

Opt-Out Remedies Will Not Fix AI Overviews

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Key Points

- Google's new AI Overview feature has raised competition concerns relating to publishers' inability to opt-out.
- We argue that the harm to competition caused by AI Overview instead lies in its ability to divert traffic.
- We show how an opt-out remedy would be ineffective at ending the infringement, providing meaningful choice to publishers and may have several unintended consequences.
- Competition authorities should therefore re-evaluate their approach to remedies, with a stronger focus on protecting merit-based competition for user traffic.

Introduction

In 2024, Google launched the “AI Overview” on Google Search. This feature places a summary response to most user search queries atop the search engine results page (SERP) powered by Google’s Gemini AI model. This summary is prepared through the aggregation and synthesis of the sources below the AI Overview on the SERP. This aggregation process is referred to as ‘grounding’.

Since its introduction, the AI Overview has steadily reduced direct traffic to publishers’ websites.¹ Publishers include news organisations, around whom much of the debate on AI Overviews has focused, as well as a wide variety of other websites including blogs, forums, review platforms, and different service aggregators. Empirical evidence suggests that websites which provide public goods, such as those that provide free and reliable educational content, have suffered the most significant drops in traffic.² This decline in website click-through rates (CTR) is attributable to the introduction of AI Overview, and threatens publishers’ capacity to generate revenue through their websites, which is core to their business models.

The AI Overview has therefore led to a decoupling between traffic on Google Search and traffic on publishers’ websites. In other words, it has created a market structure in which Google Search retains traffic at the expense of independent publishers. The risks of these dynamics are stark: the structural and accelerating decline in revenue for publishers has already resulted in the mass layoffs of journalists, and a corresponding deterioration of the

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¹ Athena Chapekis, Anna Lieb, Sono Shah and Aaron Smith, ‘What Web Browsing Data Tells Us About How AI Appears Online’ (Pew Research Center, 23 May 2025) <https://www.pewresearch.org/data-labs/2025/05/23/what-web-browsing-data-tells-us-about-how-ai-appears-online/> accessed 20 February 2026.

² Nicolas Padilla and others, ‘The Impact of LLM Adoption on Online User Behavior’ (24 December 2025) SSRN Working Paper <https://ssrn.com/abstract=5393256> accessed 20 February 2026.

quality of information online.³ This pattern both harms competition for visibility online, and also creates harms to democracy. Indeed, the project of self-government in healthy liberal democracies requires plural, high-quality journalism that is accessible to all, a project competition law has historically protected.⁴

In this context, the Competition and Markets Authority (CMA) has proposed, pursuant to its powers under the Digital Markets, Competition and Consumers Act 2024 (DMCCA), a remedy to enable publishers to “be able to opt out of their content being used to power AI features such as AI Overviews or to train AI models outside of Google search”.⁵ The package of measures also includes interventions to improve the attribution of source material within AI Overviews, the transparency and fairness of search rankings and the grounding process, and the portability of Google Search data.

This opt-out remedy has seemingly attracted broad support in both the academy⁶ and amongst publishers: the European Publishers Council (EPC)⁷ and the News/Media Alliance,⁸ representing the interests of publishers in the European Union and the United States respectively, have called for this remedy to be adopted in the course of abuse of dominance litigation against Google relating to its AI Overview.

Likewise, the European Commission has recently opened an investigation into Google under Article 102 of the Treaty on the Functioning of the European Union (TFEU) for using the content of publishers on its SERPs “without appropriate compensation to publishers and without offering them the possibility to refuse such use of their content”.⁹ It is concerned that publishers cannot “refuse” Google using their content in its AI Overviews (i.e. opt out) “without losing access to Google Search” on which they depend “for user traffic”.¹⁰ The EPC

³ Mark Sweney, ‘Mirror publisher puts 600 jobs at risk amid AI and reader changes’ *The Guardian* (8 September 2025) <https://www.theguardian.com/business/2025/sep/08/mirror-publisher-jobs-ai-reach-express-star> accessed 20 February 2026.

⁴ Ariel Ezrachi and Viktoria H. S. E. Robertson, ‘Can Competition Law Save Democracy? Reflections on Democracy’s Tech-Driven Decline and How to Stop It’ (2025) 13 *Journal of Antitrust Enforcement* 315 <https://academic.oup.com/antitrust/article/13/2/315/7739150> accessed 20 February 2026.

⁵ Competition and Markets Authority, ‘CMA proposes package of measures to improve Google search services in UK’ (GOV.UK, 28 January 2026) <https://www.gov.uk/government/news/cma-proposes-package-of-measures-to-improve-google-search-services-in-uk> accessed 20 February 2026.

⁶ Maurice E Stucke, *AI, Antitrust, and the Marketplace of Ideas* (forthcoming 2026) *Fordham Law Review* <https://ssrn.com/abstract=5630852> accessed 20 February 2026; Andriychuk O and others, ‘Response to the CMA Consultation on Proposed Conduct Requirements for Google’s General Search and Search Advertising Services’ (Social Science Research Network, 25 February 2026) <<https://papers.ssrn.com/abstract=6304680>> accessed 26 February 2026.

⁷ News/Media Alliance, ‘News/Media Alliance Files Amicus Brief in *United States v. Google*’ (News/Media Alliance, 12 May 2025) <https://www.newsmediaalliance.org/google-antitrust-remedy-brief/> accessed 20 February 2026.

