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**Our Ref: TC/ADM838**

25 February 2026

Dear CMA DMCCA Search Team,

**Re: Movement for an Open Web submission on the CMA's proposed conduct requirements further to the SMS designation of Google in General Search and Search Advertising**

We represent Movement for an Open Web (“MOW”). We are responding to the CMA’s consultation on conduct requirements for Google in Search and Search Advertising.<sup>1</sup> We refer to our correspondence dated 30 June 2025, 10 December 2025, 30 January 2026, 4 February 2026 and 13 February 2026 regarding Google’s Gen-AI products in its Google Search and the CMA’s investigation into these products under the Digital Markets, Competition and Consumers Act 2024 (“DMCCA”).

We have made submissions on the economic context and impact of the major digital platforms on the UK to the House of Lords (enclosed). We also include the recent Autorité de la Concurrence’s findings of similar issues to Google’s dominance in Search, occurring in the relationship between video content creators, their audiences and platforms.<sup>2</sup>

This submission identifies four critical areas in which the proposed conduct requirements (“CRs”), as currently drafted, risk being circumvented by Google, rendering the remedies ineffective. Our specific comments on the wording of the CRs are in the annexes:

**(1) The serious risk of the UK becoming a “Content Farm” for Google’s AI.**

[REDACTED]

[REDACTED]

[REDACTED] This risks transforming UK publishers from independent businesses into content suppliers for Google’s properties, fundamentally undermining the competitive digital economy the CMA seeks to protect. All content owners and creators will be forced to compete to be in the top slot created by Google’s AIOs—increasing Google’s market power over our creators. The CMA recognises that people create content that is shown in organic results. We refer to these as Organic or Human results as they are generated by people running their businesses [REDACTED]

<sup>1</sup> <https://connect.cma.gov.uk/google-search-conduct-requirements> and the case page at <https://www.gov.uk/cma-cases/googles-general-search-and-search-advertising-services>

<sup>2</sup> Autorité de la concurrence (18 February 2026) available at <https://www.autoritedelaconcurrence.fr/en/press-release/online-video-content-creation-autorite-de-la-concurrence-examines-relationship>

The CMA also recognises that Google has SMS levels of power in Search. The CMA accepts that choice needs to be restored where there is no choice.<sup>3</sup> In Microsoft, for example, the choice that needed to be restored arose from the bundling of the media player and the operating system. Here the bundling is taking place in the SERP so unbundling the SERPs means creating fair ranking between rival properties' content and Google's AIO content in the SERP. The choice that is to be restored is only explicitly referred to for publishers - not users at the consumer interface with the SERP - and as a result the interrelationship between the publisher side and the user side of the Google machine is, perhaps, understated. Indeed, publisher side choice is dependent upon user side choice being restored.

Basic non-discrimination principles apply to Google as a dominant supplier of a distribution system, and the Fair Ranking approach presupposes a choice being provided to users, so our request is to make the choice clear at the user level, based on output measures of the placement of results in response to user queries as was submitted in our complaint and Autoritas' report.<sup>4</sup>

Testing an effective remedy can easily be done by seeing whether that 30% is restored after the remedy is in place. That could be measured over a period of 3 days, consistent with Google's own testing practices in search.<sup>5</sup>

## **(2) Due process for those affected and harmed.**

There is a lack of due process in the CMA's policing of the CR remedy for those whose livelihoods are on the line. The CMA is responsible for assessing and making sure its remedies are effective in addressing the anticompetitive practices that it has identified, not Google. The process for assessing compliance with the CR is a different matter than Google's obligation to comply. The CR focuses on Google's complaints process, which is a separate matter from the CMA's duty to secure an effective remedy. The CMA has also overlooked the importance of trialling and testing remedies before they come into force. In the CMA's 2020 DAMS Report,<sup>6</sup> the CMA noted the importance of an ongoing<sup>7</sup> trialling and testing monitoring regime. Excluding such a provision now risks being inconsistent and going against what is a legitimate expectation of publishers that the CMA puts in place a remedy that effectively rectifies the harm to them.<sup>8</sup>

The CMA appears not to have fully explained the process by which it will assess the effectiveness of its remedies in restoring competition. In discharging its duties, the CMA should be mindful that peoples' livelihoods in the UK are at stake: they have rights that need to be respected. This means it is required to adopt an open and transparent process. Output measurement of visibility in SERPs, such as what Autoritas has provided, is critical - as is publisher testing and verification with their own evidence of traffic received from improved site visibility.

Due process requires independent adjudication (not by Google) of evidence from both Google's compliance systems and from publishers. Any justification of a defendant's position is a burden borne by the defendant and must be subject to evidence testing and scrutiny by the CMA before being

<sup>3</sup> See for example in relation to the Choice Screen discussion on page 12: [Introduction to the consultation](#)

<sup>4</sup> Please see our complaint dated 30 June 2025 attaching the Autoritas report.

<sup>5</sup> See for example the time period over which Google maps was tested as is referred to in the High Court judgement in *Streetmap vs Google*. [Streetmap EU Ltd v Google Inc](#) [2016] EWHC 253 (Ch),

<sup>6</sup> [https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final\\_report\\_Digital\\_ALT\\_TEXT.pdf](https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf)

<sup>7</sup> See 8.129, CMA DAMS Final Report, 2020

<sup>8</sup> See for example, the level of due process that needs to be in place where people's rights are affected see *R (Osborn) vs Parole Board* [2013] UKSC 61 and in particular, see para 71 where Lord Reed references Lord Bingham's 8 principles on the Rule of Law.

accepted. Google’s claims need to be evaluated within an adjudication process before they can be accepted. That process must be one through which publishers can be heard, their evidence can be communicated, and a time frame laid down for a fast-track resolution of any disagreement that Google cannot game to their benefit. Pending the outcome of the restoration of a competitive equilibrium, Google should be barred from bundling and promoting its AIOs over rivals’ competing organic results in the SERP.

