# SCiDA

## SHAPING COMPETITION IN THE DIGITAL AGE

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## Response to the CMA Consultation on Proposed Conduct Requirements for Google's General Search and Search Advertising Services

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### The SCiDA Project: Shaping Competition in the Digital Age

SCiDA stands for Shaping Competition in the Digital Age. It is a joint research project of Heinrich Heine University Düsseldorf (Germany) and the University of Exeter (UK). Our team compares and analyses the regulatory initiatives in the EU (Digital Markets Act), the UK (Digital Markets, Competition and Consumers Act) and Germany (section 19a of the Competition Act) in shaping competition in the digital age. Our independent research project is funded by Deutsche Forschungsgemeinschaft (DFG) and the UK Arts and Humanities Research Council (AHRC).

Principal investigators are professors Oles Andriychuk (Exeter) and Rupprecht Podszun (Düsseldorf). More information (including our regular blog entries reflecting on the development of the DMA and a database with documents and information) can be found at www.scidaproject.com.

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## Executive Summary

The SCiDA Project welcomes the opportunity to respond to the Competition and Markets Authority's consultation on four proposed conduct requirements for Google's general search and search advertising services, issued following Google's designation as having Strategic Market Status in October 2025.[1] These proposals represent the first substantive deployment of the Digital Markets, Competition and Consumers Act 2024's conduct requirement powers and mark a significant milestone in UK digital markets regulation.[2]

Our response draws on the SCiDA team's extensive comparative research analysing digital markets regulation across the EU, UK, and Germany, as well as observations from the CMA's stakeholder roundtables on the proposed conduct requirements held in February 2026. We address each of the four conduct requirements in turn and respond to the specific consultation questions posed by the CMA.

In summary, we broadly support the CMA's approach across all four conduct requirements while identifying several areas where clarification or strengthening would enhance effectiveness. On the **Publisher Conduct Requirement**, we consider the CMA's identification of compelled consent as a central problem to be well-founded, but note that the opt-out model's workability was questioned at the stakeholder roundtable, with several participants advocating for structural separation of the search crawler and AI crawler. On the **Fair Ranking Conduct Requirement**, we support the proposed scope, including its extension to AI Overviews and AI Mode, while noting that definitional ambiguities regarding the distinction between fair ranking and self-preferencing require clarification. On the **User Choice Conduct Requirement**, we welcome the innovative test-drive functionality but raise concerns about the delegation of critical implementation decisions to Google, particularly regarding the number of providers to be displayed on the choice screen. On the **Data Portability Conduct Requirement**, we agree that formalising Google's voluntary provision of its DMA-compliant data portability API is both necessary and proportionate, while recommending greater clarity on the scope of specified data and the interaction with data protection obligations.

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[1] Competition and Markets Authority, 'Strategic Market Status Investigation into Google's General Search and Search Advertising Services: Final Decision' (October 2025).
[2] Digital Markets, Competition and Consumers Act 2024, s 20.

# I. Introduction

The Competition and Markets Authority (CMA) published its first proposed conduct requirements under the DMCCA 2024 in January 2026, targeting Google's general search services following its SMS designation in October 2025. The four consultations address distinct but interconnected concerns within Google's search ecosystem: the relationship between search and AI-generated content (Publisher CR), non-discrimination and transparency in organic ranking (Fair Ranking CR), choice architecture and default settings (User Choice CR), and the portability of user search data (Data Portability CR).[3]

The DMCCA establishes that conduct requirements must pursue one or more of the statutory objectives set out in section 19(5) and (6), namely fair dealing, open choices, and trust and transparency.[4] Conduct requirements must also fall within the permitted types listed in section 20 and satisfy a proportionality assessment. The CMA's four proposed CRs represent a carefully calibrated package that addresses different facets of Google's search dominance through distinct but complementary interventions.[5]

Members of the SCiDA team attended the CMA's stakeholder roundtables on the proposed conduct requirements in February 2026, covering the Publisher CR, Fair Ranking CR, and User Choice CR. The observations from these discussions inform our analysis throughout this response. We note that the roundtables revealed common themes of concern regarding implementation feasibility, transparency deficits, and the risk that vague requirements may be interpreted by Google in ways that minimise competitive impact.

Our response is structured as follows. Section II addresses the Publisher Conduct Requirement. Section III addresses the Fair Ranking Conduct Requirement. Section IV addresses the User Choice Conduct Requirement. Section V addresses the Data Portability Conduct Requirement. Within each section, we provide analysis and respond to the specific consultation questions posed by the CMA.

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[3] Anush Ganesh, 'The CMA Shows Its Hand: Four Conduct Requirements for Google' (SCiDA Blog, February 2026).
[4] DMCCA 2024, s 19(5)-(6).
[5] DMCCA 2024, s 24.

