

CMA Consultation: Fair Ranking Conduct Requirement

Non-confidential comments by Lovehoney Group (lovehoneygroup.com), February 2026

General Comment of Lovehoney Group	
<p>Given Google’s incentives and track record in responding to regulatory obligations, we expect it will interpret the Fair Ranking Conduct Requirement (CR) as narrowly as possible and seek to rely on ambiguities, technicalities or formalistic compliance approaches in order to limit the practical scope of its obligations. It is therefore essential that the CR – particularly the provisions set out in the table in Section 3.1 – be drafted in clear, precise and operational terms that leave minimal scope for restrictive interpretation or circumvention.</p> <p>In our view, this requires in particular that key concepts, thresholds and triggering events be defined with sufficient legal certainty to ensure consistent application and effective oversight. The Fair Ranking CR should be framed in a manner that constrains outcomes, not merely processes, and that enables meaningful supervision by the CMA. Vague or narrow standards bear enforcement gaps and may incentivise minimalistic or formalistic compliance strategies.</p> <p>Given Google’s position as a gatekeeper for a substantial proportion of online publishers and retailers, the effectiveness of the CR will depend not only on its substantive clarity but also on the credibility of its enforcement framework. In this context, it is crucial that the CMA retains and is prepared to exercise robust enforcement powers, including the imposition of severe and dissuasive penalties in cases of non-compliance.</p> <p>Any such penalties must be calibrated to ensure genuine deterrence. In light of Google’s substantial financial resources and overall economic strength (USD 3.7 trillion market capitalization, in 2025: USD 400 billion revenue, USD 130 billion profit and USD 73 billion free cashflow), penalties that are modest in relative terms would risk being perceived as a cost of doing business rather than as an effective compliance incentive. The enforcement practice should therefore take into account Google’s financial capacity to ensure that non-compliance carries meaningful consequences.</p>	
Fair Ranking CR (see table in Section 3.1 Consultation: Fair Ranking Conduct Requirement)	Lovehoney Group Comments
<p><i>3. Nothing in this conduct requirement shall apply to Google’s ranking or presentation of <u>paid-for search results</u>, features or content.</i></p>	<p>The Fair Ranking CR do not address paid-for content. We respectfully submit that this position should be reconsidered.</p> <p>In practice, Google’s general search results and paid-for search advertising are closely intertwined and jointly shape user visibility, traffic allocation and commercial outcomes. For many publishers and retailers – particularly those operating primarily online – organic and paid search are not functionally separable channels, but complementary and interdependent routes to market. Excluding paid-for content from the scope of the Fair Ranking CR would therefore leave a significant part of Google’s influence over market access unregulated.</p>

As set out in our prior submission to the CMA dated January 31, 2025 (response to CMA's Invitation to Comment dated January 14, 2025), Google's conduct in the area of search advertising raises concerns closely linked to fairness, transparency and non-discrimination:

- We have experienced substantial CPC inflation in branded keywords without corresponding increases in competitive bidding, suggesting structural opacity in price formation (see discussion on pages 2–3 of the Response).
- The shift to automated bidding models (e.g. target ROAS, PMAX) has materially reduced advertisers' visibility and control over auction dynamics, placement and performance data.
- Advertisers are increasingly required to rely on Google's own automated systems without meaningful ability to verify pricing logic, bidding outcomes or allocation across channels.

These features demonstrate that Google's role in paid search is not that of a neutral intermediary but of a vertically integrated operator with significant discretion over auction design, price formation, and visibility allocation. If the Fair Ranking CR were confined to organic results only, there would be a risk that discriminatory or distortive effects remain or arise in paid placement mechanisms.

From a competition perspective, excluding paid-for content would draw an artificial distinction that does not reflect commercial reality. The decisive issue is not whether content is paid or unpaid, but whether Google's conduct in determining visibility, access and pricing is objective, transparent and non-discriminatory – irrespective of the fact that organic and paid search operate under distinct ranking systems and policies.

