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For the attention of  
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By email only

**Our Ref:** TC/ADM838  
25 July 2025

Dear CMA Search SMS Team,

We write on behalf of the Movement for an Open Web ('MOW'), a not-for-profit organisation seeking to secure an open and decentralised web. We are responding to the CMA's invitation for interested parties' views on its proposed decision to designate Google as having strategic market status ('SMS') in general search services (comprising general search and search advertising activities).

We welcome the provisional designation of Google as having SMS status, in the general search and search advertising markets, together the "General Search Services".<sup>1</sup> Specifically, we see Google's AI Overviews ('AIOs') as a separate product in a separate product market that is being bundled together with Google's general search results. We understand that you have nevertheless included AIOs within the scope of what you describe to be the "digital activity" for the purposes of the Digital Markets, Competition and Consumers Act 2024 ('DMCCA')<sup>2</sup> in order that the scope of your investigation includes them and the conduct requirements that you can then impose would also operate within the scope of your remit under the DMCCA. We appreciate that you will also include as in scope the advertising services that Google uses to monetise search including Google Ads, SA360 and AdSense.<sup>3</sup>

**Google's use of Artificial Intelligence ('AI') in Google Search**

The CMA has raised a distinction between Gemini AI assistant, which it found is in a separate market, and Google's use of Generative AI in search. We agree with the initial assessment that Google has now developed its search product to include AI in the form of the following features: AI Overviews, Gemini AI assistant and 'AI Mode' form part of Google's general search. The CMA has analysed and concluded that the Gemini AI assistant is not substitutable for general search and is thus excluded from the digital activities for general search. However, for AI Overviews and AI Mode, this feature is included within scope of the digital activities (see paragraph 4.39 of the provisional decision).

We have provided you with a complaint that details how Google leverages its dominant position in search by exploiting web publisher's content on 30 June 2025. It should be clear from that complaint that Google chooses when to trigger its AIO product, and that its impact is being targeted on competing ad funded publishers. Google has argued publicly that increasing aggregate web traffic demonstrates that its AIOs are beneficial and do little harm. This misrepresents the considerable harm AIOs are doing

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<sup>1</sup> [CMA's Proposed Decision on Strategic Market Status Investigation into Google's General Search Services](#), ("SMS Designation of Search") (24 June 2025).

<sup>2</sup> Digital Markets, Competition and Consumers Act 2024, UK Public General Acts 2024 c. 13. Available at: <https://www.legislation.gov.uk/ukpga/2024/13>; "1.12 We propose to describe the relevant digital activity as the provision of: 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)."

<sup>3</sup> SMS Designation of Search (n 1) page 17-20.

to the advertising-funded publishers.<sup>4</sup> From the US Google search trial in 2023, we understand that 80% of Google searches are non-commercial searches. We also understand that Google and Meta between them account for more than 80% of online advertising in the UK.<sup>5</sup> The subset of total advertising that is affected by Google's conduct is likely to be small in total aggregate advertising market terms but highly significant in terms of affecting independent publishers and sources of news. The impact on plurality of the media and freedom of speech is amplified by the small number of independent voices that remain in the UK.

### Google's Arguments and CMA Jurisdiction under DMCCA.

Google characterises AIOs as “deeply embedded within the Search infrastructure and directly powered by Search technologies”.<sup>6</sup> The issue of whether AI and AIOs make any difference to Google's market power has been raised in the consultation.<sup>7</sup>

From our perspective of being involved on behalf of MOW in the debate on the DMCC Bill we provide below our understanding in the expectation that it will help the CMA support its conclusions in the event of a challenge to them by Google:

- When the initial text of the Digital Markets, Competition and Consumers Act 2024 was released, the drafting of Article 5<sup>8</sup> raised concern as it requires the CMA to adopt a forward-looking assessment spanning at least five years to determine whether an undertaking possesses substantial and entrenched market power. It might have created practical difficulties in evidencing dominance in fast-evolving markets like search, where it was already obvious that Google would seek to argue that AI would change the market dynamics, reducing its market dominance.
- This concern was debated on the floor of the House and laid to rest.<sup>9</sup> It was argued that requiring credible evidence of future market conditions risks undermining the CMA's ability to act, particularly where dominance is currently observable but future threats remain speculative.
- In accordance with Parliament's subsequent clarification, the CMA's inclusion of AIOs within the scope of the relevant digital activity indicates that it is not required to establish future dominance with absolute certainty.<sup>10</sup>

