Google

22 July 2025

# CMA Search SMS Investigation
# Google's response to the Proposed Decision

## Executive Summary

1. Google agrees with certain aspects of the Proposed Decision (**PD**), including that AI Overviews and AI Mode are part of the 'relevant digital activity' and Gemini AI assistant is not. In other aspects, Google disagrees with the PD's assessment. This response identifies the most significant issues that will affect the operation of the UK's digital markets competition regime (**DMCR**) in respect of general search services.

2. Google's primary concerns regarding the scope of designation are as follows:

    a. ***The CMA's intention to re-assess designating Gemini AI assistant is based on unknown and unknowable criteria.*** Despite excluding Gemini AI assistant from the 'relevant digital activity', the PD signals an intent to re-evaluate its inclusion using potentially different criteria to those deployed in the PD. This creates significant uncertainty and lacks a legal or logical basis. The PD's provisional assessment is further undermined by proposed Conduct Requirements (**CRs**) in the accompanying Roadmap that appear to bind Gemini AI assistant, despite it being scoped out.

    b. ***The improper inclusion of syndication services.*** The PD erroneously scopes organic search and search ad syndication services that are rendered to websites into the 'relevant digital activity'. These are distinct, publisher-facing services with different uses to general search services where Google does not have substantial and entrenched market power (**SEMP**); [✂] in organic search and search ad syndication.

3. Google also has a number of concerns with respect to the CMA's approach to assessing SEMP.

    a. ***The PD's analysis of substantial market power for general search is flawed.*** The PD overstates perceived barriers to entry/expansion in relation to defaults and access to data; does not substantiate its claims that users face challenges in switching; and its assessment of AI assistants is incomplete.

    b. ***The PD contains a superficial entrenchment assessment that runs contrary to the DMCCA.*** The PD fails to adequately engage with expected or foreseeable market developments, which may impact Google's position. It wrongly presumes entrenchment, thereby stripping this criterion of independent meaning.

    c. ***The PD conducts a flawed SEMP analysis for search advertising,*** incorrectly equating high return on ad spend with market power, and misinterpreting trends in ad load, prices, and quality.

    d. ***The PD does not contain a SEMP assessment for syndication.*** The PD fails to assess SEMP for organic search and search ad syndication, despite including them within the proposed designation scope. The CMA cannot designate Google in relation to its

syndication products unless it conducts that analysis and can prove Google has SEMP in relation to them.

e. ***Many of the PD's conclusions rely on evidence with low probative value***, such as non-binding US court judgments, partial plaintiff briefs, and uncorroborated assertions from others.

4. As the CMA approaches its final decision, Google remains concerned that it bears a disproportionate share of the burden of DMCCA enforcement actions. The proposed designation of Google's general search activities comes alongside a wide-ranging SMS investigation into mobile and a roadmap that keeps 13 potential interventions on the table over the course of the anticipated 5-year designation period. Even if some of those interventions are not immediately prioritised, they create substantial uncertainty that hangs over our search business and necessarily weighs on decisions concerning our UK operations and plans for UK product launches - ultimately impacting UK businesses and consumers. We remain committed to engaging with the CMA with concrete proposals that will go some way to addressing the most significant concerns that the PD raises and we remain hopeful that CRs will be targeted, proportionate, and only applied on the basis of a strong evidence base. This – we believe – is what the DMCR intends.

## I. Scope of designation

5. The CMA's proposed definition of the relevant digital activity is "*a service that searches the world wide web, and can draw on other sources, to return information on any subject (general search) and a service that enables advertising to users of general search (search advertising), together, general search services*" (PD, 4.6).

6. Google agrees this encompasses Google Search, including generative AI features like AI Overviews and AI Mode on the Search Engine Results Page (**SERP**). However, the definition should be amended to apply only to "*a service whose primary purpose is to search ~~that searches~~ the world wide web*". 'Primary purpose' is an important limiting condition, consistent with the CMA's DMCR Guidance (**Guidance**). It is essential to clearly delineate search services and prevent parties from incorporating tangential search components into non-search products in order to game the system, thereby taking advantage of CRs that were not intended to benefit them. The modest change proposed above could resolve this issue.