⁸ European Publishers Council, ‘European Publishers Council files formal antitrust complaint against Google over AI Overviews and AI Mode’ (European Publishers Council, 10 February 2026) <https://www.epceurope.eu/post/european-publishers-council-files-formal-antitrust-complaint-against-google-over-ai-overviews-and-ai> accessed 20 February 2026.

⁹ European Commission, ‘Commission opens investigation into possible anticompetitive conduct by Google in the use of online content for AI purposes’ (European Commission, 9 December 2025) https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2964 accessed 24 February 2026.

¹⁰ *ibid*

“strongly welcomed” the Commission’s investigation, as have prominent nonprofits such as Article 19 and Foxglove.¹¹

We make two arguments about the proposed opt-out remedy. First, that it has no coherent justification. Second, that it would create undesirable, unintended consequences. The purpose of these arguments is to highlight that the current proposals for an opt-out remedy are insufficient. Competition authorities must, at the very least, supplement any such remedy with additional measures to ensure the remedy is effective, proportionate, and does not have adverse consequences on the market or on democracy.

I. Harms Addressed by the Opt-Out Remedy

Google has a lot to lose from the rise of AI assistants. Its flagship product, Google Search, responds to user queries with a list of ten links. AI assistants like Open AI’s ChatGPT represent a new paradigm. They serve “up information in clear, simple sentences[,] explain concepts in ways people can easily understand[, and] even generate ideas from scratch, including business strategies, Christmas gift suggestions, blog topics and vacation plans.”¹² To counter the threat posed by consumers moving away from Google Search towards AI assistants, Google has invested heavily in its own AI offerings.¹³

Google’s response has included the development of its own AI chatbot (Gemini), and more importantly for our purposes, the integration of AI into its search engine through AI Overviews. To discourage users from turning to rival AI assistants with their search queries, Google began to provide AI-generated natural language responses to users for some queries, essentially transforming its search engine into a one-shot chatbot.¹⁴

Google’s innovation can be reasonably considered as a product improvement. Yet as was clearly established in *Google Shopping*, product improvements do not necessarily constitute merit-based competition under Article 102 TFEU.¹⁵ Hence, even if Google’s aim is to adjust its business model to adapt to dynamic competition from AI chatbots, if the new business model leads it “to take part in an abuse of a dominant position, there is nothing to preclude that [business] model being caught by the prohibition under Article 102 TFEU”.¹⁶

To analyse the anti-competitive effects of Google’s conduct, we separate it into two parts: the demand side, where Google leverages its monopoly power to shape the flow of traffic around

¹¹ European Publishers Council (n 8); Article 19, ‘EU: Antitrust probe into Google’s use of content for AI is an important step’ (Article 19, 10 December 2025) <https://www.article19.org/resources/eu-antitrust-probe-into-googles-use-of-content-for-ai-is-an-important-step/> accessed 24 February 2026; Foxglove, ‘The European Commission has opened an investigation into Google AI Overviews!’ (Foxglove, 11 December 2025) <https://www.foxglove.org.uk/2025/12/11/european-commission-investigation-google-ai-overviews/> accessed 24 February 2026.

¹² New York Times, ‘A New Chat Bot Is a ‘Code Red’ for Google’s Search Business’ (New York Times, 21 December 2022) <https://www.nytimes.com/2022/12/21/technology/ai-chatgpt-google-search.html> accessed 24 February 2026

¹³ New York Times (n 12)

¹⁴ Todd Davies ‘Innovation or Infringement? Generative AI and the Potential for Exclusionary Abuse under Article 102 TFEU’ (UCL Faculty of Laws Research Paper No 10/2025, 1 August 2025), 6-7 <https://ssrn.com/abstract=5375544>.

¹⁵ *Google and Alphabet v Commission (Google Shopping)* (Case T-612/17) [2021] ECLI:EU:T:2021:763, para 188.

¹⁶ *Ibid*, para 314.

the internet, and the supply side, where Google leverages its monopsony power to coerce publishers.

On the supply side, Google uses its monopsony power to dictate unfavourable terms for how publishers' content is used in the provision of AI Overview, a concern raised in several jurisdictions. The Commission, in the press release announcing its investigation into Google's conduct, framed its efforts as an examination of whether Google was "imposing unfair terms and conditions on publishers and content creators". It was particularly concerned that publishers were being denied "appropriate compensation" and the possibility to "refuse [the] use of their content" in AI overviews without also being de-listed from its search engine.¹⁷ At the time of writing, the Commission is yet to commit to a specific remedial approach.

The CMA's aforementioned package of commitments also focuses on the supply side, although unlike the Commission, it barely mentions bargaining power.¹⁸ Its proposal takes a decidedly technocratic approach, seeking to foster "choice over how [publishers'] content [is] used by Google in its AI-generated responses", transparency to aid in publishers' ability to make informed choices, and "attribution of content in AI-generated responses".¹⁹ This approach, which has generally been received with approval amongst competition law scholars,²⁰ allows publishers to opt their content out of the grounding of AI-generated responses in Google Search, requires that Google publish information about how publishers' content is used, create metrics for publishers, and "take reasonable steps" to ensure that publishers' content is properly attributed in its AI-generated segments of SERP pages.

