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Re: Online Platforms Market Study
Competition and Markets Authority

DuckDuckGo's Comments on the Market Study Interim Report Online Platforms and Digital Advertising

DuckDuckGo is a privacy technology company that helps consumers stay more private online. DuckDuckGo has been competing in the U.K. search market for over a decade, and it is currently the 4th largest search engine in this market. From the vantage point of a company vigorously trying to compete, DuckDuckGo can hopefully provide useful input on this report's components addressing the search engine market. Because DuckDuckGo syndicates its ad feed from an upstream provider, and because DuckDuckGo does not operate a social network, we do not comment on those aspects.

The interim report is extraordinarily good. We are amazed at what the CMA has been able to uncover and evaluate in a mere six months. Many groups and governments have considered and opined on Google's dominance in the search market, but this report is the first we have seen that has truly captured, in a concrete manner, its foundational elements. The CMA is on the right course and we strongly desire that it stay on that course. In terms of prioritization, we believe the evidence is already over-whelming that Google has a deeply entrenched position and data-invasive behaviors in search, and it is well past the time for governments to construct remedies. As research has shown many times, "[c]onsumers expect to see government, regulators and consumer bodies working on their behalf to hold organisations collecting their data to account, and to make the first move in 'breaking the stalemate'."¹ It is of paramount importance that the CMA make a market reference, and move beyond studying to actually investigating.

For that reason, we were sorely disappointed that the report indicates an inclination to do what so many institutions have previously done. According to the report, "The decision on whether to propose a market investigation reference rests on whether it is the most appropriate mechanism for delivering potential reforms." There is no superhero that will solve the Google problem. There are only diligent foot soldiers who get their hands dirty and get the work done. The CMA has shown that it is quite capable of doing so. The question is a matter of grit. The CMA states that it views "recommendations to government as the best mechanism for delivering reforms." Exactly how many reports, how many commissions, how many blue-ribbon experts are necessary before anything actually changes? We've already seen the GDPR, the Furman Review, the Cairncross Review, the House of Lords Select

¹ <https://britainthinks.com/pdfs/Consumer-Data-Research-report.pdf>

Committee on Communications, three Google antitrust cases from the European Commission, the Stigler Center report, the special advisors' report for the European Commission, and the list goes on ad nauseam. How many letters, regulatory complaints, bankruptcies, and press releases must non-Google companies and civil society pursue, for how many years, before any governmental entity with statutorily authorized powers makes a concerted and considered effort to shoo the elephant back to the zoo? The government to which CMA intends to pass the buck has already passed the baton to the CMA. This should not be a game of hot potato. The time to act is now, and the body to act is you.

The report asserts three reasons for passing the buck, which can be summarized as follows:

1. Some people in the newly elected political party currently in power say encouraging words sometimes about some things that we interpret to mean that this government will maybe take indeterminate action of some kind to fix the Google problem.²
2. Google is a big company with tentacles reaching all around the world. We are just a little island.³ We should be realistic about whether we can accomplish anything meaningful on a big problem.
3. The Google problem is hard, and we haven't figured out everything we need to understand by the statutorily set six-month deadline for publishing this interim report.

We need not say more on that.

Turning to the substance of the ~1,000-page report, and its treasure trove of evidence-filled appendices, the CMA correctly makes the preliminary determination that the search market has significant network effects in developing a web index and economies of scale in click-and-query data, which limits the ability of other search engines to compete with Google. The CMA correctly identifies that default settings in both desktop and mobile devices are powerful barriers to robust competition, and that there is a feedback loop between Google's position as the largest search engine and its ability to acquire extensive default positions that entrench and reinforce this dominance. The interim report finds "that the profitability of ... Google ... has been well above any reasonable estimate of what we would expect in a competitive market for many years. In 2018 we estimated that the cost of capital for Google [Search]... was around 9%, compared to actual returns on capital of over 40% ... This evidence is consistent with the exploitation of market power." The CMA also correctly observes that harm can take the form of exclusionary behavior, with Google having the incentive and ability to leverage its search market power into other related services. We heartily agree that this has the effect of making it more difficult for us, and other search engines, to compete.

² Notably, the report did not cite to anybody's actual statements.

³ But see Interim Report, Paragraph 3.81. Just in the UK and only for 2018, Google paid \$1.3 billion dollars (16% of Google's total annual UK search revenues) to be the default search engine solely on mobile devices.