### International coherence

The position being adopted by the CMA is consistent with the findings of the U.S. Department of Justice ('DOJ') in *USA v. Google (Search)* [2020], which concluded that AI currently cannot replace the fundamental building blocks of search.<sup>11</sup> Despite the emergence of AI-enhanced competitors, the DOJ found that Google continues to hold monopoly power.<sup>12</sup> However, it is important to note that the DOJ did ultimately find AI as a stand-alone product, which is similar to the CMA's findings. Although the

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<sup>4</sup> Ibid, page 5: “Google's bargaining position can impact fair and reasonable terms for publishers, including fair payment terms for the use of their content. Insufficient controls about how their content is used in Google Search (including AI Overviews) also limits news publishers' ability to monetise their content.”.

<sup>5</sup> [CMA DAMS report 2020](#) (1 July 2020).

<sup>6</sup> SMS Designation of Search (n 1) page 26.

<sup>7</sup> Ibid, Para 1.18 et seq.

<sup>8</sup> DMCCA (n 2) Article 5.

<sup>9</sup> Lord Clement-Jones, HL Deb 22 January 2024, vol 835, col 115GC, [Hansard](#).

<sup>10</sup> Viscount Camrose, HL Deb 22 January 2024, vol 835, col 120GC, [Hansard](#).

<sup>11</sup> *United States v. Google LLC*, No. 1:20-cv-03010 (D.D.C.), ECF No. 1033 (July 9, 2025). Available at: [https://storage.courtlistener.com/recap/gov.uscourts.dcd.223205/gov.uscourts.dcd.223205.1033.0\\_3.pdf](https://storage.courtlistener.com/recap/gov.uscourts.dcd.223205/gov.uscourts.dcd.223205.1033.0_3.pdf)[1](<https://www.courtlistener.com/docket/18552824/united-states-of-america-v-google-llc/>).

<sup>12</sup> Ibid, page 162.

test for establishing SMS is a different test to market monopolisation at issue under US law, the CMA should be congratulated for taking an approach which aims at substantive consistency with the DOJ's findings.

We understand that the EU Commission is currently considering whether to take proceedings under either Article 102 or the DMA, in both cases on the basis that AIOs are a separate product from general search, again consistent with the assessment of the position by the DOJ and US Court and the CMA.

#### Concern About Enforcement Gaps and Inconsistency with International Enforcement.

We understand that Google's agreement with Apple addresses search access points. They are anti-competitively restricted and do not currently appear to feature in the list of concerns to be addressed by the CMA in its Search case. Instead, they are to be addressed only in the separate Google and Apple cases.

The issue of search access points naturally rests with the issue of access to search engine services and access remedies being contemplated by the US authorities. We also note the CMA's finding that "Google's Gemini AI assistant can at least be characterised as an access point to Google's general search."<sup>13</sup> We note further that while Google suggests that Gemini AI assistant is "predominantly focused on content generation," from a demand side perspective consumers use this search access point for discovery and navigation of links to online content, and hence the identical purpose of general search.<sup>14</sup> This identical use is consistent with the CMA's own survey of users of AI.<sup>15</sup> While Generative AI may be used for additional "complementary" tasks, such as listed by Google for content generation, the Gemini AI service competes directly with general search engine services as there is no reason for a user of Gemini AI service to navigate to a separate interface to use an alternative "access point" for the discovery and navigation functionality that defines general search services.

We do not agree with Google's allegation that its own Gemini assistant is an independent "user" of its Search service, absent any requests by the true "user" who is accessing general search services via the Gemini general search access point.<sup>16</sup>

In principle the issue of remedies might be expected to be matters to be addressed in this investigation concerning Google search, for the UK. They are, for example, the subject of the *USA vs Google* Revised Proposed Final Judgment on remedies. We note the publication of the CMA's separate assessments of Google and Apple of 23 July 2025 where they are discussed as potentially within the scope of those investigations.

