

CONSULTATION RESPONSE

Google Search SMS Designation

Context

As Sarah Cardell [argued](#) in a recent speech, the CMA is to a significant extent “starting with a blank canvas” in its implementation of the DMCC. The predictability which she argued was a priority in the same speech and other recent interventions depends on the Google Search and other early SMS investigations.

Google Search is important to UK consumers and a broad range of commercial stakeholders, including many not necessarily well-represented by those calling on the CMA to act more aggressively. The broader interest beyond this investigation, though, is that it provides clarity for other instances in which the DMCC might be applied.

For those investigations to deliver predictability and thereby deliver against the Government’s strategic steer to support growth and investment they should help companies develop a clear understanding of what does (and crucially does not) cause a service to be in scope for ex ante regulation. The Guidance for the CMA notes that in many cases the tests under DMCC are not those that would have applied in pre-existing competition law, but this creates an opportunity and responsibility for the CMA to develop similarly robust tests that reflect the priorities of this new regulatory environment. The final decision can do more to provide that clarity than the proposed decision.

Consumer alternatives

In a number of instances, the CMA notes that certain alternatives to Google and other general search providers do not meet all of the needs met by that search provider.

- Usage of AI assistants “varies by use case”. Use cases for which AI assistants seem most immediately applicable would be what is described in the consumer survey as “search the web for [simple or less simple] information.”
- Specialised search providers “focus on specific sectors or ‘verticals’ such as flights, hotels and shopping.”
- Social media companies are noted as providing information “based on the content provided to them”, but without considering whether that might in some categories provide a viable alternative means to accessing certain categories of content online.

The problem with this approach is that it risks “missing the wood for the trees”. There will always be companies that provide more or less general services with advantages and disadvantages (generally not considered in the proposed decision) versus more specific answers to a particular consumer need.

AI assistants

AI assistants are noted to represent an alternative to Search, but this is treated as limited because overall usage is low (5.47). It is important to remember that ChatGPT, for example, was launched less than 3 years ago. Overall usage of AI assistants is growing rapidly. There is no reason to believe that in 5 years they will not be an even more significant competitive

constraint on Search for many categories of enquiry. It is difficult to imagine what the “entrenched” element in the DMCC legislation was intended for if not for this kind of transformative technological development.

CMA also argues that this impact is limited because AI assistants are “likely to continue being used in tandem with traditional general search providers for some time” (5.43). This seems backward: if consumers can multi-home, choosing between these two kinds of services on a flexible basis, it will be easier for those services to grow and compete with Google Search at the margin. There is no “all or nothing” choice between Google Search and AI assistant competitors which might raise the bar for consumers to shift their consumption in response to relative improvement in those services.

The other reason given is that Google is developing its own alternative in the AI assistant market (5.48). This seems like exactly the result that one would expect in a market subject to dynamic competition, where Google has to compete with other well-resourced and technically capable competitors. The CMA argues the outcome is uncertain but whether Google ultimately succeeds in bringing new innovations to its users, or fails, and is displaced by alternatives (or some intermediate outcome) the competitive constraint is clear: Google clearly feels that it has to invest and innovate, which would not be the case if AI assistants were not a significant potential disruptor of its business.

Specialist search

Specialist search services are disregarded because they are used less than general search for four specific services (5.56a). However, the source (Figure 2 in the consumer survey report) shows a huge range between “search the web for a product you want to buy” where shopping websites or apps account for around 39% and “search the web for simple information” where search accounts for around 88%.¹ This data is not consistent with a view that specialist search is generally a minor rival to Google, but instead consistent with a view that it is a viable and indeed common alternative for many of the most commercially-important searches (alongside going to specific brands direct, which may lower costs - airlines [have argued](#) that DMA intervention raised prices as it stopped customers doing so).

The CMA also points to statistics that show people often find specialised services through Google (5.62b). It is an assumption that this generally indicates Google plays a major gatekeeper role. It may instead often represent, for example, a situation in which someone types the name of a major marketplace (eBay, Amazon, etc.) or brand into the browser on their phone because it is easier than the URL. This technically triggers a Google search, but in many cases there will be little or no interaction with Google as someone quickly accesses the website in question. If this was not the case, they would type the URL instead.