The CMA speculates, and we vigorously concur, that consumers face negative impacts from a lack of search competition, including reduced innovation, poor returns, excessive extraction of data, and lower quality of service. We also agree that an ex ante regulatory regime would be a helpful complement to ex post antitrust enforcement, especially given the lackluster and slow pace of that enforcement to date. We whole-heartedly agree that a variety of behavioral biases, such as those enumerated in Appendix G, exacerbate the epidemic of online surveillance, which large companies and other actors have been quick to take advantage of. We concur with the CMA’s summary of the academic research pointing to the fact that different nudge approaches should be used as complements rather than substitutes, and that there is no single “silver bullet” that will address all barriers, subconscious or otherwise, that consumers face in making privacy choices.

We are grateful that the CMA recognizes the importance of the shadow surveillance, and how fundamentally naive consumers are about it. Appendix G, Paragraph 77: “There is less awareness of information that consumers do not actively volunteer, such as an IP address. Harris Interactive also found that only 47% of respondents knew that device identifiers can be collected. Doteveryone found that only 38% of respondents thought data about their internet connection was collected and only 17% believed that information others share about them was collected.”⁴ Appendix G, Paragraph 97: “Which? similarly found that most respondents had some awareness of data sharing but there was a common misconception that data sharing is ‘bounded.’ The idea that data can be combined, aggregated and shared was described as ‘an important penny-drop’ moment for consumers. Respondents were also unaware of the extent to which data sharing occurs and that an entire industry of data brokers focused on sharing and selling consumer data existed.” DuckDuckGo believes that, while additional consumer education is helpful, it is more important to actually help consumers by changing platform practices, which are intentionally designed to ensure consumers do not have their own, and the collective public’s, privacy as a top-of-mind concern, especially given the inherent cognitive limitations and consumers’ behavioral biases.

We find that platforms regularly engage in “sludge” techniques, creating deliberate frictions to make it harder for consumers to effectuate their intended choices. For example, Google has historically displayed alarming pop-up boxes to consumers who have changed their default search engine in Chrome to DuckDuckGo. These pop-ups imply that those consumers are at risk of some kind of malware because of their choice to use DuckDuckGo, nudging those consumers to revert to Google as their default search engine. Similarly, Google has failed to give consumers an ever-green mechanism to

⁴ See also Appendix G, Paragraph 90: “Digital Content Next (2018) found that two-thirds of the information collected or inferred by Google through an Android phone and the Chrome browser was done through ‘passive’ methods, that is where an application is set up to gather information while it is running, possibly without the user’s knowledge. The report defined Google’s passive data gathering methods in terms of data from platforms (e.g., Android and Chrome); applications (e.g., Search, YouTube, Maps); publisher tools (e.g., Google Analytics, AdSense); and advertiser tools (e.g., AdMob, AdWords).”



change the Android home screen search bar to DuckDuckGo. Even after Google's upcoming preference menu for new Android devices is introduced in March, the devices will have no setting by which a consumer can switch the home screen search bar to a non-Google search engine (assuming the consumer did not do so upon activation of the device).

We emphatically support the CMA's intention to further study:

- Ad auction manipulations, including how Google employs levers with auctions to directly and indirectly influence pricing. We have certainly seen Google introduce false scarcity to raise auction prices in the Android preference menu.
- Arbitrage in the search and ad industries.
- Lack of transparency in the reporting of ad fraud. While it is known that advertisers and publishers do not receive sufficient information from large search engines, it is worth noting that downstream syndicators are also deprived of this insight.
- Browser privacy settings, including how these controls interact with the controls offered by the platforms. The CMA states it will explore whether blocking cookies at the browser level negates the cookie notice presented to consumers when they search. We add that the CMA should also examine whether browser settings impact search engine defaults, especially once the EU Android search preference menu is introduced.
- Privacy controls available at the OS-level and their interaction with other controls, such as within the browser, to examine whether blocking ad personalization in Android prevents other platforms such as Bing from serving personalized ads. We add that the CMA should also examine whether Android's upcoming Manifest version prevents or hinders privacy functionalities from properly working.

Opting Out of Personalized Advertising

We strongly support the CMA's interest in requiring platforms to allow consumers to turn off personalized advertising. A ban on personalized advertising vis-a-vis search engines is particularly ripe. As noted in Appendix E, Paragraph 131(a), "consumer-specific data appears less valuable in search advertising Google said that many search queries are not affected by personalization signals, even if historic data is available." In other words, neither Google Search nor consumers would experience any downside to requiring Google to turn off personalized advertising.