## II. The Publisher Conduct Requirement

The Publisher CR addresses a fundamental asymmetry in the relationship between Google and web publishers arising from the introduction of AI-generated responses in search.[6] Specifically, publishers have historically permitted Google's search crawler to discover their content, enabling Google Search to present and link back to their websites.[7] Over the past two years, Google has introduced AI-generated response features such as AI Overviews and AI Mode (also its Gemini AI assistant) that are built using, and continue to rely upon, content published on the web by individual creators and businesses and crawled by Google search crawler.[8] Publishers now face declining referrals and limited visibility over how their content is used by Google's AI services.[9]

The CMA's evidence indicates that existing opt-out mechanisms carry substantial penalties, with Google's own research showing that removing snippets reduced traffic by nearly half.[10]

We consider the CMA's identification of what might be termed 'compelled consent' imposed by Google on publishers as the central problem to be well-founded.[11] Given Google's SMS in general search, publishers have no sufficient option to control over Google's use of their Search Content in its generative AI services and features. The proposed requirement to unbundle search crawling from AI training and grounding represents a targeted intervention that establishes a new choice architecture, creating a multi-tiered data licensing market between publishers and Google.

Against this background, the CMA noted three main challenges arising from this trend and proposed to introduce the CR to ensure that publishers can make properly informed and meaningful choices over how their Search Content is used in relation to Google's generative AI services and features.[12] Accordingly, the CMA suggested that publishers require sufficient controls to withhold the use of their content for Google's AI, adequate transparency to make an informed choice, and trust that Google will provide sufficient attribution.

However, the Publishers Roundtable revealed considerable scepticism about the practical workability of Google's implementation of this CR. Participants questioned how the conduct

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[6] CMA, 'Proposed Conduct Requirement: Publisher Conduct Requirement' (January 2026), para 1.4.
[7] Ibid.
[8] Ibid, para 1.4.
[9] Ibid.
[10] Ibid, para 1.11.
[11] Ibid para 1.5.
[12] Ibid, para 2.1.

requirement would operate in practice. While the CMA indicated that fines could be imposed for non-compliance, this enforcement mechanism did not alleviate broader concerns about the opt-out model's fundamental viability. Several participants argued that structural separation of the search crawler and AI crawler represents the only effective solution, directly challenging the CMA's rejection of this approach as disproportionate. The suggestion of content separation as an alternative regulatory model indicates that stakeholders are seeking mechanisms that go beyond the current opt-out framework. Participants also emphasised that placement and presentation of content remain vital for publishers' businesses, while attribution and transparency concerns highlighted the need for meaningful visibility into how Google uses their content across both traditional search and AI features.

**Responses to Consultation Questions on the Publisher CR**

*Question 6.1: We welcome views on any aspect of the Publisher CR design or analysis set out above.*

We broadly welcome the Publisher CR as an important first step in addressing the power asymmetry between Google and web publishers. The three-pillar structure of the proposed requirement, addressing choice, transparency, and attribution respectively, provides a coherent framework. We note, however, that the effectiveness of the CR will depend critically on implementation details, particularly the design of opt-out mechanisms to provide publishers sufficient choices and controls over Google's use of their content in generative AI services and features on the one hand, and the metrics provided to publishers for them to enhance transparency on how their content would be used and accordingly make their informed decisions. In addition, the roundtable discussions revealed that stakeholders harbour significant doubts about whether the opt-out model can generate meaningful changes without structural separation of crawling infrastructure. We recommend that the CMA establish clear outcome-based metrics against which the effectiveness of the CR can be assessed, and that a formal review mechanism be built into the requirement to allow for iterative refinement.

The main concern we observed under this CR is that the CMA designated AI Overview and AI Mode as part of Google Search, while excluding Gemini AI assistant, yet the proposed obligations appear to apply to broader generative AI services, including Gemini.[13] Based on the proposed CR, the distinction between designated AI features, including AI Overview and AI Mode, and Gemini AI assistant remains insufficiently clear.

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[13] Ibid, page 15.

Moreover, given that AI Overview and AI Mode have been integrated into Google Search SMS, it is unclear whether the use of search data and crawling within Google Search should also be considered as inputs for these AI features, in a manner consistent with their use in Google Search itself. However, the CMA's proposed CR does not appear to address this potential inconsistency, raising questions about the scope and coherence of the regulatory framework under the Act.

*Question 6.2: In relation to ensuring publishers have sufficient choice:*

*(a) Separate controls over training and grounding outside of general search.*[14] We consider that providing separate controls over training and grounding outside of general search would enhance publisher choice in a meaningful way. The distinction between these two uses of content is significant: training involves the incorporation of publisher content into the foundational knowledge of AI models, whereas grounding involves the real-time use of content to generate specific responses. Publishers may reasonably wish to permit grounding within search (which maintains a direct connection to their content) while prohibiting the use of their content for broader AI training purposes. We recommend the CMA require Google to provide granular, unbundled controls that allow publishers to make distinct decisions regarding each type of use.

*(b) Page-level controls outside of general search (Google-Extended).*[15] Page-level controls would allow publishers to block quickly a specific page from appearing in search generative AI features, whilst still appearing in nongenerative AI search results. Different pages on a publisher's website may have different commercial sensitivities and different relationships to AI generated content. Allowing publishers to make page level decisions would enable more nuanced content management and reduce the risk that publishers are forced to choose between blanket opt-in and blanket opt-out.