**(3) Google is a monopsonist purchaser.**

Google has huge bargaining power versus the wide range of smaller content creators that need it for the distribution and display of their products to consumers. As such, Google can act independently of them and is unconstrained by competition when restricting visibility of their pages from consumers. [REDACTED]

[REDACTED] The French Competition Authority has recently<sup>9</sup> made observations about small suppliers’ structural dependency on Google in distribution:

*“Content creators are therefore structurally dependent on the main platforms, which creates a significant imbalance in their respective bargaining powers. This asymmetry is particularly evident in platforms’ ability to unilaterally set the terms of their commercial relations with creators, whether in terms of revenue sharing or content visibility.”<sup>10</sup>*

In this context, the publisher opt out remedy is misguided. Media owners need not *opt out* of the theft of their copyrighted content. The Publisher CR’s opt-out approach for Google’s AI uses of publisher content improperly shifts the burden from Google to copyright holders. Publishers’ consent to crawling has always been limited to organic search listing purposes. Google must be required to obtain opt-in consent for all authorized uses beyond navigational organic linking, such as training LLMs or grounding AI services that compete with the content publishers created. Google’s conduct obligations must be rephrased to require opt-in for any use beyond navigational listing of publishers’ properties in organic search result links.

We support the goal of providing publishers with an effective choice over what they share and for what purpose – search or training and grounding Google’s generative AI services. This opt-in choice will only work if the Fair Ranking outcomes create *visibility* for rival media owners’ content which also means SERPs choice for users, with a range of alternatives presented to them among Human/Organic and AI alternatives in the SERPs.

**(4) The proposed remedies contain language which is vulnerable to circumvention.**

[REDACTED] The current definitions of “Publisher,” “Search Content,” and other related terms create exploitable loopholes that Google can leverage through product rebranding, technical restructuring, or alternative content ingestion mechanisms. We urge the CMA to adopt technology-neutral, functionally-defined obligations that focus on economic substance rather than technical form.

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<sup>10</sup> Autorité de la concurrence (18 February 2026), page 2. available at <https://www.autoritedelaconcurrence.fr/en/press-release/online-video-content-creation-autorite-de-la-concurrence-examines-relationship>

## Specific Annex Points

### 1. Technology-Neutral and Media-Neutral Protections to Avoid Google's Circumvention

Google's conduct obligations must apply regardless of the technical means by which it ingests rival publishers' copyrighted content. The CMA identified five mechanisms Google uses to gather publisher content - crawling is only one.<sup>11</sup> Limiting remedies to “*content collected through Googlebot or any Google crawler*” creates a structural loophole.<sup>12</sup> Google could fulfil the letter while defeating the purpose by acquiring content through API integrations (e.g., see Google's Universal Commerce Protocol (“UCP”)), direct licensing with aggregators, data brokers, Common Crawl, or its own products (Google Analytics, Ads, Shopping, YouTube, Cloud). None of these alternative methods of content ingestion address the unequal bargaining power and unilateral terms Google dictates on media owners, which is at the heart of its SMS designation in Search and urgently needed conduct remedies. Similarly, the definition of “Publisher” must not be limited to browser-accessible content, as this excludes in-app and video / connected television content delivered over web standards - a growing proportion of media consumption access via general search results, especially from voice assistants.<sup>13</sup>

### 2. Fair Ranking Must Provide Genuine Publisher Controls and Consumer Choice

Under the DMCCA, Google's SMS status imposes a fair ranking obligation mandating objective, non-discriminatory ranking of organic search results - the blue links to human-generated publisher properties relative to Google's own AI-generated summaries. Currently, Google's discriminatory display of AI Overviews reduces rival publishers' visibility and restricts consumers' access to competing content. True end-user choice requires presenting human-generated products in organic links above (not beneath) AI Overviews. Human-generated content providing links to independent businesses deserves fair ranking relative to AI-generated content. Bundling AI summaries into general search results without genuine consumer choice constitutes an abuse of dominance.

### 3. Objective Ranking Criteria Must Be Fair, Not Merely Consistent

Consistency alone does not ensure competitive neutrality if underlying metrics embed structural advantages for Google. For instance, latency-based thresholds that effectively require publishers to host content on Google's cloud infrastructure, or that favour Google's own content, would appear objectively consistent but would nonetheless be unfair, particularly where the latency threshold is imperceptible to consumers and has no material effect on the quality of listed links in search results. Any criteria Google selects should be evaluated based on its impact on output: if the criteria shifts click volumes to Google's own content, Google should bear the burden of justifying that the criteria does not unfairly discriminate against consumer navigation to rival publishers' content.

### 4. Effective Monitoring and Due Process

The CMA's proposed six-month reporting cycle is insufficient to ensure continuous compliance. This interval would allow Google to fall out of compliance for significant portions of each period while

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<sup>11</sup> Final Decision, paragraph 4.14(a).

<sup>12</sup> Publisher Control Conduct Requirements, definitions 1(f).

<sup>13</sup> Final Decision, paragraph 4.11(b): “Google's general search can be accessed in numerous ways, including through web browsers, webpages, search apps, voice assistants and smart speakers; and through other means such as interaction with images.”

presenting aggregated data suggesting overall compliance. The CMA should have access to output measures on a daily basis. We propose a straightforward solution. Google could publish a microsite providing aggregate results of outbound navigation to rival publishers' content from general search services, similar to its existing Google Trends, showing the quantity of outbound links consumers engage with. This would enable transparent monitoring of whether Google's designs unfairly steer consumer behaviour away from original sources.

## 5. Legal Consistency with Competition Law

We appreciate that the DMCCA is different from competition law as it exists in the Competition Act 1998 (“CA 1998”) and EU competition law, but also would observe that the CMA’s duties<sup>14</sup> means the CMA cannot use one to contradict outcomes in the other. Under standard competition law, Google, as the dominant player, is prohibited from bundling its own AI product with its dominant search system. This has been clearly established in many EU and UK court cases and follows the unbundling case law such as that which prohibits Microsoft from bundling Windows Media Player with its Operating System. Importantly, the burden of proof is on the defendant seeking to put forward a justification for any abuse of dominance – and to date there is no case on which such a justification has been successful at EU level. So, since any justification of a defendant’s position is a burden borne by the defendant and has to be subject to evidence, testing and scrutiny before being accepted, it would potentially undermine UK competition law if the CMA were to accept a justification where there has been no testing of Google’s evidence and no fair and objective process through which that can be assessed. If the remedy to a DMCCA case were to [REDACTED] in the SERP absent an assessment of that justification subject to testing by those with a legitimate interest in their rights not being unfairly compromised, then the CMA would have become a defendants’ champion, allowing Google a mechanism to evade compliance with underlying UK and EU competition Law, and to do as it will with UK publishers’ content.