We therefore respectfully submit that the CMA should reconsider its current approach and extend the scope of the Fair Ranking CR to encompass paid-for search advertising, taking due account of its specific characteristics and the additional, and potentially significant, adverse effects it may have on publishers and business users.

<p>Non-discrimination and objectivity</p> <p>4. When making any decision related to the matters set out in paragraph 2, Google shall apply <u>objective</u> and non-discriminatory criteria. This means Google:</p>	<p>The current drafting requires Google to apply “objective” criteria. The term “objective” is not defined. In the absence of clarification, there is a material risk that Google will define its own internal principles and characterise them as “objective”, even where they are discretionary or value-laden in nature.</p> <p>This is particularly concerning in light of Section 1.24(b), where the CMA refers to Ofcom having provided examples of content that is, and is not, harmful to children. That approach – anchoring assessments in externally defined standards and concrete examples – provides an appropriate model. It demonstrates that “objectivity” in this context should not mean unilateral criteria developed and interpreted by Google alone, but criteria grounded in clear, externally verifiable standards.</p> <p>Given Google’s position as a gatekeeper for the vast majority of online publishers and retailers, allowing it to define for itself what constitutes “objective” treatment would undermine the effectiveness of the Fair Ranking CR. The obligation must therefore ensure that “objective” criteria are: (i) based on clear, pre-defined parameters; (ii) capable of independent verification; and (iii) aligned with recognised legal or regulatory standards where relevant.</p> <p>Proposed clarification (paragraph 1 of the table):</p> <p>“objective criteria mean criteria that are:</p> <p><i>(i) specific and sufficiently precise to enable third parties to understand how they will be applied;</i></p> <p><i>(ii) capable of independent verification and audit; and</i></p> <p><i>(iii) where relevant to content standards (including safety-related assessments), aligned with applicable legal and regulatory standards or recognised regulatory guidance, rather than based solely on Google’s internal policies or discretionary judgments.”</i></p>
<p>a. shall not take into account whether or not a publisher:</p> <ul style="list-style-type: none"> i. has chosen to advertise on Google; ii. has entered into other commercial or contractual arrangements with Google; iii. has chosen to opt out of its content being used for Google’s search generative AI features or any Google service outside of general search; or iv. has exercised contractual or statutory rights against Google; or <p>b. shall apply the same,</p>	<p>The introduction to the Fair Ranking CR expressly identifies Google’s SafeSearch Policy as an example of discriminatory conduct, noting that specialist retailers were treated less favourably than more general retailers (Section 1.17(b)). In that scenario, Google was acting solely as a search platform and was not promoting its own competing products or services.</p> <p>We understand from Sections 2.1 and 2.6(b) that the contemplated Conduct Requirements are intended to (also) address precisely this type of discrimination and to prevent differential treatment that disadvantages certain categories of third-party businesses without objective justification.</p> <p>However, the current drafting of the proposed Fair Ranking CR in Section 3.1 (in particular paragraph 4 of the table) appears to frame the obligation primarily by reference to the treatment of Google’s own products and services vis-à-vis those of third parties. This formulation</p>