However, imposing such an obligation outside the scope of general search raises a problem that these services may not yet designate through the SMS. For example, in its designation decision, the CMA excluded Gemini from the scope of Google Search as an SMS. Absent a separate designation covering Gemini, extending page-level controls beyond general search to this AI assistant may exceed the regulatory perimeter established by the CMA.

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[14] CMA, Publisher CR consultation, para 4.13.
[15] Ibid para 4.25.

We recognise, however, that page-level controls impose additional technical complexity, and the CMA should consider whether the benefits justify the implementation costs for both Google and publishers.

*Question 6.3: In relation to greater transparency for publishers:*

*(a) Per-feature performance and engagement information within general search.* [16] We support the provision of per-feature performance and engagement data. The current opacity regarding how publisher content performs across different search features, particularly AI Overviews and AI Mode, significantly hampers publishers' ability to make informed decisions about content licensing and opt-out choices. Without granular data on engagement metrics per feature, publishers cannot meaningfully assess the trade-offs involved in permitting or restricting their content's use in AI-generated responses. We recommend that the CMA require Google to provide disaggregated metrics as a core component of the transparency obligation.

According to section 20(2)(e) DMCCA, the CMA can oblige a designated undertaking to present to users or potential users any options or default settings in relation to the relevant digital activity in a way that allows those users or potential users to make informed and effective decisions in their own best interests about those options or settings. In this regard, we suggest that, if publishers consider information on per-feature performance of their content to be necessary for making informed decisions about participation in either AI Overviews or AI Mode, the provision of such information could form part of the CR imposed on Google.

*(b) Information to understand the quality of clicks from search generative AI features.* [17] We consider click quality data to be essential for publishers to assess the genuine value of traffic referred from AI-generated search features. There is an important distinction between a click that leads to meaningful engagement with publisher content and a click that results from a user seeking to verify an AI-generated summary. We recommend that Google provide engagement metrics for clicks originating from AI features, disaggregated by feature type. Such metrics could include indicators of user engagement depth, which would enable publishers to distinguish between clicks driven by genuine interest in their content and those resulting from users seeking to verify AI-generated summaries. This data would enable

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[16] Ibid para 4.45.
[17] Ibid para 4.50.

publishers to make evidence-based assessments of the commercial value of their content's inclusion in AI-generated responses.

*Question 6.4: In relation to attribution:*

*(a) Mechanism for publishers to communicate reasons for blocking content from AI features.*[18] A mechanism for publishers to communicate their reasons for blocking content could enhance the effectiveness of the CR while maintaining proportionality. Such a mechanism would provide valuable signal data to the CMA about the nature and prevalence of publishers' concerns and could help identify patterns of conduct that warrant further regulatory attention. However, care must be taken to ensure that such a mechanism does not evolve in practice into an informal bargaining process that places additional burden on publishers or creates expectations that reasons must be provided to justify the exercise of a right.

The aim of this communication mechanism is to reduce the negative effects of inaccuracies in search generative AI features. The CMA suggested establishing such a mechanism to enable publishers and Google to exchange information about the reasons for blocking content from AI features, for example through a 'not factually correct' reporting option. Such a mechanism would generate valuable signal data for Google regarding the performance of its AI services, including AI Overviews or AI Mode, thereby creating a feedback loop for improving these AI features. However, the extent to which publishers would benefit depends on how Google responds to and acts upon the reported concerns. Additionally, once the reporting mechanism is established, the relevant data on these reporting reasons should also be provided to the CMA, enabling the authority to identify patterns of conduct that may warrant further regulatory scrutiny.

*(b) We welcome further examples of information and metrics regarding attribution in AI features.* Attribution in AI-generated responses presents unique challenges compared to traditional search result attribution. When Google's AI Overview synthesises information from multiple sources, the question of how credit is allocated becomes particularly complex. We recommend that Google provide information that allows publishers and the CMA to assess the effectiveness of attribution in AI-generated responses. At a minimum, this should include data on the frequency with which each publisher's content is used as a source, the

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[18] Ibid para 4.67.

visibility of attribution links within AI features relative to traditional organic results, and the extent to which source content is paraphrased, summarised, or directly reproduced. The rationale for such disclosure is grounded in the well-established principle that effective competition monitoring requires measurable indicators, as the CMA itself has recognised in its broader approach to outcomes-based regulation. These metrics would enable both publishers and the CMA to assess whether attribution is functioning effectively.

Attribution within AI features is of significant importance for traffic and revenue received by publishers. In this context, information and metrics used to address attribution should also serve to mitigate risks of self-preference, ensure the fair allocation of traffic and revenue, and prevent the further expansion of ecosystem power. Nevertheless, the risk may persist where AI-generated answers effectively substitute for publishers' content. In this scenario, ensuring 'sufficient attribution' becomes particularly challenging, as it concerns not only the accuracy of the reference but also its prominence and visibility. More importantly, designing attribution frameworks may itself confer additional discretion on Google to decide and allocate attribution among publishers. This could function as a *de facto* ranking mechanism, as such, would require regulatory oversight.