The CMA's proposed approach risks creating inconsistencies with EU and UK competition law, both of which continue to apply in parallel. The assessment of ranking fairness should proceed in two steps: first, assess whether ranking results are discriminatory in effect using objective, output-based measures; second, if discrimination is identified, consider whether Google's conduct can be objectively justified and is proportionate. The CMA should not expend resources assessing whether Google's ranking systems are 'fair' in theory without first identifying whether discrimination exists in practice.

Also, in view of the DMCCA being an *ex ante* regime, the conduct requirements are forward-looking and thus do not address the issue of content already scraped and used by Google to train Google’s AI models. The evidence we submitted on 13 February 2026 demonstrates these harms.

As you know, the European Commission is investigating Google’s use of publisher content in its AI services under Article 102, TFEU, which would cover Google’s actions on an *ex ante* basis.<sup>15</sup> To fill this gap, the CMA should also open an investigation under Section 18, CA 1998 so that harmed parties are able to claim for losses over the *ex post* period. The CMA should also impose interim measures (an unbundling requirement) on Google pending the outcome of such an investigation.

## 6. Evidence and Market Reality

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<sup>14</sup> See s.25, ERA 2014, which states that the “CMA must seek to promote competition, both within and outside the United Kingdom, for the benefit of consumers.”

<sup>15</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_2964](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2964)

The current evidence in the market is that some content deals are being struck with AI companies. However, those deals do not represent a competitive benchmark of parties with equal trading positions. At best there are three major AI businesses<sup>16</sup> and a series of discriminatory deals which remain largely secret, excluding small businesses from payment, display and visibility afforded to larger rivals.<sup>17</sup> This result is a separate distortion in digital markets, which the CMA has recognized given “*the impact of Google’s general search on the future of independent media, and the importance of such media to society.*”<sup>18</sup>

The CMA states it has “*not seen direct evidence that Google’s individual ranking decisions are unfair.*” This statement is inconsistent with market reality and overlooks current facts and directly relevant precedent, including the European Commission’s Decision in *Google Search (Shopping)*<sup>19</sup> and subsequent judgments, which established that Google’s own comparison-shopping service was not subject to the same ranking mechanisms as competing services, rendering its conduct inherently discriminatory. The Commission found this conduct ongoing, as confirmed in its 19 March 2025 press release and current DMA investigation.<sup>20</sup> We understand Google’s technical implementation continues to promote and display its own products in a discriminatory way as Discover, AI Overviews and AI Mode are displayed through mechanisms that bypass standard search ranking methodology. This perpetuates the same discriminatory treatment identified in the 2017 *Google Search (Shopping)* Decision.

We are also concerned that the CMA has not seen evidence of ranking being unfair because the CMA has not looked sufficiently carefully. This is a grave concern given the importance of the case to those whose businesses are critically dependent on being found in the SERPs and the parallel litigation which is taking place in the UK Competition Appeal Tribunal.

## 7. Conclusion

Overall, we are concerned that the CMA may be captured by Google. Under standard competition law, Google, as the dominant player, is prohibited from bundling its own AI product with its dominant search system. This has been clearly established in many EU<sup>21</sup> and UK<sup>22</sup> court cases and follows the unbundling case law such as that which prohibits Microsoft from bundling Windows Media Player with its operating system.

Any justification of a defendant’s position is a burden borne by the defendant and has to be subject to evidence testing and scrutiny before being accepted. [REDACTED]

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<sup>16</sup>All leveraging monopoly infrastructure and all linked to Cloud Computing market power with returns on capital consistent with monopoly rents. See the CMA Mobile Browsers and Cloud Gaming Market Study 2024.

<sup>17</sup> [https://www.linkedin.com/posts/francescopmarconi\\_ai-companies-spent-413-billion-building-activity-7429902852871004160-pVak?utm\\_source=share&utm\\_medium=member\\_desktop&rcm=ACoAADjO-0UBqEIXpJOasE4HPnKEyK\\_PPHHrgkl](https://www.linkedin.com/posts/francescopmarconi_ai-companies-spent-413-billion-building-activity-7429902852871004160-pVak?utm_source=share&utm_medium=member_desktop&rcm=ACoAADjO-0UBqEIXpJOasE4HPnKEyK_PPHHrgkl)

<sup>18</sup> Final Decision, paragraph 1.17.

<sup>19</sup> See, for example, para (379) of the *Google Search (Shopping)* (27 June 2017) decision, which refers to Google’s comparison shopping service not being subject to the same ranking mechanisms, as its competitors, including adjustment algorithms, which contributed to the self-preferencing abuse, as found by the Commission available at CASE AT.39740 *Google Search (Shopping)* (27 June 2017) available at [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39740/39740\\_14996\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf)

<sup>20</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_811](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_811)

<sup>21</sup> CASE AT.39740 *Google Search (Shopping)* (27 June 2017) available at [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39740/39740\\_14996\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf)

<sup>22</sup> The UK Competition Appeal Tribunal released its findings regarding the binding nature of the European Commission’s *Google Shopping* case <https://www.catribunal.org.uk/sites/cat/files/2025-07/14245721%3B%2015895723%20%28T%29%3B%2015965723%3B%2016365724%20%28T%29%20-%20Judgment%20%28Preliminary%20Issue%29%20%5B2025%5D%20CAT39%209%20Jul%202025.pdf>



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## Part 1: Definitional Vulnerabilities to Circumvention

### 1.1. Effective remedies must be technologically neutral to remain resilient to future forms of Google’s conduct that achieve the same anticompetitive effects

We agree with the CMA’s finding that its conduct requirements apply on a “*global basis to capture all publishers that make content available to UK users.*”<sup>23</sup>

As a general point, the CMA’s definition of Google Search as a digital activity in the SMS notice excludes the Gemini assistant<sup>24</sup> but is part of Google’s “*broader generative AI services*” (as defined in the Publisher CR). Google itself outlines that “*AI Overviews use a customized Gemini model*”.<sup>25</sup> We note that the CMA includes anti-circumvention provisions. However, the conduct requirement remains product-specific and thus, a potential circumvention technique. Google scraping and using publisher content for its Gemini or broader generative AI services is still providing Google with an unfair advantage. In addition, there is currently a large gap for circumvention through Discover, which is becoming a more significant source of traffic for publishers (please see the evidence that we provided to the CMA on 13 February 2026).

