

25 February 2026

Dear case team:

Re: Request for comments on proposed Google Search Conduct Rules

This letter responds to your request at the roundtables held in the week commencing 16 February 2026 for further input on recent expert analysis of search services. Thank you for the helpful roundtables.

The letter further addresses the importance of the insight from the study for the approach the Conduct Rules propose to take to non-discrimination. It also provides comments on the proposed user choice screen and the publisher opt-out.

1. Fair Ranking: Zou and Zhou (2025) study

In 2025, Zou and Zhou published an insightful analysis of non-discrimination remedies in search entitled *Self-preferencing and Search Neutrality in Online Retail Platforms*. The study was published in the peer-reviewed journal *Management Science*, and a further version is also available [on SSRN](#). The authors confirm that they were not funded and had no competing interests regarding the research.

The paper considers the impact of search neutrality on pricing. The paper starts with the observation that a platform sale – in the paper, a so-called first party sale – will be promoted above third-party sales if the platform thereby gains more revenue. Distinctively, the paper then asks what happens next.

So far, the debate on self-preferencing has tended not to consider consequential effects from intervention. The authors identify two important considerations (pp.3-5):

- First, that in the short term, **competition alleviation** may take place from intervention. This occurs if competition in a related market weakens because traffic is attained from regulation rather than competition. Therefore, it is not necessary to compete as hard on price or other forms of marketing to generate intensive matching, because non-discriminatory traffic access essentially guarantees footfall via the investment of another (the platform).
- Second, that in the longer term, **entry deterrence** may occur. This is a more subtle dynamic. In principle, more searchable options from third parties increase platform value. However, the third party must make a margin on its sales, so the third-party sale has lower commission than use by the platform, *ceteris paribus*. That is, a platform shares margin for the shelf space.

Interestingly, this means that mandating access can create an incentive to increase access prices. This is because once there is search neutrality, there is less third-party return on investment in matching (**competition alleviation**,

above). If the quality of third-party offerings therefore declines, there is less margin for the platform from offering the access (since average quality has now fallen).

In this scenario, the authors note that if mandating access results in lower-quality search results – essentially, sharing so-so traffic, rather than investment in quality matching – then the crowding out of competition in matching diminishes returns from working with third parties, since they are now bringing less to the table. If so, then it is both in the platform’s interest, and economically efficient, to eliminate the double margin, since all the access user is then doing is using regulated traffic access without investing in improved matching. In that scenario, the advertiser and society at large would save from reduced double marginalisation.

These significant insights highlight an important role for determining the quality of matching by those using regulated access. There is a large difference between me-too entry, which may simply inflate costs, and entry that genuinely competes by matching better.

It follows that the real test is whether there is monopolistic crowding out of *better* matching by rivals, which would be a market failure based on market power. However, the mere fact that rivals want access on equivalent terms says very little. It does not answer that question, and ought not to be a focus.

a. Other relevant studies

Other important results in the literature back up the Zou and Zhou line of argument. For instance, Bergmann and Bonatti (2023) analyse the relationship between on-platform and off-platform sales. Applying the familiar framework of inter- vs intra-brand competition, the authors note that large platform shares may induce strong intra-brand competition, e.g., a low price to secure a valuable large-scale slot or to ensure that the relatively high cost of a large-share listing is recouped. Scarcity in advertising may however diminish inter-brand competition. This chimes with the Zou and Zhou (2025) observations that competition with the platform can result in strong outcomes for consumers (e.g., improved intra-brand competition from a low price offer on the large platform to secure a prominent space on it).

Recent work by Anderson and Beadre-Defolie (2024) consider the relationship between third-party listing fees and own-product sales. The results address must-have platforms; it is unclear whether Google Search is actually a must-have for audience and if so for which audience and of what quality (e.g., clicking once vs reading the same site every day; please see below comments on the Publisher Conduct Requirement for recent statistics). But even in must-have scenarios Anderson and Beadre-Defolie note that third-party sales may attract higher fees because of product **improvement** by the platform: in such a scenario, third-party fees can increase because, like-for-like, the third-party platform user must provide more value since it is now crowding out more margin from the platform’s own supply. However, as the reason why the platform’s margin has increased is that efficiency has improved, this is an improvement from the societal point of view. This further

chimes with the Zou and Zhou paper: the reason why the third-party fee increases may be that the on-platform sales are more efficient and therefore cheaper; if so, there is an increased fee to some parties, but average user welfare is increasing from lower average costs.