7. Google has significant concerns, however, regarding the PD's proposed approach to: (i) revisiting the scope of designation regarding Gemini AI assistant; and (ii) the in-scope treatment of organic search and search ads syndication.

### a. *Gemini AI assistant: revisiting designation and imposing CRs*

8. Google agrees that AI assistants, including Gemini AI assistant, should be excluded from the scope of the 'general search' activity. The PD rightly bases this exclusion on several factors: (i) Google is not the market leader in AI assistants; (ii) Gemini AI assistant is presented, branded, accessed, and monetised differently from Google Search; (iii) it uses Google Search as an input; (iv) their use

cases differ; and (v) a product merely being an 'access point' for Google Search is insufficient for treating it as part of Google Search (PD, ¶¶4.12-4.15).

9. Point (i) aligns with the principle that the CMA can only designate a firm as having SMS when it has SEMP in a digital activity (DMCCA, ss. 2(2)(a) and 5). Points (ii) to (v) reflect the factors that the Guidance identifies as relevant to assessing the scope of designation (e.g. Guidance, ¶2.10, placing weight on how products are "*offered and consumed*").

10. However, the PD opens the possibility of a rapidly revised designation decision based on unknown, unknowable, and divergent factors from those set out in any initial designation decision. It lists only a subset of the factors currently in the PD as being relevant to future re-designation investigations (excluding – for example – points (i) and (ii) above), while inviting views on which other factors it should apply, which could diverge from those set out in the PD, DMCCA, or Guidance (PD, ¶¶1.15 and 4.18). This undermines the certainty that a clear designation decision – based on stable criteria – could otherwise provide. It also cuts across the PD's claim to "*recognise the need for certainty as to the scope of an SMS designation*" (PD, ¶4.20).

11. Moreover, Google is concerned that certain proposed CRs in the accompanying Roadmap are drafted to bind Gemini AI assistant (see e.g. Roadmap, ¶3.13), despite its anticipated (and correct) exclusion from designation. Applying CRs to products outside the 'relevant digital activity' and lacking SEMP contravenes the DMCCA scheme and undermines the purpose of designation.

### *b. Google's organic search and search ad syndication services should not be in scope*

12. The PD (see ¶4.34) improperly includes Google's organic search and search ad syndication services rendered to websites within the general search services 'relevant digital activity'.

#### *i. Organic search syndication*

13. Google's organic syndication products - Programmable Search Engine (or **ProSE**) and Web Search Syndication (or **WSS**) - are publisher-facing enterprise services that are fundamentally different from general search services. These services consist of enabling website operators to show search results and search ads on their site. They are distinct from the service that a search engine performs by showing search results to users in response to their queries.

14. The logic applied to exclude Gemini AI assistant from the scope of designation (PD, ¶¶4.13-4.15) should apply equally to ProSE and WSS.

15. On the supply side:

    a. ProSE/WSS are B2B services offered to publishers, not end-users, and are branded, accessed, and monetised separately from Google Search.

    b. While ProSE/WSS use some Google Search technology, this does not make them part of the same digital activity. Just as Gemini AI assistant uses Google Search as one input

without being part of Google Search, ProSE/WSS are *users* of Google's general search infrastructure when delivering their services.

c. Unlike general search and search advertising, which are part of the same two-sided business model, ProSE/WSS are not inextricably linked to AdSense for Search (**AFS**) and can be used without monetisation via AFS.

16. On the demand side:

a. The users are publishers, a different customer segment to general search end-users.

b. More than [✂] of publishers that use ProSE/WSS do so for purposes which do not resemble general search (e.g. internal university intranet search functionality, or searching within the UK government's gov.uk websites - including the CMA's).[1]

c. Google is [✂] in organic syndication to general search engines. [✂].

17. ProSE/WSS are evidently, therefore, part of a distinct organic search syndication digital activity, which should not simply be aggregated with general search services.[2]

### *ii. Search ads syndication*

18. The PD's conclusion that Google's search ad syndication service (AFS) is within the scope of the search advertising digital activity is illogical. The CMA's definition of search advertising explicitly refers to "*advertising to users of general search*" (PD, ¶1.12), not third-party sites. AFS services, which are provided to publishers, do not meet this definition.