*(c) Extent to which the Publisher CR can be expected to result in consumer benefits.* We consider that the Publisher CR can deliver meaningful consumer benefits, though these are likely to materialise indirectly. By ensuring publishers retain meaningful control over their content, the CR helps preserve the economic sustainability of quality content creation. If publishers cannot monetise their content effectively because AI features extract value without adequate compensation, the incentives to produce high quality journalism and analysis may erode over time. Effective attribution also serves consumer interests directly by enabling users to assess the provenance and reliability of information presented in AI generated responses. Accordingly, the CR can safeguard downstream competition and consumer choice by ensuring that users continue to have effective access to original sources and their corresponding attribution. However, these consumer benefits depend on the CR being implemented in a manner that genuinely shifts the balance of power between Google and publishers, rather than creating compliance formalities that leave the underlying dynamics unchanged.

## III. The Fair Ranking Conduct Requirement

The Fair Ranking CR addresses concerns about non-discrimination, transparency, and complaints processes in relation to Google's organic ranking decisions.[19] The requirement applies to organic search results including web results, images and videos, content within search generative AI features such as AI Overviews and AI Mode, and the ranking of organic results relative to search features on the search engine results page.[20]

The Fair Ranking Roundtable centred on definitional ambiguities and questions of scope. Participants discussed the distinction between fair ranking and self-preferencing, suggesting that the CR's boundaries may be insufficiently clear for stakeholders to understand what conduct is actually prohibited. The confirmation that AI Mode and AI Overviews fall within the CR's scope significantly expands its reach beyond traditional search results, raising questions about how fair ranking principles apply to AI generated content that synthesises information from multiple sources. Lack of transparency emerged as a central concern, with participants questioning whether Google's ranking methodologies and potential self-preferencing practices can be adequately monitored and verified.

### Responses to Consultation Questions on the Fair Ranking CR

*General*

*Question 6.2: Do you agree with the proposed scope of the Fair Ranking CR?*

We broadly agree with the proposed scope. The inclusion of AI Overviews and AI Mode within the scope is particularly welcome and reflects the evolving nature of search. As search increasingly incorporates AI-generated content, fair ranking principles must extend to the mechanisms by which sources are selected, weighted, and presented within AI features. The exclusion of paid-for content from the scope is reasonable, given that advertising is subject to separate regulatory frameworks. However, we note that the boundary between organic and paid content may become increasingly blurred as AI features evolve, and the CMA should remain vigilant to ensure that the exclusion of paid content does not create a loophole through which self-preferencing can occur.

*Question 6.3: Do you have any views or evidence on the benefits or costs of the Fair Ranking CR?*

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[19] CMA, 'Proposed Conduct Requirement: Fair Ranking Conduct Requirement' (January 2026).
[20] Ibid para, 4.5.

The benefits of non-discriminatory ranking extend beyond the directly quantifiable impacts on affected businesses to include systemic benefits for the competitive process, innovation incentives, and consumer welfare.[21] We note, however, that the costs may increase if the transparency obligations generate significant ongoing compliance requirements, and the CMA should monitor implementation costs to ensure they remain proportionate.

*Non-discriminatory and Objective*
*Question 6.4: Do you have any views on the non-discrimination part of the Fair Ranking CR?*

*(a) Are the requirements sufficiently comprehensive?* The non-discrimination requirements address concerns identified in the consultation. The prohibition on considering factors such as whether a publisher has advertised with Google, entered into commercial arrangements, opted out of AI features, or exercised contractual or statutory rights captures the main avenues through which discriminatory ranking could occur. However, we would welcome greater clarity on how the requirement applies to self-preferencing, given that the roundtable discussion revealed uncertainty about where the boundary lies between fair ranking obligations and broader self-preferencing concerns. The application of non-discrimination principles to AI-generated content also requires careful elaboration, as the selection and weighting of sources in AI Overviews involves qualitatively different processes from traditional algorithmic ranking.

*(b) Are there other factors which should be included in paragraph 4?* We suggest that the CMA consider including additional factors relating to the publisher's relationship with Google's competitors. Specifically, Google should not be permitted to consider whether a publisher has entered into commercial arrangements with competing search providers or AI services, or has provided content exclusively to competitors, as a factor in ranking decisions. Additionally, the factor list should address the potential for indirect discrimination through proxy variables that correlate with the protected factors but are not explicitly listed.