Lastly, Judge Mehta considered imposing an opt-out remedy in *United States v Google*, pertaining to Google's attempted monopolisation of the online search market.²¹ The plaintiffs put forward the same concerns about Google's superior bargaining power, and the all-or-nothing choice faced by publishers with regards to opting out of both conventional search results and AI Overview.²² Ultimately, however, Judge Mehta declined to impose any remedies, because in his view, the plaintiffs neglected to provide a "sufficient factual basis" on which they could be justified and since they did not correspond closely enough to the case at hand.²³

The demand side has received comparatively little attention. One obvious concern, given the impetus for AI Overview in the first place, is that Google may attempt to defensively leverage its dominance in the online search market to distort merit-based competition for AI assistants.

¹⁷ European Commission (n 9)

¹⁸ Although one could argue that its acknowledgement of bargaining power is implicit in Google's designation as having Strategic Market Status under the Digital Markets, Competition and Consumers Act. Competition and Markets Authority, 'Strategic Market Status Investigation into Google's General Search Services: Final Decision' (10 October 2025)

https://assets.publishing.service.gov.uk/media/68e8b643cf65bd04bad76724/Final_decision_-_strategic_market_status_investigation_into_google_s_general_search_services.pdf accessed 25 February 2026

¹⁹ Competition and Markets Authority, 'Consultation: Publisher Conduct Requirement — Google's General Search Services' (CMA, 28 January 2026) 5

https://assets.publishing.service.gov.uk/media/6979d0bf75d44370965520a0/Publisher_conduct_requirement.pdf accessed 25 February 2026

²⁰ Andriychuk O and others (n 6)

²¹ *United States v Google LLC*, No 1:20-cv-03010-APM, Doc 1436 (DDC, 2 September 2025) 203-6

²² *Ibid* 203-5

²³ *Ibid* 205-6

Yet while Google has integrated AI Overviews into its search engine, it has so far kept its own AI assistant, Gemini, separate from its search engine. In this regard, Google has not used its power in online search to bolster the competitive prospects of Gemini but rather improved its search engine to have assistant-like characteristics.

We believe that harm to competition in the market for AI assistants is a red herring. Google is competing directly with rival AI assistants with its distinct Gemini offering, rather than through AI Overviews. Instead, the more serious anti-competitive harm lies in how Google's conduct affects intra-ecosystem competition for user traffic, i.e. by using AI Overview to hoard traffic within the Google Search platform, thus denying this traffic to publishers. To illustrate this point, imagine a user searching for updates on a recent news item; if the information the user is looking for is summarised in the AI Overview, that user will be unlikely to click-through onto the websites returned in the results. In this manner, Google starves specialised websites like news organisations of user traffic by hoarding it on its own platform.²⁴

With a market share of around 90% in online search, Google dominates as a source of traffic.²⁵ The Commission's *Google Shopping* decision established that such traffic is a critical input for comparison shopping services,²⁶ yet its critical nature extends beyond comparison shopping services. The default business model of online publishers on today's web is one underpinned by monetising traffic through advertising (or alternately, via affiliation links, direct sales or brand building). Without traffic, hundreds of thousands of publishers' websites will simply not be viable to run. As explained by Veale, traffic is also vitally important for publishers in a practical sense, because it allows them to improve their websites by performing experiments – such as altering elements of the content or design – directly on their user base.²⁷

By satisfying the “want” of users directly on its SERP rather than by passing them onto a publisher, Google has entered direct traffic competition with publishers.²⁸ Prior to the introduction of AI Overviews, traffic was directed to publishers from Google's search engine according to a merit-based process. Google applied fair and impartial ranking criteria to the websites in its index based on their relevance to the user's query, and users choose which website to click based on the perceived merit of each result.²⁹ Yet, as established by the Commission in *Google Shopping*, Google maintains the ability, by positioning its own products at the top of the search results, to “dramatically” increase traffic to those products.³⁰ The Commission, and later the Courts, deemed such conduct to be non-meritorious.³¹ Yet

²⁴ Davies (n 14) 9-10

²⁵ 'Search Engine Market Share Europe' (*Statcounter Global Stats*, January 2025 – January 2026) <<https://gs.statcounter.com/search-engine-market-share/all/europe/#monthly-202501-202601>> accessed 26 February 2026

²⁶ Commission Decision C(2017) 4444 final of 27 June 2017 relating to proceedings under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement (Case AT.39740 — Google Search (Shopping)) [2018] OJ C9/11, recitals 444-501.

²⁷ Michael Veale, 'Some Commonly Held but Shaky Assumptions about Data, Privacy and Power' in Maria Ioannidou and Despoina Mantzari (eds), *Research Handbook on Data, Privacy and Competition Law* (Edward Elgar 2025) 25–26.

²⁸ Davies (n 14) 6-7

²⁹ *Google Shopping* (Case AT.39740) (n 26), Section 7.2.3.1.

³⁰ *Google Shopping* (Case AT.39740) (n 26), recitals 385-6.

³¹ *Google Shopping* (GC) (n 15), paras 174, 195-7

Google appears to have exploited this ability to retain traffic on its search engine through AI Overview, rather than forward it on to publishers.

