want to make Twitter a private company?
- What are the potential benefits and risks of acquiring Twitter through a reverse triangular merger?
- Can you think of a specific example where the type of merger is detrimental to the deal?

The next step would be to discuss the initial payment structure of Elon Musk's offer. In order to properly comprehend this, students should at the very at least be aware of the definition of a leveraged buyout (LBO). Instructors can utilize a table of the largest LBOs to date to help students understand the scale and significance of the Twitter acquisition (Figure 9) and the structure of the payment (Table 1).

[1] "Forward and Reverse Triangular Mergers." 2023.

The following list of standard questions is proposed. The instructor is free to modify them as they please:

- Based on the table, how does Twitter's acquisition compare to other LBOs in terms of size?
- Do you believe the benefits of an LBO outweigh the risk?
- Musk initially put up his Tesla stock as collateral in the margin loan. Do you believe this to be a gamble or a calculated move?

iii. Motives to Merge

The motives to merge are perhaps the most critical aspect of this case study. Typically, students encounter classic merger examples where the glaring motives are either synergies, diversification purposes, or perceived market undervaluation of the target resulting in a cheap buy. Through this teaching process, we aim to challenge students' often traditional outlook on the why's and wherefores of the M&A field. We anticipate this part to raise doubts and questions that might delay the flow of the class; therefore, instructors should be prepared in order not to lose too much time.

Ideally, instructors should maximize their use of the whiteboard during this part since the quantity of information conveyed might prove itself to be overwhelming. Therefore, noting down the different ideas shared and classifying them into different tables, charts and such will prove useful (Figure 19). The acquirer's motives will be broken down first. Musk is an avid tweeter and frequently shares his thoughts and decisions with his followers, therefore some of his motives are stated and factual, rather than speculative. They are as follows:

1. Enforcing free speech on Twitter: Musk has criticized Twitter for its content moderation policies, and he believes that the platform should be more open to a wider range of viewpoints.[2]

[2] Dwoskin, Elizabeth. 2022.

2. Lead Twitter to optimal performance: Musk has said that he wants to make Twitter a more user-friendly and engaging platform. He has also suggested that he may add new features to Twitter, such as a long form blogging platform and the ability to edit tweets after they have been posted. Musk has said Twitter is the "public town square" of the world (Figure 10). He believes that it is performing sub optimally, and it can be a more valuable company if it has a larger user base and generates more revenue.
3. Gain access to a larger dataset: Twitter has a massive data set, including user demographics, interests, and social connections. This data could be valuable to Musk for a number of purposes, such as improving his other businesses, developing new products and services, and targeting advertising.
4. To prevent Twitter from being acquired by someone else: Musk has said that he is concerned about the potential for Twitter to be acquired by a company that would not share his values.[3] By acquiring Twitter himself, he can ensure that the platform remains aligned with his own vision.
5. Winner's curse & hubris: Musk has had a series of successful acquisitions and breakthroughs in the tech world, which may have led to his overconfidence in the proposal of this merger. In addition, Musk has a strong opinion on many issues, and he believes that Twitter is a powerful tool for shaping public opinion. By owning Twitter, he would have more control over the platform and could use it to promote his own views.

The instructor is advised to first ask the students directly what they believe to be the motives of the merger. The initial answers will certainly relate to synergies, diversification, and value of control, which can be elaborated in detail if the instructor deems it necessary, but it is assumed that the target audience of this case study would already be knowledgeable about such concepts. These

[3] SEC Filings.

points are certainly fair, and students should be allowed to defend them. Although this case study focuses on different aspects of the acquisition motives, the traditional motives to merge are perfectly applicable to it. Students will also undoubtedly mention the sections from the case study that directly hint at the fact that this could highly be a case of winner's curse & hubris. It would be interesting for the instructor to ask the students whether they agree with this theory and encourage them to develop arguments regarding it, thus enhancing their reasoning skills.

An interesting aspect that could be introduced, following the free speech point, is a demonstration of just how intensely Elon Musk's words and actions can influence stock prices. Subsequently, it is useful to refer to Twitter stock's historic price chart (Figure 11) to illustrate the market's reactions to key events such as Musk joining and later rejecting Twitter's board position, leading to the eventual merger agreement. In order to facilitate their understanding, it is recommended for the instructor to have previously exhibited examples of how corporate announcements can influence stock price to students, for both target and acquiring companies.

The following list of standard questions is proposed. The instructor is free to modify them as they please:

- What is usually the biggest motive to merge? (Students are expected to mention synergies).
- What trends do you see in the Twitter stock price after Musk accepted and later rejected Twitter's board position?
- Do acquisition announcements—whether they be negotiated mergers or hostile takeovers—have a different influence on target and acquiring companies' stock price?
- What are the potential risks and benefits of Musk's ability to influence markets in this way?

After having addressed the acquirer's point of view, it is fitting to turn the page to Twitter's shareholders. As Twitter, Inc. would convert to a private company, the main advantages stockholders would receive lie within two aspects: the premium, and the liquidity of the offer. Students will be able to recognize the benefit of the all-cash structure of the merger, often described by Musk himself as "seller-friendly", and the premium on the stock price. Conversely, they should identify the implications of going private, as stockholders will forgo the opportunity to realize the potential long-term value of Twitter as a public company.

The following whiteboard activity is proposed in order to encourage interaction with students:

- Draw a table on the whiteboard with two columns: one for Elon Musk and one for Twitter's shareholders.
- Ask students for the most apparent and hidden motives that they think may be at play and write these ideas in their respective columns.
- Lead a discussion on the different motives and the potential implications for each group.

After potentially intense and time-consuming conversation, it is important to give students time to recollect their thoughts and accept each other's opinions and stances. Ideally, the instructor can take time for a break by introducing some audiovisual material, such as the media provided in the Professor's Resources, as it demonstrates public concerns about Musk's vision for free speech. This could lead to an interesting debate about what students define free speech as, the importance of the balance between it and content moderation, and finally, the potential impact of corporate ownership on public discourse.[4]

[4] Referring to concerns and claims with Sinclair Media Group using its 173 television stations "to advance a mostly right-leaning agenda", Facebook–Cambridge Analytica data scandal and other examples of media being used to push political propaganda.

The following list of standard questions is proposed. The instructor is free to modify them as they please:

- In your opinion, do you believe Musk's ideas align with Twitter's current mission?
- Is Elon's idea of free speech similar to yours? What are your concerns about Musk's vision?
- How could Musk ensure that Twitter remains a platform for open and honest discussion while also protecting users from harmful content?
- What should corporate ownership's role be in public discourse?

iv. Stakeholder Theory

Now that the conversation has brought up the effects of the merger beyond the scope of the acquirer and shareholders, it is suitable to transition into the topic of value creation and stakeholder theory. Discussions about the social impact of businesses are often characterized by a lack of clarity and actionable steps, but they are becoming more relevant in today's world. Instructors ought to familiarize the class with The Friedman Doctrine, also known as shareholder primacy.[5] It suggests that Twitter should prioritize profit maximization over free speech concerns, leaving it to shareholders to address societal issues with their earnings. Considering Twitter's prominent role in public discourse, students should critically examine who would be more effective in driving positive change. Now, students should research beyond the traditional two-party analysis (buyer and stockholder) that is conducted for most mergers, identify the non-shareholder stakeholders that are affected by this transaction, and assess the negative and positive effects of the merger for each group. Some of the key stakeholders include but are not exclusive to:

[5] Merrick, Amy. 2021.