<p><i>objective criteria in relation to its own products and services and the equivalent products and services of third parties.</i></p>	<p>risks narrowing the scope of the obligation to situations of “self-preferencing” only.</p> <p>Our concern is that Google may argue that discriminatory application of policies such as SafeSearch falls outside the Fair Ranking CR because the differential treatment does not involve Google’s own products or services, but rather affects different categories of third-party retailers. If that interpretation were accepted, a significant portion of the discriminatory conduct identified by the CMA would remain unaddressed.</p> <p>To avoid this outcome, the Fair Ranking CR should make explicit that the obligation to apply objective and non-discriminatory criteria extends to the treatment of all third-party businesses and categories of businesses, irrespective of whether Google’s own products or services are implicated. The prohibition should clearly capture discrimination between third parties, as well as self-preferencing, where such discrimination affects ranking, visibility, or access on Google’s search services.</p> <p>We suggest clarifying paragraph 4.b. of the table to make explicit that the obligation is not limited to comparisons between Google’s own services and those of third parties, but also covers differential treatment between third-party businesses or categories of businesses.</p> <p>Proposed clarification (paragraph 4.b. of the table):</p> <p><i>“b. shall apply the same, objective criteria (i) in relation to its own products and services and the equivalent products and services of third parties, as well as (ii) as between different third-party businesses or categories of third-party businesses, irrespective of whether Google’s own products or services are involved.”</i></p>
<p>Transparency</p> <p>5. Google shall provide <u>publicly</u>:</p> <p>a. <u>sufficient information</u> about how it undertakes the matters described in paragraph 2; and</p> <p>b. <u>sufficient notice and information</u> in advance of any <u>material changes</u> to the key ranking criteria, policies and procedures that affect the matters described in paragraph 2.</p>	<p>1. Meaning of “Sufficient Information”</p> <p>“Sufficient information” should enable publishers and business users to:</p> <ul style="list-style-type: none"> • understand the conceptual framework of filters and content moderation mechanisms (including systems such as SafeSearch), how they operate, and under which conditions content may be restricted, demoted or excluded; • access reliable search and click performance statistics, including data on impressions, clicks and the search queries triggering them, with only minimal aggregation or classification as “unknown”; • understand the principal ranking signals and optimisation levers available to publishers, including how qualitative concepts such as “helpful content” or E-E-A-T are operationalised in practice and which measurable factors may influence ranking outcomes;

	<ul style="list-style-type: none"> • understand the role of user interaction signals (e.g. click-through rates, dwell time, return-to-SERP behaviour) in ranking decisions, including how such signals are treated in the context of zero-click search results and AI Overviews; and • assess whether and how their visibility may be affected by automated systems, AI-based summaries or other features that reduce direct traffic to publishers’ websites. <p>The information provided must be sufficiently concrete and operational to allow publishers to make informed commercial and technical decisions (e.g. SEO adjustments, content strategy changes, or advertising allocation). High-level or generic statements of principle would not meet this standard.</p> <p>Proposed clarification (paragraph 1 of the table):</p> <p><i>“sufficient information includes (i) a description of the conceptual framework, scope and functioning of filters and content moderation mechanisms (including systems such as SafeSearch), (ii) reliable, granular and verifiable performance data, (iii) details on principal ranking signals and optimisation parameters available to publishers, (iv) details on whether and how user behaviour signals (including click-through rates, dwell time, return-to-SERP behaviour and similar engagement metrics) influence ranking, demotion or visibility decisions, and (v) information enabling publishers to assess whether and how their visibility may be affected by automated systems, AI-based summaries (such as AI Overviews), or other features that may reduce direct traffic to publishers’ websites;”</i></p> <p>2. Meaning of “Material Changes”</p> <p>A “material change” should not be limited to structural overhauls of the ranking system. Rather, it should encompass any change of a matter, covered by “sufficient information” as outlined above, that may reasonably require publishers to adjust their content, technical setup, marketing strategy or compliance approach.</p> <p>The test should be whether the change is capable of having a non-trivial impact on publishers’ discoverability, traffic, or commercial performance – not whether Google considers the change to be technically significant.</p> <p>Proposed clarification (paragraph 1 of the table):</p> <p><i>“material change includes any change that that may reasonably require publishers to adjust their content, technical setup, marketing strategy or compliance approach.”</i></p> <p>3. Meaning of “Publicly”</p>
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	<p>The effectiveness of paragraph 5 will depend not only on <i>what</i> information is provided, but also <i>how</i> it is made available.</p> <p>In practice, information that is technically published but buried within complex help pages, fragmented across multiple links, or difficult to locate does not provide meaningful transparency. Given Google’s central gatekeeper role for publishers and retailers, transparency obligations must ensure that information is prominently presented and straightforward to access.</p> <p>To be effective, the requirement should therefore clarify that:</p> <ul style="list-style-type: none"> • Relevant information must be accessible within one click from a clearly labelled and dedicated transparency page; • It must not be dispersed across multiple documents in a manner that makes it difficult to identify the applicable rules; and • Publishers should have the option to proactively receive updates (e.g. via subscription to an email alert or newsletter) whenever material changes are made. <p>Proposed addition to paragraph 5 of the table:</p> <p><i>“Google shall ensure that the information required under this paragraph is presented in a clear, prominent and easily accessible manner. Such information shall be available via a clearly identifiable and dedicated webpage, accessible within one click from a central transparency or publisher information page. Google shall also provide publishers with the option to subscribe to timely notifications (e.g. via email alerts or a newsletter) informing them of material updates or changes to the relevant criteria or policies.”</i></p>
<p>Non-distortion and complaints 6. <i>Google shall provide a <u>clear and accessible process</u> for handling complaints from publishers in relation to its policies and procedures related to any of the matters described in paragraph 2, which allows publishers to indicate any potential adverse impacts on the functioning of any market in the United Kingdom in which they are active.</i></p>	<p>Paragraph 6 of the table establishes a complaints mechanism. For this mechanism to fulfil its purpose – namely, to ensure compliance with the Fair Ranking principles – it must be more than a formal or procedural avenue. It must operate in a manner that is efficient, responsive and capable of delivering timely outcomes.</p> <p>First, the process should be expressly required to be efficient and swift. Delayed resolution in the context of search ranking or visibility can cause immediate and significant commercial harm. A complaint mechanism that produces decisions only after prolonged periods would, in practice, fail to sufficiently remedy the effects of discriminatory or non-objective ranking decisions.</p> <p>Second, while the use of automation and AI tools may support scalability, the process must be subject to meaningful human oversight and monitoring. Decisions affecting ranking, demotion or removal should not be determined solely by automated systems. Adequate human review is necessary both to ensure contextual</p>