19. The logic applied to exclude Gemini AI assistant from the scope of designation (PD, ¶¶4.13-4.15) should also apply to AFS.

20. On the supply side:

a. AFS is branded, accessed, and monetised separately from Google Search (including Google's search advertising services, Google Ads and SA360). Advertisers do not interact with AFS directly, and publishers create separate accounts to access AFS.

b. Like Gemini AI assistant, AFS acts as a *user* of Google Search services (including its search advertising services) when delivering its own service to publishers.

c. Publishers can use AFS for monetisation without using ProSE/WSS.

21. On the demand side:

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1 [✂].

2 For completeness we note that the CMA (rightly) does not seek to group organic syndication services with general search services pursuant to DMCCA section 3(3). The relevant criteria would not be satisfied in any event: for the reasons set out above, provision of organic search syndication does not have substantially the same or similar purpose as general search or search advertising services, nor is it carried out in combination with those services to fulfil a specific purpose.

a. AFS serves publishers, a distinct customer base from advertisers. AFS enables search ads to be shown on any websites with a search results page - not just on general search engines.

b. More than [✂] of publishers using AFS are not general search engines.[3] AFS is not part of the same "*two-sided platform*" as Google Search (PD, ¶4.84). Nor is it inextricably linked to ProSE/WSS.

c. AFS is [✂] in search ad syndication services. [✂].

22. The PD's reasoning regarding AFS is insufficient. It only provides reasons why Google Ads and SA360 should be in scope based on advertisers' experience (PD, ¶4.80). But using these tools does not involve any direct usage of (nor justification for including) AFS. The PD must also provide reasons for designating the supply-side service provided to publishers using AFS. AFS search ads differ meaningfully from search ads that appear on Google Search, with many options to customise how search ads appear (via different 'search styles' and extensions).[4] No reasons to designate exist.

23. It follows that AFS should not be treated as part of Google's search advertising digital activity (or general search services).[5]

## II. 'Substantial and Entrenched Market Power': Legal Requirements

### *a. Legal test*

24. The CMA bears the burden of proving, on the balance of probabilities, that Google satisfies both the 'substantial' and 'entrenched' criteria of SEMP. These conditions are distinct, cumulative, (DMCCA, s. 2(2); Explanatory Notes, ¶109; Guidance, ¶2.54), and any doubt weighs against a finding of SEMP (see *Tesco Stores Ltd. and others v OFT, [2012] CAT 31*, ¶88).

25. Substantial market power (**SMP**) must be at least equivalent to, if not higher than, 'dominance' under Chapter II of the Competition Act 1998. The DMCR narrowly targets perceived 'unprecedented market power' (Explanatory Notes, ¶3). The higher threshold is consistent with the DMCCA's broad intervention powers. Finding SMP therefore requires a rigorous assessment of constraints on the firm's ability to profitably sustain prices above competitive levels (Guidance, ¶2.55) or, as noted in the Guidance (at FN43), degrade quality or innovation. An SMP finding must clearly explain how the factors considered by the CMA together meet this high bar, supported by robust evidence.

26. The 'entrenched' condition requires a forward-looking assessment of at least five years, considering expected or foreseeable developments that might affect the undertaking's conduct

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3 [✂].

4 By contrast the PD explicitly excludes display ads from scope even though these can also be purchased as part of the same campaign like AFS search ads (PD, ¶4.11(b)).

5 See also FN2, which applies equally to search ad syndication (*mutatis mutandis*).

if no designation is made. If market developments mean that the undertaking's market position is unlikely to persist, it is not 'entrenched'.

27. Finally, the CMA's decision must be proportionate, evidence-based, sufficiently reasoned, and made after sufficient inquiry (see *JD Sports Fashion plc v Competition and Markets Authority, [2020] CAT 24*, ¶144; and *Ecolab Inc. v Competition and Markets Authority [2020] CAT 12*, ¶58). Google has the right to receive sufficient information to make meaningful representations to the CMA *before* a final decision is made (see *BMI Healthcare Limited v Competition Commission [2013] CAT 24*, at ¶39(7); and High Court in *R (JP) v NHS Croydon Clinical Commissioning Group [2020] EWHC 1470 (Admin)*, ¶9).