As one of us has previously noted, the self-preferencing theory of harm in *Google Shopping* does not map cleanly onto Google's AI Overviews because they are not ranked in Google's search results.³² However, the broader principle established in *Google Shopping*, that Google must not exploit its dominant position to undermine the competitive structure of the market, survives.³³ We argue that the introduction of AI Overviews risks harm to the effective structure of competition for user traffic across all publishers. Indeed, Google's dominant position in the online search market affords it a special responsibility not to distort genuine, merit-based competition for traffic, under Article 102 TFEU.³⁴

To summarise, Google's AI Overview has reshaped the mechanics of online search by transforming Google's SERP from a portal to a destination. Competition authorities, courts and commentators appear to have accepted this transformation. Their remedial approach thus far amounts to a fine-tuning which seeks to address the imbalance of power between Google and publishers that AI Overview produces on the supply side. In doing so, courts and competition authorities have too easily accepted this fundamental change to the competitive structure that Google has sought to bring about, and overlooked the harm to competition for traffic that it creates. To discharge their statutory duties to protect competition, competition authorities must not be content with solely 'fixing' markets, they must play a part in shaping them too.³⁵ The opt-out remedy falls well short of this ambition, as demonstrated in the following section.

II. Justifications for the Opt-Out Remedy

There are two possible justifications for the opt-out remedy. First, that it is necessary to end Google's infringement. Second, that it provides publishers with more choice and commercial freedom. Unfortunately, it does neither.

A. Effectiveness

The first purpose of any competition law remedy under EU or UK competition law is to effectively bring the infringement to an end.³⁶ This requires correspondence between the remedy and the anticompetitive effects of the conduct. In other words, the remedy must be tailored to end the specific harm to competition in question. In our view, the opt-out remedy breaches this principle of correspondence.

As detailed above, the core anticompetitive harm caused by the AI Overview is the diversion of traffic, and therefore the ability to generate revenue, from publishers to Google itself. This

³² Davies (n 14) 14

³³ *Google Shopping* (Case AT.39740) (n 26), recital 600.

³⁴ Case C-333/21 *European Superleague Company SL v FIFA and UEFA* EU:C:2023:1011, para 128

³⁵ Davies T and Cohen S, 'Error Costs, Platform Regulation, and Democracy' (2025) 21 *Journal of Competition Law & Economics* 390, 407-411 <<https://doi.org/10.1093/joclec/nhaf008>> accessed 19 September 2025

³⁶ Pablo Ibáñez Colomo, 'Remedies in EU Antitrust Law' (2025) 21 *Journal of Competition Law & Economics* 137 <https://academic.oup.com/jcle/article/21/2/137/7951361> accessed 20 February 2026.

is a well-established competition law theory of harm.³⁷ Self-sufficient, independent publishers are the lifeblood of the open web. Google’s self-dealing of traffic directly threatens the basic viability of their business model, which relies on serving content to traffic from sources such as Google’s SERP.

Enabling publishers to opt-out of AI Overview is not aimed at preventing this core harm. The purpose of the opt-out regime is to provide publishers with a measure of choice about whether and how their content is retrieved, aggregated, and presented by Google in the grounding process for AI Overview. An opt-out capability may be a legitimate objective to promote through a remedy. But promoting this choice will not alter the structural market conditions which have led to the non-meritorious allocation of traffic caused by AI Overview, and the corresponding decline of publishers’ ability to generate traffic and revenue. In other words, it does not fix the core harm: the opt-out remedy provides a solution to the wrong problem.

If anything, publishers would not be incentivised to take advantage of the new option to opt out. The empirical evidence suggests that websites cited by AI Overview consistently receive higher click through rates (CTR).³⁸ It is implausible that consumers will radically change their behaviour and browse beyond the AI Overview after the imposition of the opt-out regime. Publishers, who are dependent on traffic, therefore have an incentive to opt-in their content. It is hard to imagine any material changes to the market dynamics after the remedy is ordered, *ceteris paribus*. Google, publishers, and consumers will be faced with the same basic incentives before and after the opt-out regime, all of which will continue to drive traffic away from the websites of publishers.

The opt-out regime does not address the structural threat to the continued existence of independent publishers caused by AI Overview. Whose data Google can use in AI Overview is beside the point. So long as AI Overview exists, independent publishers’ survival will be threatened by traffic drought, colloquially known as Google Zero.³⁹

In short, the purpose of the opt-out remedy does not correspond to the true harm which has motivated intervention: the structural diversion of traffic away from publishers’ websites to the AI Overview. The remedy risks being more cosmetic than effective. This is especially so in light of the illusory nature of the choice it guarantees publishers, as we show next.

B. Choice

³⁷ *Google and Alphabet v Commission (Google Shopping)* (Case C-48/22 P) [2024] ECLI:EU:C:2024:726; *Streetmap.EU Ltd v Google Inc, Google Ireland Ltd and Google UK Ltd* [2016] EWHC 253 (Ch); *Google (Search Jobs)* (Case AT.40592) Summary of Commission Decision [2017] OJ C 369/1.

³⁸ ‘AIO Impact on Google CTR: September 2025 Update’ (Seer Interactive, 4 November 2025) <https://www.seerinteractive.com/insights/aio-impact-on-google-ctr-september-2025-update> accessed 20 February 2026.

³⁹ Nilay Patel, ‘Google Zero Is Here — Now What?’ *The Verge* (30 May 2024) <<https://www.theverge.com/24167865/google-zero-search-crash-housefresh-ai-overviews-traffic-data-audience>> accessed 20 August 2025.