Any such ban should extend to advertisers' aggregation techniques for creating targeted advertising on search engines, as further described in that paragraph: "... indicated that while search advertising is driven by intent (the keyword), it normally needs to be augmented with audience targeting. WPP said that it can leverage native targeting signals such as demographic and location data, and their client's own first-party data (e.g., visits to key pages on their website), to target specific audience groups. This is supported by some Google research showing that the use of remarketing lists for search ads audience has on average a [redacted]% higher click-through-rate and a [redacted]% higher completed-view-rate when compared to non-audience targeting."

The contemplated opt-out, however, needs to be clearly described. We are concerned that the CMA appears to believe that consumers can already opt out of personalized advertising (other than by using DuckDuckGo). For example, the CMA characterizes Google as giving consumers “full control” over their search history. This is at odds with other parts of the CMA report, where the CMA recognizes that opting out of *seeing* personalized advertising does not mean that Google has stopped profiling consumers, collecting massive amounts of personal data for use in other ways, such as creating look-alike audiences or filter bubbles. See Measuring the "Filter Bubble": How Google is influencing what you click, <https://spreadprivacy.com/google-filter-bubble-study/> (December 2018). Similarly, consumers’ ability to delete their search history is often moot, because the value that Google obtains from that search history is quickly achieved, and the deletion occurs only after Google has sucked all relevant data points from it, including its diffuse incorporation into user profiling.

We are also concerned with the CMA’s conflation of contextual and personalized data. In Appendix D, the CMA categorizes four broad categories of data relevant to its study: (a) user data; (b) contextual data; (c) campaign data; and (d) search data. We paused at the CMA’s discussion of contextual data because it does not align with current policy discussions. For example, we regularly explain our business model as relying on contextual ads (i.e., ads triggered by search key words), in contrast to Google’s model of personalized/targeted ads built on data collected on individuals, specifically including their search history. Yet, the CMA describes contextual data in a manner that blurs this distinction. Appendix D, Paragraphs 15-17: “Contextual data refers to data on the context in which an advertisement impression is served or a consumer is making a query. For instance, it can relate to the content of a webpage on which the impression is shown, the natural meaning of the keywords the consumer inputs in a query, or information about external factors such as weather conditions. It can also refer to the context of a consumer search such as the consumer’s location and their search history (particularly their immediate prior searches)... [S]ome contextual data can be personal data, if it is associated with an identifiable person. For instance, search queries and histories and location data recorded against specific users’ profiles may be considered personal data within the meaning of relevant data protection legislation. Contextual data, alongside user data, can be used to personalize results and advertisements to the consumer.” We do not agree with this characterization of contextual data.

Later in Appendix D (Paragraph 86), the CMA states, “Contextual advertising typically uses relatively limited user data such as search terms, device, location, and language, in order to show ads in the right size, format, and language.” We do agree that technical aspects like this are used to display ads (of any kind), but we would not characterize this as contextual. We certainly do not agree with the CMA’s next sentence in this paragraph that the line between contextual and personalized advertising is blurred by advertisers who target audiences (e.g., demographics, affinity, in-market, similar audiences, etc.) – that is personalized advertising (aka targeted ads), as shown by the CMA’s footnote citation to Google’s advertising model.⁵

⁵ <https://support.google.com/google-ads/answer/1704368?hl=en-GB>

Choice Architecture

We support the concept that platforms should be required to trial and test the choice architecture they adopt. It's our understanding that that large platforms do in fact test this, through third party consultants, and actually implement the opposite, i.e., design their "choices" in a manner that dissuades consumers from selecting the option that protects their privacy. For example, Google's choice of the nomenclature for its purported "incognito" mode regularly misleads consumers into believing their searches are private, when in fact they are captured by Google just as much as the regular mode. See *Tracking in 'Incognito' or Private Browsing Mode?*, <https://spreadprivacy.com/tracking-in-incognito/> (Feb. 2017). As discussed below, while we conceptually support a requirement for testing choice architecture, we believe that requiring Google to do so will only marginally improve online privacy, due to the innumerable ways that companies can engage in sludge techniques.