### b. General search - the PD contains a flawed assessment of SMP and Entrenchment

28. The PD's SMP assessment for general search contains several errors, particularly in its overstatement and mischaracterisation of Google's perceived advantages from defaults and data access.

#### i. Google's default positions do not create significant barriers

29. Google disagrees that its default positions give rise to barriers to entry or expansion. The CMA has conducted no assessment to demonstrate otherwise and the PD repeatedly cites unsubstantiated assertions from certain third parties in place of empirical evidence; indeed it does so 18 times in just 14 paragraphs (see FNs 487-489, 495-496, 518-522, 524, 529-534 and 537). Moreover, Google does not hold default positions on Windows and Google Search can only appear in choice screens on Android; it does not get exclusive pre-installation.

a. ***The PD does not assess whether Google's default positions are contestable.*** OEMs and browser developers choose Google as default due to its objectively superior quality, which drives higher queries and monetisation. And while the CMA references evidence from the US Search Litigation that Microsoft would have to pay Apple to equal Google's revenue share (PD, ¶5.153(g)), it ignores statements from Apple that it was a "*no brainer to stay with Google*" as Google has "*the best search engine*" and "*they're monetizing really well*" (United States v Google LLC, ¶95).

b. ***Additional options exist for other players to be set as default in the UK***. On UK Android devices, users are prompted to choose their preferred search engine via a neutral choice screen (Cf. PD, ¶¶5.143(c)). The choice screen gives third-party search engines a promotional opportunity *on top of* deals that they can strike with Android OEMs and mobile networks. The fact that users choose Google Search shows the results of competition on the merits; it does not indicate that Google default positions on other devices are a barrier to entry. Moreover, the PD's reliance on pre-2019 Android defaults or US data is irrelevant to (i) the current UK competitive landscape and (ii) a forward-looking assessment to 2030 (Cf. PD, ¶¶5.143(c)).

c. ***The PD ignores that Microsoft holds key default positions including on the most popular desktop products.*** Microsoft's Windows operating system accounts for

~63.3% of desktop devices in the UK (and ~70% globally). Microsoft procures a situation whereby OEMs exclusively pre-install Edge (see e.g. DAMS Final Report, Appendix H, ¶¶40-74), and it ensures that Bing is the default, often with choice architecture that makes switching difficult. In any event, Google's high share of search queries on Windows PCs, despite not being the default, underscores that Google's popularity is the result of user preference and competition on the merits; it does not indicate that Google's default positions on other devices are a barrier to entry.

30. The PD's assertion that Google's defaults are the "*most important*" (PD, ¶5.145) is therefore unsubstantiated. Moreover, the PD ignores the fact that other players also pay for defaults and that users frequently opt for Google due to preference.

### *ii. The PD does not substantiate its claim that customers face substantial switching challenges*

31. The qualitative survey does *not* support a finding that users face substantial challenges in using alternative search engines.

a. First, the survey fails to account for the fact that Android smartphone users in the UK would have already selected their preferred search engine via the Android Choice Screen when first setting up their device. This screen, which is only shown on devices where the Search app is pre-installed and is offered voluntarily by Google in the UK, means that Android users have already made an initial decision regarding their default search engine.

b. Second, respondents to the qualitative survey were asked whether they knew that "*it is possible to change the search engine that [their] device uses*". This question is conceptually wrong, and confusing for users. There is no single search engine that each given device uses – devices have multiple search entry points each of which could be configured to a particular search engine. Therefore, while it would be coherent to ask – for example – which search service a user's preferred browser defaults to, asking which search engine their 'device' uses – and how to change it – makes no sense. It is unsurprising that users were "*typically not very confident in tackling the task and often admitted that they did not know how to switch the default search engine*" (PD, ¶5.19) given the confusing instructions.

c. Third, the CMA-commissioned research in the mobile browsers and cloud gaming market investigation found that users can switch browser defaults with ease. 85% of users were confident in their ability to download a new browser and 77% of users were confident that they could change their default browser (Verian, Mobile Browsers Consumer Research for the CMA, August 2024, page 9). There is no reason to think this should be different for other product areas such as search.

d. Fourth, the survey runs counter to real-world evidence that users can and do use their preferred search service, even if another one is initially set as the default. This is consistent with Google Search's success on Windows PCs.