1. Employees: Employees may be concerned about job loss as 2022 witnessed the trend of freeze hiring[6] and massive layoffs in the tech sector due to the weakened global economy and fears of a recession. Additional worries include changes to the company culture, the impact of the merger on their work-life balance, and the potential for agency loss given Elon Musk's history of centralizing power and making decisions without consulting employees.[7] Conversely, the merger might lead to new opportunities for professional growth with access to Musk's resources and expertise, as well as potential bonuses and appealing severance packages.
2. Users: User experience on the platform may be compromised by a potential increase in hate speech and misinformation, as well as Musk's vision for free speech and its impact on content moderation. On the other hand, the changes proposed could lead to a more engaging and informative platform, with the addition of features and the improvement of algorithms for better targeted content.
3. Advertisers: Even though Musk has stated that he wants to improve the effectiveness of advertising campaigns, advertisers may be concerned about the potential for their brands to be associated with harmful content.
4. Government regulators: While concerns emerge about the merger's impact on competition and privacy in the technology industry, Musk has stated he intends to hold Twitter accountable to its users and to the public,[8] leading to a more responsible and transparent social media company.

The following continuation of the whiteboard activity is proposed in order to encourage interaction with students:

- Add a new column to the whiteboard called Stakeholders.

[6] Kelly, Jack. 2022.
[7] Kolodny, Lora. 2018.
[8] Albergotti, Reed. 2022.

- Prompt students to identify the non-shareholder stakeholders that are affected by the merger.
- Discuss the potential factors that might affect each group and how.

v. Valuation

A transition into the valuation exercise previously solved by the students is appropriate. Instructors are encouraged to create graphics, using the supporting excel sheet, displaying the range of values obtained from student results for Twitter stock, such as a football field chart (Figure 12). It is very important to note that although valuation is a significant contributor to the relevance of the work, this case study's main focus does not lie within the valuation calculations, but rather within encouraging students' critical thinking and intuition through their exposal to unusual but real business transactions such as this case. Simplified assumptions are allowed, and students are encouraged to use their preferred valuation methods (DCF, comparable multiples, transaction multiples, adjusted present value etc.). The excel provided in the Professor's Resources contains examples of the results of a DCF, comparables and transaction multiples, each calculating the standalone value of the firm. The timestamp for these valuations is December 2021, with the simple assumption that this is the last date providing complete information while remaining undisturbed by Elon Musk's involvement, thus presenting a true reflection of the intrinsic value of Twitter. The DCF (coupled with a sensitivity chart) and comparables analysis produce a range of values between \$48 and \$52. The students are expected to produce similar results when performing their calculations for the same time-period. The comparable transactions result in a value of \$39,50. This abnormally low result can be explained by the fact that the Twitter deal is worth over \$44 billion, far bigger than most acquisitions conducted in the market. Thus, it is difficult to select transactions that are perfectly comparable in value. The premium of the offer price over the average intrinsic value, presented in the Professor's Excel calculations, is 14.20% (Table 2).

The instructor is recommended to take time to display the range of different results and explain where students might have faced confusion and different thought processes. Referring to the previously mentioned historic price chart of the stock, students can evaluate the difference between the fair/intrinsic value of the stock and the offer price, then attempt to justify the reason for the premium. It is reasonable for students to be unable to quantify synergies, since X Holdings I, Inc. is a financial buyer that was created solely for the purpose of consummating this merger. In addition, any potential synergies related to Musk's other business are hypothetical and uncertain.

The following list of standard questions is proposed. The instructor is free to modify them as they please:

- How do mergers create value?
- Is there a premium on the offer?
- What are the potential synergies captured in the deal?
- What factors might justify a premium for Twitter stock?

At this point in the class, a simple but effective exercise would be to first request the students to imagine themselves to be shareholders, then ask them to raise their hand if they would agree to sell their shares to Musk. This exercise is to be repeated later, when more complicated aspects of the merger are revealed, and it would be interesting to compare the number of hands raised before and after.

vi. Antitrust

Following these ideas, an interesting topic of discussion is that of antitrust and its importance in protecting innovation, competition, and consumers. It could be useful to note some significant mergers that were blocked in recent years such as AT&T and T-Mobile (2011), Anheuser-Busch

InBev and SABMiller (2016), Dow Chemical and DuPont (2017), Illumina and Pacific Biosciences (2021), and Nvidia and Arm (2021).

The following list of standard questions is proposed. The instructor is free to modify them as they please:

- What is the purpose of antitrust regulations?
- Have you heard of any mergers that were blocked by antitrust regulators?
- How would Musk’s acquisition of Twitter threaten antitrust laws?

Students will explore the antitrust implications of the Twitter-Musk merger in more detail and consider the potential impacts on competition and consumers. Seeing Musk’s influence, his impulsive behavior, public criticism on regulators and the significant portion Twitter represents in the social media industry, it is important for students to be aware of the possible negative impacts on financial markets, new entrants, and Musk's other companies' competitors.

Additionally, students could participate in the following debate as a way to get them to critically think about the antitrust implications of the merger from both perspectives. It will also help them to develop their research and communication skills.

- Divide students into two groups, one group will represent Musk and the other group will represent antitrust regulators.
- The Musk group should research arguments in favor of the merger and the antitrust regulators group should research arguments against the merger.
- Give students time to prepare their arguments.
- Set rules for the debate, these could include things like time limits for each speaker, rules for rebuttal, and rules for audience participation.

- Moderate the debate.

Instructors could point out that the merger was one of the largest and most complex antitrust transactions ever reviewed,[9] and the 30-day waiting period[10] expired without any action from regulators. This means that the deal dodged revision and became only subject to the remaining customary closing conditions, most notably Twitter's shareholder approval.

INDIVIDUAL PART

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vii. Introduction

After looking into Elon Musk's claims and intentions to terminate the merger with Twitter and the information available in the case study materials, students should be aware of Twitter's response, which was a lawsuit filed on July 12th, 2022, based on contractual infringements by Musk, Parent, and Acquisition Sub. Instructors should also assess the class's knowledge on merger agreements and their structure. Students should recognize that these binding contracts include representations, warranties, covenants, agreements, and conditions to close and to terminate. These provisions aim to protect both parties.

While non-law students may not directly participate in drafting or negotiating these arrangements, a basic understanding of the key parts in this crucial document is essential. Understanding the implications of these agreements facilitates informed decision-making and allows for the assessment of potential risks, benefits, and overall transactional impact for those interested in participating in such deals. Grasping complex legal concepts allows individuals to raise concerns early in the process, potentially mitigating legal and financial issues and providing a competitive

[9] Reuters. 2022.

[10] Mergers exceeding certain size thresholds must wait 30 days per the Hart-Scott-Rodino (HSR) Act for antitrust review by the Federal Trade Commission (FTC) and the Department of Justice (DOJ).

advantage in the job market. A simplified list of these is necessary for the contents of each provision to be easily comprehended by students (provided in the Case Study as Exhibit 1).

The following list of standard questions is proposed. The instructor is free to modify them as they please:

- What are the key elements of a merger agreement?
- How can understanding the implications of merger agreements facilitate informed decision-making?

viii. Jurisdiction

Students should be aware that the jurisdiction of this lawsuit is Delaware. Delaware is a popular jurisdiction for corporate law, and its courts have a long history of experience in handling M&A cases and have developed a body of law that is favorable to businesses. In this case, the Delaware Court of Chancery has exclusive jurisdiction over the case because Musk formed Parent and Acquisition Sub, both Delaware corporations, for the sole purpose of acquiring Twitter, also a Delaware corporation. In addition, he agreed to use "reasonable best efforts" to consummate the contemplated transaction, including having Parent and Acquisition Sub file a Certificate of Merger with the Delaware Secretary of State.