The second justification for the opt-out remedy is that it offers “businesses and consumers more choice and control over how they interact with Google’s search services”.⁴⁰ However, we argue that the choice it provides to publishers is thin to the point of illusion. Ultimately, the ability to opt-out of AI Overviews does not contribute any meaningful additional freedom for publishers.

As Raz argues, more choice does not necessarily contribute to freedom. In particular, the creation of additional bad or neutral choices can jeopardise, rather than enhance, freedom.⁴¹ This is because true freedom – autonomy – is morally valuable only if exercised in the pursuit of the good. For this reason, the state is under a duty to maximise only the availability of valuable options. In other words, the creation of choice for choice’s sake is not simply valueless in freedom terms; it can be actively autonomy-diminishing.⁴² Hence, on a Razian view, any choice offered by the opt-out regime which fails to create any valuable options would not create additional or meaningful freedom for publishers.

As Stucke notes, publishers currently face a “Hobson’s choice”,⁴³ or in Raz’s terms, a choice between two bad options. The first option is to allow Google to index their data on Search in exchange for ‘opting in’ to the training and grounding of the AI Overview. The second option (called Google-Extended) is to ‘opt out’ of training and grounding the AI Overview, in exchange for withdrawing from Google Search’s indexing altogether, which in practice means forfeiting all traffic from Google Search. Independent publishers are thus caught between a rock and a hard place. There is no genuine choice to be made between the extractive, anticompetitive status quo and the self-defeating and non-commercial choice to abstain from Google Search. In this context, the purpose of any competition law remedy must be to restore healthy, socially productive and merit-based competition for traffic, rather than perpetuating a market structure in which publishers are faced with inevitable extinction.

Does the additional power granted by the remedy to opt out of the AI Overview without opting out of Google Search provide publishers with an escape from this Hobson’s choice? No. The parameters of opting in remain the same, in particular because the CMA missed the opportunity to order the payment of a licence fee in exchange for the benefits Google obtains by publishers opting in. This option still amounts to publishers forging the instrument of their own eclipse, because doing so strengthens the AI Overview without any material improvements in the publishers’ capacity to generate their own traffic and revenue. Granted, the choice to opt out no longer requires publishers to delist themselves from Google Search. But has this materially changed the position of publishers who choose to opt out? Empirical studies show that publishers who are not cited in the AI Overview have organic CTR almost three times lower than that of cited publishers.⁴⁴ The marginal benefit to publishers is so small as to risk being negligible.

⁴⁰ Competition and Markets Authority, ‘CMA proposes package of measures to improve Google search services in UK’ (GOV.UK, 28 January 2026) <https://www.gov.uk/government/news/cma-proposes-package-of-measures-to-improve-google-search-services-in-uk> accessed 20 February 2026.

⁴¹ Joseph Raz, *The Morality of Freedom* (Clarendon Press 1986), 417.

⁴² Dori Kimel, *From Promise to Contract: Towards a Unified Theory of Contract Law* (Clarendon Press 2001).

⁴³ Maurice E Stucke, *AI, Antitrust, and the Marketplace of Ideas* (20 October 2025) SSRN Working Paper <https://ssrn.com/abstract=5630852> accessed 20 February 2026, 24.

⁴⁴ Seer Interactive, ‘AIO Impact on Google CTR: September 2025 Update’ (Seer Interactive, 4 November 2025) <https://www.seerinteractive.com/insights/aio-impact-on-google-ctr-september-2025-update> accessed 26 February 2026.

The decision to opt out therefore remains an act of commercial self-sabotage, because it would put the capacity of those publishers to attract traffic at a significant competitive disadvantage compared to publishers who have opted in. What's more, the business incentives to 'choose' this option are nonexistent, because absent a licence fee, it does not confer any financial benefits. Hence, the opt-out remedy does not create any new *valuable* choices for publishers. In other words, it does not give publishers "more choice and control over how they interact with Google's search services", as was promised. Rather, this proposal simply recreates the original Hobson's choice a second time, with a marginally less bad, albeit still commercially unviable, opt-out option. In one important sense, however, this second Hobson's choice is more insidious than the first: the second one was engineered and blessed by the state.

The illusory nature of the choice afforded to publishers is further underlined by the proposed remedy's choice architecture. It is the essence of an opt-out regime that opting in is the default option. Publishers must take active steps to opt out of this default and, in the process, incur transaction costs. Empirical evidence suggests that this form of nudging is highly effective, especially when designed to perpetuate the status quo.⁴⁵ Absent effective oversight, Google could design the choice architecture so as to make the costs of opting out overly burdensome for publishers, thereby preventing publishers from exercising true choice. In particular, smaller publishers may incur the highest transaction costs to exercising their options to opt-out than larger publishers, reflecting and exacerbating the power imbalances between Google and smaller publishers.⁴⁶ In the same vein, Singh and Scott-Morton warn of the risk of Google employing dark patterns "to steer publishers toward consent or to introduce friction that discourages refusal", further undermining the quality of the choice provided to publishers.⁴⁷ In all these ways, the opt-out remedy offers publishers a formal choice which could transpire to be illusory in practice. In other words, courts and regulators should be wary of the remedy's design enabling Google to capitalise on coerced, manipulated, or even nudged consent given the pre-existing power asymmetry between Google and publishers. Any remedy which risks providing the infringer with a structural advantage over the publishers who have suffered anticompetitive harm should be reconsidered.