Improper Reliance on Comscore Data to Determine Market Share

Comscore has not produced a general search report since 2016.⁶ The CMA cobbled together Comscore data through other Comscore reports, which are grossly deficient because they encompass non-general search measurements such as Yahoo answers. One need only look at Figure C4 in Appendix C, in which Comscore reports a mere 70% market share for Google Search, when every other measurement method (e.g., clicks, referrals) indicate at least a 90% market share (a non-trivial 20% delta).

Comscore's data on search engine market share is irredeemably flawed, just as much, if not more so, in the UK as in the US. The fact that Comscore is widely used within the examined industries and by other government bodies does not mean it *should* be used. We note for example that in the CMA's report, a chart compiled from Comscore data purports to measure data on malware-posing-as-search-engine companies; similarly, the report mentions a search engine with de minimis traffic originating from typosquatting (goole.com). Comscore does not measure, for example, searches conducted through DuckDuckGo's apps and extensions at all. Because of DuckDuckGo's stance against online tracking, our apps and extensions block both Comscore and Statcounter measurement tags. In rebuttal, Comscore points to its panel data as a proxy. But that data is also intrinsically flawed because people who value privacy would not agree to participate in such a panel. In other words, Comscore's data suffers from immense selection bias.

In a sense, however, our Comscore criticism may be irrelevant. Just as one does not need a precise ruler to measure floodwater depth in a decade-long torrential rain, Google's 90%+ domination of the search engine market is easily established. Nonetheless, because it will be important to calibrate remedial efforts, to determine if they change market share at all or how well, the CMA would be wise to invest more effort into this issue.

⁶ Comscore's last general search engine report:

<https://www.comscore.com/Insights/Rankings/comScore-Releases-February-2016-US-Desktop-Search-Engine-Rankings>



Specifically, we strongly recommend that the CMA rely on “publisher data.” Publisher here means the owner of a website that logs visits. No one needs to opt in except for the publisher. With enough publishers with significant traffic, the traffic logs will accurately determine search market share. To elaborate, every website knows the immediately prior website – for example, if I search on Bing.com for “UK CMA” and click on Bing’s resulting link for your website, I am whisked to your website, and your website knows that I arrived there from Bing.com.

The largest set of publisher data is readily available to the CMA – Google Analytics, which is embedded on approximately 79% of the top 50,000 sites. While Google does not publicly report Google Analytics data, that data can be obtained by the CMA (or any of the antitrust investigations occurring in so many parts of the world). Tellingly, Google recently updated its list of default search engine options in Chrome in the U.S. based on “on new usage statistics” from “recently collected data,” which we presume to be Google Analytics data. Still, even Google Analytics will not precisely reflect search engine market share. DuckDuckGo’s apps and extensions, for example, block the Google Analytics request outright.

But the publisher data need not be massive to be statistically significant. The CMA could obtain informative publisher data from publishers themselves, including the CMA itself. If the CMA determines that its own site does not have sufficient traffic, or that the traffic is skewed in some way, the CMA could aggregate its own publisher data with other government websites. The CMA could also obtain publisher data from other groups, such as from a range of UK news sites.

Overview of Contemplated Interventions

- **Code of Conduct.** We do not have experience with enforceable codes of conduct for companies with strategic market status, and we are therefore reluctant to take a strong position on whether such a code would be helpful to diversify the search market. That said, we are doubtful that any such code could be developed and enforced in a timely manner, and time is the very essence of an effective remedy in the search market. We are also concerned with the contemplated code of conduct’s reliance on the undefined term, “strategic market status.” We are reminded of the U.S. Supreme Court’s multi-decade struggle to define obscenity and Justice Potter Stewart’s famous quote that he could not use words to describe it, but that he “knew it when he saw it.” Nonetheless, we are inclined to agree that such a code system would more quickly address competition problems than standard antitrust enforcement, at least as that has been practiced the past few decades. But that is not saying much.
- **Pro-Consumer Rules.** We support rules to give consumers greater control over data and to improve transparency. But giving consumers more settings to exercise “choice” is unlikely to be sufficient for meaningful change. The world is already familiar with the long-failed “notice and consent” regimes. As the Competition Law Forum notes, platforms often purport to give consumers a plethora of granular privacy settings, but these give consumers a false sense of

control because those settings usually only govern visible (front stage) data processing. A much preferable approach is a rule that requires all platforms to give consumers an option to use their services without requiring in return the use of consumers' data. We believe this should be a generally applicable rule, not adjusted according to whether a platform has SMS status. Similarly, while we are supportive of changes to default settings such that a consumer must affirmatively opt-in to personalized advertising, we believe this should be a generally applicable rule, not adjusted according to whether a platform has SMS status. We are also supportive of rules that require platforms to design consent and privacy policies in a way that facilitates informed consumer choice. See *Ethical, by Design: How We Design With Your Privacy in Mind*, <https://spreadprivacy.com/ethical-by-design/> (January 2019). That said, the number of ways in which these choices can be manipulated are legion and ever-evolving, always one step ahead of the antibiotic du jour (or de jure). Design rules to facilitate consumer choice cannot avoid the need for constant vigilance in this “whack a mole” process.