We urge the CMA to adopt technology-neutral, functionally-defined obligations that Google cannot evade through definitional loopholes, product rebranding or specific methods of ingesting media owners’ copyrighted content.

We suggest tightening the current definitions to avoid ambiguity:

<sup>23</sup> Publisher Conduct Requirements, paragraph 5.19.

<sup>24</sup> See [CMA’s Final SMS Decision](#) (10 October 2025), para 1.18 and 1.19

<sup>25</sup> <https://static.googleusercontent.com/media/www.google.com/en//search/howsearchworks/google-about-AI-overviews.pdf>

- (1) The definition of “publisher” and “Search Content”, which must be technology-neutral and explicitly cover in-app and connected television (“CTV”) content delivered over web standards, because the relevant test is whether content is shared by the media owner using HTTP or other open web protocols, not the access method used by the end consumer;
- (2) The definition of “Search Content acquisition” must cover all ingestion mechanisms and not be limited to “crawling”;
- (3) The objective ranking criteria must guard against the use of latency and technical performance metrics as proxies for infrastructure self-preferencing, with a human-perceptibility standard ensuring that sub-perceptible latency differences cannot be used as ranking signals that systematically favour Google’s own cloud and CDN services; and
- (4) The paid-for exclusion content in Search Results must be qualified to prevent it from becoming a structural loophole through which Google channels self-preferencing conduct.

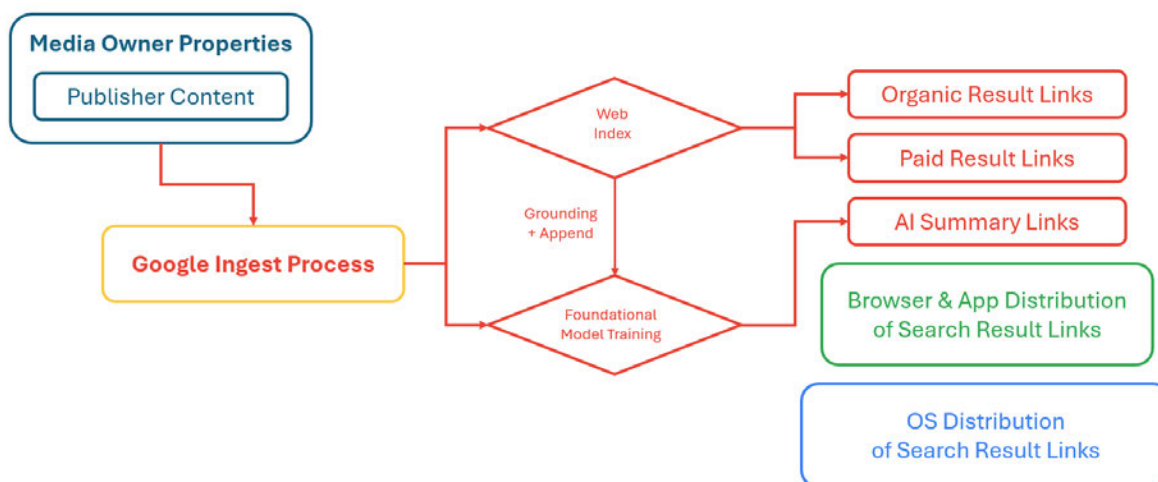
To ensure Google’s future conduct truly remedies this issue, it is critical to provide the market clarity on the following terms:

- 1) “Publishers”
- 2) “their Content”
- 3) “gathered”
- 4) “used by Google”.

### 1.2. The Scope of the CMA’s Empowering consumer choice in search results to General Search

The CMA recognises that Google has SMS levels of power in general search. In response to Fair Ranking CR question 6.2, the scope of Google’s obligations must be clarified.<sup>26</sup> For remedies to be effective, the scope of Google conduct requirements must cover all aspects of the pipeline of generating General Search services.

Google’s General Search Services Pipeline



<sup>26</sup> Consultation: Fair Ranking Conduct Requirement (28 January 2026), 6.2.

In answer to question 6.4 of the Fair Ranking Conduct Requirements, the CMA must design its remedies to comprehensively address the following areas to curb and prevent the continuing harm caused by



- 1) **Technology-neutral content handling:** Google’s conduct obligations should apply regardless of the software or technical means by which Google ingests rival publishers’ copyrighted content;
- 2) **Media-neutral protection:** Google’s conduct obligations should cover all copyright content, regardless of media format (including text, audio, image, and video) when Google ingests such content for either enriching its General Search service, or training and grounding its AI models and results;
- 3) **Device-agnostic consumer access:** Google’s compliance obligations should extend across all consumer access points (desktop, mobile, voice-activated, and other connected devices), ensuring consistent behaviour across platforms when consumers access Google’s search results;
- 4) **Non-discrimination in ranking:** Google must ensure that its own content and services are ranked on a fair, objective basis alongside rival publishers and service providers, without undue self-preferencing in search results.

**1.3. The Definition of “Publisher” must be technology-neutral**

Clarity in remedies requires first that definitions must be consistent across Google’s Conduct Requirement obligations. We first highlight inconsistencies in the definitions of “publisher” and “search content.”

