

Response to Consultation

User Choice Conduct Requirement

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. In our response to this and the other consultations, our focus for this first set of conduct requirements is where the conduct requirements raise concerns for the wider digital economy, or where its analysis sets a concerning precedent for future SMS investigations.

Do you agree with the key design options we have considered in terms of effectiveness for the User Choice CR?

Coverage of the Search Choice Screen

The rationale for a choice screen seems weak in the case of the proposed extension to Chrome installed on an iOS/iPadOS device or a Windows desktop. The CMA asserts that limited coverage of choice screens “may limit their effectiveness” but no meaningful consideration is given to the difference in context between existing choice screens and those proposed under this conduct requirement.

Where consumers have proactively chosen to install Chrome as an alternative to a pre-installed browser this is more complex than changing search engines (it requires finding software online and installing it, versus simply changing a setting) and so there is little reason to think that any purported status quo bias is a serious obstacle to users gaining these benefits. Any consumer benefits are likely to be small and the CMA’s proportionality estimate, which assumes a very high per user benefit, is therefore implausible.

The CMA in this context takes for granted Chrome’s role as a third party app competing with, for example, the preinstalled and heavily promoted Edge browser. Use of its search engine is an incentive for Google to invest in improving Chrome, both delivering benefits for consumers directly and raising competition among browsers for important classes of devices. If this regulation diminishes that incentive, it is not clear that the overall impact will be an increase in competition.

Eligibility criteria to appear on the Search Choice Screen

Expanding eligibility for choice screens carries significant risks to the extent it makes it easier for companies to be included and reduces the scope for judgement about which should be included. For example, the Yandex browser, owned by a Russian company subject to Russian data localisation laws, was initially listed as a potential default choice alternative under the Commission’s original DMA guidance. These risks are not theoretical, and could also apply to search engines, but do not appear to have been considered by the CMA.

There may also simply be alternative versions of this risk. Whereas Google and its main competitors such as Microsoft have a long-term incentive to provide a service that users trust, protecting the value of their brands, this cannot be assumed for any company providing an eligible search engine under the CMA's conditions. Overly lax criteria might result in the inclusion of search engines that can exploit users' data in ways that are not immediately apparent (and might allow them to outcompete more privacy-oriented search engines in the short run, perhaps by providing more attractive inducements to switch), but undermine consumer trust in digital services over the medium term (for example by using search data less carefully).

In the envisaged conduct requirement, eligibility would be defined broadly, and those search engines included would in some cases be chosen randomly (with others chosen based on popularity). While concerns such as security and privacy could be read as implicit in some of the criteria given, they should be listed explicitly and given as much prominence as the existing criteria, which broadly relate to "is this a search engine substitute".

It is not hard to imagine a "free money" search engine monetised through aggressive data sharing attracting users and creating significant consumer harms in the time before the Information Commissioner's Office (ICO) or other relevant regulators are able to intervene. Over time this would weaken the impact of choice screens as well, as an adverse selection process leads to users avoiding search engines from smaller brands altogether.

Related to the premise for this intervention, the CMA should be consistent in its analysis of whether Artificial Intelligence (AI) chatbots are substitutes for search engines. In the decision report where Google Search was designated, the CMA took the view that AI chatbots were not in scope in part because they were subject to significant existing competition and did not address the same set of user needs. This would imply they should not be part of a search engine choice screen.

Determination of the list of eligible providers that would appear on the Search Choice Screen and what role, if any, the CMA should play in that process

If transparency over the process to determine the list of eligible providers is taken too far, it might result in Google being forced to reveal internal processes and safeguards it relies on to determine the existence of a data protection risk, which may in turn negatively impact Google's ability to mitigate such data risks in the future.

If there are specific kinds of service that the CMA believes are legitimate competitors to Google Search, which should be included, a narrower intervention (ideally voluntary in nature to maintain the flexibility for Google to make important exceptions) would create fewer risks to user privacy and security.

Frequency of display and timing of the Search Choice Screen

The CMA should recognize that, with additional presentations of choice screens, the balance of costs and benefits is almost certain to shift against them. Users are more likely to have already made a positive choice to prefer a certain search engine; they are also more

likely to be frustrated by friction that additional choice screens will create in their user experience.

Given the acknowledged modest impact of existing functional choice screens, there does not seem to be enough evidence to indicate that more choices will achieve significant additional switching except by a random process as users click to make the screen go away, which will not create a sustainable business for alternative search engines. The CMA should consider whether this will make demand less predictable for other providers, besides Google Search. Particularly if combined with a relatively large and unstable list of eligible providers (due to the inclusion of random search engines, as discussed above), it might see a rise in switching that does not reflect the meaningful establishment of sustainable alternative search engines.

Generally speaking, it seems hard to justify going ahead with this conduct requirement without as a minimum testing its impact first.

Design of choice architecture on the Search Choice Screen

The standards set out by the CMA in its interpretative notes for how Google should design choice screens are not unreasonable in themselves, as users should have the information to make decisions “in their best interests.” It is important, however, that this is understood broadly and with a proper accounting of the fact that consumer losses in the event of their data being exposed might have a large bearing on what is in their best interests relative to the merits of a slightly faster choice over search engines.

The CMA should also be realistic that an above-criticism, concise, factual description of the merits of different search engines might be genuinely hard to achieve. In this context, holding Google to an unrealistic standard instead of accepting that this is part of the marketing challenge for any digital service is not likely to be productive and will simply yield one intervention after another with little regulatory stability for competing services to invest around.

Again, this feels lower risk if CMA were to pursue it through voluntary commitments and/or testing specific interventions before going ahead.

