

CMA DMCCA SMS INVESTIGATION INTO GOOGLE'S GENERAL SEARCH AND SEARCH ADVERTISING - 14
JANUARY 2025

SAMSUNG RESPONSE TO INVITATION TO COMMENT

- (1) Samsung appreciates the opportunity to comment on the CMA's investigation notice and summary of the investigation contained in the invitation to comment (ITC). We will separately respond to the request for information we received following the launch of the investigation. We also look forward to contributing as part of the engagement with third parties noted on the administrative timetable.
- (2) We were involved throughout the mobile ecosystem market study, and mobile browser market investigation which preceded this SMS investigation. While the latter focused on browsers rather than search engines, some of the points we made in the response to the market investigation provisional findings decision, and earlier remedies working paper, are relevant to the present SMS investigation. Some of our earlier submissions a part of the market study remain relevant.
- (3) Given the short time available and the possibility of further bilateral engagement with the CMA (as acknowledged in the ITC and which opportunity Samsung would welcome), we will keep this comment short, and limit ourselves to summarizing our thoughts on specific key questions raised in the ITC which have a direct bearing on Samsung and its business model - namely:
 - a. Q3 - addressing how Google's general search services might be affected by the development of AI interfaces providing alternative means of returning information
 - b. Q5/Q6: in so far as those seek initial input on the effectiveness, proportionality and benefits of the following possible CMA interventions aimed at addressing weak competition and barriers to entry and innovation in search:
 - i Measures to ensure challenger search services can access key default positions and reach consumers; and
 - ii Measures to promote consumer awareness, engagement and choice in search.

A: The effect on Google's general search services of the development of AI interfaces

- (4) While Google's position in the provision of standard general search engines may be well-established, it is not clear Google will benefit from the same market position in respect of AI interfaces (including those which integrate/facilitate search-related activities), many of which have been rolled-out to end-consumers only relatively recently and whose functionalities and device/ecosystem integrations are still developing. Any market(s) for such AI interfaces (and the services they facilitate) may well be more highly contested, bearing in mind how such interfaces can benefit from cross-device/user experience integration (not solely limited to Apple's or Google's ecosystems) and especially given that Microsoft and OpenAI have a strong presence in generative AI technology. In other words, there is no guarantee that Google's Gemini services currently or will command the same popularity to that previously experienced by Google in respect of its standard general search engine.
- (5) Further, at this early stage, it is unclear how Google's position in general search engines may be impacted (or not) by AI interface integrations and any search-related activities those integrations provide. Search related activities enabled by AI integrations are powered by technologies, perform functions and produce end-user results which are distinguishable from those relating to general search. General search is a rules-based product that identifies material that already exists on the internet (or licensed data sets) to produce a list of results, providing a range of different third-party content which the end-user can peruse and interact with depending on his/her exact preferences and specific needs. Conversely, as acknowledged by the CMA, search-related activities powered by generative AI interfaces are powered by a large language-model based product that relies on pre-trained knowledge and patterns which generates new, "artificial" content to give, e.g., the end-user a more targeted, bespoke response to his/her search query. As AI technology/integrations and consumer preferences develop, it remains to be seen how such AI-enabled search-related activities (facilitated by AI assistants or AI powered search engines) will act as a substitute and directly compete with general search. It is also an open question whether usage patterns will differ for AI integrations, with more multi-homing and variety of access points, and less reliance on device-level defaults.
- (6) Bearing in mind the above, the market share data obtained during the CMA's 2020 online platforms and digital advertising market study (DAMS) needs to be revisited before assessing the need for any intervention in this area – the DAMS data is now at least four years old and did not include AI search-related activities.

B(i) Measures to ensure challenger search services can access key default positions and reach consumers