Definitions in the Publisher CR	Definitions in the Fair Ranking CR
“ <b>publisher</b> means any party that makes content available on the web to any natural or legal persons located in the UK using Google’s general search services”	“ <b>publishers</b> means any party that makes content available on the web to UK users”
“ <b>Search Content</b> means publisher content collected through Googlebot or any Google crawler fulfilling the function of crawling open web content for Google’s general search”	“Google’s general search services are an important means by which other firms, across a wide variety of sectors, access customers, <u>facilitate transactions, and therefore carry out their business.</u> They are a key gateway through which businesses and <u>content creators</u> can reach consumers...”

The Publisher CR defines “publisher” as “*any party that makes content available on the web to any natural or legal persons located in the UK using Google’s general search services” (emphasis added). The Fair Ranking CR uses slightly different language: “*any party that makes content available on the web to UK users*”. This inconsistency alone creates uncertainty.*

The definition of “publishers” must be consistent across Google’s conduct requirements and must focus on all media formats made available to consumers or legal persons using web standards (e.g., HTTP, TCP/IP). Publishers should accordingly be defined as “content creators,” where their content is

accessible by any legal person located in the UK. The “content” these media owners create should be defined as any information that is used by Google’s general search services.

More fundamentally, both definitions anchor to “the web” in a way that is ambiguous. As the CMA correctly recognised in paragraphs 4.7,<sup>27</sup> 4.9, 4.11, and 4.16 of the SMS Decision, the scope of general search services is not limited to browser-accessible content. The SMS Decision defines general search as Google's service that:

*“allows users to search the world wide web through any medium and returns results in **the form of information of any type** (including but **not limited to all the information on Google’s SERP**)... Google’s general search can be accessed in numerous ways, including through web browsers, webpages, search apps, voice assistants and smart speakers; and through other means such as interaction with images.”* Crucially, Google itself agreed at paragraph 4.16 that *“the type of data source that Google Search uses is not relevant to whether a search result is part of Google Search or not.”*

The CMA's Final Decision (paragraphs 4.9 and 4.11) correctly recognizes that the scope includes “Google Search: **however it is accessed**,” and that the access medium is irrelevant.

Moreover, content creators need not be a business, but could be consumers. Accordingly, all copyrighted content must be protected under the definition of publisher, rather than narrowly limited to a technical method of how such copyrighted content is ingested or accessed.

What matters most is whether the content is published, distributed, or made available by a media owner using standard internet protocols, including HTTP, and related open web standards.<sup>28</sup> Content delivered to consumers via apps but transmitted over standard web protocols, referenced via URLs, indexable in principle by web crawlers, or accessible via other Google software that accesses publisher content built on web standards, is functionally indistinguishable from a potentially narrow reading of “web content” in any meaningful sense.

Otherwise, the risk is that Google’s acquisition of copyrighted media owner content because it relied on its Android OS, its partnership agreement with Apple or other handset manufacturers or via other Google products, such as its website analytics and cloud services, could act as an exemption. Secondly, such content is frequently discoverable by end consumers using search services that Google has embedded into its apps or OS, which requires protection in other remedies discussed further below.

The CMA noticed this same concern in paragraph 2.38 of its Final Report:

*“Google’s wider ecosystem of products and services means it controls a number of routes through which **general search services are accessed (for example browsers and operating systems)**, and in which it can therefore give its own general search service preferential treatment. Through this wider ecosystem of products and services, Google collects extensive data that gives Google a substantial competitive advantage over rivals....”*

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<sup>27</sup> Paragraph 4.7 of the CMA’s Final Report states that the scope of the investigation was regarding a service that is not limited to only browser-accessible content, given the scope was to a digital discovery service that enables people to find information from “world wide web, and can draw on other sources, to return information.”

<sup>28</sup> This aligns to the CMA’s Final Decision, paragraph 4.2, and definition of the relevant digital activity: “For these purposes, ‘digital activities’ are: (a) the provision of a service by means of the internet, whether for consideration or otherwise....”

**Circumvention risk:** Google may argue that content accessed through native mobile applications, connected television (“CTV”) apps, or voice assistants does not constitute “web” content and falls outside the CRs. As in-app and CTV content grows as a proportion of total media consumption, and as Google expands its indexing across these environments (through its agreements with streaming platforms, its Discover product, and its expanding crawler infrastructure), this definitional gap will become progressively more damaging to publishers.

The correct analytical principle is that the consumer access mechanism, whether a browser, a native app, a smart TV application, or a voice assistant, is entirely irrelevant to whether the underlying content was created or distributed by a media owner for the purposes of this remedy. Fortunately, this distinction is not debated by Google. Google agreed at paragraph 4.16 that “*all information incorporated in its SERP is part of its general search; and submitted that [t]he type of data source that Google Search uses is not relevant to whether a search result is part of Google Search or not.*” Moreover, Google’s own description of its General Search results clearly states that all media formats (e.g., text, image, audio and video) will be returned.<sup>29</sup>

**Proposed Amendment to the definition of a “publisher”:**

*'Publisher' means any party that makes content available using standard internet protocols (including HTTP or TCP/IP), regardless of the technical mechanism or device through which end users may access that content. For the avoidance of doubt, a publisher includes any party whose content is accessible via a URL, indexed or indexable by a search service, or transmitted using open web standards, irrespective of whether that content is accessed by end users through a web browser, a native mobile application, a connected television application, a voice interface, or any other access method. The definition must be consistent across the Publisher CR and Fair Ranking CR.*

**1.4. The Definition of “Search Content” must be technology-neutral, media-neutral and cover all methods of ingestion, not just “crawling”**

The Publisher CR defines “Search Content” as “*publisher content collected through Googlebot or any Google crawler fulfilling the function of crawling open web content for Google's general search*”.

This definition, while product-agnostic in one dimension (it covers successors to Googlebot), is technically specific in another. This definition only captures content obtained through “crawling,” which Google could argue excludes protections for content that Google acquires through all other technical mechanisms that serve the same economic and functional purpose.

The circumvention risk is significant. The SMS Decision itself, at paragraph 4.14, identifies five distinct mechanisms by which Google gathers content to power its general search services, of which crawling is only one.

