Google's response to the consultation on the CMA's Draft Markets Guidance

1 October 2025

Introduction

This submission sets out Google's views on the CMA's revised draft markets regime guidance (**Draft Guidance**).

We appreciate the opportunity to comment on the Draft Guidance. Google has been closely involved in the CMA's markets work in recent years, including the CMA's market studies into online platforms and digital advertising, mobile ecosystems, and music streaming; market investigations into cloud services, and mobile browsers and cloud gaming; and market review into AI foundation models. Our comments are informed by this experience.

We recognise that the UK markets regime can play a useful role in enabling the CMA to examine issues in a market where businesses have not infringed the law. This is an important feature of the UK regulatory regime that distinguishes it from many other jurisdictions. That said, our experience from involvement in markets cases has been that the demands on businesses involved can be highly burdensome. Responding to requests for information, preparing teach-ins, attending hearings, and engaging on potential remedies all require considerable time and resources from business executives, as well as advisory teams. While we appreciate the opportunity to engage with the CMA in the course of its work, it is important these demands are proportionate and do not contradict the CMA's strategic priority to advance the government's pro-growth agenda by diminishing companies' incentives to invest in the UK.

We therefore welcome the Draft Guidance's incorporation of the CMA's '4Ps' (Pace, Predictability, Proportionality, and Process). We are supportive of the CMA's commitment to minimise the burdens imposed by market interventions on businesses.[1] And it is helpful to consolidate the various disparate pieces of existing guidance into a single document.

There are, however, a handful of areas where we think the Draft Guidance could be improved. First, we suggest that the CMA clearly sets out the interaction between the markets regime under the Enterprise Act 2002 (**EA**) and the *digital* markets regime under the Digital Markets, Competition and Consumers Act 2024 (**DMCCA**). We also provide some proposals as to how the CMA might make changes to better achieve the goals enshrined in the 4Ps.

[1] Sarah Cardell, Blog, Transforming our approach to market interventions, 24 July 2025.

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Our specific comments are set out in more detail below.

Specific comments on Draft Guidance

We make five main observations on the Draft Guidance:

First, the Draft Guidance should be amended to provide greater clarity on the interrelationship between the parallel markets and digital markets regimes. The Draft Guidance does not provide any detail on how the new digital markets regime introduced by the DMCCA will interact with the markets regime under the EA.

Both regimes give the CMA significant powers to request information, require engagement from parties, and enable the CMA to impose wide-ranging remedies. And importantly, both are 'discretionary' regimes—*i.e.*, the CMA has discretion as to whether and how to act, taking into account its Prioritisation Principles.

Given the significant potential overlap between these regimes, we suggest that the Draft Guidance is revised to specify when the CMA is likely to address an issue under the EA, and when it is more likely to tackle it under the DMCCA. The Draft Guidance should also set out those circumstances where the CMA is unlikely to take action under either regime, for example where it is actively considering issues under the other regime, or has excluded concerns in previous cases under either regime. This would provide greater clarity and predictability to businesses as to how issues in digital markets are likely to be tackled by the CMA and how the two regimes will interact.

It will also be important to ensure that CMA activity is proportionate, for example ensuring that the same issues are not scrutinized under both regimes in parallel, with the accompanying burdens on businesses. Such parallel investigations could also result in inconsistency. For example, theoretically, the CMA could find no AEC in relation to an issue considered in a market investigation, but decide to impose interventions such as conduct requirements or pro-competition interventions for the same issue under the DMCCA. Absent a material change in circumstances between the two investigations, this would be unjustified and disproportionate.

Second, introducing 'state of play' meetings for markets cases is positive, but updates to parties need to provide sufficient information on the CMA's thinking. The Draft Guidance states (at ¶6.16-6.19; and 8.33-8.37) that the CMA will introduce internal state of play meetings—which are routine for mergers cases—in market studies and investigations. The accompanying consultation document (**Consultation Document**) states that the CMA will provide an update to the parties after these meetings, *e.g.*, via an email, progress report, or

external state of play meeting. These changes have the potential to provide much-needed transparency on the CMA's thinking on the issues it is considering.

It is critical, however, that these updates provide sufficient information to enable parties to understand the CMA's emerging thinking. The updates should, as a minimum, set out the CMA's initial thinking on potential theories of harm (including those theories of harm it is actively pursuing, and those it has dropped), the evidence it has on its file and—if applicable—the remedies it is considering (and where there are a number of possible remedies to address a particular theory of harm, which of those remedies it is most minded to pursue). The Draft Guidance should specify these details, and commit the CMA to providing them.