We are concerned that taken together the three SMS investigations and designations may be defined separately and hence too narrowly to address the harms that have been identified and are being pursued internationally.

A further example of narrow specification is abuse concerning specialised search engines and bundling. The EU's investigations and Decisions in *Google Search (Shopping)* [2017]<sup>17</sup> addressed Google's abuse in relation to specialised search engines used for shopping and news, images, maps, etc. and the EU

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<sup>13</sup> SMS Designation of Search (n 1) page 29.

<sup>14</sup> SMS Designation of Search (n 1) page 32.

<sup>15</sup> SMS Designation of Search (n 1) page 33.

<sup>16</sup> SMS Designation of Search (n 1) page 36.

<sup>17</sup> European Commission, *Case AT.39740 – Google Search (Shopping)*, Commission Decision C(2017) 4444 final of 27 June 2017, available at: [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39740/39740\\_14996\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf).

*Google Android Decision* [2018]<sup>18</sup> where the EU addressed a range of abuses including the bundling of Chrome to Google Play Store and the limitations on play store games to use alternative payment systems as well as the imposition of default settings on mobile suppliers. The EU position is addressed by the US Authorities in *USA vs Google (Search)* and the subsequent case concerning Ad Tech. These will be the subject of remedies in the near future, but the position with relation to the UK. Despite years of investigations, is a long way off, if at all. There will thus be a short-term enforcement gap and a longer-term risk of under enforcement.

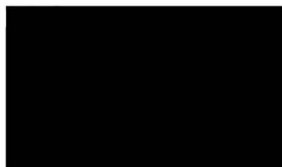
Furthermore, Google leverages the same data inputs (as the CMA notes in paragraph 1.14 of the provisional decision) for its Gemini AI assistant and AI Mode (which is yet to be rolled out in the UK). Any additional features such as AI mode need to be within the scope of the activities that the CMA can remedy. If the Gemini AI assistant were to be out of scope, we understand that the CMA would need to bring on a further SMS investigation to bring Gemini AI assistant within scope, which while not impossible might add delay if not an enforcement gap. We note that in the CMA's parallel SMS investigation into Apple's Platform, the CMA includes "Gemini Extensions" within scope but this is limited to the mobile ecosystem and voice assistant technologies only.<sup>19</sup> We thus urge the CMA to reconsider its removal of Gemini AI assistant from scope within search as this then provides a "gap" of regulation within Google's search features.

We therefore urge the CMA to carefully consider likely future developments to ensure that its investigations do not operate within hermetically sealed boxes but that their scope contains a practical level of overlap so that remedies can be fashioned that are internationally consistent and effective and within the timeline that is foreseeable internationally. At best, the UK risks being the last authority to address illegal activity, at worst, its narrowly defined remits will be exploited as business opportunities by Google and Apple.

While the CMA's Roadmap already identifies potential conduct requirements, we will save our comments on their content for their upcoming consultation, particularly given the need for consideration of the total remedies following the separate SMS designations of Google and Apple that are subject to a different timetable.<sup>20</sup>

As has become well known, all involved across authorities and the political spectrum worldwide were convinced of the need for swift action in digital markets many years ago. We remain very concerned that failure to act has already caused irreparable harm and the additional time contemplated by the CMA in implementing conduct requirements and any subsequent interim enforcement orders will prove too slow to prevent further irreparable harm to UK publishers and an irreversible impact on the plurality of the media that remains in the UK.<sup>21</sup>

Yours faithfully,



**Preiskel & Co LLP**

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<sup>18</sup> European Commission, Case AT.40099 – Google Android, Commission Decision of 18 July 2018, published in OJ 2019 C 402, p. 19, available at: [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/40099/40099\\_9993\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/40099/40099_9993_3.pdf).

<sup>19</sup> [Proposed decision Strategic Market Status investigation into Google's Mobile Platforms](#) (23 July 2025), see para. 4.30 and 4.46.

<sup>20</sup> [Roadmap of possible measures to improve competition in search](#) (24 June 2025).

<sup>21</sup> DMCCA (n 4) Article 32.