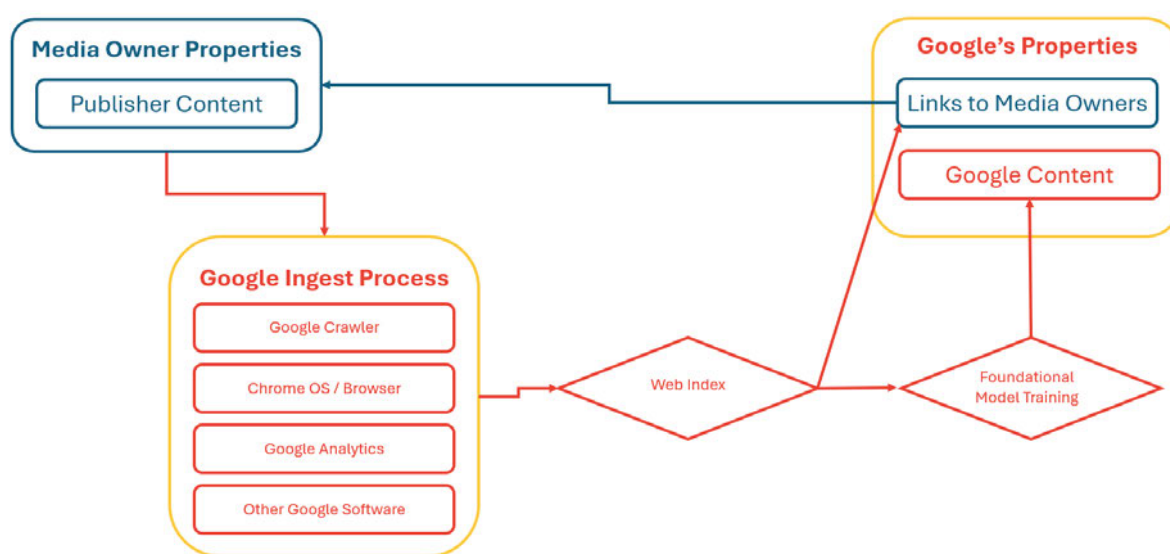
Google could satisfy the letter of the current definition while defeating its purpose by acquiring content through:

- Direct licensing from aggregators, data brokers, or Common Crawl datasets, potentially using Interpretative Note 5's “open-source data sets” carve-out as cover;

<sup>29</sup> See <https://developers.google.com/search/docs/appearance/visual-elements-gallery> and <https://developers.google.com/search/docs/appearance/enable-web-stories>

- Relying on integrations with publisher APIs, sports data feeds, or financial data providers that bypass Googlebot entirely;
- Ingesting content via pipelines controlled by Google's other products, including Google Analytics, Google Ads, Google Shopping, YouTube, and Google Cloud, which collect publisher content through entirely separate mechanisms;
- Developing AI ingestion pipelines that pre-process content into embeddings or vector representations that are technically distinguishable from “crawling” even though they serve an identical function; and
- Commercial licensing deals with content aggregators or streaming platforms where a publisher's robots.txt signals has no technical effect.

## Google’s General Search Services Ecosystem



The particular technological process through which Google ingests rival publishers’ copyrighted content is irrelevant to determining whether the rights holder has expressly authorised Google to use that content for AI purposes. In response to the CMA’s question 6.2 in Publisher Conduct Requirements, we note that rules that apply only to robots.txt signals for General Search, and that ignore the five other ways the CMA identified Google gathers publishers’ content, need to be updated so that they cover all technologies equally, comprehensively and fairly.<sup>30</sup>

A separate risk is that Google may argue if a publisher chooses to avoid having its content indexed by Google’s web crawler, such content is exempt from its conduct requirements. However, from the media owners’ perspective the protection must apply to all publisher content made available via web standards regardless of how Google technically ingests it.

<sup>30</sup> Final Decision (10 October 2025), paragraph 4.14(a). Google has explicitly notified the CMA that its crawler supplies only a subset of the information Google ingests to inform its General Search services, specifically Google General Search service relies on “Data from other products – user data collected from Google’s ecosystem of products including volunteered data (data intentionally provided by the user), observed data (information recorded about the user and what they do) and inferred data (information derived or deduced from other data). (d) Data on user behaviours on other websites and apps – user data collected from analytical tools such as Google Analytics for advertising verification, attribution and measurement of effectiveness.” Final Decision, 5.187.

#### 1.4.1. The Definition of “Search Content” must be cover all media, not just text

The CMA refers to Search Content (the inputs into Google’s Search and broader generative AI services) as “*images, videos, maps and local data*” (Final Decision, paragraph 5.211) and “*links to specialised search services, videos and maps within the scope of the designation.*” (Final Decision, paragraph 4.25).

**Interpretative Note 5 of the Publisher CR risk:** The current “open-source datasets” carve-out in Interpretative Note 5 could permit Google to ingest publisher content indirectly via datasets that aggregate content for which the originating publishers have not consented to AI uses by Google. This exception must be expressly limited where Google has reason to believe that the dataset contains content from publishers who have not opted in to the specific use by Google.

Accordingly, the definition of Search Content must be defined by all inputs Google uses for building, training or grounding its Google’s Search and broader generative AI services. The following definition should be added to the definition of Search Content that is subject to Google’s conduct requirements:

**Proposed Amendment to the definition of “Search Content”:**

*'Search Content' means any content published by a party using standard internet protocols, including but not limited to text, images, video, audio, structured data, or any other form of digital content, which Google acquires, ingests, processes, stores, or uses (by whatever technical means) for the purpose of: (a) generating, grounding, or improving its general search results; (b) training, fine-tuning, or grounding its generative AI services and features; or (c) any other purpose that derives value from the content's provenance as content published by that publisher. This definition is expressly not limited to content collected through Googlebot or any specific crawler product.*

#### 1.5. The definition of “broader Generative AI Services” must be functional, not a named list

The Publisher CR defines “broader generative AI services” as “*Google's generative AI-dependent products and services offering information retrieval capabilities outside of general search, such as Gemini AI Assistant and the Vertex AI API.*” The use of named products is inherently unstable. Google regularly rebrands, merges, and reorganises its product portfolio.