Relatedly, the Draft Guidance should include a commitment for the CMA to narrow its concerns over the course of a case, and focus on the most material harms to UK consumers and businesses. This would align with the UK government's strategic steer to the CMA,[2] and the CMA's public commitments to adapt its approach to support the government's pro-growth agenda.

Finally, the state of play meetings should be scheduled sufficiently in advance of formal CMA publications (such as the Provisional Decision Report in a market investigation) so as to give the parties an opportunity to engage with the CMA's emerging views before the CMA commits to these views publicly. Relatedly, the CMA should make clear at the beginning of a case what will be the cut-off date for submissions from the parties before the CMA publishes formal documents (such as interim report(s), so that parties can ensure their views are taken into account before publication.

These changes would provide businesses with a better understanding of the potential issues under consideration, and give them the opportunity to respond and engage with the CMA decision-makers on these issues before the CMA takes any decision(s). This would greatly enhance predictability for parties and by giving a greater ability to more meaningfully engage with the CMA's thinking, would help make the CMA's work more proportionate.

Third, teach-ins can be beneficial and decision-makers should attend where possible. Our experience in recent cases is that teach-ins can be a valuable tool for the CMA to better understand how markets work. In many cases, teach-ins can be more effective than evidence-gathering via written correspondence, such as responses to information requests. We therefore welcome the Draft Guidance's statement that the CMA will offer parties the opportunity to hold teach-ins in both market studies and market investigations (Draft Guidance, ¶¶6.14, 8.30), formalising existing practice.

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[2] UK Government, Strategic steer to the Competition and Markets Authority.

Although teach-ins can be very useful, they require significant work by the parties to develop their presentation and prepare for the meeting. Given this, they may not be necessary or proportionate in every case. That said, if a teach-in is held, it would make sense for the decision-makers (*e.g.*, the Inquiry Group in market investigations) to attend where possible, in addition to the case team. This would help to get decision-makers up to speed quickly, which is particularly important if they have not had previous experience of the markets involved, and/or the markets are dynamic and fast-moving (such as the markets Google operates in). Having decision-makers attend with the CMA staff would also be more efficient and proportionate than requiring businesses to educate them through separate submissions or meetings. Relatedly, the Draft Guidance should make clear that—as far as possible—the CMA will seek to minimise the burden on businesses by not duplicating evidence-gathering via information requests, where information has already been provided at a teach-in.

Fourth, Working Papers should be retained. The Consultation Document states that Working Papers will only be prepared and published on an "*exceptions-only basis*", will no longer publish an annotated issues statement in market investigations, and that the CMA will instead inform parties of its emerging thinking through interim report(s) (¶2.12).

In our experience, Working Papers provide a valuable opportunity for parties to digest and engage with the CMA's emerging thinking and evidence base. Interim report(s) could, in principle, serve a similar purpose. But we have concerns that—given the inevitable effort and time involved in preparing a full description of the CMA's views on every topic it is investigating—interim report(s) may take longer to prepare than Working Papers (giving less time for parties to respond), be more practically challenging for the CMA to reassess, and thereby reduce parties' ability to influence the CMA on the substance of its thinking. This would be counterproductive, lead to less predictability, and ultimately be an inferior process to Working Papers.

If the CMA's objective for replacing Working Papers with interim report(s) is to streamline the process (*i.e.*, by not publishing all its Working Papers, inviting public comments, and sifting through a potentially large number of responses), there are better alternatives. For example, the CMA could put key information on its thinking back only to the main parties of an investigation (including any key parties raising concerns) at an early stage of a market study/investigation, but not publish these materials or invite public comments. The CMA could also reduce the resource burden by providing the information in a format that is less time-consuming to prepare—for example, via a presentation or a note prepared by the case team.

This would enable parties to review the evidence and provide their feedback before the CMA has committed to a set viewpoint or course of action, while making the process more efficient. At a minimum, the introduction of interim reports in place of Working Papers should not mean a

reduction in the information, or the timeliness of information, that parties receive from the CMA. Timeliness and transparency are key if the CMA is to deliver on the 4Ps in the context of a revised markets regime.

Fifth, the proposed "timeline efficiencies" are a step in the right direction; they should go further still. The Consultation Document sets out a "*range of measures aimed at reducing the overall end-to-end length of markets work*" (¶2.15). These include the CMA setting bespoke timings for each project (going beyond statutory timescales "*where appropriate*"), a more streamlined approach to the 'put back' process, and ensuring that market investigations are more tightly focussed by narrowing the issues via a preceding market study or market review.