The following list of standard questions is proposed. The instructor is free to modify them as they please:

- Do you think that the Delaware Court of Chancery is the most appropriate forum for this case? Why?
- What are some of the key features of Delaware that make it attractive to businesses?

ix. Due Diligence

Before discussing and dissecting the specific sections of the merger agreement, instructors should explain the concept of due diligence and its importance in the matter. The term is applied in securities law, but it originated from common law, which is created by judges through their decisions in real-world cases and used in the United States.[10] Students should be aware that in common law, judges use the precedents of previous case decisions to come up with their own verdicts.

The process of due diligence is taken care of before the signing of the agreement. Students should be able to identify at least four areas that might alert them to certain warnings such as: financial (may indicate fraud or insolvency), operational (may indicate unstable operations), liability or compliance (may show potential exposure to litigations) and transactional (may include conflicting accounting and tax goals).

Under §5.11, Musk and Acquisition Sub were responsible for conducting their own due diligence and didn't rely on Twitter for information. As such, they are believed to have made an accurate assessment before signing the agreement. This will be important to know considering the accusations of infringements and closing conditions.

The following list of standard questions is proposed. The instructor is free to modify them as they please:

- What areas would you investigate to assess proper due diligence?
- What are the implications of the acquiring party in agreeing to §5.11?

[10] Reed Lajoux, Alexandra, Stanley Foster Reed, and H. Peter Nesvold. 2007.

x. Material Adverse Effect

Although the merger has been approved by Twitter's Board of Directors and it scaped a lengthy and complex antitrust regulatory process, it is still subject to a vote of the shareholders as outlined in §7.1 of the merger agreement. An important condition to the merger is that Twitter must have accurately represented its financial condition, business operations, and compliance with applicable laws and regulations. Additionally, there must be no Company Material Adverse Effect (MAE) as of the closing date. It is important to note that the concept of MAE is complex and can vary depending on the specific circumstances of each case.

Students should be familiar with the exceptions to MAE that are specifically stated in the contract between Twitter and Musk in §7.2. In particular, students should focus on the fact that changes in certain types of disclosures in Twitter's SEC filings—excluding those recognized by Twitter in the "Risk Factors" and "Forward-Looking Statements" sections—could possibly be interpreted as buyer-friendly. For example, Twitter does in fact mention their ability to increase monetizable daily active users (mDAUs) as a risk to their business and operational factors.[11] Musk's claims of the magnitude of the bot problem have yet to be supported by any real evidence, and any changes to this metric could compromise a precedent.

Historically, Delaware has had a high standard for showing a MAE as the heavy burden of proof is usually on the buyer. Courts will generally say that the time period of these dramatic and unfavorable performance changes should be measured in years.[12] Also, one could argue the existence of more bots could mean Twitter’s profitability has the potential to be even higher as Musk has claimed multiple times his intention to acquire Twitter was to improve the product by eliminating the bots and spam, and previously stated that if the deal fell through he would need to

[11] Twitter 2021 10-K.
[12] Referring to Akorn v. Fresenius Kabi.

reconsider his position as a shareholder since it was “simply not a good investment without the changes need to be made”.[13]

The following list of standard questions is proposed. The instructor is free to modify them as they please:

- What do you understand by the term MAE and what is the purpose of these clauses in a merger agreement?
- What are some of the challenges of drafting and interpreting MAE clauses?
- How would you describe the exceptions on the MAE clause?
- Do you think that Twitter's alleged failure to disclose the true extent of its spam problem constitutes a MAE? Why?

xi. Effort Covenants and Information Sharing

Effort covenants and information sharing are crucial aspects of merger agreements. They ensure commitment, good faith, risk allocation, prevent sabotage, and protect shareholder interests. Information sharing allows parties to make informed decisions and assess the merger's feasibility. Although both parties agreed to take necessary steps to consummate the merger under agreed-upon conditions (§6.3), §6.10 and §6.4 are generally considered to be more seller-friendly because they place a greater burden on the acquiring party to close the deal. However, it is important to note that Twitter can only be considered to have breached its obligations if Musk is unable to obtain financing solely because of Twitter's actions or omissions (§6.11). To establish a breach of effort covenants, Twitter must demonstrate that Musk, Parent, and Acquisition Sub failed to adhere to their obligations under §6.3. This does not imply that the defendants were obligated to guarantee

[13] SEC Filings.

the merger's success, but rather that they were required to make a sincere effort to complete the transaction. Musk, on the other hand, has accused Twitter of violating the information sharing provision by withholding information about its financing plans and hindering his efforts to secure financing for the merger. Twitter has refuted these claims, alleging that Musk's information requests were unreasonable and compromised user’s privacy.

The following list of standard questions is proposed. The instructor is free to modify them as they please:

- What are the purposes of effort covenants and information sharing in merger agreements?
- Do you believe both parties have followed their agreements? Why?
- What are the limitations and the implications of Twitter's obligation to share information with Musk?

xii. Ordinary Course Covenant

§6.1 states that while the merger agreement is still in effect and not yet completed, Twitter must continue to operate its business as usual and cannot make any major changes without Musk's consent. This includes hiring or firing new employees if those actions would have a significant impact on Twitter's financial condition or business operations. Musk has argued that Twitter is not acting in good faith and has breached the ordinary course covenant by making several changes to its business, including firing two key high-ranking employees, and instituting a hiring freeze, which adversely affected Twitter's financial position and business operations. Twitter argues that the changes it has made to its business are consistent with its past practices and that they have been made in the best interests of the company and its shareholders with the goal of managing costs amidst the uncertainty of the takeover.

The following list of standard questions is proposed. The instructor is free to modify them as they please:

- What is the purpose of an ordinary course covenant in a merger agreement?
- How would you analyze the evidence to determine whether Twitter breached the covenant?
- Do you think that Musk has a legitimate claim on this matter?

xiii. Public Disclosures

§6.8 required parties to consult with each other before making public statements about the merger before issuing press releases with some exceptions. Twitter, aware of Musk's reputation as a prolific tweeter and his impact on the market, wanted to allow him the flexibility to communicate his thoughts while at the same time protecting their product and brand, allowing him to tweet about the merger so long as it did not disparage the company or its representatives.

This could be a good moment to show students tweets Musk sent through the platform (Figure 13 and 14) to propose some interesting ethical questions that the instructor can feel free to modify:

- Why do you believe public communication provision is important and why was it so crucial to establish?
- What are the potential risks of allowing one party to make public statements about a merger without the other party's consent?
- Do you believe Musk's use of Twitter during the merger process was ethical? Why?
- Is it ethical for a company to restrict a major shareholder's freedom of speech?

xiv. Termination

Firstly, the instructor should affirm the difference between effective time, effective date, termination date, and closing date to avoid confusion in the following section. Moreover, this could be an interesting moment for instructors to introduce the legal principle of "exceptio non adimpleti contractus". In simple terms, it is a legal defense that one party can use to argue that they should not be held responsible for fulfilling their obligations under a contract because the other party has not fulfilled their obligations first. It's essentially a way to say, "I don't have to do my part of the deal because you haven't done yours.". Students should understand that, in general, the party initiating the termination of a merger bears certain responsibilities and consequences. This can involve paying the other party a fee, refunding their merger-related expenses, and safeguarding them from losses resulting from the cancellation. However, the specific consequences of termination are contingent on the terms outlined in the merger agreement. These are established in §8.1.