32. Finally, the CMA has neither made available the underlying data, nor reviewed transcripts or recordings of interviews with survey participants to satisfy itself that their views have been fairly reflected (contrary to *Spreadex Limited v Competition and Markets Authority, Reasoned Order (Remittal), [2025] CAT 13*, ¶7). This casts doubt as to the probative value of the survey.

### *iii. The PD fails to show that Google's access to data is a barrier to entry*

33. The PD claims Google's access to "*significantly more data*" acts as a barrier. As evidence, the PD relies on statements from Google's rivals - chiefly Microsoft - as well as findings from the US Search Litigation judgment (PD, ¶5.167). The PD does not, however, substantiate the claim that the volume and variety of data Google has access to constitutes a barrier to entry or expansion.

a. ***Google's data is not required to successfully develop an index***. Brave has successfully built and licensed its own 20+ billion page index. Perplexity launched rapidly without building its own index, initially relying on Bing, then quickly developing its own proprietary index of over a billion pages at low cost. Moreover, Perplexity's CEO has confirmed that the size of an index does not matter. And with API access to large language models (such as Grok) and search engines (such as Brave), solo developers can generate a reasonable engine in a matter of minutes. The ease of entry and innovation by these firms demonstrates that Google's data is not a necessary input.

b. ***The PD does not engage with the results of Google's detailed 2022 data reduction experiment.*** The PD dismisses the relevance of Google's 2022 experiment, which showed that access to more data only accounts for a fraction of the quality differences between Google and Bing.[6] The PD did not challenge this decisive result. Instead, it claims that scale was decisive for Google's past innovations (PD, ¶5.156); a claim that is entirely unevidenced. And it suggests that the experiment lacks credibility if Google has somehow failed to implement the results in its day-to-day operations (ignoring questions such as whether reducing data inputs would be cost-efficient).

c. ***The PD does not explain why 'variety of user data' is important.*** This assertion (PD, ¶5.170) relies on mixed evidence and ignores that firms can easily seek user permission for data like location. Moreover, the PD acknowledges that the relevance of specific types of data may vary across competitors - for example, Yahoo does not consider location data to be more important than other categories (see PD, ¶5.169).

d. ***The PD does not assess data use by others.*** While the PD assesses Google's use of data (PD, ¶5.160), it does not assess rivals' use of data, and therefore whether rivals can use their own or third-party sources to compete. Without that analysis of rivals' use of data, the PD has not identified - today - where the gap (if any) is between Google's access to data and rivals' access to data.

6 [✂].

### *iv. The PD characterises AI assistants as a source of competition but provides an incomplete assessment*

34. AI assistants can represent out-of-market constraints on Google Search, even though they are not search services themselves (see e.g. Roadmap, ¶2.9 and PD, ¶¶5.18-5.19, 5.33, 5.47 and 5.82). Indeed, the PD states that AI assistants are potential competitive constraints on Google in general search, referring to them as a source of market disruption. However, it also dismisses them as not being a *material* constraint on Google Search – a "*limited alternative*" – primarily on the basis that they allegedly face significant barriers to entry and expansion (PD, ¶¶5.48-5.49). This is an incomplete assessment. The purported barriers to entry are overstated (or do not arise) in respect of AI assistants (not only general search services).