- **Market Interventions.** We support interventions to address specific sources of market power and to promote competition. CMA's categorization of these interventions as demand-side remedies (facilitating consumer choice and improving access to consumers for non-Google search engines) and supply-side remedies (providing third-party access to Google index and ranking data) is constructive. As between structural or behavioral market remedies, we believe the latter is more likely to be impactful (the latter are designed to regulate or constrain the behavior of market parties and/or empower customers to make meaningful choices). We do not understand the report's claim that “all of the interventions would need some form of regulatory body to implement them.” While we are not opposed to the creation of a Digital Markets Unit, as recommended by the Furman Review, that is still just a glimmer on the horizon, and may never occur. The CMA can, and has in the past, implement remedies itself. For example, in the CMA's retail banking market investigation, the CMA marched into the future with bold structural changes that quickly and immensely helped consumers and small businesses, without any need to punt elsewhere to revolutionize the banking landscape. Similarly, the CMA could issue orders (following a market investigation) regarding access to Google's web index, Google's purchase of major default search engine placements, etc.

Demand Side

Default Settings. The power of defaults cannot be overstated, as shown by the CMA's determination that, just in the UK and only for 2018, Google paid third parties \$1.3 billion dollars (16% of Google's total annual UK search revenues) to be the default search engine solely on mobile devices.⁷ We adamantly agree that Google should be forced to relinquish its defaults on mobile operating systems, devices (laptops, tablets), and most browsers. The CMA report does not specifically mention Google's Chrome browser or Google's Pixel phone for this

⁷ Interim Report, Paragraph 3.81.

intervention (or for the preference menu intervention), but they should be included. At a minimum, Google's domination in the mobile environment (Android), and the desktop/laptop environment (Chrome) should be kept top-of-mind when contemplating the various ways this intervention could be implemented. For example, regardless of whether the intervention is designed as a flat ban on search engines, device manufacturers, or browsers, the restriction should not disregard Google's current or anticipated ability to dilute the effect of that ban (e.g., below-market pricing on Pixel phones).⁸ We recommend excluding the Firefox browser and other small browsers (e.g., Opera) from the contemplated ban because we support a diverse browser market.

We believe the best way to address default purchases is by mandating preference menus (more on that below), which effectively eliminates the default while concurrently providing the consumer with options. However, Google should also be required to simultaneously update the Chrome browser and Android operating system such that consumers can easily change defaults themselves by a simple click (i.e., get back to the preference menu setting). Right now, when consumers visit DuckDuckGo.com or download our app, we have no simple, programmatic way to help them change their default search engine across their Android device (e.g., both the home search bar and in Chrome). Instead, these are multi-step, non-intuitive changes, with the home search bar change not even possible without very advanced technology skills. We should be able to prompt the consumer (e.g., "do you want to change your default search engine to DuckDuckGo? click here") to jump directly to the preference menu such that, if the consumer selects DuckDuckGo, all those defaults would change at once with one tap.

In addition, Google should be required to create in AndroidOS a universal home screen search bar that can be configured in Settings. Today, Android's home screen search bar is an app-based functionality tied to Google Search that cannot be changed in Settings. Following the EU-mandated preference menu, consumers can, on new-device activation, change that to a non-Google search engine -- but if the consumer later deletes the non-Google search app, the home screen search bar automatically reverts to Google Search and the consumer cannot easily reverse that without doing a complete factory re-set of the device.

Preference Menus. As explained above, while we believe a prohibition on Google setting or buying defaults is better than the status quo, an even better solution is government-mandated preference menus. See "Search Preference Menu Immediately Increases Google Competitors' Market Share by 300-800%," <https://spreadprivacy.com/search-engine-preference->

⁸ Exhibit J, Paragraph 10 floats the idea that a default ban could be designed as a limit on the proportion of default positions secured by Google for particular devices or browsers. We think this will be difficult to implement as a practical matter due to measurement challenges, market fluctuations, and trade issues (e.g., Huawei sanctions) but that the CMA should explore it nonetheless because it is important to maintain browser market diversity.

menu/ (October 2019), and “Search Preference Menus: Improving Choice With Design,” <https://spreadprivacy.com/search-preference-menu-design/> (January 2020).