	<p>assessment and to prevent systemic biases or errors from being perpetuated at scale.</p> <p>Absent these elements the complaints process risks becoming a formal compliance exercise rather than a meaningful tool to secure adherence to the Fair Ranking CR.</p> <p>Proposed clarification (paragraph 6 of the table):</p> <p><i>“Google shall establish and maintain a complaints process enabling publishers and third parties to challenge decisions relating to ranking, visibility, demotion or removal of content, products or services. The complaints process shall be efficient, responsive and capable of delivering decisions within a reasonable and clearly defined binding timeframe, taking into account the potential commercial impact of ranking-related decisions.</i></p> <p><i>Google may use automated or AI-supported tools as part of the process; however, decisions shall be subject to meaningful human oversight and review, and the overall operation of the process shall be monitored by appropriately qualified personnel.”</i></p>
<p>8. <i>If, having reviewed the summaries received pursuant to paragraph 6, the CMA considers that a <u>specific policy or procedure</u> (or combination of policies and procedures) related to any of the matters described in paragraph 2 may be having a <u>material adverse impact</u> on the functioning of any market in the United Kingdom, Google shall produce and publish a report examining:</i></p> <p><i>a. whether the identified policies or procedures are having a material adverse impact on the functioning of any market in the United Kingdom; and</i></p> <p><i>b. if so, what steps Google proposes to take to reduce or remove any such adverse impact.</i></p>	<p>Paragraph 8 of the table requires Google to submit a report only where there is a “material adverse impact”. This term is not defined. In the absence of clarification, there is a significant risk that the threshold will be interpreted too narrowly, thereby limiting when Google is required to report and, in turn, reducing the effectiveness of oversight under the Fair Ranking CR.</p> <p>If “material adverse impact” were construed as requiring substantial financial loss or wide-scale market disruption, many relevant violations could fall outside the reporting obligation. This is particularly concerning in circumstances where discriminatory or non-objective conduct:</p> <ul style="list-style-type: none"> • is systematic but does not necessarily result in a significant impact on any single publisher when assessed in isolation; or • has a negative effect on a publisher’s visibility, traffic or commercial performance, but the extent of that effect is difficult or impossible to quantify with precision. <p>In addition, paragraph 8 of the table should not be limited to situations where an <i>existing</i> policy or procedure has an adverse impact. A material adverse impact may arise not only from the application of a specific policy or procedure, but equally from the <u>absence</u> of a necessary or appropriate policy or procedure.</p> <p>For example, a failure to define clear ranking principles in relation to a particular type of search query or category of content may create structural conditions in which discriminatory or non-objective outcomes arise or persist without effective control. In such circumstances, the harm does not result from the application of a</p>