The following list of standard questions is proposed. The instructor is free to modify them as they please:

- What are the potential implications of the absence of a financing contingency and diligence condition clause in the termination conditions?
- After discussing the most relevant sections, do you believe the merger agreement was seller-friendly as previously stated by Musk?

xv. Specific Performance

Instructors should familiarize students with the concept of specific performance. It is an equitable remedy that can be ordered by a court to compel a party to perform a contractual obligation and to prevent or manage wrongs that cannot be adequately compensated by monetary damages. Under §9.9 both sides agree that if either party breaches the agreement, the other party can seek an injunction, specific performance, or other equitable relief to prevent breaches of the agreement and to enforce its terms. Although, it is most common for buyers to try and seek specific performance, sellers also have the right to force the sell to completion.[14] In short, Twitter has the right to these benefits to cause Musk to find the equity and debt financing or to enforce his obligation to fund the merger himself to consummate the closing. To answer the questions proposed students are encouraged to analyze and consider the specific facts of the case and the specific provisions of the agreement, predicting the arguments Musk and Twitter would make and the strengths and weaknesses of each.

To close the discussion, the following list of standard questions is proposed. The instructor is free to modify them as they please:

- What do you expect will be the court's decision on this case considering the information we have discussed and that shown in the case study?
- How do you think it will affect future M&A cases?

xvi. Merger Arbitrage

The unresolved nature of the proposed acquisition, the ongoing litigations, and the potential for significant financial losses for both parties created a unique environment for merger arbitrage: an investment strategy that capitalizes on market inefficiencies arising from the potential success or failure of mergers. This presents an opportune moment for instructors to introduce students to this investment strategy, the inherent risks involved, and the critical need for merger arbitrageurs to meticulously evaluate the evolving legal landscape as new information surfaces.

At the time of Elon Musk's initial offer of $54.20 per share for Twitter, the company's stock price stood at $45.83 per share. This resulted in a price gap, or "spread," of $8.37 per share. Merger

[14] As was the case with IBP Inc. v. Tyson Foods, Court said specific performance was doable since Tyson admitted it was seeking a lower price, the acquisition was still a good strategy for the company and shareholders would also be better served with this remedy rather than a large damages award.

arbitrageurs could exploit this spread by acquiring Twitter's stock at a discounted price and receiving the agreed-upon offer price upon holding their shares until the merger's completion. Examining the spread at the time of the proxy statement's release (Figure 15) provides insights into the market's perception of the merger's outcome. The wider spread indicates heightened uncertainty and a higher perceived likelihood of the deal falling through, in which scenario merger arbitrageurs would incur losses as Twitter's stock price continues to plummet. As Twitter itself has acknowledged, the failure of the merger could project an image of instability and uncertainty about its future direction, potentially alienating key stakeholders.[15]

The following list of standard questions is proposed. The instructor is free to modify them as they please:

- Based on the chart, how does the market believe the outcome of this merger will end?
- As a merger arbitrageur what information would you be looking into if you were to assess an opportunity?

xvii. *Proxy*

On July 26th, 2022, Twitter sent its definitive proxy statement to its shareholders. The lawsuit was ongoing and set to go to trial on October 17th, 2022, but Twitter still believed the merger agreement remained in effect. Students should be aware that the approval of the target's shareholders is a crucial part of mergers and acquisitions, and proxy statements are a required step for them to receive the merger consideration. Instructors could provide other examples of proxy statement usage (election of directors i.e.) and explain that "proxies" are legal documents by which shareholders

[15] From Twitter's Definitive Proxy Statement.

vote an absentee ballot in case they wouldn't be able to attend the special meeting set for September 13th, 2022. At this point, the approval of shareholders is the only remaining regulatory condition for completing the merger under the official agreement.

The Target, with the help of Parent and Acquisition Sub, is responsible for preparing and filing the proxy statement with the SEC (§6.2). The definitive proxy statement contains all the necessary information for shareholders to make an informed decision, and states Twitter was "committed to closing the merger on the price and terms agreed upon with Mr. Musk".

The following list of standard questions is proposed. The instructor is free to modify them as they please:

- Why did Twitter send a definitive proxy statement to its shareholders even though the lawsuit between Twitter and Musk was still ongoing?
- Under §6.2, what is the importance of the acquiring party in assisting the creation of the proxy statement?
- What are the potential implications of the appraisal rights section of the proxy statement for Twitter shareholders?
- What advice would you give to a Twitter shareholder who is undecided about whether to vote in favor of the merger?

EPILOGUE

On October 27th, 2022, Elon Musk completed the acquisition of Twitter for $44 billion. Twitter shareholders supported the deal during the proxy meeting, and the merger was finalized after reaching an agreement and cancelling the trial after months of uncertainty. After assuming his new position, Musk immediately fired several top executives, including CEO Parag Agrawal, CFO Ned Segal, and legal policy, trust, and safety lead Vijaya Gadde. He then dissolved the company's Board of Directors and merged it with X Holdings, II, taking Twitter private. Musk later changed Twitter's logo from the iconic bird to its new name "X", believing this would be the accelerant to create an "everything app". His vision for this new platform would offer many different services similar to WeChat, a Chinese multi-purpose messaging, social media, mobile payment, gaming, online shopping, food delivery and transportation app.

Musk also released a series of internal documents known as the "Twitter Files," which he says show that Twitter's previous management team censored conservative voices on the platform. As of October 30th, 2023, it became evident to the public that Twitter wasn't worth the $44 billion Musk acquired it for: employees at X were awarded equity in the company at a valuation of $19 billion, or $45 per share. It remains to be seen how Musk's changes will impact Twitter, but it is clear that the platform is entering a new era and still struggling to remain profitable.

APPENDIX

Figure 1. The World's Most-Used Social Platforms: The largest global active figures (in millions) as of April 2021 for a selection of the world's top social media platforms.