35. AI assistants are already able to secure distribution in the UK. ChatGPT is integrated into Apple Intelligence, and Perplexity has secured pre-installation agreements with Motorola and a distribution agreement with VMo2. It is also reported to be discussing a partnership to secure distribution by integrating Perplexity's search features into Samsung's Internet browser. But even without distribution deals with OEMs and browser developers, AI assistants like ChatGPT have experienced spectacular success through user downloads. The PD also ignores relevant considerations, overlooking or understating important factors such as their traction with users, external funding, and other considerations.

    a. **ChatGPT.** ChatGPT is a hugely popular AI assistant with 46 million new app downloads in March 2025 alone. For the six-month period ending 31 March 2025, OpenAI reports that ChatGPT Search had approximately 41.3m monthly active users in the EEA, representing a nearly 4x growth compared to the previous six-month period. This figure is close to the DMA threshold of 45 million monthly active end users, which (if the relevant business user threshold is also met) presumptively means that the service constitutes "*an important gateway for business users to reach end users*" (DMA, Article 3(2)(b)). OpenAI closed a $40 billion funding round in March 2025.

    b. **Perplexity.** As early as Q1 2024, Perplexity was reported to have ~15 million monthly active users worldwide across its website and app, and confirmed in April 2025 that it now had 30 million users - doubling its usage in a 12-month span. Investors and partner firms are clearly optimistic about Perplexity's prospects. In November 2024, Perplexity announced the introduction of advertising with participation from "*brand and agency partners, representing the largest and most beloved in the world, including Indeed, Whole Foods Market, Universal McCann, PMG, and others*". Additionally, Perplexity announced a US partnership in May 2025 with PayPal for payments inside Perplexity Pro. In December 2024, it closed a funding round valuing the company at $9 billion and is reportedly now close to securing a further $500 million in funding (its second funding round in the last 6 months, and fifth funding round in the last 18 months) at a valuation of $14 billion. Strikingly, Perplexity has been recognised for its ability to handle uncommon and longtail queries, even though it has not licensed (and claims not to want) access to Google's data.

c. **Copilot.** Copilot has 36 million active users across all platforms and Microsoft has recently integrated it into its market leading productivity suite so that users can ask *"questions that are grounded in [...] web content"* within the likes of Outlook, Word, and PowerPoint. Microsoft has also introduced a Copilot key to Windows 11 PCs, which places Copilot literally at the fingertips of billions of PC users right out-of-the-box. As a result of this promotion through the Windows ecosystem, the use of Copilot to answer factual queries is only likely to increase. Microsoft launched the standalone Copilot Android app on 26 December 2023 and Motorola has announced the integration of Copilot (and Perplexity) into MotoAI on the flagship RAZR phones.

d. **Meta AI assistant.** The Meta AI assistant allows users to make factual queries and receive "*timely and up to date answers with access to real-time search information*" as a result of a partnership with Bing. Meta has integrated its AI assistant within its leading messaging and social media products (WhatsApp, Instagram, and Facebook) and new hardware such as its Ray-Ban Meta glasses, resulting in significant reach. For example, any of Instagram's ~35 million UK users could ask Meta AI 'what is the weather in London today' and receive a factual response without leaving the app. Meta has also launched a standalone version of the Meta AI assistant in April 2025, touting its ability to "*search across the web*."

36. The growing traction of prominent AI assistants aligns with how investors view the sector. Venture capital funds would not commit vast funds to projects (such as creating a search engine, which the DAMS Final Report estimated would cost between £7.5 billion to £22.5 billion (~$10 billion to $30 billion) to create a search engine of comparable scale to Google) where high barriers to entry meant they were doomed to fail. A total of ~$74.1 billion has already been raised by OpenAI ($57.9 billion), Perplexity ($0.9 billion), Mistral ($1 billion), and Anthropic ($14.3 billion). Even newer startups, such as Genspark, are swiftly attracting significant funding. Twenty AI firms have each raised $2 billion by 2024 and 42% of all US venture capital invested in 2024 went to AI companies.

### *v. The PD applies an incorrect legal and evidentiary standard, and its forward-looking analysis contains errors of fact and assessment*

37. The PD's conclusion that Google's purported SMP in general search is entrenched relies on erroneous legal and evidentiary standards and factual assessment, casting doubt on its validity.

a. First, in line with the DMCCA, the CMA should take account of developments that are "*expected or foreseeable if the CMA does not designate [Google with SMS in general search / search advertising] and may affect [Google's] conduct in [general search/search advertising]*" (DMCCA, s. 5). The PD introduces a new criterion, namely that such developments must be "*sufficient in scope, timeliness and impact to eliminate the SMP*" (PD, ¶5.8). The PD thereby narrows the range of developments that may be taken into account, contrary to what is required by the DMCCA.