Google currently lists at least 11 consumer and 12 enterprise products that incorporate generative AI services trained or grounded on publishers’ copyrighted content.<sup>31</sup> Both lists are incomplete but illustrate that the broader generative AI services must include all uses by Google of models trained or grounded on media owners’ copyrighted content, rather than merely a named list of current products for the CMA’s conduct remedy to truly be effective in returning control to publishers.

A publisher control remedy limited to currently named products will likely be evaded through product rebranding or restructuring of the corporate entity operating the relevant service.

**Proposed Amendment to the definition of “broader generative AI services”:**

*The definition of 'broader generative AI services' should be extended to include all Google products and services that incorporate generative AI models trained or grounded (in whole or in part) on Search Content, regardless of the product name, the technical architecture, or the Google entity through which the service is operated. Interpretative Note 2 should be amended to confirm that 'evolve in an*

<sup>31</sup> See <https://support.google.com/docs/answer/13447609?hl=en> and <https://ai.google/products>.

*appropriate way' requires controls to extend automatically to any new product, feature, or service meeting this functional test, without requiring further regulatory action.*

Paragraph 2 of the Publisher CR provides that publishers should be able to opt-out of their content being used for training and grounding (of Google broader generative AI services) and grounding only (of Google's search generative AI features). The CMA notes that Google-Extended currently offers a single limited control covering both training and grounding use cases. Google states that its current Google-Extended signal will only "limit", but not stop Google's use of content for "*training future generations of Gemini*" rather than all use of media owners' copyrighted content for any use by Google in AI training and grounding.<sup>32</sup> [REDACTED]

The CMA would like to hear further evidence on the benefits and risks of Google providing separate controls over training and grounding outside of general search. [REDACTED]

[REDACTED] Publishers should be able to signal to Google an *opt-in* use right for training and/or grounding on a separate basis. [REDACTED]

Also, the CMA would like further evidence on the benefits and risks of Google providing content-level controls for Search Content usage outside of general search. We understand this means publishers having the control to include or exclude their content (either at page level or directory (whole website) level) from being used in Gemini and Vertex and other non-Search related products. We support granular controls for publishers to be able to separately authorize portions of their content that is made available via open web standards, rather than rely on artificial distinctions that are device and application-specific, such as top-level website domains for content accessed via browsers. Moreover, more transparency is required from Google on what content from media owners Google has gathered and/or stored, and which systems and products Google has subsequently used it and displayed it on (e.g., "blue links", "carousels" and "snippets"). Such a transparency conduct requirement will level the playing field and enable rival publishers to fairly value their content for Google's specific uses.

## **Part 2: An opt-out framework misallocates the burden of compliance from Google to Publishers**

### **2. Publisher Authorization Permits Only Navigational Search Uses**

The CMA correctly recognises in the Publisher CR (paragraph 1.5(a)) that publishers "*have no realistic option but to allow their content to be crawled*" given Google's SMS in general search. Publishers' historical consent to crawling was granted on the basis of a specific implicit bargain: visibility in organic search results in exchange for Google indexing their content. That bargain did not extend to training large language models or grounding AI services that compete with publishers' own content.

<sup>32</sup> See <https://developers.google.com/search/docs/appearance/ai-features> and <https://developers.google.com/crawling/docs/crawlers-fetchers/google-common-crawlers#google-extended>

## 2.1. [REDACTED]

As set out in our complaint dated 30 June 2025, Google’s market power has enabled it to obtain and use rival publishers’ copyrighted content without permission or payment for purposes not authorised by the content owners. The terms on which publishers historically permitted Google to use their content were established over decades, based on the mutual benefit of visibility in general search results that drive referral traffic back to those digital properties. That arrangement allowed consumers to access, engage with, and purchase products or services directly from those publishers’ properties.

To ensure the CMA’s conduct requirements do not inadvertently condone Google’s unauthorized use of rival publishers’ copyrighted content, Google’s conduct obligations must be rephrased to *opt-in* to any use beyond navigational listing of rival publishers’ property in organic search result links.

The CMA’s current approach focuses on providing “*effective controls to allow publishers to opt out of their Search Content being used for any generative AI purpose (ie both training and grounding)*.”<sup>33</sup> This framing inverts the correct legal and commercial starting point. Copyright law does not require rights holders to assert their rights affirmatively against each potential unauthorised use. Google must bear the burden of demonstrating that it has explicit authorisation for each use it makes of publisher content beyond organic search listing.

The CMA’s current phrasing inappropriately shifts the burden to copyright holders to signal to Google that it should not continue its unauthorized use of their copyrighted content, such as in training or grounding its AI services.

In the Interpretative Notes, the CMA states that “*Google should not intentionally rank publishers lower or remove them from organic search results based on their use of the controls*” (*emphasis added*). The word “intentionally” here is unclear. Any seemingly objective criteria in an algorithm may be seen as not being an intentional ranking technique but has the same effect. We suggest removing this word to avoid limiting the CMA’s conduct requirement monitoring Google’s subjective intent and instead focus on more objective output criteria, such as consumers’ visibility of links to rival publishers’ content and their navigation from Google General Search services to that content. Please see section 3.5 below regarding criteria to be used, which should be fair (not only consistent).

[REDACTED] In copyright terms, when publishers signal that their content is available to Google’s software for inclusion in General Search, there is a grant of a limited right being made for a specific purpose: use by Google for the purposes of display in SERPs. This initial grant does not confer to Google use for other unauthorized purposes, such as the purpose of training Google’s LLM or use in grounding to improve its AI services that compete with the copyrighted content the publisher has created. The terms on which a property owner allows its property to be used are a matter for that property owner – not for Google. Google’s terms of trade cannot govern the basis on which the property is being made available. [REDACTED]

[REDACTED] Accordingly, the CMA conduct requirements cannot legally support an outcome where Google unilaterally decides to waive rival publishers’ copyright rights unless they have expressly and affirmatively signalled to Google that they wish to assert them against Google’s unauthorized use.