Given the above, we believe that an opt-out regime fails to offer publishers a genuinely valuable choice, and as such, does not meaningfully increase the freedom of publishers. In sum, neither effectiveness nor choice justifies the current proposals for publishers to be given the power to opt out of AI Overview. The remedy does not resolve the specific harms perpetuated to publishers by AI Overview, and fails to provide publishers with genuine freedom and choice in their commercial relationships with Google.

III. Risks of the Opt-Out Remedy

⁴⁵ J M Jachimowicz, S Duncan, E U Weber and E J Johnson, 'When and Why Defaults Influence Decisions: A Meta-Analysis of Default Effects' (2019) 3 Behavioural Public Policy 159 <https://doi.org/10.1017/bpp.2018.43> accessed 20 February 2026.

⁴⁶ Richard Fletcher, 'How Many News Websites Block AI Crawlers?' (Reuters Institute for the Study of Journalism, 22 February 2024) <http://reutersinstitute.politics.ox.ac.uk/how-many-news-websites-block-ai-crawlers> accessed 26 February 2026.

⁴⁷ Madhavi Singh and Fiona M Scott Morton, 'A Roadmap for a Monopolization Case Against Google: Monopsony Power and AI Overviews' (forthcoming (2026) 175 University of Pennsylvania Law Review) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6303280 accessed 26 February 2026, 39.

We have thus far argued that the opt-out remedy is ineffective. Neither will it end Google’s infringement, nor will it provide publishers with additional meaningful choice. In this section, we show that it harbours the potential for unintended consequences which would harm the marketplace and democracy.

A. Quality

Allowing publishers to opt out of Google’s AI Overview will diminish the quality and reliability of the information which it provides to consumers. Simply put, with fewer high-quality and authoritative sources from which to draw, Google will rely on a narrower and potentially less reliable pool of information, thereby compromising the reliability of AI Overview. This risk is particularly acute for niche or specialist queries, where the most accurate and authoritative answers are often concentrated within a very limited number of specialised websites, thus depriving Google of reliable information with which to synthesise an adequately informed answer.

In addition to increasing the risk of inaccuracies, limiting the data available to Google will significantly slow the long-term learning trajectory of its AI models vis-à-vis its competitors. To function effectively, modern AI systems need to be trained on vast and high quality datasets. Restricting the flow of publisher content to Google through an opt-out remedy directly undermines its ability to develop models. Importantly, the same remedy would not apply to Google’s rivals such as Anthropic or OpenAI – who compete directly with Google in the development of AI models – thus creating an uneven playing field and limiting Google’s ability to engage in dynamic competition with other AI-powered services.

Moreover, the opt-out regime may undermine the quality of AI Overview by introducing an additional degree of separation between the Overview and the original source of the information. Where the originating publisher of information has opted out, the grounding process relies on secondary reporting, increasing the likelihood that accuracy and nuance are diluted as information moves from the original source to secondary sources and ultimately to the AI-generated summary. The risk, therefore, is turning the grounding process into a game of Chinese whispers.

B. Attribution

Consider the following scenario. Publisher A is subscription-based news source which has opted out of the AI Overview. After a costly years-long investigation, A uncovers evidence of Elected Official Z’s wrongdoing. Z’s wrongdoing is national news, and A’s report has generated widespread interest online. A’s rivals publish their own articles about Z, albeit without any additional original reporting. The AI Overview references A’s rivals; it cannot cite A’s original report because A has opted out of the AI Overview.

In this scenario, an opt-out regime will result in an unfair misattribution of credit. Notably, this would be the case even with robust implementation of the attribution commitments suggested by the CMA.⁴⁸ It is a basic principle of fairness that A should be credited for the fruits of its labour. Conversely, it would be unfair to credit A’s rivals for the information

⁴⁸ Competition and Markets Authority (n 5) 16.

which A has invested and worked to produce. But the opt-out regime decouples the production of value from the attribution of credit for that value. For this reason, it would be manifestly unfair to publishers like A, who have created genuine social value.

This misattribution of credit will have second-order consequences. A will unfairly be deprived of the economic benefits of its reporting. Without credit through references on the AI Overview, A would not receive the returns from its investment in terms of traffic or reputation, and by extension, in terms of revenue. Instead, these benefits would flow to free-riding rivals referenced by the AI Overview. This would fundamentally misalign incentives for publishers: A would be disincentivised from producing high-quality information. Further, A's rivals are not incentivised to compete on the merits with A, but to capture the value created by A and appropriate it for themselves. In the long term, these misaligned incentives will amount to another nail in the coffin of value-creating publishers, or in democratic terms, independent journalism capable of holding power to account.⁴⁹

C. Free-Riding

While A's rivals may be able to free-ride on A's investment into uncovering Elected Official Z's wrongdoing, their capacity to free-ride pales in comparison to Google's. The opt-out regime will allow Google to free-ride on an industrial scale. In our scenario, Publisher A has invested heavily in its investigation of Elected Official Z's wrongdoing. This investment has yielded a valuable, non-rivalrous and semi-excludable public good in the form of information about Z. However, as explained above, A will not enjoy the benefits of this investment; Google will. Through the AI Overview, Google externalises the costs of producing this information onto Publisher A. Once A has borne the costs of investigating Z, Google becomes a free-rider: it captures a disproportionate share of the traffic generated by consumer demand for the information that A has produced, without incurring the corresponding costs of its production. This remains the case regardless of whether A has opted in or opted out. If A opts in, Google can free-ride directly on A's investment; if A opts out, Google can still free-ride indirectly, by extracting the information about Z's wrongdoing through the "Chinese whispers" dynamic described above. As a result, the AI Overview enables Google to profit from A's investment while not having to bear the burden of its costs.