We note the CMA report did not fully capture our position on this subject. Exhibit J, Paragraph 12 states that we support a preference menu when consumers set up their device or browser – this is correct,⁹ but we also believe that preference menu should be pushed out on applicable devices and browsers now, not just over time as consumers purchase new phones or computers. Google did this (albeit poorly) with Android devices in Spring 2019. To wit, Google displayed an alert box within Google Search on Android that notified consumers that they could select a different search engine and directed consumers to Settings (as shown in news articles).¹⁰ While Google has apparently claimed that it is impossible to display a comprehensive preference menu on existing devices (i.e., one that would change the search bar default), we find this hard to believe given the common practice of pushing out important Android software updates for other reasons. Even if technological barriers prevent a change to the home screen search bar on existing devices, those barriers certainly do not prevent Google from displaying an alert box on existing devices to change the Chrome search default. Of course, we have opinions on how that alert can be designed to be effective and not more visual clutter that nudges consumers to dismiss without due regard.

We have acknowledged that a large number of consumers will select Google as their default search engine in any preference menu or alert box. But that does not counsel against having such functionality, just as one should not let “perfect be the enemy of good.” Increasing non-Google search engine market share by some amount is enormously preferable to the status quo. We agree with the CMA’s observation that this measure has the potential to become more impactful over time because non-Google search engines would be able to incrementally gain access to more search queries and clicks (which permits them to improve search result relevance) and increase the likelihood of investments in other search improvements.

As we have witnessed with the Android preference menu, active and granular government direction on the specific design and mechanics of that preference menu is necessary to prevent Google from gaming the preference menu in its favor. If the CMA is not inclined to be so granular, even a directive with basic requirements could likely solve much of the gamesmanship. With Android, we would expect Google to create a preference menu that funnels consumers to “choose” Google. The CMA could create basic guidelines (“do’s and don’ts), incorporating lessons from the three past iterations of the Android preference menu, as well as the earlier Microsoft browser and Russian search preference menus. Thereafter, the CMA could

⁹ Excluding some browsers, as noted above.

¹⁰ These news articles show the Spring 2019 preference menu: <https://venturebeat.com/2019/04/18/google-to-suggest-10-browser-and-search-engine-alternatives-for-android-users-in-europe/> and <https://9to5google.com/2019/04/18/google-europe-browser-search-choice/>



transfer future monitoring and enforcement to a body such as the contemplated Digital Markets Unit.

Regarding the instances and frequencies for any such preference menu, we believe it should be shown (a) for new devices, one time at activation; and (b) for existing devices and applicable browsers, one time, on any date announced a month in advance. Our opinion as to the instances and frequencies for the contemplated preference menu has an important caveat – additional frequency is not needed, provided Google has given consumers (a) an AndroidOS setting that allows consumers to change the home screen search bar after they make their preference menu selection; and (b) the persistent ability to accept a one-tap prompt to programmatically change the Chrome default and the home screen search bar default.

We strenuously oppose pay-to-play auction formats for preference menus. We have been very clear on this subject since the EU Android remedy was first announced, and we will be publishing a longer blog on this subject at SpreadPrivacy.com in the coming weeks.

Supply Side

Third-Party Access to Click-and-Query Data. We agree that Google should be required to provide click-and-query data to rival search engines. However, as the CMA correctly notes, the vast majority of search engines rely on syndication contracts with upstream providers, which often have exclusivity provisions that would prevent them from using Google’s click-and-query data – as a result, this remedy is insufficient alone.