*Transparency*
*Question 6.5: Do you have views on the transparency part of the Fair Ranking CR?*

*(a) What should the concept of a 'material change' cover?* We consider that the concept of a material change should encompass both deliberate ranking policy changes and significant

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[21] Ibid para 2.9.

changes to ranking systems, including core algorithm updates. The proposed 30 business days' notice period is reasonable for changes that are actionable or made to meet specific policy objectives. However, the distinction between material changes requiring notice and routine improvements is inherently difficult to police, and we recommend that the CMA establish a presumption that any update that alters search rankings for more than a specified proportion of queries or that materially affects any identified category of publishers should be treated as material. We also recommend that the CMA clarify whether changes to the ranking of sources within AI Overviews and AI Mode constitute material changes requiring advance notice, given the confirmation that these features fall within the CR's scope.[22]

*(b) What are the advantages or risks of including your suggested changes?* The principal advantage of a broad definition of material change is enhanced predictability for publishers and other market participants. The ability to anticipate and prepare for ranking changes is essential for businesses whose revenue depends on search visibility. The primary risk is that an overly broad definition could impede Google's ability to make rapid improvements to search quality, particularly in response to spam or manipulation. We consider that this risk can be managed through an exception for urgent security-related or anti-manipulation updates, provided that Google notifies the CMA and affected parties retrospectively and provides a detailed explanation of the change.

*Non-distortion and Complaints*
*Question 6.6: Do you have views on the non-distortion and complaints part of the Fair Ranking CR?*

*(a) What are your views on our proposed complaints-led process for addressing concerns about distortions?* A complaints-led process is a reasonable starting point, given the practical difficulties of proactive monitoring of ranking distortions across the entirety of Google's search results. However, the effectiveness of such a process depends on the accessibility of the complaints mechanism, the speed of resolution, and the remedies available. We recommend that the CMA establish clear timelines for the handling of complaints and ensure that the process does not place disproportionate evidentiary burdens on complainants, who may lack the data and analytical capacity to demonstrate ranking distortions with the precision that Google could rebut. The CMA should also consider whether systemic

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[22] Ibid para, 4.13.

complaints (affecting multiple publishers or categories) should trigger a distinct investigative process.

*(b) What factors should inform whether the materiality threshold has been reached?* The materiality threshold should be calibrated to capture distortions that have a meaningful impact on competition while avoiding the administrative burden of addressing trivial fluctuations. Relevant factors should include the magnitude of the ranking change, the number of publishers or market participants affected, the duration of the distortion, the economic significance of the affected queries, and whether the distortion systematically favours Google's own services or commercial partners. We recommend that the CMA also consider whether the distortion is more likely to be explained by changes in content quality or relevance (which would not constitute a distortion) or by factors unrelated to the merits of the content.

*Question 6.7: Do you have views on our proposals for introducing a general complaints process covering manual exclusions from Google's search index?*

We support the introduction of a general complaints process for manual exclusions. Manual exclusion from Google's search index has profound consequences for affected businesses, effectively removing their online visibility. A transparent complaints process with clear criteria for exclusion, reasoned decisions communicated to the affected party, and an accessible appeals mechanism is essential. We note that the roundtable discussion highlighted concerns about the adequacy of existing complaints procedures, and the proposed process should be designed to address these deficiencies. The CMA should also consider whether the complaints process should extend to de facto exclusions achieved through algorithmic downranking to the point of effective invisibility, which may have equivalent effects to manual exclusion.[23]

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[23] Ibid para, 4.25.

## IV. The User Choice Conduct Requirement

The User Choice CR proposes improvements to choice architecture through enhanced choice screens, a test-drive functionality, centralised default settings, and balanced prompts. [24] Evidence demonstrates that despite the introduction of choice screens in 2020, in every month since April 2020 a large majority of UK users have continued selecting Google Search when presented with the Android Choice Screen.[25] The CR aims to make choice architecture more effective through a range of design interventions. It should be noted here however that the effectiveness of choice screens is heavily debated. Studies into choice screens introduced in the past have demonstrated that the effect on user behaviour is limited if the choice screens are not properly designed.[26] Choice screens can even have a negative effect on the user perception of alternatives if the selection or auctioning mechanism is improperly designed, for instance by promoting revenue-per-user maximizing business models with additional advertising.[27] It is therefore of vital importance that the introduction of conduct requirements that introduce choice screens give credence to past calls for neutrality and proposals by competitors of Google, civil society organisations such as BEUC, and initiatives such as Fair Search.[28]

The Choice Architecture Roundtable revealed widespread scepticism about Google's proposed approach to default search selection and choice screens. Participants, including representatives from DuckDuckGo, Vivaldi, and other European search providers, raised fundamental questions about the extent of Google's discretion in implementing the CR. Central to the debate was scepticism about the choice screen's potential effectiveness given ambiguities in the CR's specifications. The number of providers to be displayed emerged as a critical unresolved issue, with participants noting that too few options limit genuine choice while too many create decision paralysis favouring the incumbent. The term 'reasonable number' in the proposed CR provides no definition, criteria, or guidance, effectively delegating the determination of a market-shaping variable to the dominant firm being

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[24] CMA, 'Proposed Conduct Requirement: User Choice Conduct Requirement' (January 2026), para 1.7.

[25] Ibid para, 1.6.

[26] Decarolis, Francesco, Muxin Li, and Filippo Paternollo. 2025. "Competition and Defaults in Online Search." American Economic Journal: Microeconomics 17 (3): 369–414.