	<p>specific rule, but from the absence of one, and the competitive and commercial consequences for affected publishers may be the same.</p> <p>Moreover, expressly covering situations involving missing policies and procedures would prevent Google from adopting an unduly narrow or minimalist approach in defining such frameworks in order to limit the likelihood of triggering reporting obligations.</p> <p>The reporting obligation should therefore expressly capture <u>both</u>: (i) adverse impacts resulting from the operation of a specific policy or procedure; and (ii) adverse impacts resulting from the failure to implement, maintain or enforce policies and procedures required for compliance with the Fair Ranking CR.</p> <p>Proposed clarification (paragraph 1 of the table):</p> <p>“material adverse impact means: <i>(i) any violation of this conduct requirement that is systematic or repeated in nature; or</i> <i>(ii) any violation of this conduct requirement that has an appreciable effect on the business, visibility, traffic or revenues of an affected publisher, even if the financial impact is not substantial in absolute terms;”</i></p> <p>Proposed clarification (paragraph 8 of the table):</p> <p><i>“...the CMA considers that a specific policy or procedure (or combination of policies and procedures) related to any of the matters described in paragraph 2 or the lack of a policy or procedure necessary for compliance with this conduct requirement may be having a material adverse impact ...”</i></p>
<p>9. <u>In addition to the complaints process described in paragraph 6, Google shall also publish an alternative dispute settlement mechanism for publishers that have been manually excluded from Google’s general search index.</u></p>	<p>Paragraph 9 of the table appears to limit the alternative dispute settlement mechanism to cases in which a publisher has been manually excluded from Google’s general search index. This scope would be too narrow and would not reflect the broader range of potential infringements of the Fair Ranking CR and that Google might not always address complaints from publishers appropriately.</p> <p>The alternative dispute resolution (ADR) mechanism must, therefore, be available for <i>any</i> complaint brought under paragraph 6 of the table that has not been resolved to the satisfaction of the publisher. Limiting ADR to manual de-indexing decisions would exclude a wide range of potentially significant issues, including discriminatory ranking, demotion, filtering, or algorithmic application of policies. Such a limitation would materially weaken the enforcement architecture of the Fair Ranking CR.</p> <p>In addition, the ADR mechanism must not impose undue procedural or financial barriers on publishers. Excessively long or short deadlines, complex formal requirements, or disproportionate fees would</p>

	<p>undermine the accessibility and practical effectiveness of the process – particularly for smaller or specialist publishers.</p> <p>Crucially, the dispute resolution body must be independent of Google and empowered to issue decisions that are binding on Google. A mechanism that is advisory only, or structurally influenced by Google, would not provide an effective safeguard.</p> <p>To ensure accountability and regulatory oversight, disputes referred to ADR and their outcomes should also be included in Google’s periodic reporting to the CMA.</p> <p>Proposed clarification (paragraph 9 of the table):</p> <p><i>“Google shall establish or participate in an alternative dispute resolution mechanism available to any publisher whose complaint under paragraph 6 has not been resolved to the publisher’s reasonable satisfaction. The dispute resolution body shall be independent of Google and empowered to issue decisions that are binding on Google. The procedure shall be accessible, transparent and proportionate, and shall not impose undue procedural or financial burdens on publishers.</i></p> <p><i>Google shall include information on disputes referred to the mechanism and their outcomes in its reporting to the CMA pursuant to paragraph 7.”</i></p>
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