The same is true for the finding that specialised search services spend on Google adverts. There is no reason to think this moderates the competitive constraint over time. Beyond their immediate impact on sales, such adverts are a means for specialist platforms to attract new customers that might go straight to their services when looking for goods and

¹ More neutral language should have been used than “search the web” which, technically accurate or not, carries strong implications that it is asking about activities that look like general search engines, not alternatives such as finding products within marketplaces.

services in future (many such adverts explicitly invite consumers to conduct the same search using their services). Google's hosting such ads is an indicator of dynamism in the market, not evidence that the market has ossified.

Social media

Social media platforms are disregarded because of their functional differences (5.67). This seems to be a result of looking for a direct competitor on a technical level and from a supplier perspective (e.g. a service that can be used as an alternative in a browser search selection). From a consumer perspective, on the other hand, social media is clearly an alternative means of accessing certain classes of information. If someone wishes to know something, find something, they might not search a social media website for it, but they could well either actively ask their connections or passively look at what their connections are talking about.

This kind of substitution is clearly relevant to the news sector, for example, which is not addressed specifically but particularly relevant given the CMA is considering multiple conduct requirements specifically for news and other publishers. As CCIA noted in its original submission, Ofcom research suggests Google (and this is explicitly considering the search engine) is 13th behind a diverse range of alternatives including linear TV (BBC is #1 and ITV is #2); social media; video sharing and instant messaging. As a result, one reason why some companies do not consider their services as a competitive constraint on Google Search (5.66) may be that they play a larger role in addressing this kind of consumer demand and the more relevant question is whether Google Search (either in itself, or as a means to access other sources) is a competitive constraint on their own businesses.

There is an obvious disconnect between the SMS designation report where this market is not considered and the role of media (including but by no means limited to social media) is therefore not treated as material versus the roadmap where there are conduct requirements prioritised for the sector. The CMA needs to decide if (a) Google's role in the news sector is important, in which case it needs to reflect on the extensive competition and Google's relatively minor role as a source of news compared to alternatives; or (b) the news sector and Google's role in it is relatively minor, in which case risky interventions to address the news sector in particular (considered separately in our submission regarding the roadmap) are not justified.

Summary

The CMA has looked across various alternatives and concluded that they are not general search engines, they do not address the same use cases in the same way. It would be better for the CMA to start from a consumer perspective, considering different use cases and the credibility of different alternatives to meeting them: are there any use cases for which Google is not subject to either existing static or dynamic competition? This would both provide a more realistic and complete understanding of the market and a clearer evidential link to potential conduct requirements for which it is currently hard to see the rationale.

- Searching for more or less simple information - this may be responsible for a large number of searches but with less associated revenue. Those searches may have distorted the historical data which purports to show a pattern of stability in the

search sector as a whole, as companies understandably focus on innovating to compete in lower frequency but more valuable segments. AI assistants are particularly well-placed as alternatives for this kind of use case.

- Searching for goods and services that people want to buy - this is where specialised services exist that are viable alternatives with their own considerable resources; advantages and disadvantages; and brands that mean they are not simply passive recipients of search traffic.
- Looking to stay informed about current events - this is where media generally, including social media, has a much larger share than Google Search.

In the relevant scenario in which Google's Search service materially worsened in the coming 5 years in any or all of these sectors, it is hard to imagine that these alternatives and potential alternatives would not grow at its expense. The CMA has not shown a practical lack of alternatives for consumers or a lack of dynamism in the market as a whole that justifies intervention. It has also not done so for specific segments, which means that the prioritisation of measures cannot flow from an understanding of where there are imminent problems that might require intervention.

Advertising alternatives

Many of the same issues described for search also apply to search advertising. Beyond that, CMA seems to assume that competition must be "all or nothing" and therefore reject a realistic view of the advertising market where diverse advertisers choose between media at the margin by assumption.

Other services being a "complementary" (5.108, 5.119a), part of a marketing mix alongside Search, rather than a straight alternative, is treated as a problem. However the practical effect of not having an "all or nothing" choice is that advertising customers are able to multi-home and choose where to increase or decrease their spending at the margin. Companies then compete at that margin for a larger share of spend and advertisers have a choice over what part of the "funnel" they will increase or decrease spending within. This is compatible with (indeed, supports) competition in the digital advertising sector.