[27] Ostrovsky M., Choice Screen Auctions, NBER Working Paper w. 28091 (2020)

[28] Cf. FairSearch, 194884-4-1301-v2.0 - 1 - 30-40622149
Submission on behalf of FairSearch to the ACCC's Issues Paper - Views on the roll-out of Google's search and browser choice screens following the European Commission's Google Android decision (2021); DuckDuckGo, 10 Principles for Fair Choice Screens and Effective Switching Mechanisms (2022); BEUC, Examining the Design of Choice Screens in the Context of the Digital Markets Act (2023).

regulated. DuckDuckGo's evidence of 40 to 89 per cent variation in alternative provider selection rates based on choice screen design demonstrates that these implementation details are not peripheral technicalities but determinants of competitive outcomes.[29]

Additional concerns were raised about Google's existing prompts that encourage users to switch back to Google Search after installing a third-party search extension. DuckDuckGo reported that this prompt costs them approximately 50 per cent of extension users, suggesting that the prompt is designed to maximise deterrence rather than to inform. The CMA's finding that the current prompt does not frame the choice in a fair and balanced way is well-supported, and the proposed requirement for balanced prompts is a necessary intervention.

## Responses to Consultation Questions on the User Choice CR

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

*(i) Coverage of the Search Choice Screen.* We agree that extending the Search Choice Screen to multiple entry points seems likely to improve both formal and effective choice, given that users can access search through different interfaces.

*(ii) Eligibility criteria to appear on the Search Choice Screen.* The proposed eligibility criteria based on technical capability and functionality appear adequate to ensure that only genuine and functionally comparable general search providers appear on the Search Choice Screen. However, certain elements are rather vague and would benefit from further clarification. In particular, it would be desirable to elaborate upon how 'stakeholder expectations' should be interpreted or what a 'significant proportion of UK users' should mean in practice. The requirement that eligible search engines must be 'considered by a significant proportion of UK users to provide a general search service' risks closing the door for smaller and emerging search providers. It is conceivable that both Google and the established second-tier search engines share an interest in maintaining this threshold at a level that excludes potential new entrants. We recommend that the CMA either clarify the definition of 'significant proportion' to ensure it does not inadvertently create a barrier to entry, or adopt a lower threshold that better accommodates innovative and nascent search providers. A softer formulation, such as requiring that a provider offers a 'credible' or

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[29] DuckDuckGo, response to CMA consultation, cited in CMA User Choice CR consultation.

'functional' general search service, would better serve the objective of fostering genuine competition on the merits rather than reinforcing existing market positions.

*(iii) Determination of the list of eligible providers and the CMA's role.* Having Google determine the list of eligible providers may ensure operational efficiency, but the CMA's role should be defined more clearly to uphold legal predictability and avoid administrative arbitrariness. We note the roundtable discussion highlighted a 'gatekeeper-within-a-gatekeeper' problem, where Google controls eligibility determination, the number of providers displayed, which eligible providers actually appear versus those requiring additional search, and the design of the discovery mechanism for non-displayed providers. Each of these decisions shapes competitive outcomes, and Google has obvious incentives to interpret the requirements in ways that minimise switching. We strongly recommend that the CMA either specify the number of providers to be displayed (for example, between five and seven) or, at minimum, establish a transparent, evidence-based process with stakeholder input for determining this number.

*(iv) Frequency of display and timing of the Search Choice Screen.* We agree that more frequent display of the choice screen may be necessary to achieve the regulatory objective. Re-displaying the choice screen at a fixed annual interval appears appropriate: it avoids excessive repetition that could frustrate users while providing a predictable and regular opportunity to reconsider default settings in line with typical annual review cycles. It should however be ensured that the reoccurring choice screen does not contain nudges to redirect users back to Google Search after they have adopted a new default search engine.

*(v) Design of choice architecture on the Search Choice Screen.* The proposed incorporation of balanced, targeted, and understandable design principles into the choice architecture is well-founded. Nevertheless, it is advisable that the content of the information screen be subject to prior empirical testing through consumer surveys or similar methods to ensure that it genuinely improves user understanding and does not inadvertently steer users toward any particular provider. The CMA must faithfully consult both competitors and civil society stakeholders in determining whether the choice screen is effective or whether amendments are necessary.

***(vi) Option to test-drive search providers.*** We welcome the test-drive functionality as an innovative intervention that recognises search services as experience goods.[30] Allowing users to trial an alternative provider for a limited period is a reasonable proposal that can meaningfully reduce status quo bias and informational asymmetries. However, pilot testing and an impact assessment should be carried out before full implementation. The proposed 14-day period should be empirically validated, as the optimal duration may vary depending on user sophistication and usage patterns. We also note that the post-test-drive journey requires careful design: the prompt presented to users at the end of the trial period should not offer any opportunities to redirect users back to Google's proprietary search services.

