BBC response to CMA's consultation on Conduct Requirements in Google Search investigation

We welcome the CMA's proposals to impose Conduct Requirements ("CRs") on those activities of Google within the scope of its designation and note that quick implementation would support the UK's creative sector and publishers.

This response outlines where we consider the CMA should strengthen its draft CRs concerning Publisher Controls and Fair Ranking. We have focused on the effectiveness of the proposed CRs, particularly in terms of how they allocate responsibility as between Google and publishers like the BBC.

We hope that, in the implementation of the CRs, the CMA will safeguard the ability for publishers to understand, evaluate and utilise the new opportunities afforded by the CRs without Google bringing forth further changes which frustrate this process. We note in this regard the rapid development of Google Search, even since the commencement of the CMA's investigation, and the direction of travel[1], again noting the importance of speed in implementation and simultaneous development of CRs to address the Category 2 issues identified in the CMA's Roadmap (in particular, fair payment for content).

We remain open to constructively engaging with the CMA around any revisions to its draft Publisher Controls and Fair Ranking CRs, and its implementation plans.

Publisher Controls

The BBC welcomes the CMA's attempt to give it and other publishers a degree of control over the use of their content in Google's Gen AI Search Features. The Publisher Controls CRs could play a pivotal role in shaping a market that rewards original reporting and supports responsible AI innovation per the aims of the SPUR coalition[2]. However, we remain concerned that the draft CRs are not sufficiently robust that they will result in the "meaningful" control the CMA is tasked to deliver. Below are our observations and suggestions for enhancements to the draft Publisher Control CRs in respect of the controls themselves, transparency and attribution.

Controls

We encourage the CMA to consider the following from an effectiveness perspective:

- o **Proactive engagement.** It is imperative that the burden rests with Google to make available, explain and engage proactively with publishers, including as necessary on an individual level, around the controls available. The current

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[1] E.g. Google AI Mode rollout, Google testing of Web Guides within Search Labs (Web Guide: An experimental AI-organized search results page)

[2] Open letter to global leaders across media

Interpretative Notes to the draft CRs appear to require only that Google "post information", "invite representations" and "take action to respond to any issues raised by publishers" but do not mandate proactive engagement.

- o **"Per purpose" controls**. There are many ways in which the BBC's content is valuable to Google in terms of the development and delivery of its AI services and features, now and in the future. To protect and have true agency over its content, the BBC needs to understand the purposes for which its content is used or could be used by Google and to exercise control in respect of each purpose. We recommend the CMA clarify in the CRs that publishers should be able to opt-out of the following purposes: training, grounding, fine-tuning, all separate from each other and separate from Search. This granularity is particularly important at this stage in the development of AI, when Google's ability to leverage its dominant position from Search has been wholly unconstrained and when publishers are seeking to establish responsible licensing frameworks.

- o **Crawlers.** Structural separation of crawlers would, in our view, provide a more effective control, providing publishers (and the CMA) with at least the opportunity to monitor the activity of Google's various crawlers, rather than rely solely on Google implementing separation "behind the scenes". This detection ability, especially if combined with "per purpose" controls and transparency, would enable us to understand the purpose for which and the frequency with which our content is being crawled. Both are critical to evaluating our position for the purposes of negotiating fair value exchange. Moreover, the imposition of structural separation of activities is an established and effective remedy for risks arising from market dominance. Finally, we encourage the CMA to consider why Google should not be expected to operate separate crawlers when its competitors, e.g. Microsoft and OpenAI already offer this.

- o **Directory level and page level controls**. We agree with the proposal in the draft Publisher Control CRs that any opt-out be available at both levels. In respect of the CMA's proposals in footnote 56 around functionality within Google Search Console to immediately block a specific page from Google's Gen AI Search Features due to inaccuracies and/or reputational damage, we consider this important for the effectiveness of the CR and for retaining audience trust. But to ensure effectiveness, this should be combined with a monitoring and alerting obligation on Google to promptly notify us of inaccuracies it becomes aware of, whether through internal quality control or user feedback. Per our previous submissions, the obligation cannot sit entirely with the BBC to spot where our content has been inaccurately represented.

- o **Burden of controls on publishers:** It is important that the outcome of the CRs is not an illusory choice by reason of the controls being too burdensome on the BBC to implement. Google are not the only AI company whose systems and controls we are having to navigate to protect our content. It is therefore

important that any configurations / control files required by the CRs are in a standardised format which are scalable. Linked to this, we urge the CMA to ensure that the final CRs can accommodate future industry-wide solutions or standards which may be adopted insofar as they align with the aims of the CRs.

o **Effective oversight:** whilst separation of crawlers would aid detection by publishers and the CMA, the CRs must secure ongoing independent oversight by the CMA of Google's adherence to controls.

Transparency

To be effective, it is imperative that the Publisher Control CRs around transparency equip the BBC to understand and evaluate its use of controls. Given the lack of any meaningful data from Google to date around its Search Gen AI Features, the CMA's focus should be on securing comprehensive datasets from which publishers can draw conclusions rather than pre-filtered or pre-aggregated datasets determined by Google in its own interests. The recent data made available to publishers by Bing is an example of what is possible and should serve as a starting point to the CMA in terms of what can reasonably and proportionately be expected of Google (especially given its market position in Search compared to Bing).