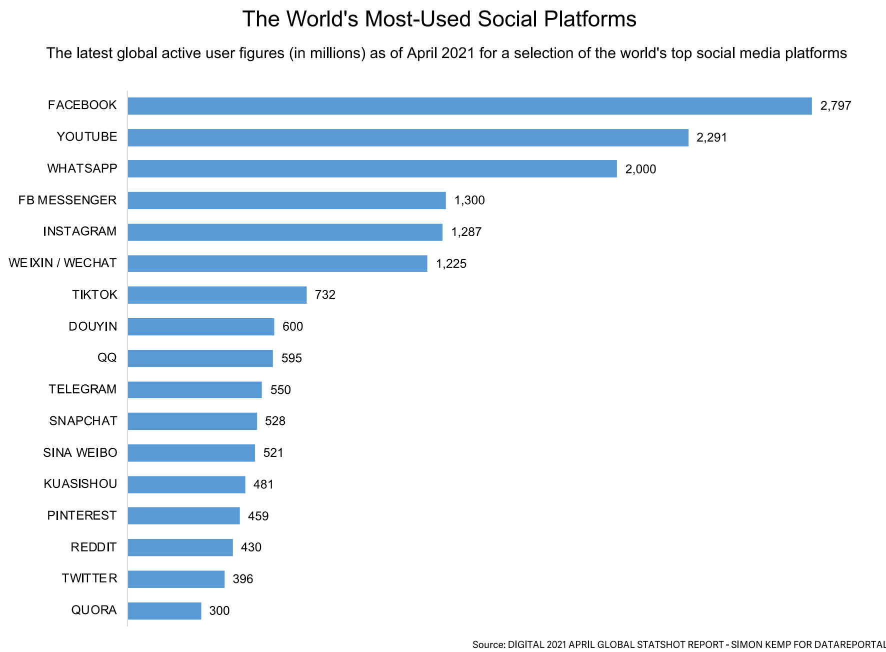


Figure 2. Twitter Annual Users (mm) from 2011 to 2021

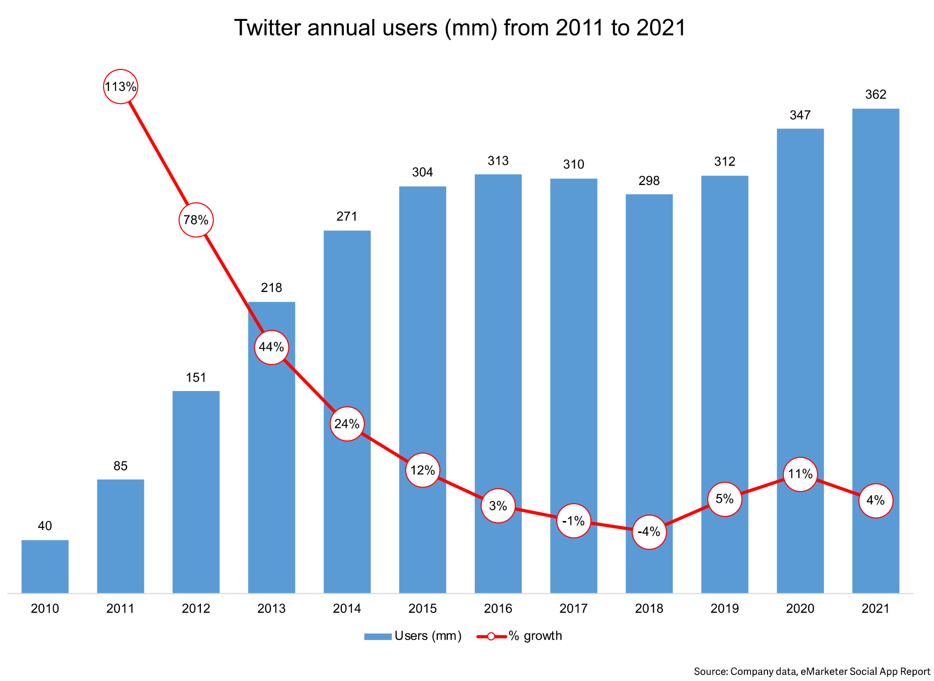


Figure 3. Favorite Social Media Platforms: Percentage of internet users aged 16 to 64 (excluding China) who say that each option is their 'favourite' social media platform as of December 2020

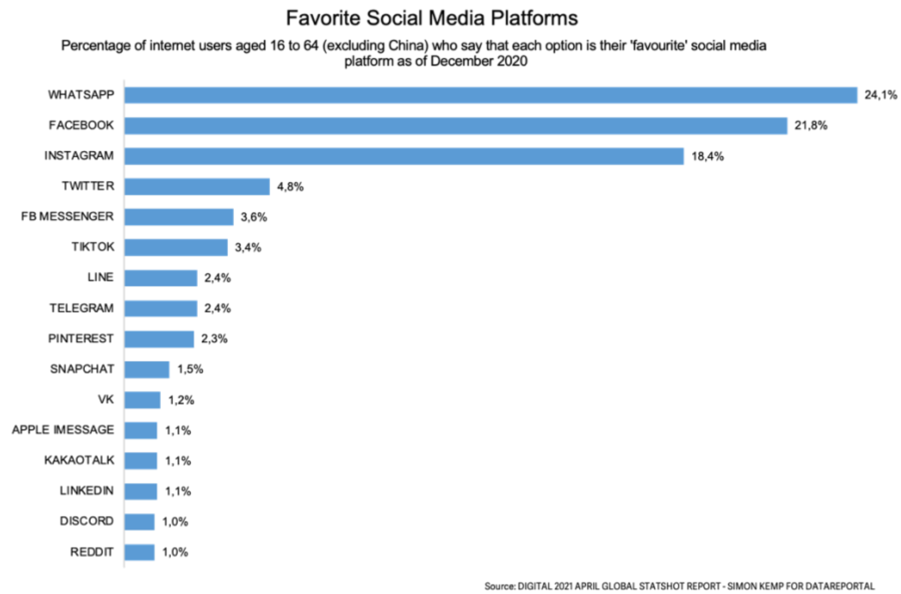


Figure 4. Twitter's Revenue and Profitability YoY

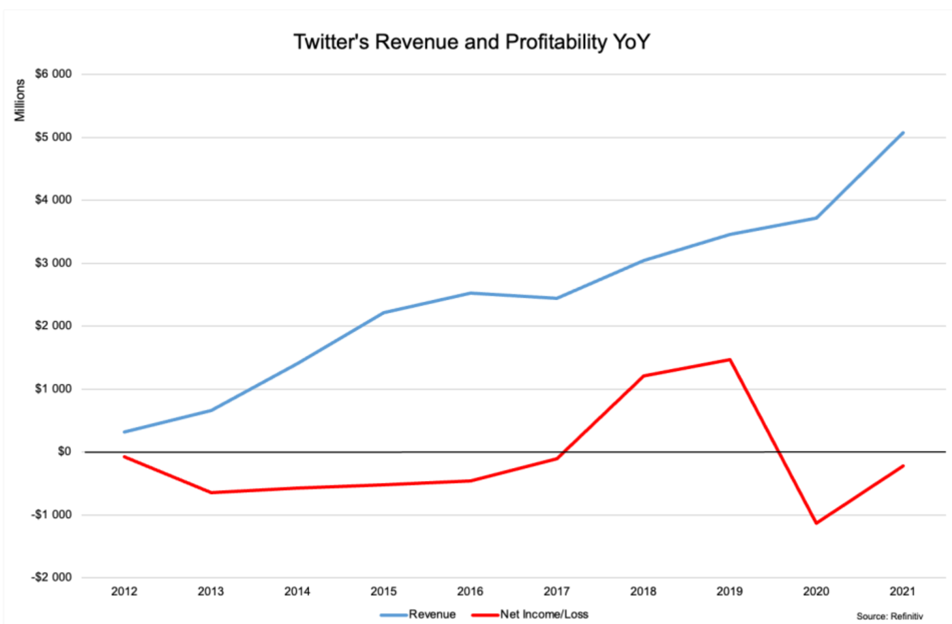


Figure 5. Elon Musk's Offer Tweet

Figure 6. Reverse Triangular Merger

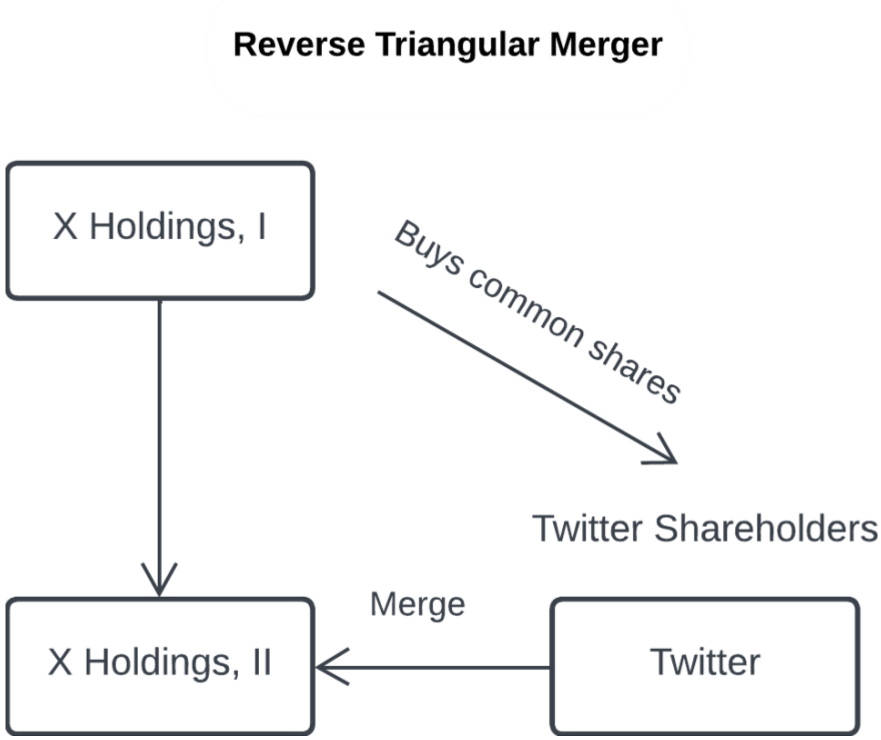


Figure 7. Number of completed reverse mergers through 2016 and 2021 with deal value over 1 billion USD.