The prompt that appears after two weeks has to account for default stickiness and brand loyalty of consumers. A study by Vásquez Duque (2022) found that users that are assigned to another search engine as a default option tend to stick with that search engine for a while, but that a combination of user misperception on the quality of alternatives lead to the stickiness of default settings. The study found that – despite using the same search engine – only Bing benefited from a substantial increase in its perceived quality after users adopted it temporarily, while Yahoo did not.[31] The question then is whether a test-driving mechanism actually helps users to make a better decision, or if it reinforces the stickiness of the Google brand. After all, being presented with a second-choice screen may make users reconsider their choice to switch based on the belief that Google offers a better search experience, even if the quality differences are not significant. The CMA should carefully weigh the benefits of a test-driving mechanism for users against its potential effects on competition: if users are given a second-choice opportunity and are not satisfied with their selected default, the chances are great that they return to the dominant search provider.

In terms of design, we would argue that if a test-driving mechanism is implemented, it should ask in first instance only if the user is 'satisfied with its current search provider – yes or no'. A second-choice screen should only be offered if the user communicates that they are unsatisfied with the current search provider. This way, the test-driving mechanism becomes opt-out: users will stick with the selected alternative unless they are actually dissatisfied, it does not become a matter of being presented with repeated choice screens that may subconsciously favour the incumbent.

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[30] CMA, 'Proposed Conduct Requirement: User Choice Conduct Requirement' (January 2026), para, 4.50.
[31] Omar Vásquez Duque, 'The Potential Anticompetitive Stickiness of Default Applications: Addressing Consumer Inertia with Randomization' (April 6, 2022). Available at SSRN: https://ssrn.com/abstract=4077132 or http://dx.doi.org/10.2139/ssrn.4077132

*(vii) Device-level consumer journey to change default search provider on Android devices.*
The proposal to introduce a centralised default search setting at the Android operating system level is well-justified, as it addresses the cumulative switching frictions that collectively prevent users from making informed choices. However, to ensure legal certainty while safeguarding user autonomy and system integrity, we recommend articulating minimum functional standards for the device-level switch, including technical neutrality, reversibility, and interoperability with existing user configurations.

*(viii) Third-party access to a user's default search setting.* We agree on the importance of the Default Search Settings API. Requiring Google to implement such an API would mitigate the information asymmetry that currently limits the ability of third-party search providers to engage with users in an accurate and meaningful way. However, this should be implemented in a manner that safeguards user privacy and avoids technical conflicts with existing device or application settings. Standards for API access should be specified in more detail, including limiting visibility to the minimum necessary information, ensuring secure communication, and maintaining user consent.

*(ix) Prompts displayed by Google that may inhibit effective user choice.* The proposal to require balanced prompts is strong and constructive. Nevertheless, we consider that the current CR's vague 'fair and balanced' requirement may allow Google to continue justifying friction through security narratives, design prompts that technically comply while maintaining deterrent effects, and avoid meaningful accountability for switching barriers. We recommend that the CMA consider requiring: a transparent verification system distinguishing legitimate competitors from genuine security threats; specification of prompt design principles including neutral language, visual equality, no pre-selection, and proportionality to actual risk; mandatory A/B testing demonstrating that prompts do not deter more than a specified proportion of intentional switchers; and publication of monthly data on prompt displays and user responses broken down by provider.

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

(a) We agree that six-monthly compliance reports broken down into monthly periods are appropriate. This enables the CMA to monitor both overall trends and short-term fluctuations in compliance. The monthly timeframe seems reasonable for ensuring the timely detection of potential issues. This requirement appears proportionate, striking a good balance between oversight and reporting burden.

(b) We agree that Google should provide a copy of any correspondence rejecting a potential search provider's application. This enhances transparency and enables the CMA to verify that eligibility assessments are conducted fairly and consistently. Care should be taken to protect commercially sensitive information in such correspondence.

(c) There should be information communicated towards competitors on the effectiveness of the choice screen as well. Search providers should be allowed to know if they have been selected as a default and whether they have been selected through the choice screen or via another method of default selection.[32]

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

We agree with the CMA's provisional proportionality assessment, insofar as it is anchored in the statutory framework under the DMCCA.[33] The proportionality analysis finds that benefits would exceed costs if increased competitive pressure led to user experience improvements equivalent to 15 to 25 pence per year across Google's more than 60 million UK users, or if at least roughly 30,000 to 50,000 additional switches occurred per year. These thresholds appear modest relative to the potential benefits of enhanced competition in a market where Google's dominance has generated estimated excess profits in the range of three to four billion pounds. Google's own estimated costs of approximately five million pounds over five years for extending choice screens appear correspondingly modest. We support the CMA's iterative approach of revisiting the proportionality assessment in light of consultation responses and evolving evidence. However, the proportionality assessment could be strengthened by a clearer explanation of how costs to original equipment manufacturers and other third parties have been weighed against the potential competitive benefits.

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[32] Open Web Advocacy, Apple adopts 6 of OWA's Choice Architecture Recommendations (2024), online: https://open-web-advocacy.org/blog/apple-adopts-6-owa-choice-architecture-recommendations/
[33] CMA, 'Proposed Conduct Requirement: User Choice Conduct Requirement' (January 2026), para 5.38-5.45.