These dynamics are structurally extractive. By perpetuating them, the remedy risks further entrenching Google's dominance. Worse, it contributes to permanently diminishing the economic viability of high-quality journalism, which depends upon the ability to appropriate at least part of the returns generated by expensive reporting. If Google continues to systematically capture user attention at the point of search through the AI Overview, A loses the capacity to monetise its own content. Over time, this dynamic generates an underinvestment problem: anticipating diminished returns, Publisher A will reduce its expenditure on high-cost investigations, particularly where these investigations are most expensive but socially valuable. This would lead to a vicious circle, where publishers create less high-quality content with social value, are less able to create revenue from their lower

⁴⁹ For an overview of other structural risks to publishers' business models and the associated societal harms, see House Judiciary Committee, Subcommittee on Antitrust, Commercial, and Administrative Law, *'Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations'* (Majority Staff Report, 117th Congress, 2d Session, CP 117-8, July 2022) 44-57 <<https://www.govinfo.gov/content/pkg/CPRT-117HPRT47832/pdf/CPRT-117HPRT47832.pdf>> accessed 25 February 2026

value content and are thus less able to fund expensive and important content such as investigative journalism.

To mitigate these extractive market dynamics, competition authorities should, at a minimum, require Google to pay licence fees to publishers like A. A detailed consideration of how a mandatory licensing scheme should be implemented is out of scope for this contribution, but should draw from the EU's recent experience with the Directive on Copyright in the Digital Single Market, which afforded publishers a right to refuse the use of their content or demand a fee, yet was undermined by imbalances of bargaining power between publishers and Google.⁵⁰ An effective remedy must ensure that Google can no longer profit from investments it did not make without appropriately compensating the original producers. By internalising the costs Google currently externalises, licensing fees would recreate the economic link between the production of value and the appropriation of that value. This would re-align market incentives to favour investment in high-quality information, rather than the mere capture of the value created by high-quality information. Ultimately, a licence fee provides a direct mechanism to cease the free-riding that entrenches Google's dominance, which should be a key aim of any remedy in these cases.

D. Political Bias

The opt-out regime could also render the AI Overview structurally vulnerable to political bias and manipulation: if the remedy produces a politically asymmetric pattern of opt-outs, the informational base from which the AI Overview draws would become skewed. In turn, this could bias the summaries presented to users through distortion at the level of the grounding input available to AI Overview. This risk is therefore structural. Access to undistorted flows of high-quality information is a precondition for the exercise of autonomous political judgement, and therefore, of active participation in healthy democracies. In this way, these distortions in the grounding process present a potential democratic harm.

This skew could arise incidentally, as a byproduct of funding asymmetries, differing business models, or divergent editorial incentives.⁵¹ But it could equally be exploited deliberately. It would be easy to imagine authoritarian states flooding Google with biased information and opting in to the AI Overview, attempting to skew the data pool from which the summaries are generated. Given the volume of traffic served by AI Overview, even modest distortions in source availability may have disproportionate downstream consequences on the marketplace of ideas.

There is also a second possible mechanism through which the AI Overview could be deliberately skewed. Some publishers are funded by deep-pocketed actors whose purpose is to shape public discourse through their content, rather than to achieve a return on their investment. For these publishers, participation in the AI Overview would represent an opportunity rather than a trade-off. Opting in would expand the reach and amplification of their preferred narratives at scale, rendering the decision effectively costless from their

⁵⁰ Ula Furgał, 'The Emperor Has No Clothes: How the Press Publishers' Right Implementation Exposes Its Shortcomings', *GRUR International*, Volume 72, Issue 7, July 2023, 650, 655-6
<https://doi.org/10.1093/grurint/ikad025>

⁵¹ Ariel Ezrachi and Viktoria HSE Robertson, 'Can Competition Law Save Democracy? Reflections on Democracy's Tech-Driven Decline and How to Stop It' (2025) 13 *Journal of Antitrust Enforcement* 315, 318.

perspective. In this way, the opt-out remedy provides another mechanism facilitating the risk of political bias in AI Overview.

The opt-out remedy therefore risks making AI Overview vulnerable to political bias and manipulation, thus harming democracy. Competition law has long acted to protect media pluralism and a diversity of perspectives on information markets. That commitment should preclude competition authorities from adopting the opt-out remedy without guardrails specifically addressed at mitigating the risk of political manipulation of AI Overview.

E. Democracy

Lastly, despite ostensibly seeking to protect the publishers on which free and democratic society depend, there are several reasons why an opt-out remedy may in fact cause harm to democracy. First, it risks undermining the open web and the marketplace of ideas. For the reasons discussed above, small independent publishers who depend on traffic to survive would be disproportionately harmed by the opt-out remedy. In particular, studies demonstrate that publishers who provide the very conditions necessary for democratic dialogue online – those who provide the public good of educational information,⁵² and those who provide the platforms and forums for that discussion to take place⁵³ – have been among those most harmed by AI Overview. In this way, the opt-out remedy undermines the preconditions necessary for digital democracy.