Regarding Google’s “concern” that third parties accessing click-and-query data “would create risks to consumers’ privacy and lead to inappropriate parties ... gaming Google’s algorithm,” we consider this a convenient excuse. It is our mission to set a new standard of trust online, and we would not support this intervention if it resulted in reduced privacy. The click-and-query data does not need to have (and should not have) consumers’ personal information in any material way. It may be that Google is making the straw-man argument that individuals search their own name, which certainly does occur, but we do not believe those searches in the contemplated API of billions – nay, googles – of searches would materially impair privacy. The CMA’s report indicates that trackers and IP addresses would not be part of the data set, which solves for the most critical privacy issue, which is ensuring a search cannot be traced back to a person. Even in the rare event that a person searches a phone number or a home address, or even his passport number or his UK national insurance number, that can be addressed without much trouble. Google can create a filter that excludes searches containing a certain number of digits, for example. As for the prospect that parties would be able to use the click-and-query data to game Google’s algorithm, we speculate that Google is envisioning a situation where someone would spend tens of millions of dollars (which is what it would likely entail to ingest an API of all of Google’s click-and-query data) to then spend millions of dollars more to reverse-engineer that data in some way to parse out Google’s ranking signals, and then use that information to re-



design a website such that a bogus weight-loss clinic would be the first organic result. Obviously this is an absurd hypothetical. And if it were to occur, we are confident that Google would be quick to terminate access rights and remediate the issue. In addition, we anticipate that this market intervention would be only for companies that either currently operate a general search engine or establish a bona fide basis for launching a new general search engine, and that in either case, the third party would be contractually or regulatorily required to solely use Google's click-and-query data for that purpose.

While Google apparently did not surface this issue with the CMA, a genuine privacy issue that should be avoided in access to click-and-query data is "sessions." A search session is a record of a consumer's searches linked together over time or by device by a single identifier, often an IP address. It is not difficult for Google to provide access to click-and-query data without session information, and it certainly is not needed to create or augment a third-party's index and ranking data.

We do not put any weight on the idea that third-party access to click-and-query data would reduce Google's incentive to innovate or improve its algorithm. As previously stated, even with all of the contemplated market interventions, we anticipate most consumers will still use Google Search for the foreseeable future. Introducing Google to a competitive landscape will actually heighten Google's incentive to innovate.

Regarding the specific data that would be shared (query data alone; click and query data; or click and query data and search results), we believe providing access to any of these categories would be a vast improvement in diversifying the search engine market. However, the last group (click and query data and access to search results) is most likely to materially reduce Google's dominance of the search market. As stated above, however, session data should never be transferred or shared. We are not conceptually opposed to requiring third parties to pay for access, provided that it is on FRAND terms. However, because a determination of FRAND terms is likely to be fraught with lengthy negotiations and litigation, and given Google's almost total domination of the search market, huge incumbency advantage, and mind-blowing revenue, we take the pragmatic approach that no payment should be required.

Syndication Agreements. We agree that Google should be obligated to supply syndicated search results and its ad feed on FRAND terms. We emphasize that syndication of the search results is pointless without the ad feed, so inclusion of an ad feed would be a necessary component of this intervention. We expect this will significantly diversify the search market. Regarding pricing, because this would be a bundled supply (algo + ads), we suggest that the algo component be priced near the upstream provider's actual cost, with the ad component on a revenue-sharing basis, with a larger portion of the revenue going to the downstream syndicator as it achieves higher revenue bands.

The CMA observes that “if Google were required to offer syndication on more attractive terms to third parties, this could potentially limit the ability of Microsoft to compete with Google in providing these syndication services.” Yet, that seems a plausible outcome only if the CMA does nothing to address Google’s defaults or third-party access to Google’s click-and-query data. If the CMA does pursue a market intervention in this regard, it very well may be that Microsoft would readily become a more attractive syndication partner than Google.

In any event, the CMA also observes that Microsoft already has a rich array of downstream syndicators, and that Microsoft obtains substantial non-monetary value from these companies.¹¹ Moreover, Google has stated under oath that it does not syndicate to private search engines. Google requires any downstream search engine to provide Google with the most personal of search data – the consumer’s IP address. Google then uses that identifier to supplement its detailed consumer profiles, and track those consumers as they browse the Internet (and increasingly, as they move in the physical world too). See Google’s Submission in Response to House of Representatives Subcommittee Questions Following July 16, 2019 Hearing (Answer 25).¹² Thus, Microsoft and Google do not appear to compete against each other in the syndication market, at least on pricing terms. We believe the best course of action, at least now and for the near term, is likely to be regulation of syndication arrangements on non-price terms only.