b. Second, by introducing a requirement that there is "*clear and convincing*" evidence to establish that market power *is not* entrenched, the PD introduces a legal presumption

that is unlawful and inconsistent with the scheme of the DMCCA. In particular, it entails a reversal of the burden of proof (requiring the party under investigation to show that its market power is not entrenched when the burden of proving entrenchment is on the CMA). It also sets a higher bar for the treatment of exculpatory evidence (which the PD says must be "*clear and convincing*") compared to inculpatory evidence (for which it asserts no such requirement). Finally, this approach risks departing from the proper legal standard (which as the Guidance notes should be the balance of probabilities standard: see Guidance, ¶2.80),

38. These errors pervade the PD, which frequently cites 'uncertainty' or lack of 'clear' evidence as a basis for presuming that Google's purported SMP is entrenched (see e.g. PD, ¶¶5.48-5.49 and 5.125). For example, it dismisses AI assistants as future competitive threats based on Google's current position in Search (PD, ¶5.30) – a fact that says nothing about developments in the coming 5 years. And it relies on AI assistant monetisation being "*unclear*" (PD, ¶5.222), while ignoring readily apparent investor confidence and active monetisation efforts (e.g. OpenAI's enterprise focus, Perplexity's ads, Meta AI's plans for recommendations/ads). More relevant is evidence of overall market trends, forward-looking projections, share price development, investment levels in R&D, and the history of innovation, which does not appear in the PD.

### *c. Search ads - the PD contains a flawed assessment of SMP and Entrenchment*

#### *i. Substantial Market Power*

39. The PD's finding that Google has SMP in general search advertising is based on flawed reasoning regarding ROI and misinterprets important ad trends (PD, ¶5.219).

a. First, the PD's reasoning that high ROI from Google Search ads creates *a* "*more effective form of advertising market power*" is flawed (PD, ¶5.91). A high ROI simply indicates Google offers a higher quality service, which is a result of competition on the merits. If Google's ROI decreased, advertisers would switch their spending proportionately.

b. Second, the PD misinterprets trends relating to ad load, click-through rates (**CTRs**), and ad prices, which leads it to incorrect conclusions about why Google's search advertising revenue has grown:

i. ***Ad load.*** The PD acknowledges shopping ads are in a carousel, meaning they are not immediately available without scrolling (PD, ¶5.96; FN374). The ability to scroll through shopping ads does not result in a *meaningful* increase in ad load or exercise of market power, nor does it necessarily increase revenues unless users click on ads. The horizontal nature of the shopping carousel is a user-friendly design choice that does not reduce visibility of organic results, while providing useful ads for users.

ii. ***Increased CTRs benefit advertisers.*** The PD links increased CTRs to higher revenues without acknowledging that higher CTRs can indicate higher ad quality, benefiting advertisers and users.

iii. ***Declining/stable CPCs.*** The PD's acknowledgement that real average cost-per-click (**CPC**) has "*generally declined since 2015*" and "*remained relatively stable since 2020*" is crucial (PD, ¶5.97). When combined with increased CTRs and the lack of evidence that ROI for advertisers has declined, this suggests the quality-adjusted real price for Google's search advertising has *fallen* since 2015, which is inconsistent with a finding of market power.

### *ii. Entrenchment*

40. The PD errs in assessing whether Google has entrenched SMP in search advertising by understating the competitive constraints from Amazon, other large retailers, and AI assistants, all of which are expected to grow materially during the designation period.

a. ***Retail media growth.*** The PD acknowledges that specialised search providers such as Amazon could become a more attractive alternative to Google's search advertising (PD, ¶5.113). This is consistent with the exponential growth of the UK retail media ad market, projected to grow from ~£3 billion in 2024 to over £7 billion in 2028. [✂].

b. ***AI assistants as future ad platforms.*** The PD recognizes AI assistants' potential to exercise a competitive constraint on Google's search advertising (PD, ¶¶5.82-5.84). Service providers in this rapidly evolving market are now actively pursuing ad revenue generation to diversify their revenue sources. OpenAI's CEO has reversed previous comments indicating a disinterest in ads, and the company is reportedly exploring taking cuts from online product sales. Similarly, Meta AI plans to "*show product recommendations or ads*". Other AI assistant providers have already introduced ads:

i. Microsoft Copilot: launched "*Microsoft Advertising Showroom ads*" in March 2025, with Microsoft research showing 25% better ad relevance metrics in Copilot than traditional search.

ii. Perplexity: introduced ads in November 2024 (in the form of "*sponsored follow-up questions*" and "*paid media positioned to the side of an answer*"), noting that subscriptions alone "*do not generate enough revenue to create a sustainable revenue-sharing program*" for publishers.