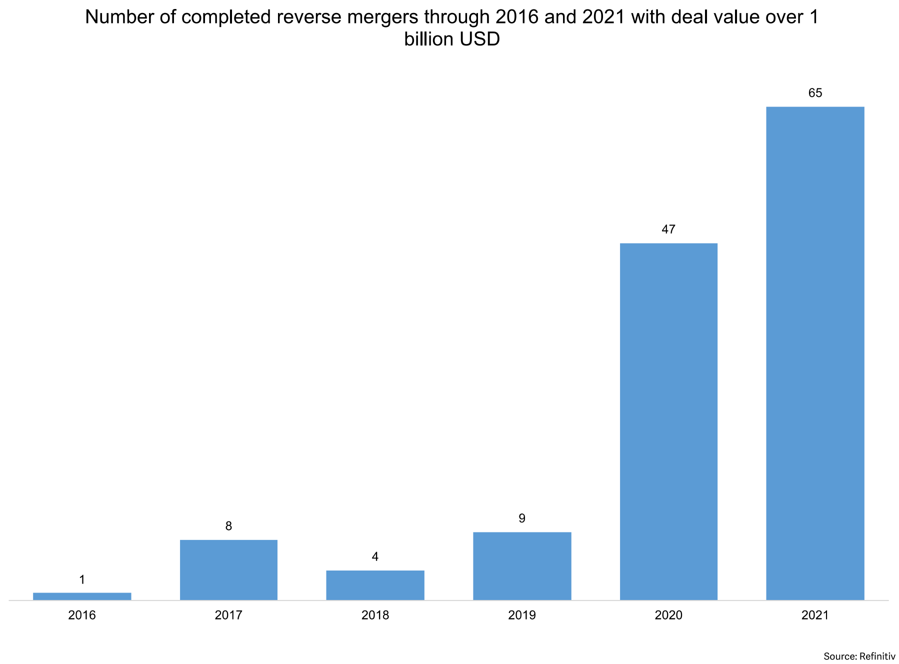


Figure 8. Percentage of completed reverse mergers through 2016 and 2021 with deal value over $1 Billion by Target's Macro Industry.

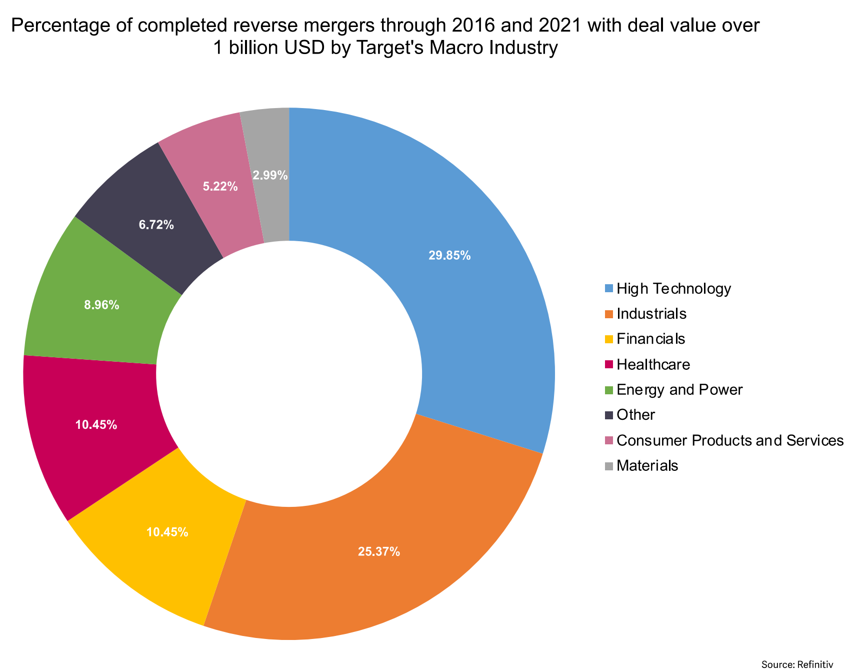


Figure 9. Largest Leveraged Buyouts in History

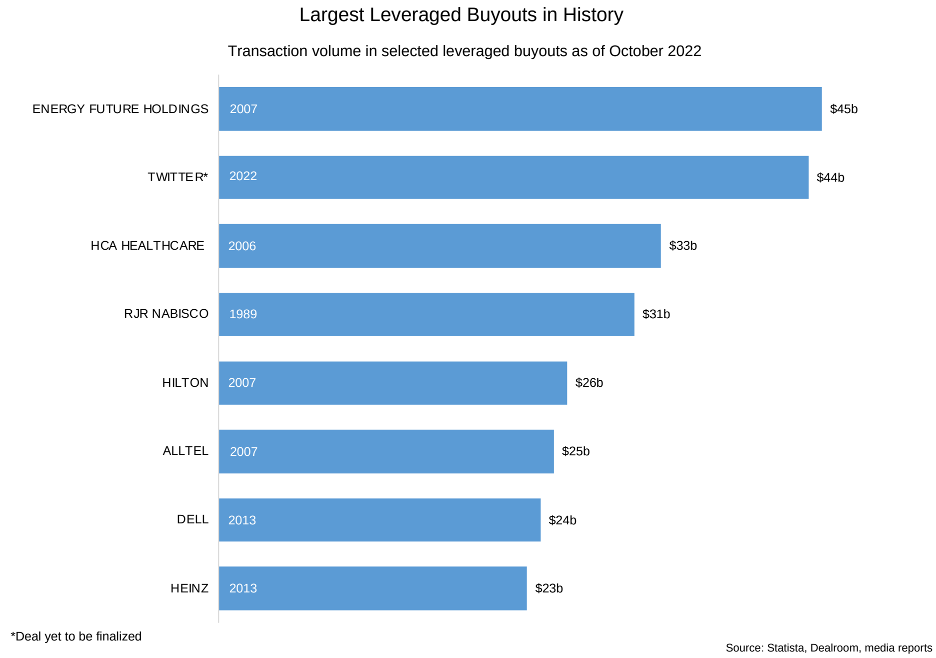


Figure 10. Musk's "Public Town Square Tweet".

Figure 11. Twitter's Stock Price.