## V. The Data Portability Conduct Requirement

The Data Portability CR proposes formalising Google's voluntary provision of its DMA-compliant data portability API for UK users.[34] Within the European Economic Area, Google complies with DMA Article 6(9) through a combination of Google Takeout and a data portability API introduced in March 2024.[35] These requirements do not extend to UK users, but Google provides the API in the UK voluntarily. In the first year of the API's availability in the EEA, Google received fewer than 20 requests from businesses to use the API.[36] Stakeholders have noted that Google's API outperforms those of other DMA gatekeepers, but raised concerns about operational uncertainty and technical implementation.[37]

The primary concern identified is that Google's voluntarily provided API could be withdrawn at any time, creating what one stakeholder described as a 'real existential risk' for businesses relying on it. Formalisation through a conduct requirement would increase business viability in investors' eyes and reduce the cost of capital for firms building services on the basis of data portability.[38]

### Responses to Consultation Questions on the Data Portability CR

***(a) Do you agree with the aim of the Data Portability CR and how we propose to implement it?***

We agree that imposing a legal obligation on Google to provide data portability to its UK users represents the most appropriate approach. This is desirable not only from the perspective of effectiveness, but also in terms of legal certainty, as it reduces reliance on voluntary and potentially unstable arrangements. In order to avoid unnecessary fragmentation and additional compliance burdens, it is welcome that the obligation is designed to maximise consistency with the existing regime under the EU Digital Markets Act.

***(b) Do you consider the proposed Data Portability CR would result in the potential benefits we have identified?***

The identified benefits of increased data monetisation, user time savings, lower costs and improved services, and increased innovation and investment are plausible. However, their

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[34]CMA, 'Proposed Conduct Requirement: Data Portability Conduct Requirement' (January 2026), para 1.2.
[35]Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act), art 6(9).
[36] CMA, Data Portability CR consultation para 1.3.
[37] Ibid para 1.5.
[38] Ibid para 1.7.

materialisation will depend primarily on the scope, design, and governance of the portability mechanism rather than on the existence of a legal mandate alone. With respect to innovation, we agree that both theoretical models and evidence from comparable policy interventions support the proposition that legally mandated data portability can stimulate investment and innovation, but the actual impact will depend on the technical usability of the data, the presence of complementary governance measures, and realistic assumptions about user behaviour.

*(c) Do you agree with the proposal to use Interpretative Notes to clarify the conduct we expect from Google?*

We agree that Interpretative Notes can play an important and valuable role in reducing vagueness and potential ambiguity, thereby improving both compliance predictability and compliance itself. Such notes mirror the practice of regulatory authorities in other domains, where non-binding yet authoritative guidance assists regulated entities in implementing binding rules. However, it should be noted that, under the principle of legitimate expectations, the Interpretative Notes will in practice bind the CMA itself. Google should be entitled to rely on the premise that conduct aligned with the Interpretative Notes will be regarded as compliant and will not give rise to sanctions should the CMA subsequently adopt a different interpretation. The Interpretative Notes should therefore be drafted with particular care, and subsequent regulatory action should be consistent with them.

*(d) Do you agree with the content of the Interpretative Notes? Are they sufficiently clear and comprehensive?*

The proposed Interpretative Notes clarify several important operational requirements, which is desirable for translating the CR into practical steps. However, several issues deserve more elaborated explanation. Regarding specified data, a question arises whether the definition includes inferential or derived data, which are also considered important competitive assets. We recommend that the Interpretative Notes explicitly address whether and how derived data are included. Regarding privacy, it should be noted that the DMA extends data portability beyond the scope of the GDPR, raising the question of whether the CMA likewise intends to rely on a concept of data portability that goes beyond data subject rights under data protection law. Greater clarity would be desirable regarding situations in which data portability involves personal data processed on legal bases other than consent or contract. Regarding 'reasonable business needs', the meaning of this term remains unclear, particularly in a context where

third parties may have widely differing technical capabilities. We recommend that the Interpretative Notes specify the types of needs covered or articulate criteria by which reasonableness can be assessed.

*(e) Do you agree with the proposals for compliance reporting and monitoring?*

We agree that effective compliance reporting and monitoring are essential for achieving the regulatory objectives. The compliance metrics to be provided by Google appear adequate for monitoring adherence to technical requirements. In addition, we suggest that the CMA regularly assess outcome-oriented indicators, such as the number and diversity of integrations enabled by portability, as well as broader measures of innovation. It would also be advisable for the CMA to collect feedback from end users and third parties regarding the practical utility and usability of ported data. Monitoring should further take into account patterns of end-user behaviour and competition-related indicators, including evidence of actual market entry by new service providers.

## VI. Conclusion

The CMA's four proposed conduct requirements represent a carefully calibrated first deployment of the DMCCA's regulatory powers. The package addresses distinct but interconnected dimensions of Google's search dominance and reflects the UK's distinctive evidence-based approach to digital markets regulation. We broadly support the proposed interventions while emphasising cross-cutting themes that emerged from our analysis and from the stakeholder roundtables.