Option to ‘test-drive’ search providers on the Search Choice Screen

A ‘test-drive’ feature seems at odds with the consideration in other areas (e.g. data portability) where the CMA has sought to avoid UK-specific engineering requirements. Generally speaking, the CMA should seek to align with both existing practice where the UK has functional choice screens and with international practice where they function voluntarily or in response to regulatory demands.

The case for the proposed measure rests on academic studies which suggest that users might be poorly informed about the quality of rival services and there might be value in them learning. None of these studies support the idea that an ill-founded fear that it would be hard to switch back to Google Search (it would not) is a significant barrier to switching.

As with expanding eligibility, this might also result in low quality switching that does not reflect a genuine interest in other services, around which viable new competitors could be built.

Device-level consumer journey to change the default search provider on Android devices

There is a complaint that users might have to take four to six steps to change their search engine, but two of those steps relate to the simple fact that someone changing their search provider in Chrome opens Chrome first. The CMA's assertion that navigating to settings, then to "Search Engine" settings, and then choosing a search engine represents an onerous process does not seem credible evidence that consumers face significant obstacles to switching as a result. Any fewer clicks would surely raise the risk that the option to change search engines was buried among too many other options on a more general page.

While the CMA points to multiple access points, it does not present any evidence that these are a significant barrier to consumers' switching. The number of access points on a typical device is not particularly large and consumers can easily change these features as they encounter a new access point on which they want to make a change. Multiple redundant paths to adjust the same basic settings seems at least as likely to induce confusion among consumers.

In this and other cases, the lack of a meaningful problem facing consumers, combined with many of those that will now be eligible already having demonstrated that they can install alternative software, makes the likely balance of costs and benefits poor.

Third-party access to a user's default search setting

Like other changes in the user choice CR, this involves shifting the emphasis towards more information about customers' habits online being shared. Creating new UK-specific engineering requirements for Google and original equipment manufacturers (OEMs) is generally likely to be costly. Introducing such a requirement in order to achieve marginal improvements in the marketing efficiency for other search engines seems unlikely to represent a good balance of costs and benefits.

Prompts displayed by Google that may inhibit effective user choice

It is concerning that the CMA seems to be both looking to reduce checks on what could be invalid consumer choices alongside intervening to broaden the eligibility criteria. If there is going to be a very broad range of services that are eligible to be default search engines, and limits on the ability to warn when services seek to change search engines, the combination seems to heighten the risk of users being exposed to privacy and security risks.

Do you agree with our proposals for compliance reporting and monitoring?

Do you agree that Google should provide 6-monthly compliance reports with metrics identified broken down into monthly periods?

It is not clear what compliance objective is addressed by 6-monthly reporting that would not be addressed by annual reporting. Many of the requirements include data on user behaviours, and drawing firm conclusions within a year is unlikely to be advisable, even if the CMA receives the data earlier. The CMA has not provided any justification for that frequency, and annual reporting reflects normal practice and would lower costs.

The CMA should also show some flexibility in terms of the implementation planning for any conduct requirement that involves working with third parties, such as OEMs. Otherwise there is a risk that sufficient time is not given for those third parties to understand the requirements and agree an approach with Google that minimises any unnecessary engineering costs.

Generally speaking, given that many of these metrics relate to the rate of switching, the CMA should be clear that they are not metrics for success in themselves. As is noted in the consultation document, switching is not the objection in itself, although any sudden changes in such data might indicate if a particular problem arises over time.

Do you agree that Google should provide a copy of any correspondence sent to a potential search provider rejecting their application to the CMA?

As noted above, decisions to exclude a provider may involve sensitivities beyond, for example, the feature set of the search engine. While it may be appropriate for Google to share this with the CMA, any non-confidential version for publication should be designed carefully to avoid creating risks for Google in excluding inappropriate search engines, for example any posing excessive privacy or security risks.

Do you agree with our proportionality assessment for the User Choice CR?

The CMA's proportionality assessment seems to have two important problems:

First, it relies on a single study of a "small sample of desktop Edge users," and found what is an obviously high value for a perceived quality improvement for Bing relative to Google of £149.10 a year.¹ The other figure mentioned describes consumer surplus related to Google Search, not the impacts of being required to choose between search engines, and is therefore irrelevant. The CMA has not chosen conservatively between two plausible estimates as it claims, these are studying completely different questions.

¹ Allcott, H. et al Sources of Market Power in Web Search: Evidence from a Field Experiment. <https://lmu.solff.com/papers/SearchMarket.pdf>.

Given that Google Search is generally considered to be a high quality search engine, indeed in a US case a judge described it as “the industry’s highest quality search engine”,² and changing search engines is not difficult at present, it is implausible that there is a nearly £150 a year benefit that users have neglected and well-resourced competitors such as Microsoft have not been able to communicate. Unless the CMA believes that Google has materially underestimated the consumer surplus with Search, it would imply that a typical Google Search user can improve their consumer surplus relating to search by a third by switching. This is inconsistent with both common knowledge about the competitive quality of Google Search but also hard to square with the CMA’s own argument in other conduct requirements that Google has various advantages over other search engine providers.

This study is simply not intended to support a cost-benefit assessment for an intervention of this kind and is not a reasonable basis to conclude that these measures are proportionate. The likely explanation of the high estimate is that a small sample of the sort acknowledged to be used in this study will often produce exaggerated or outright unreliable impact findings.

Given that the CMA is proposing substantial changes in an area where both functional choice screens and easy consumer switching already exist, which will affect millions of users, a proportionality assessment based on robust evidence should be undertaken. It could also take appropriate time to trial some of these measures and get direct evidence over whether, for example, consumers find them frustrating instead of assuming they will not.

What are the likely costs for OEMs arising from each of the design elements set out in this chapter?

No response.

² United States v. Google LLC, No. 1:20-cv-03010 (D.D.C. Aug. 5, 2024), ECF No. 1033, at 6.