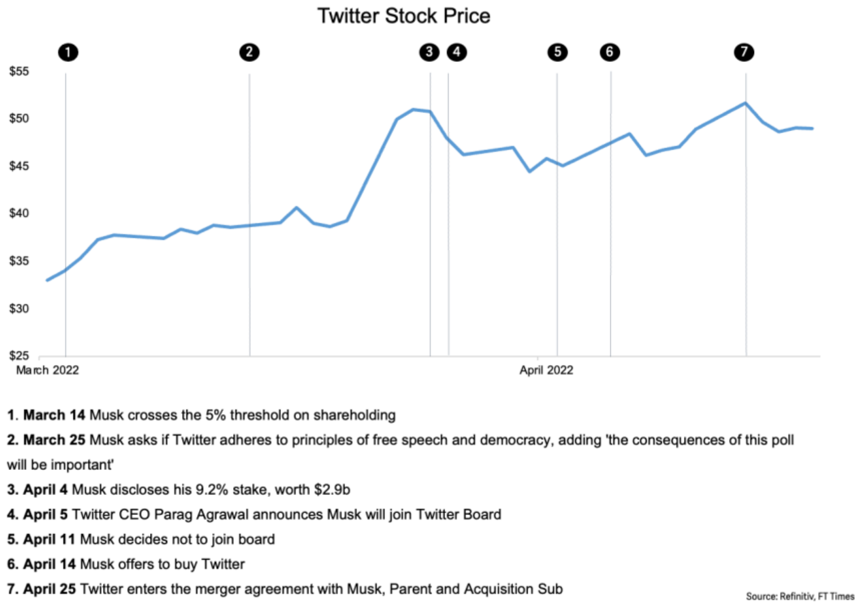


Figure 12. Football Field Chart of Pre-Announcement Valuation of Twitter.

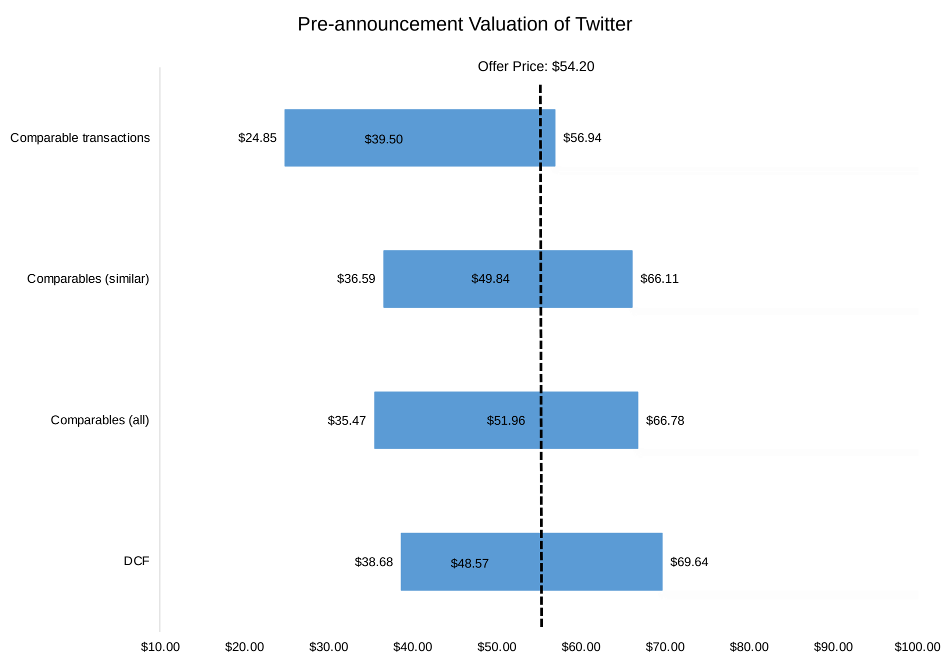
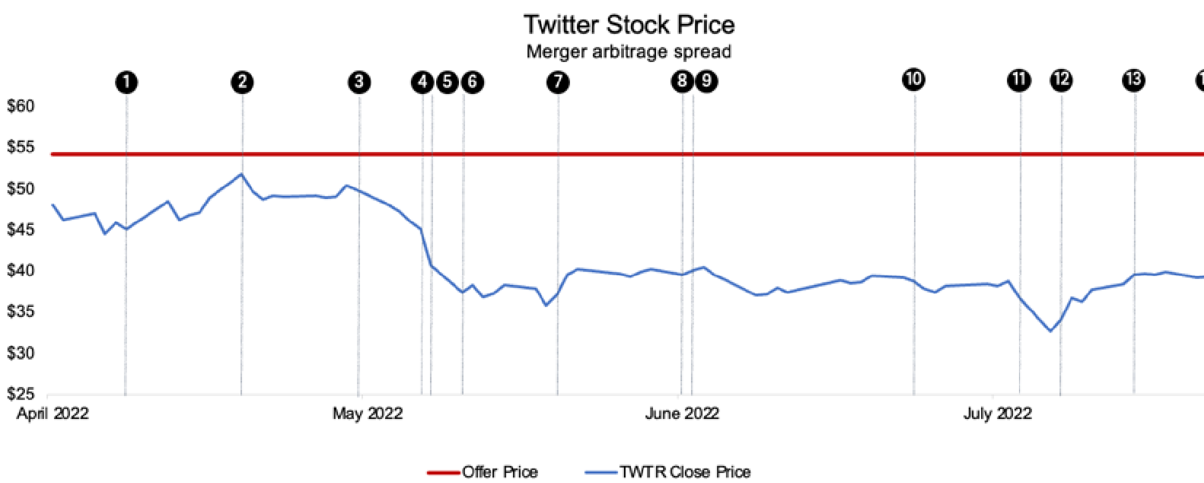


Figure 13. Elon Musk Replies to Twitter's CEO Thread about mDAUs concerns

Figure 14. Musk Tweets Encouraging the SEC to Investigate the Accuracy of Twitter's Disclosures

Figure 15. Twitter Stock Price: Merger arbitrage spread.



1. April 14 Musk offers to buy Twitter

2. April 25 Twitter enters the merger agreement with Musk, Parent and Acquisition Sub

3. May 6 A Twitter shareholder filed a complaint alleging that Musk had an understanding with other stockholders to secure their votes for the merger.

4. May 12 Twitter announces a temporary hiring freeze and two top executives exit the company.

5. May 13 Musk tweets that the acquisition is "temporarily on hold," citing concern over "the prevalence of bot and spam accounts on the platform". Roughly two hours later, Musk says he's "still committed" to the deal.

6. May 16 Musk responds to Twitter's CEO thread about mDAUs concerns with a poop emoji.

7. May 25 Twitter shareholders bring a class-action lawsuit against Musk over alleged stock manipulation tied to the tumultuous acquisition process.

8. June 6 Musk threatens to renounce the deal if Twitter doesn't provide additional information about the prevalence of bots on its platform

9. June 7 A Twitter shareholder filed a complaint seeking records to investigate alleged wrongdoing by the Twitter Board related to the merger and public disclosures about mDAUs

10. June 28 A Twitter stockholder sued the company and its board alleging incomplete and misleading disclosures in the revised preliminary proxy statement.

11. July 8 Musk moves to terminate his acquisition of Twitter, again pointing to the issue of bot accounts.

12. July 12 Twitter sues Musk, Parent and Acquisition Sub in the Chancery Court of Delaware, intending to force him to close the deal.