The CMA's analysis of "market" outcomes only considers the extremely narrow frame of general search providers (Figure 5.4). Including other categories (specialised search advertising, display advertising) would show strong growth among challengers in the broader sector (e.g. TikTok, Amazon). That growth is hard to reconcile with the narrative in the proposed decision that focuses only on the disadvantages that these alternatives have to search advertising and neglects their advantages. In the case of specialised search, for example, those companies might have more direct data on whether adverts are associated with a purchase. In the case of display advertising, by contrast, some outlets might have richer data on the backgrounds of those that advertisers are seeking to reach, or the context in which they are being contacted.

Overall the market seems to be held to an unrealistic standard. It is common and consistent with a normal, competitive market for some customers to have more-or-less strongly held preferences and make decisions for more-or-less rational reasons.² Evidence that some

² CMA cites engagement with Google's largest shopping advertisers, which seems a group selected to be those least interested in alternatives.

customers feel this way is a weak justification for viewing a sector as stagnant which, in terms of actual market outcomes, shows enormous dynamism. Even if some advertisers who spoke to the CMA find them limited, in practice many other advertisers must feel those alternatives are an increasingly valuable way to spend advertising budgets or they would not have grown as much as they have.³

Barriers to entry and expansion

User access and default positions

The CMA cites how most consumers chose to retain Google when presented with choice screens in Android (5.143c). This is consistent with defaults in most cases allowing users to access the same browser they would have chosen more easily.

Conversely, [research for Mozilla](#) argued that Microsoft “repeatedly uses harmful design to influence users into using Edge” (and taskbar search only functions with Bing). However Edge remains a modest share even among desktop browsers.

While none of this implies that choice architecture is irrelevant, it suggests limits on the extent to which competition is currently constrained. Such defaults also have a limited impact on other forms of competition for search (e.g. specialised search, social media), considered earlier in this submission.

Data and fixed costs

Almost all sectors have some kinds of economies of scale and scope, but this does not preclude competition because (a) companies can invest strategically to secure those scale advantages; (b) there are also disadvantages to scale; and (c) companies do not need to compete “like for like”.

Many of the more-or-less direct competitors to Google Search considered earlier in this response have considerable financial resources and have made substantial investments to support new services in other contexts. There are also a wide range of companies that have data relationships with users. Search engine clicks is the only setting in which Google’s data relationships might be distinctive and new businesses creating AI assistants aiming to compete with Google clearly believe they can establish effective search with less of that kind of data, reflecting new techniques.

CMA counts all of the advantages of scale and does not give due consideration to its disadvantages. In particular, operating a widely used search engine necessarily means that Google is subject to the greatest efforts by third parties seeking to distort its results, from everyday search engine optimisation through to more pernicious attempts to share misleading results. To a significant extent, the costs of operating a search engine and the data required will be less fixed than it might appear from a naive analysis of the resources required by Google as the largest search engine.

³ Leaving aside other means by which companies might address the underlying objectives of their advertising spend, e.g. investments in retail operations; non-digital advertising.

CMA describes at length the data (5.155) and financial expenditures (5.172) that Google invests in order to deliver its search products. There is a risk that it assumes that companies would be seeking to replicate Google, rather than adding to the range of alternatives described earlier in this submission. The costs of operating Google are not necessarily the costs of developing a viable competitor to Google.

Implications for the wider DMCC

As mentioned at the beginning of this submission, this first investigation will have a disproportionate impact on the sector's understanding of how the DMCC will be applied in practice. In that context, even if the CMA stands by its overall decision, it should consider the signals it is sending in the analytical report:

- In a sector with highly diverse business models, that the CMA will expect a “like-for-like” general competitor, discounting diverse competition in the aggregate
- That equivalents to competition for “share of wallet” will be generally be discounted as the potential for users to multi-home is instead treated as an obstacle to competition
- Despite the legislative requirement for a company's position to be “entrenched”, that even the most profound technological and market changes will be discounted until their scale and scope has become comparable to the longer-established service
- That a company's investments to compete with well-resourced and capable competitors will be treated as evidence of the limits of competition, rather than an expression of dynamic competition
- That conduct requirements will not be based on segment-specific findings that there are limitations on consumer choice identified at the designation stage

None of these standards are appropriate, and some may not be intended, but the CMA should reflect on whether amendments could address these potential concerns.