- (7) At paragraph 41(a) of the ITC the CMA writes: "*As noted in Box 2 above, the market study found that Google's control of key search access points, including through the revenue-sharing and placement agreements it has reached with third parties, may help to maintain Google's strong position in search. We will therefore consider interventions that could improve the ability of competitors to secure these key access points, including restrictions on Google's ability to enter into revenue-sharing and placement agreements.*"
- (8) This potential intervention is likely to have significant effect on Samsung and other mobile/tablet/PC OEMs, as well as challenger browsers. Samsung encourages the CMA to carefully consider the adverse consequences any intervention which significantly hinders OEMs' ability to generate service revenues from Google may have on those OEMs' ability to invest in and compete on product innovation and lower retail prices, as well as the corresponding negative impact this could have on consumers.
- (9) As noted in our responses to the DAMS RFIs, Samsung has a revenue sharing agreement with Google. As part of this, Samsung receives a share of search revenue generated through the use of Google Search on Samsung Internet Browser (SIB). [Confidential remarks about revenue share agreement and implications of potential interventions.]
- (10) When deciding what interventions are proportionate and effective, the CMA should also bear in mind that that the decision to use Google Search as a default search engine reflects consumer preferences, just as much as Samsung's own commercial interests in the form of revenue sharing. As we explored in our responses to the DAMS RFIs, to ensure its new devices are user-friendly and easy to adopt, it is important for an OEM to deliver an 'out-the-box' experience (OOBE) which matches what consumers want and are used to - e.g. making sure the leading search engine will be readily accessible on their new device. Before curtailing OEMs' ability to generate service revenue from Google and meet existing consumer expectations, it must be clear to the CMA that such a significant intervention will effectively foster the use of rival search engines (despite current consumer preferences) and deliver meaningful consumer benefits which are proportionate to and commensurate with the potential negative effects outlined above.
- (11) It should be also emphasized that Android end-users are already presented with opportunities to choose their default search engine on the most commonly used device search access points due to regulatory interventions pre-dating the DMCCA (as acknowledged at paragraph 48, ITC and summarized in paragraph 15 below). Indeed, in the UK, consumers have been presented such choice screens since March 2020 - only shortly before the publication of the DAMS report in which the CMA suggested that it should have new powers to intervene under new online platform legislation. Particularly if CMA intends to re-evaluate and subsequently maintain/update these choice screens (as has been done under the EU DMA): (a) it is essential that the CMA revisits its findings on Google's default

positions from the DAMS (which are now outdated), bearing in mind the impact of these pre-existing choice screens; and (b) judges the proportionately and likely effectiveness of any further interventions addressing revenue share arrangements in light of these consumer prompts already in place. It is not clear that banning all remaining revenue-sharing agreements (at least in so far as they relate to Android devices) *on top of* these existing choice screens (whether their design is enhanced or not) would have a sufficiently large, incremental benefit to competition and consumers, such that it would outweigh the significant damage to vital income streams of both OEMs and browser providers as well as the potential negative knock-on impact on consumers.

- (12) Finally, we would also request that any intervention should be carefully considered alongside interventions proposed as part of the separate SMS investigation (and possible CRs and PCIs) into Apple's and Google's mobile ecosystems - particularly since mobile ecosystems points (including browsers) act as important access points by which consumers engage in search activities. In the same way the DMCCA seeks to address how the interconnected nature of digital services and online ecosystems can allow strategically important firms to entrench their position across multiple digital activities, it is essential from the CMA to judge the proportionately and effectiveness of its interventions under the DMCCA in the round - including by bearing in mind the aggregate impact on these interventions not only on SMS firms and their ecosystems, but also the OEMs and other business users which interact with them.
- (13) For instance, unlike iOS devices where the device manufacturer and the OS provider are identical, for Android devices where the device manufacturer (i.e. the OEM) is separate from the OS provider (except for Google Pixel devices), the final decision authority for the device user experience (including whether to display the choice screen) lies with the OEM who designs, develops, manufactures, and sells the Android devices, rather than with Google as the OS provider. We hope that the investigation will proceed in a direction that adequately respects these rights of OEMs.

B(ii) Measures to promote consumer awareness, engagement and choice in search.

- (14) At paragraph 41(b) of the ITC, the CMA writes: *"Design choices by Google which determine whether and how users make decisions about search services - also known as 'choice architecture' - may be making it harder for users to make active and informed choices about which search services they use. We will consider interventions that could empower consumers to make more active choices, including by requiring choice screens to be presented at set up on key access points. These could be accompanied by other measures*

to simplify the user's journey when they are making choices over which search services to use."