As noted above, markets cases can place a significant burden on businesses operating in the UK. In the course of our engagement with the CMA on mobile-related issues (principally via the mobile ecosystems market study and mobile browsers market investigation), we answered over [✂] questions, attended over [✂] substantive meetings, and submitted over [✂] substantive papers. This required us to set aside significant resources—including a large amount of time from senior business executives—over nearly five years.

We accordingly welcome the Draft Guidance's proposals to alleviate some of these burdens and make the processes more efficient. We suggest the following five additional measures for the CMA to better deliver on the 4Ps framework and the government's strategic steer:

- ***First, where the CMA has previously excluded concerns in its recent work, these issues should be taken off the table for any related investigations***. Otherwise, there is a risk of duplication, inconsistency, and unnecessary burdens on businesses. To take an example, the CMA's mobile ecosystems market study found that Google Play's app review, app ranking, and use of developer data did not give rise to equivalent concerns to Apple's conduct.[3] But less than four years later, the CMA has proposed interventions against Google under the DMCCA investigation in relation to these processes, and continues to ask detailed questions about them. This is disproportionate and a waste of both the CMA's and Google's time and resources. The Draft Guidance should address this by making clear that where the CMA has previously found no concerns, it will not revisit the same topic unless there is clear evidence that circumstances have changed.
- ***Second, the CMA should only continue to pursue theories of harm where it has identified clear evidence of (potential) harm.*** We welcome the proposal in the Draft Guidance for the CMA to set out where it has provisionally identified an issue (*i.e.*, an AEC) at an earlier stage than is currently done in market investigations (¶2.12(a)). This could be helpful to identify the CMA's areas of focus for the remainder of the

[3] CMA, Mobile Ecosystems Final Report, ¶¶6.53, 6.92, and 6.115.

investigation, and thereby increase predictability for parties. For the same reasons, the CMA should rule out those theories of harm it will not be pursuing, if it has not identified clear evidence of harm. In other words, the CMA should only continue to pursue issues where there is sufficient evidence (and, at minimum, more than unsubstantiated allegations) to warrant continuing its investigation of these issues.

- ***Third, information requests should be limited to what is absolutely necessary for the CMA to conduct an informed assessment of the issues***. Certain of the information requests we have received from the CMA in markets cases have been extremely voluminous, requesting large numbers of internal documents (including internal emails) and very granular, bespoke datasets. Responding to these requests inevitably slows down the process. The Draft Guidance should include a commitment for the CMA to ensure information requests are as targeted as possible to enable it to receive sufficient information to progress the case as quickly as possible. It should include a commitment for the CMA to work with the parties to achieve this. And, as touched upon above, it should require the CMA to take into account evidence provided through alternative means, such as teach-ins or written submissions.

- ***Fourth, the CMA should refer to materials previously produced before imposing additional demands on businesses through further requests for information***. This is more proportionate than requesting the same or similar information again, leading to delays and a disproportionate waste of resources for both parties and the CMA. We had a positive experience in this regard in the mobile browsers and cloud gaming market investigation, where the CMA limited new requests for finance-related data, instead relying on data for the previous year provided in the market study. This pragmatic approach allowed us to better focus our attention and resources on the other issues the CMA was considering.

- ***Fifth, improving the put back process would alleviate the significant burden on businesses.*** We welcome the commitment in the Consultation Document to "*streamline*" the put back process. In our experience put backs require significant work from both advisers and Google employees, often on compressed timeframes. We would suggest the following changes are reflected in the Draft Guidance: (i) the CMA should identify the relevant materials it has drawn from for each put back extract (the CMA took this approach in the mobile browsers and cloud gaming market investigation, and it considerably expedited the process); (ii) the CMA should not require the parties to identify confidential information in their submissions and repeat the same exercise via the put-backs - this is duplicative; and (iii) the CMA should as far as possible take into account representations on confidentiality and accuracy from previous put backs where it proposes to publish the same or similar material in another document.

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Conclusion

Much has changed since the UK markets regime was established by the EA in 2002. The Draft Guidance is a welcome attempt to consolidate and update the CMA's approach to undertaking markets work—including to account for the 4Ps framework—with the overall goal of making the markets regime more efficient for businesses operating in the UK today. Our suggestions above aim to contribute that same goal.

We hope this submission is helpful. We look forward to working collaboratively with the CMA in the course of its markets work in the future.

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