These subtle dynamics would suggest caution before adopting per se rules. Instead there should be analysis of the relevant dynamics and metrics. The point is picked up below in relation to the specific proposed rules.

b. Rent-seeking risks

[REDACTED]

- [REDACTED]
- | [REDACTED]
- | [REDACTED]
- | [REDACTED]

[REDACTED]

[REDACTED]

The comments chime with the risk of diminished competition from regulation identified by Zou and Zhou (2025). Indeed, the apparent desire is to gain traffic in a basic two-dimensional sense, rather than to show how investment in audience matching would work better under the proposed intervention considering the state of the expert literature.

[REDACTED]

c. What rules then are apt?

The CMA faces a challenging task in that the complainants do not seem to articulate a meaningful link between the desired rules, and better user-facing outcomes.

The CMA consultation papers identify increased investment as a desired outcome.¹ Therefore, the risk of harm to outcomes, as from rent-seeking demands, ought to be considered. This is currently only latent in the cost-benefit analysis, because there is no analysis of how competition in related markets might be harmed by overly broad intervention.²

Consumer impacts such as those noted by Zou and Zhou are not only relevant to a proportionality analysis: their consideration is also legally required under s.19(10) DMCCA. It is respectfully submitted that the Conduct Rules could helpfully be tweaked expressly to read on whether the user of the Conduct Rules is demonstrating blocked competition, rather than just difference in treatment.

As drafted, the Conduct Rules (Rule 4) require objective and non-discriminatory criteria without regard to:

- advertising on Google,
- other commercial or contractual arrangements,
- opt-out of non-general search features, or
- the exercise of rights;

Google is further required to apply the same policies to itself.

The question then becomes, *what agreements, and what policies?* Those would be the benchmarks for discrimination. However, if a contested agreement is based on competition in a downstream market, then bringing that competition to a wider audience may enhance – and not diminish – competition. So the mere fact that Google is gaining a benefit from charging a fee to a downstream user of its traffic does not say whether the market is working well for the user. The real question is, as per Zou and Zhou, whether competition in the matching is improving, or not.

Therefore, some analysis of those market impacts seems to be apt – and not just the difference in treatment, because if the difference in treatment results from quality reasons, then differentiation is the point.

In this regard, a little too much may have been made of the Reddit example. This is because, on the Zou and Zhou framework, Reddit has invested in audience in competition with others.³ Google may make margin by listing Reddit, but any other

¹ e.g., Fair Ranking Conduct Rule Consultation, Para 5.24.

² Id, paras 5.16-5.19 (Potential Costs – not currently including harms from rent-seeking).

³ This dynamic is currently somewhat understated in paragraph 5.23(a) of the Fair Ranking consultation paper, which refers to whether Google favours its own traffic (YouTube) or traffic covered by an agreement such as that with Reddit. The issue is that on the Zou and Zhou model, the competition *from* agreement (Reddit) or *from* owned-and-operated systems (YouTube) may be some of the strongest competition for audience, but this will be overlooked by framing the question as one

publisher could also have made the equivalent investment. Indeed, some did (witness Substack's growth over the past year). So, the mere existence of an agreement for placement seems perhaps too wide a test (cf. proposed Rule 4(a)(ii) indicating that the *agreement* rather than its impact is the currently proposed focus).

The risk of not considering these user impacts is a notable anti-consumer outcome of precisely the type s.19(10) DMCCA seeks to prevent. Investment by Reddit in audience-friendly content would be undermined by regulation providing traffic contrary to the Reddit/Google agreement if the agreement reflects investment in audience. Further, this is a key pathway for advertising revenue to flow to audience investment. Of course, if it is shown that the Reddit transaction harms user outcomes, that would be different – but this has not been shown. The contrary seems more likely: Reddit has engaged in dynamic competition with other publishers, and the agreement funnels advertising money to this innovative provider of audience.

If the above concerns are shared, then the following three changes would help to integrate the insight from Zou and Zhou:

1. While it is already implicit, it could be clarified that the reference to the “functioning of any market” (Fair Ranking Conduct Rules - paras 6 and 8) requires evidence of market impact beyond just the impact to a particular business or special interest group. It would also be helpful to situate the agreements rule in Rule 4(a)(ii) in an express user impact analysis.

This is a simple and easily implementable change, because all it does is ask not only whether the agreement exists, but also whether it has a good user-facing impact – perhaps, by assessing what innovations and investments were associated with it.

2. Similarly, the reference to “market” impact on paragraph 15 of the interpretive notes could helpfully flag *user* impacts as a particular focus of concerns, reflecting s.19(10) DMCCA's consumer focus.
3. It may also be helpful expressly to tailor the Conduct Rule to situations where there is a risk of competing product foreclosure. If there is complementarity

of *relative impact on publishers*, without also checking what the impact on the audience/advertisers might be.