Interaction of Proposed Interventions and Timing with Code of Conduct

While it is theoretically possible that one of the contemplated interventions would be sufficient to substantially impact Google's dominance, we believe that is not realistic. We also do not consider these interventions to be substitutable. Different entities will likely benefit from different interventions. For example, it is possible that only Microsoft would be in a position (given its Azure cloud service and strong financial position) to ingest Google’s click-and-query data to improve its web index. It is possible that only mission-driven search engines like Ecosia and DuckDuckGo will benefit from a preference menu. We advocate in favor of all these remedies, as a package. A less satisfactory (but still substantial improvement over the status quo) remedy would be a gradual approach in the following order: (1) preference menu; (2) default purchases; (3) access to click-and-query data; and finally (4) syndication agreements.

Because the market interventions contemplated in the report are the most impactful tools available to the CMA, we strongly prefer that they be put into effect prior to, or alongside, the

¹¹ Footnote 94: “For example, Microsoft submitted that ‘a primary motivation for entering syndication deals is to help increase our scale [and relevancy of results] to improve competitiveness over time.’”

¹² <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-20190716-SD030.pdf>

code of conduct. We definitely are not in favor of sequencing such that the code of conduct is implemented prior to these market interventions.

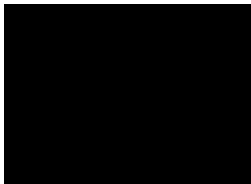
Box 9.1: CMA's Key Questions

1. Do you agree with our descriptions of general search services and social media service, as set out in Chapters 2 and 3? *As to general search services, yes.¹³ We do not opine on social media services.*
2. Do you agree with our explanation of the different forms of digital advertising, as set out in Chapter 5? *We do not opine on this subject.*
3. Do you agree with our explanation of how the intermediated open display market operates, as set out in appendix H? *We do not opine on this subject.*
4. Do you agree with our understanding of the role of data, as set out in Appendix E? *Yes.*
5. Do you agree with our analysis and findings in relation to competition in search and social media, as set out in Chapter 3? *As to general search services, yes. We do not opine on social media services.*
6. Do you agree with our analysis and findings in relation to consumer control over data, as set out in Chapter 4? *Yes.*
7. Do you agree with our analysis and findings in relation to competition in digital advertising, as set out in Chapter 5? *We do not opine on this subject.*
8. Do you agree with our assessment of the merits of a code of conduct for large online platforms funded by digital advertising? *Except as noted above, yes.*
9. Do you agree with the range of possible practices we have identified that could be considered under such a code of conduct? *Yes.*
10. Have we identified the appropriate range of potential interventions to address the sources of market power for Google and Facebook? *As to Google, yes, except we suggest the CMA also consider (a) programmatic changes to Android and Chrome such that consumers can change defaults with a single click after navigating to competing search engines; (b) immediate implementation of an alert box for search engine selection; and (c) within the AndroidOS, a post-activation setting to change the default for the home screen search bar. We do not opine on Facebook.*
11. Have we identified the appropriate range of remedies to improve consumers' control over their data? *Yes, except we suggest the CMA also consider (a) programmatic changes to Android and Chrome such that consumers can change defaults with a single click after navigating to competing search engines; (b) immediate implementation of an alert box for search engine selection; and (c) within the AndroidOS, a post-activation setting to change the default for the home screen search bar.*

¹³ One nit – Footnote 16 in Appendix F states that donations are a funding component of privacy-focused search engines. We do not believe that is correct. It certainly is not true for DuckDuckGo. In fact, we donate substantial money to third parties. See 2019 DuckDuckGo Privacy Donations: \$600,000 for Privacy Advocacy, <https://spreadprivacy.com/2019-duckduckgo-privacy-donations/> (August 2019).

12. Have we identified the appropriate range of remedies to address conflicts of interest and a lack of transparency in digital advertising markets? *We do not opine on this subject.*
13. We have set out a number of specific questions relating to the potential interventions, which are discussed in the following appendices, do you have any views on the more specific questions in these documents? *We have addressed above.*
14. Do you have any views about the appropriate sequencing of the remedies we have identified? *Yes, described above.*
15. Do you agree with our assessment of the potential candidates for a market investigation, and what are your views on the merits of each? *Yes, discussed above.*
16. Do you agree with our proposal not to make a market investigation reference at this stage? *Absolutely not.*
17. Do you support recommendations to government as an effective route to implementing interventions in these areas? *Absolutely not.*
18. Do you agree we have identified the right areas for further work in the second half of the study (set out below), and are there any significant gaps? *Yes. We have not identified any significant gaps, except for the consideration of Android OS settings, one-click programmatic changes to defaults, and an alert box.*

Sincerely,



Megan Gray