- (15) As with our response to the similar suggestion of browser choice screens on the mobile browser market investigation provisional findings decision, search engine choice screens must be carefully considered, tested and scoped, lest they:
- a. have unintended consequences which are disproportionate to the CMA's concerns regarding the SMS firm (in this case, Google);
 - b. impose an unnecessary detrimental impact and/or burden on that firm's counterparties (in this case, Samsung and other OEMs), which challenges the intervention's effectiveness, harms third-party businesses and/or leads itself to consumer detriment; and
 - c. go materially beyond addressing that SMS firm's conduct and commanding market position in the relevant digital activity, leading to an intervention (e.g. a CR) which is disproportionate and/or one which was not clearly falling within those permitted types envisaged in the DMCCA.
- (16) We note that the Chrome browser search engine choice screens imposed by the European Commission (imposed pursuant to antitrust proceedings and reviewed under the EU DMA) are well-established and focused on preventing Google from using its own position in one digital activity, namely mobile browsing via Chrome (for which Google was deemed to have 'gatekeeper' status), to materially enhance its position in search (another digital activity for which Google has been deemed a 'gatekeeper'). Conversely, we consider it likely neither proportionate nor effective to expand upon this intervention by trying to ensure a search engine choice screen is displayed on third-party mobile browsers (or other areas under the OEMs' control), despite the fact that they do not benefit from a strategic market position (or 'gatekeeper' status under the EU DMA).
- (17) A possible broader intervention risks being disproportionate in so far as it could, in effect, mandate that third party browser providers:
- a. change their terms with Google and commercial decision-making as regards default search engine - regardless of the fact that the relevant third party browser does not benefit from a 'strategic market position' (or 'gatekeeper' status under the EU DMA); and
 - b. sacrifice key service revenue generated from Google as regards default search, which may well fund the challenger browsers' operations and ability to compete. As touched on above, this concern applies more broadly to any and all interventions targeting browsers other than Safari and Chrome, likely harming an important revenue stream of the browser provider and stifling device/browser competition.

- (18) In any event, such an intervention risks being ineffective in so far as:
- a. it still relies on third-party, challenger browsers - which are not directly subject to DMCCA's interventions - changing their decision-making as regards search engine choice screens and defaults in response to mandated changes to Google's CRs or PCIs; and
 - b. the limited market position of third-party browsers (as compared to Chrome and Safari) means that any such intervention would be unlikely to have a material effect on overall Google Search usage.
- (19) Similar to those proportionately concerns registered above, any assessment of pro-choice measures to improve consumer awareness should also take account of pre-existing pro-choice measures not only mandated pursuant to earlier regulatory intervention, but also adopted by market operators themselves. Any further intervention on top of these existing measures - whether by way incremental changes to existing choice screens or more radical changes to choice architecture - must be carefully considered bearing in mind the likely incremental impact and consumer benefit *on top of* that achieved by those pro-choice measures already in place in the UK and the EU.
- (20) For instance, SIB has an easy to use drop down menu, whereby the Google "G" logo included in the browser search/URL bar, can be tapped to reveal a list of alternative search engines which consumers can change to with a single additional tap to test out alternative search engines prior to changing default settings. We respectfully consider that intuitive measures such as these, combined with easily accessible default settings screens, are a sound alternative to forced choice screens requiring users to make a decision at a single point in time (typically during the OOBE) which affects all subsequent browsing and searching.
- (21) Linked to Samsung's concerns that the CMA assessment the impact and proportionately of all its interventions under the DMCCA judgment in the round, many of the points made in Samsung's earlier responses to the mobile browser market investigation provisional findings decision also apply here, so we refer the case team to this submission - found here.

Conclusion

- (22) We hope that this summary of our initial position, based on a reading of the ITC and investigation notice, is helpful.
- (23) At this preliminary stage, Samsung wishes to register concerns that the CMA's possible interventions as described in the ITC - restricting Google's and OEM's ability to enter into commercial arrangements and the imposition of new choice screens (at least in so far as they go materially beyond that which is already available in the UK or the EU) - could have unintended consequences and/or result in a disproportionate, negative impact on

businesses. Particularly in light of parallel SMS investigations, without careful coordination and testing, such CMA interventions may go further than required in order to open up the search and browser markets and yield the consumer benefits the DMCCA is ultimately designed for.

- (24) Samsung welcomes the CMA's acknowledgement of market developments, including earlier regulatory intervention affecting choice architecture in the UK and EU, as well as technological advances which may material shape/alter consumer choices and preferences going forward. In due course, Samsung looks forward to engaging further with the CMA further to support in the identification of well-balanced, effective and proportionate interventions which are in line with the principles of the DMCCA - including by assisting the CMA with understanding how the advent of AI interfaces and earlier choice screen remedies have impacted search and consumer preferences.