5.24 articulates a concern that innovators will not invest because of concerns that others will gain traffic, which is dangerously close to the view that equivalence in traffic ought to be the focus, rather than the quality of user-facing competition. Further, this traffic-loss argument assumes that dynamic competition between the entrants will not occur (whereas Reddit may be an example of precisely this type of dynamic competition for audience). While there is certainly a sense in which *arbitrary* traffic shifts might harm investment, it is important to consider whether the associated agreements are in fact arbitrary. Per the Zou and Zhou insight: if the competition on matching is stronger than that of the more general platform, then an incentive arises to list the innovator on the more general platform, while sharing the margin from the innovation. Therefore, a party with a strong audience-facing innovation ought to expect listing (as Reddit experienced in fact). It would be a mistake to ban this type of competition just because other publishers are affected by it.

between the general and specialist audience, then the question is not whether the conduct is “equivalent” but rather whether the associated user outcomes are positive, since harnessing the *complementary* input is a form of competition. Sometimes, non-equivalence may be apt, e.g., if there are audience benefits from an innovation which has a differential impact. That is especially so if competing rivals can respond with innovations of their own. Merely conceptualising this as an equivalence-of-treatment analysis risks understating the dynamic effects at play.

So, the real question is not whether there is difference in impact, but whether better products are able to serve the user. Therefore, Rule 4(b) could helpfully apply a foreclosure-based test to help target it onto the true priority concern.

2. Choice screen

[REDACTED]

[REDACTED] Both screens could be applied. This would be a powerful test of the relationship between generative AI and general search, because differences in switching would be visible based on whether generative AI options are present.

It would be important to commit to transparency over the switching data surrounding the choice screen, especially if there are to be two (one with, and one without, the generative AI providers). There is no reason to withhold this data and periodic updates on switching will help with analysis by wider civil society researchers.

It would also be helpful to code that data by whether a party has already switched. For instance, if a user has already switched (e.g., to an Edge/Bing combination) then there may be little merit in prompting them. That data point must however be preserved for analysis, or a false denominator results. So, it would be important for there to be collection of data about past switching as part of the test drive, because this will help with the critical research question, namely whether the new switching induced by the choice screen is helpful (or not) from the consumer perspective.

Without transparency of these data, and without capturing the consumer profile *before* switching, it is impossible to undertake meaningful cost-benefit analysis of the costs of user experience interruptions, vs. benefits from any persistent switching.

3. Generative AI

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

It is understandable that parties rely on their vendors to supply knowledge of generative AI systems (although the myopia on the wider impacts such as the link to audience competition is harder to explain). In any event, transparency may help with this understanding, and improve competition by helping publishers understand better how to compete for audience.

There is however great concern that there cannot be an articulation of how a change to systems will improve them, without first understanding those systems. There is a risk of a classic so-called “nirvana” fallacy; in this case, that of the greener grass. As Demsetz (1969) noted, it is insufficient to argue that a change *might* improve things. It is instead essential to benchmark the impact of the change relative to the status quo. This can hardly be done without understanding the status quo.

A measured approach here is particularly apt because of increasing evidence that competition for audience exists in a market much wider than that for organic search, and that competition for audience withstands AI Overviews:

- Reuters Institute/Univ. Oxford data shows that search-generated pageviews are down 38%.⁴ However, as highlighted by a publishing analyst, even though the AI Overview clickthrough rate is reportedly just 1% per query, **overall** pageviews are only down 5%: this “signals a massive distribution reset rather than a total audience collapse.”⁵

⁴ Reuters Institute, [Journalism, media, and technology trends and predictions 2026](#): “Aggregate data, sourced from the analytics company Chartbeat for this report, show that Google traffic from organic search to over 2,500 sites was down by a third (33%) globally between Nov 2024 and Nov 2025 and by 38% in the United States, but it is not clear how much of this is down to AI overviews.”

⁵ Matthew Scott Goldstein, [Comments on Reuters Institute paper](#), LinkedIn, February 2026.

- Time, Inc. lost half its Google Search traffic, but its **revenue** grew 12% year on year. Time, Inc. reported that AI Overviews appear on 70% of its top queries. Even though Google Search sessions fell to just 30% of core sessions, and even though the total number of sessions fell, non-Google sessions **and** total revenue still increased.⁶ Please see the slide attached as Appendix B. As the analyst notes: “the winners will be the publishers who treat Google as a shrinking input, not as a strategy.” In competition terms, this is a clear indication that at least for some publishers, the market is considerably broader than just Google search.