Second, AI Overview reduces consumers' capacity to exercise their freedom to choose what they consume on the internet, and the opt-out regime fails to return to consumers the capacity to determine that for themselves. Consumer choice is a democratic value protected by competition law.⁵⁴ Consumers' capacity to choose between meaningfully different options diffuses private power and preserves consumer autonomy.⁵⁵ In this context, that choice includes deciding which editorial perspectives to consume. However, when consumers access news through the AI Overview rather than by choosing which publishers among a set of options, that act of selection is displaced. The platform curates, distils, and synthesises multiple sources into a single summary, effectively making the choice of perspective on the consumer's behalf. Even if multiple sources are technically incorporated, the editorial act of prioritisation and emphasis is no longer exercised by the reader but by the model.⁵⁶ In this way, the AI Overview risks narrowing the space for genuine volitional autonomy, substituting active, self-directed choice with AI-mediated aggregation.

There is, in addition, a broader democratic concern. If the remedy proves ineffective and the risks identified above materialise, the result would be the further entrenchment of Google's private power. If competition intervention consistently fails to meaningfully constrain Google's anti-competitive conduct, the concern is that its private, structural power cannot be

⁵² Mehrzad Khosravi and Hema Yoganarasimhan, 'Impact of AI Search Summaries on Website Traffic: Evidence from Google AI Overviews and Wikipedia' (30 January 2026) SSRN Working Paper <https://ssrn.com/abstract=6164926> accessed 20 February 2026.

⁵³ R Maria del Rio-Chanona, Nadzeya Laurentsyeva, Johannes Wachs, Large language models reduce public knowledge sharing on online Q&A platforms, PNAS Nexus, Volume 3, Issue 9, September 2024, pgae400, <https://doi.org/10.1093/pnasnexus/pgae400>.

⁵⁴ Case T-604/18 *Google LLC and Alphabet Inc v European Commission* ECLI:EU:T:2022:541, para 1028

⁵⁵ Davies and Cohen (n 35), 395

⁵⁶ Todd Davies (n 14), 10

effectively controlled by public power. This is a problem of constitutional magnitude. Remedies that appear corrective but functionally leave underlying power intact risk legitimising and consolidating that power, rather than checking it, thereby weakening democratic oversight of concentrated economic authority. For this reason, competition authorities should not order a remedy which so obviously risks ineffectiveness. Doing so would not simply further the anticompetitive harm intervention is intended to correct; it risks rendering Google's structural power beyond public control.

Conclusion

Competition law “is now in the age of remedies: never before has the adequate design of measures ending the infringement been so central to effective enforcement”.⁵⁷ Yet, as has been well-documented, the choice and design of remedies has remained a persistent shortcoming of competition enforcement in the digital era. The opt-out remedy risks adding to the long list of ineffective behavioural remedies imposed on Google. In this article, we have made two arguments as to why ordering a remedy which enables publishers to opt out of Google's AI Overview will frustrate, rather than further, the effective enforcement of competition law. First, that the opt-out remedy lacks a coherent justification. It will not effectively end Google's anticompetitive diversion of traffic away from publishers to itself. Nor will it provide publishers with additional meaningful choices over how they interact with Google Search. Second, the opt-out remedy will have unintended consequences which imperil both competition and democracy. We have identified five such risks: a lower quality AI Overview, the persistent misattribution of information by AI Overview, the persistence of Google's extractive free-riding, the possibility of political bias in AI Overview, and a final trio of democratic harms.

It is not too late to change course. The CMA is still consulting on its package of proposed measures, and the Commission is yet to commit to any specific remedy. To conclude, we propose two ways forward.

First, if regulators insist on giving publishers the option to participate in the AI Overview, we agree with Singh and Scott-Morton that it must be through an opt-in regime rather than an opt-out system. In addition, any such behavioural remedy must explicitly recognise and mitigate the potential unintended consequences which we have highlighted in Section III. This would require the addition of safeguards, especially for the democratic harms we discuss, including the risks of political bias, declining digital democracy, and impoverished consumer choice. On the other hand, we are pessimistic that the attribution and free-riding problems can be abated through any additional measures: they are problems inherent in the design of the opt-out remedy. While we do not endorse an opt-in remedy as a preferable outcome, it would be better than the proposals in their current form.

Second, regulators could themselves opt-out of designing a remedy, and instead order a cease-and-desist remedy requiring Google to un-launch AI Overview. That option would demand proof that no less onerous remedy would end the infringement, for which the competition authority would bear the burden. In that regard, an argument can be made that since AI Overviews are prominently placed and sourced from websites whose traffic they

⁵⁷ Pablo Ibáñez Colomo, ‘On reading and writing: looking back and looking forward’ (Chillin’Competition, 18 December 2024) <https://chillingcompetition.com/2024/12/18/on-reading-and-writing-looking-back-and-looking-forward/> accessed 27 February 2026.

divert, they are fundamentally incompatible with merit-based competition. The advantages of this approach are twofold. First, it is simple, unambiguous and requires minimal oversight. Second, it puts the ball back in Google's court to innovate, in line with its special responsibility under Article 102 TFEU, an alternate business strategy that is compatible with merit-based competition. It has plenty of latitude to do so.⁵⁸

⁵⁸ Todd Davies (n 14), Sections 4 & 5.