13. July 19 The court determines that the trial should take place in October

14. July 26 Twitter files the Definitive Proxy Statement regarding the acquisition.

Figure 16. Suggested Board Plan for Class (Part 1)

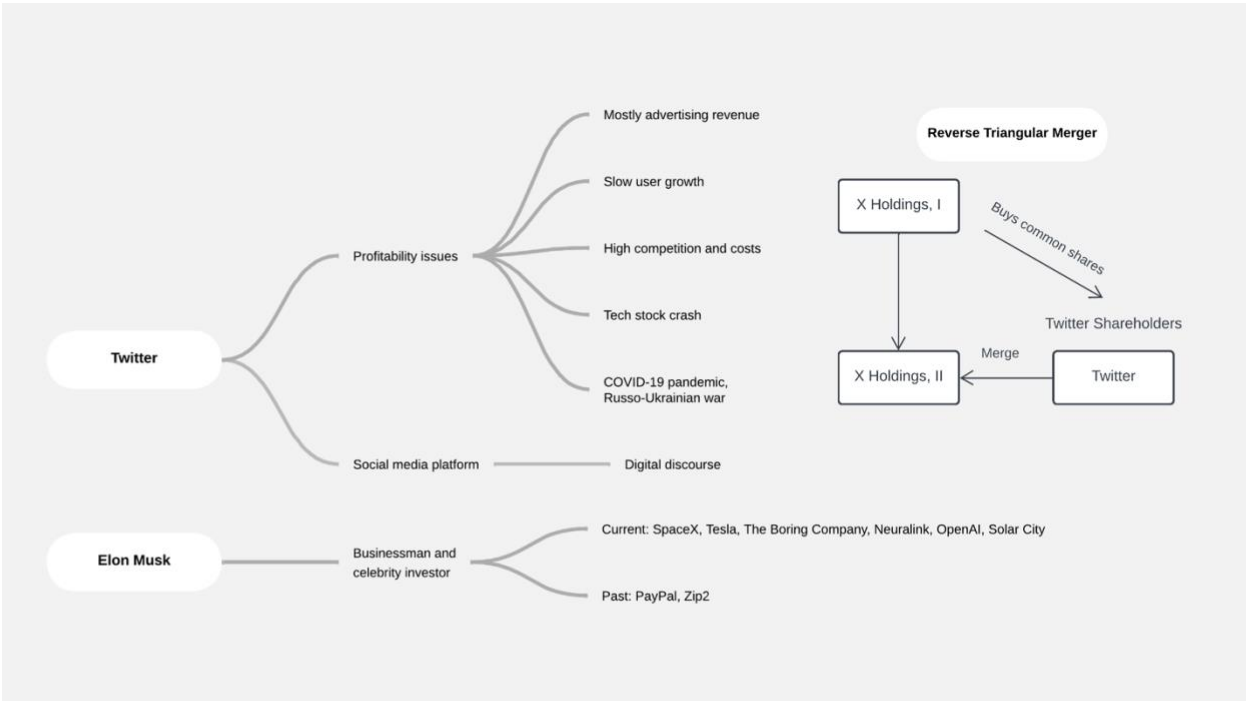


Figure 17. Suggested Board Plan for Class (Part 2)

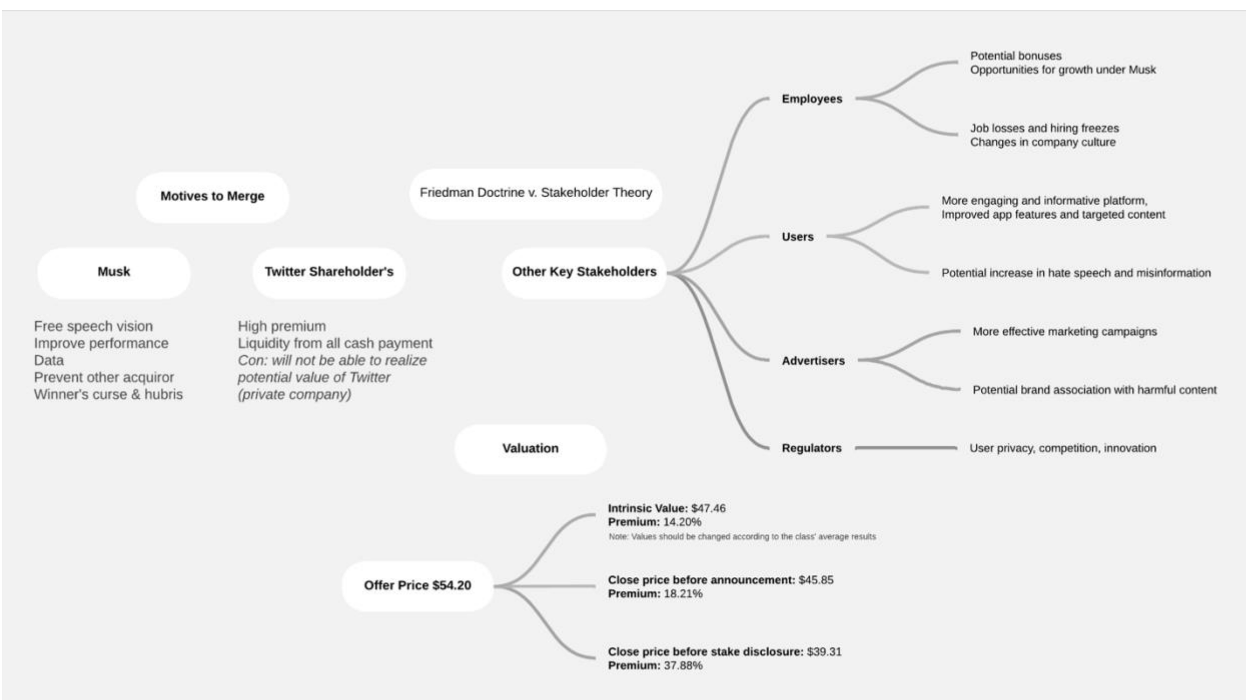


Table 1. Initial Twitter Offer Payment Structure

Intitial Twitter Offer Payment Structure

Equity Financing	**$21 Billion**
Debt Financing	**$25,5 Billion**
Margin Loan Facility	$12,5 Billion
Senior Secured Term Loan Facility	$6,5 Billion
Senior Unsecured Bridge Loan Facility	$3 Billion
Senior Secured Bridge Loan Facility	$3 Billion
Senior Secured Revolving Facility	$500 Million
Total	$46,5 Billion

Source: SEC Filings

Table 2. Twitter Acquisition Premium.

VALUATION RESULTS

	Per Share Price	Premium
Offer	$54.20	
DCF	$48.53	11.69%
Comparables (all)	$51.96	4.30%
Comparables (similar)	$49.84	8.74%
Comparable transactions	$39.50	37.21%
Average	$47.46	14.20%
Close before announcement	$45.85	18.21%
Close before stake disclosure	$39.31	37.88%

Table 3. Recut Deals after Buyer calls MAE.

Recut Deals after Buyer Calls Material Adverse Clause

Date	**Buyer**	**Seller**	**Notice**	**Resolution**
11/25/19	LVMH	Tiffany & Co.	09/09/20	Deal recut at a 3% lower price
01/12/20	Woodward	Hexcel	04/06/20	Mutual termination; no termination fees
02/03/20	CanCap / ACC	Rifco	03/27/20	Mutual release and settlement; $1.5 million paid to Rifco
02/06/20	Advent international	Forescout Technologies	05/15/20	Deal recut at a 15% lower price
02/10/20	Simon Property	Taubman Centers	06/10/20	Deal recut at an 18% lower price
02/12/20	Cast & Crew Indie Services	Oberman Tivoli & Pickert	04/06/20	Settlement (terms not disclosed); suit voluntarily dismissed
02/18/20	Amherst Holdings	Front Yard Residential	05/04/20	Deal terminated, Amherst to pay $100 million (cash payment, equity investment, and loan facility)
02/18/20	1-800- Flowers.com	Bed Bath & Beyond	04/01/20	Deal recut at a 3% lower price
02/20/20	Sycamore Partners	L Brands	04/22/20	Mutual termination and agreement to settle; no termination fees

Source: Guhan Subramanian & Caley Petrucci, Deals in the time of Pandemic, Columbia Law Review (2021)

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