Both sets of statistics strongly indicate that there are ways to grow audience without Google search. The key competition would be to present better information in a more user-enticing way than can generative AI. While this is a shift in traffic, it is also a pro-user one: it moves away from made-for-advertising low-quality clickbait, towards the quality journalism the AI cannot match.

There is a risk here of regulating despite no clear relationship to the underlying Strategic Market Status for Search. It is appreciated that much careful and detailed work was undertaken on the boundary of specialist search, general search, and AI. That work resolved in favour of treating AI Overviews as part of search, on the basis (*inter alia*) that they are embedded in search (SMS Designation Final Decision, 4.50), that they use the same underlying web crawling (4.51(a)) and because the information is included "within the SERP" (4.51(b)).

Thus the CMA concluded that the reviews are: "an integral part of the product that is provided to a user of general search (they feature as part of the SERP)." (4.52).

The argument is that Google does not allow a sufficiently strong opt-out from the use of the search API feed, and therefore, is forcing *other products' use* alongside search. Specifically, not protecting search ranking positions if opting out of the Gemini API feed is seen to "incentivise... the use of other products or services" within the meaning of s.20(3)(d) DMCCA:

“requiring or incentivising users or potential users of one of the designated undertaking’s products **to use one or more of the undertaking’s other products alongside services or digital content the provision of which is, or is comprised in, the relevant digital activity.**” (emphasis added)

However, if AI Overviews form “an integral part of the product” (4.52) then they are not “**other products or services**” within the meaning of s.20(3)(d). The provision is not triggered.

Put another way, the boundaries of the DMCCA allow mandating FRAND terms in relation to a digital activity, regulating forced combined use (tying/bundling), and areas where there is a material market power impact from cross-product effects. But there is no easy fit to regulating **within** a relevant “product.”⁷

⁶ Matthew Scott Goldstein, [Comments on Time, Inc. results](#), LinkedIn, February 2026.

⁷ See, especially, the materiality test on impacts from product boundaries which must be proven before intervening on cross-market effects under DMCCA s.20(3)(c): *Guidance* 3.14-3.16. As to

It may therefore be better simply to follow the logic of the inclusion of AI Overviews within the SERP-based boundary. That would call not for an opt-out, but for analysis of whether there is truly extension of *search* entrenchment taking a view of the entire relevant digital activity, including the AI Overview.

It is not clear that there is an impact on search market power from the AI Overview, rather than just an evolution in the search product in competition with rivals. Importantly, the switching data from the User Choice Conduct Rules can be harnessed here. If it is truly the case that the inclusion of AI Overviews harms users, then one would expect to see them switch to non-AI Overview containing alternatives. However, if they do switch to generative AI products, then that would suggest that the search provision is now competing with generative AI products.

This iterative, evidence-based approach would still preserve the possibility of an opt-out if required once more is known about the relationship between mass user switching and generative AI features, in addition to the earlier market research by the CMA. This would help to avoid a scenario where an opt-out from generative AI is offered without the benefit of helpful further information on what users want. Looking at what users do with the choice, and then revisiting the AI Overview question, helps calibrate intervention to evidence of their needs, and avoids intervening just because of loosely Google-related publisher lobbying demands.

This is also more proportionate because it helps to identify the underlying concern better, before adopting a thereby more tailored remedy.

Not only does this avoid the legal issue with s.20(3)(d) given the same-products posture already taken in the SMS designation, but it is also more principled because it addresses the underlying reason for designating in the first place, namely perceived market power in search – and not in AI.

It is hoped that these comments prove useful as the CMA finesses the final versions of its proposed Conduct Rules.

Yours faithfully,

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s.20(3)(d)'s conception of forcing/incentivising *other products* use, the Parliamentary *Explanatory Notes* from the DMCCA passage gave the example of tying *different products* (e.g. product and warranty, or app store and payment system – para.191). For its part, the FRAND terms power in s.20(3)(a) refers to discrimination in terms, which does not therefore encompass an express power to *require* not to deal: it requires equivalence in dealing (*Explanatory notes* para. 188). Nor do the AI Overviews amount to a restriction on *interaction with* competing products or their downstream use (s.20(3)(e) and (f); paras 192-193). The data power in s.20(3)(g) relates to anti-competitive data handling policies (para 194, giving the example of collecting data from a sales platform to create a *competing product*); further, the statutory language itself speaks of “use” and does not cater to a requirement *not* to use data. Rather, the issue is “**using**” data fairly. Therefore, none of the provisions squarely caters to the scenario in which a party wants to opt out of **part** of *the same* product.