41. These developments clearly demonstrate a rapidly evolving market [✂], which the PD fails to take into account when concluding that Google has SEMP in search advertising. The CMA must remain open to early re-designation given these market trends.

### *d. Organic search syndication and search ad syndication - the PD fails to assess SMP and Entrenchment*

42. The PD fails to assess whether Google has SEMP in organic search syndication and search ad syndication, per the SEMP requirement under the DMCCA. Google clearly does not have SEMP in these areas – and the CMA does not present any evidence to suggest otherwise.

a. [✂].[7]

b. The organic search and search ad syndication remedies proposed by the DOJ in the US Search trial are not based on any finding of Google holding market power in either organic search or search ad syndication.

c. For **organic search syndication:** The PD does not consider whether ProSE/WSS have SEMP in the provision of syndicated search results. It only considers whether syndicated search engines can pose a competitive constraint on Google Search, which is a separate question (PD, ¶¶5.31; 5.177).

d. For **search ad syndication**:

i. The PD does not consider whether AFS has SEMP in the provision of syndicated search ads. Google faces strong competition in ad syndication from Bing and other ad tech tools, such as Criteo's Sponsored Product Ads and offerings from CitrusAds, Kevel, and AdForm.

ii. AFS competes with many other sell-side monetisation tools, such as Microsoft Ads, Amazon Publisher Services, Criteo, Magnite, OpenX, Outbrain, Pubmatic, Sharethrough, Taboola, and Teads.

## Conclusion

43. Designation under the DMCR will have profound implications for Google's business. It is paramount that the designation process is conducted accurately, based on robust evidence, and with a view to minimising unintended negative consequences for UK consumers and businesses. A principled and well-evidenced approach will bolster the DMCCA's legitimacy and efficacy in achieving its goals of fostering innovation and economic growth.

44. While Google agrees with the CMA's provisional conclusions regarding the exclusion of Gemini AI assistant, neither organic syndication nor search ads syndication should be in-scope of designation. Syndication serves different users with services distinct from general search or search ads, and Google clearly lacks SEMP in these areas. In addition, the CMA's approach to designation, including any future re-examination of Gemini AI assistant, must adhere to the DMCCA framework and be consistent with core legal principles of proportionality and certainty.

45. We have also explained our fundamental concerns with the CMA's analysis of the SEMP conditions. The PD overstates the extent of barriers to entry and expansion within the search market, and does not fully assess AI assistants as an out-of-market competitive constraint. Its assessment of entrenchment (inappropriately) introduces a new criterion not found in the DMCCA, creates a presumption of entrenchment and seeks to reverse the burden of proof. Moreover, the PD's entrenchment analysis is superficial, failing to adequately account for the rapid pace of innovation and development in this space, particularly the potential constraint

[7] [✂].

posed by AI assistants. Given these dynamics, the CMA must maintain an open mind to revisiting Google's alleged entrenched status throughout the designation period, especially considering that key competitors like OpenAI, Microsoft, and Meta will not face DMCCA obligations.

46. Finally, Google is deeply concerned that the accompanying Roadmap proposes CRs that could bind Gemini AI assistant, despite its exclusion (rightly) from the scope of designation (see e.g. Roadmap, ¶1.5). This would materially undermine the DMCCA's purpose of confining designation to areas where a firm demonstrably holds SEMP.

47. As the first investigation under the DMCR, it is critical that the CMA adopts a robust, coherent, and evidence-based approach in its final decision and on a forward-looking basis, given the precedent this will set for future investigations.

48. We look forward to continuing our engagement with the CMA on these important points.