Data metrics

o Annex 1 outlines the data metrics and fields which the CRs should mandate Google make available to publishers. Please note that such data should be:
- in addition to the Search data which Google currently makes available to publishers via Google Search Console, rather than substitutional; and
- made available for free to publishers themselves or their appointed analytics provider, not only via Google's own proprietary products (e.g. Google Analytics).

o In terms of the CMA's specific requests for input, we consider that:
- data must be disaggregated for AI Overviews and AI Mode, and for any future Search Gen AI Features introduced by Google;
- "quality of clicks" cannot be evaluated without Google providing relevant raw data as there is an element of subjectivity to "quality" given different publisher's aims and business models. The data fields outlined in Annex 1 would provide us with the "clear and actionable insight into the quality of clicks" that the CMA is targeting with its CRs.

Transparency over Google's crawler activity

URL Inspection is an existing functionality within Google Search Console and we consider it may be a suitable tool through which Google could deliver

transparency around crawler activity. This is demonstrated in section 2 of Annex 1.

<u>Attribution</u>

In terms of attribution there is a difference for the BBC between mere branding and the type of attribution that drives willingness to pay the licence fee – in other words, credit for the content. Our research has shown that we get significant credit when the content is consumed in the BBC's own services, hence the need for links (e.g. blue links) for audiences. The Publisher Control CRs should make clear that anything less than publisher logo <u>plus </u>"blue links" (or any future equivalent – allowing audiences a frictionless route back to the BBC's own services) will not constitute "sufficient attribution". We would also urge the CMA to ensure that this expectation is hard-wired into the CRs such that it cannot be frustrated by Google under the guise of "innovation" of its SERP.

On accuracy, we recommend that the CMA impose more detailed expectations on Google around the metrics it provides on factuality. As outlined in Annex 1, these metrics should, at a minimum, be at an individual publisher level and ideally at a page level. Without this level of disaggregation, such metrics will not "help publishers to take a decision whether to give consent" per the CMA's aim.

Fair Ranking

The CMA's proposed draft Fair Ranking CRs are a positive step in introducing transparency and reducing discrimination in Google's ranking activities which, given its market position and vertical integration, can profoundly impact publishers like the BBC. We do however have some residual concerns around the effectiveness of the Fair Ranking CRs and would recommend the CMA consider the following in respect of their design and implementation:

- Significant discretion appears to remain with Google in terms of what will constitute a "legitimate policy objective", as well as scope to evade accountability through the carve-out for "commercially sensitive information". The CMA must ensure that this discretion and these exceptions do not enable self-preferencing by Google (e.g. of YouTube videos).
- Monitoring of compliance with the Fair Ranking CRs (by both publishers and the CMA) will be extremely challenging given the systemic asymmetry of information. It is likely to be difficult for publishers to spot discriminatory treatment until damage to its traffic has happened/is happening. It is also likely to be extremely challenging for publishers from their side to evidence causation between, for example, their exercise of a publisher control (e.g. to opt-out of Gen Search AI Features) and a discriminatory ranking. We therefore recommend that the CMA strengthen the Fair Ranking CRs by requiring Google to periodically undertake

testing of search ranking of "opted out of AI" content to prove it is not being down-ranked.

- o The "materiality" threshold in the Fair Ranking CR requiring advance disclosure of algorithm changes must be set at an appropriate level.

Annex 1

BBC Google/AI Data Requests

Outlined below are the data points and metrics which we believe the Publisher Control CRs regarding transparency should require Google to provide, if the CRs are to meet their aims and be effective. The mock-ups are created by us for demonstration purposes only.

1. Clicks, Impressions & Average CTR%

AI Overview & AI Mode Data Exposure in Google Search Console

Similar to how AMP results can be filtered via Search Appearance and how Search Type segments performance across Web, Image, Video and News, Google could introduce dedicated classifications for both AI Overviews and AI Mode within the Search Results Performance report.

AI Search Performance (Dedicated Report) in Google Search Console

Similar to how Discover traffic is separated into its own Performance view, Google could introduce a distinct AI Search performance report. This would consolidate AI-related visibility and engagement metrics into a single reporting environment, improving transparency and enabling clearer benchmarking of AI-driven traffic. Filtering options could also include the ability to filter on AI Mode, AI Overviews and potentially Gemini. This could also be an opportunity to expose more advanced metrics including citation, mention and prompt related data.

2. Crawl Transparency & Intent

AI Search Technical Performance in Google Search Console

Leveraging the URL Inspection Tool and Crawl Stats Report in Search Console, Google could introduce dedicated reporting that surfaces AI crawler activity.

3. Attribution, Prominence & Linking

We need transparency on attribution mechanics - how frequently BBC content is used, how prominently it is credited, and whether AI outputs drive measurable referral value back to BBC properties.

4. Quality Assurance

We require transparent quality metrics to protect brand integrity and ensure BBC journalism is neither misrepresented nor inaccurately summarised.

Platform-provided metrics on:

- Factual accuracy/error rates

- Citation accuracy

- Correct attribution to BBC where content is used