References

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Appendix A – Extracts from Zou and Zhou (pp.4-5)

Competition alleviation

In the short term, search neutrality can raise the equilibrium prices for both products. Note that consumers observe a product's price before searching it, so a lower price of the non-prominent product can invite more consumers to search it after they have searched the prominent product. Without search neutrality, the platform will self-preferentially make the third-party product non-prominent for most consumers. Anticipating this, the third-party seller will dramatically lower its price to invite search because otherwise few consumers would visit the third-party seller due to its non-prominence, which triggers strong price competition. By contrast, search neutrality will guarantee each product's prominence for its high-match-likelihood consumers (because of personalized search rankings), and each product will be non-prominent for its low-match likelihood consumers. Therefore, each seller is less willing to invite more search by reducing its price because the resulting profit-margin loss from high-match-likelihood consumers will outweigh the gain from more search from low-match-likelihood consumers. As a result, both sellers will set relatively high prices in equilibrium with search neutrality in place.

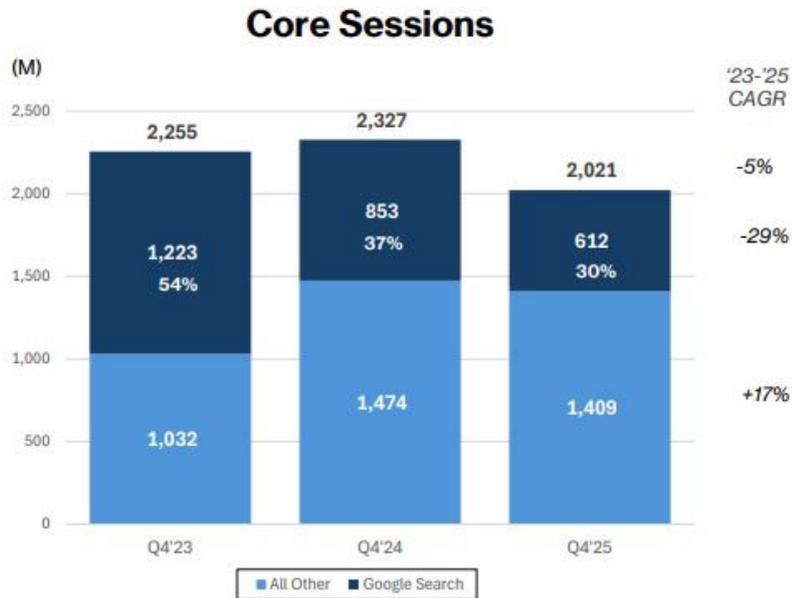
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The competition-alleviation effect can be so strong that search neutrality will decrease consumer surplus if more consumers have higher match likelihoods for the third-party product than for the first-party product, and increase the platform's profit if the opposite is true. The latter result is counterintuitive because, without search neutrality, the platform can also make the third-party product prominent for its high-match-likelihood consumers. However, without search neutrality, the platform cannot credibly commit to doing so because after prices are set, it will self-preferentially deviate by making its own product prominent for these consumers. Anticipating this, the third-party seller will charge a low price that triggers strong competition. In essence, search neutrality solves the platform's commitment issue, so competition alleviation can be achieved.

Entry deterrence

The second potential harm from search neutrality is entry deterrence: In the long term, search neutrality may increase the platform's likelihood of increasing the commission to preempt the third-party seller's entry. Note that the third-party seller's entry has two opposing effects on the platform's profitability. On the positive side, the entry can benefit the platform by providing consumers with more options to search. On the negative side, to induce entry, the platform needs to lower its commission and leave enough revenue for the third-party seller to cover the latter's entry cost. Search neutrality weakens the positive effect because it reduces both sellers' incentives to lower prices to attract search. Consequently, in equilibrium, few consumers will search beyond their prominent product. We show that search neutrality increases the platform's likelihood of entry preemption when the third-party seller's entry cost is intermediate, in which case both consumers and the third-party seller become further worse off in the long term.

Appendix B – Time, Inc. Revenue Growth Despite 70% AI Overview Saturation and 50% decline in Google referrals post-2023



- Growing Digital revenue at a 12% CAGR despite 50% decline in Google Search referrals since 2023
- AI Overviews appear on nearly 70% of top People Inc. queries¹

¹ AI Overviews Penetration is an internally-sourced metric that tracks the presence of AI Overviews on the top 10,000 People Inc. search ke
² Reflects Off-Platform Views from Core Brands