<sup>33</sup> Publisher Conduct Requirements, Paragraph 4.11(a) explaining Google’s Conduct Requirement in (1) “Effective Controls”.

## 2.2. [REDACTED]

The CMA notes that “publishers do not have sufficient choice of how their content, gathered for search, is used in its AI generated responses.”<sup>34</sup> As mentioned above, we agree that this lack of choice arises from [REDACTED]

To ensure the remedies remain technology-neutral, the CMA’s conduct requirements must also apply to links that enable navigation and access to rival publishers’ content, irrespective of which technology or interface a consumer uses as the access point to obtain those links. This is correctly captured in the CMA’s discussion of User Choice conduct requirements, where both browser and app-based searches are explicitly mentioned in its scope<sup>35</sup> as well as in its definition of General Search in its final report, mentioned above.

**Legal risk:** If the CMA’s CRs normalise an “opt-out” framework for AI exploitation of publisher content, this would be inconsistent with both UK and EU competition law. Under standard competition law, Google as the dominant firm bears the burden of justifying any conduct that harms competitors. The Publisher CR must not inadvertently function as a regulatory endorsement of Google’s unauthorised use of third-party copyrighted material.

### 2.3. Publishers Lack Fair Bargaining Power with Google

Given Google’s dominance, the risk to media owners is significant, since they cannot stand on equal footing in any commercial negotiations with Google. This market failure is part of Google being designated as having SMS. The CMA noted this bargaining power issue in its proposed decision:

*“Google’s bargaining position can impact fair and reasonable terms for publishers, including fair payment terms for the use of their content. Insufficient controls about how their content is used in Google Search (including AI Overviews) also limits news publishers’ ability to monetise their content.”*<sup>36</sup>

Accordingly, all publisher content regardless of how Google “gathers” or “collects” it must be in scope for conduct remedies to be effective at addressing the issues the CMA identified.

### 2.4. Ensuring Google’s use of rival publishers’ content is authorized for that use

To help publishers enforce their rights against Google, we agree with the CMA’s conclusion in paragraph 4.88 of the Publisher CR that publisher-provided authorization signals are a more appropriate mechanism than requiring Google to distinctly ingest a publisher’s copyrighted content separately for

<sup>34</sup> Publisher Conduct Requirements, Paragraph 1.5(a).

<sup>35</sup> Paragraph 4.20, “.... [Scope of search links pertains to] Google-owned access points on Android devices which represent a significant proportion of on-Android device searches, namely the Search widget and Chrome app”.

[https://assets.publishing.service.gov.uk/media/6979d0f35da1fd4ddea98c75/User\\_choice\\_conduct\\_requirement\\_v2.pdf](https://assets.publishing.service.gov.uk/media/6979d0f35da1fd4ddea98c75/User_choice_conduct_requirement_v2.pdf)

<sup>36</sup> Proposed Decision (24 June 2025), paragraph 1.10.

[https://assets.publishing.service.gov.uk/media/68598b13eaa6ff6419fade67b/Proposed\\_decision.pdf](https://assets.publishing.service.gov.uk/media/68598b13eaa6ff6419fade67b/Proposed_decision.pdf)

each use (such as using separate mechanisms for inclusion in organic search results, paid search results, or the training, grounding, and enhancement of Google’s AI services). Beyond cost issues for both Google and for rival publishers, given Google has informed the CMA that its crawler is but one of multiple ingestion methods, focusing remedies on the technology Google uses for content ingestion is inappropriate.

## 2.5. The Illusory Nature of a Publisher Opt-Out

The CMA requests feedback on publisher authorization signals to Google’s use of their copyrighted content, specifically in relation to paragraph 4.13 of the Publisher Conduct Requirements.

The CMA’s own evidence demonstrates that the closest current proxy for opting out of AI features — removing snippets via the “nosnippet” control – reduces publisher traffic by approximately 45%.<sup>37</sup> If opting out of one’s links being discoverable carries equivalent commercial penalties, the “choice” offered to publishers is illusory. A remedy that provides nominal choice while imposing commercially ruinous consequences for exercising that choice does not constitute meaningful publisher control.

Furthermore, the Publisher CR acknowledges (paragraph 1.11(b)) that the scope of the “Google-Extended” control is unclear to publishers, preventing informed decision-making. Transparency without genuine choice is not a remedy.

This evidence suggests that the only viable market approach is for rival publishers’ listed in organic search results to be above Google’s own AI content, providing consumers a true choice relative to Google’s own content. Practically, this means that the Fair Ranking CR must ensure rival publisher content is visibly and prominently displayed above Google’s own content and links to Google’s content must compete on the same basis as that from rival content providers. Such a remedy would enable publishers to withhold the use of their content from training or grounding Google’s AI services and still enable them to be discovered and navigated to by consumers.

### Google Must Bear the Burden of Demonstrating Authorized Use

The CMA’s remedies attempt to equip media owners with meaningful control over Google’s unauthorized use of their copyrighted content. This control must not be weakened by Google arguing a “Sorites” definition of just how much is a “substantial amount” of the copyrighted content it is unauthorized to use.<sup>38</sup> Google should bear the burden of maintaining records that it has explicit permission for an authorized use of the media owners’ copyrighted content.

#### **Proposed Amendment:**

*Google’s conduct obligations must be rephrased to require opt-in consent for any use of Search Content beyond navigational listing of publishers’ properties in organic search result links. Publisher CR paragraph 3 should be amended to state: “Google must not use Search Content for any purpose other than display in organic general search result links unless the publisher has expressly signalled its consent to that specific use. Google shall bear the burden of maintaining records demonstrating that it holds explicit consent for each authorised use of Search Content.” The obligation must further provide that no second-order adverse ranking effect may result from a publisher declining to grant consent for Google’s AI uses.*

<sup>37</sup> Publisher Conduct Requirements, paragraph 1.11(a), citing Google’s own research

<sup>38</sup> Publisher Conduct Requirements, paragraph 4.18(b).

## 2.6. Proposed amendment to the definition of “Publisher controls”

To ensure remedies are not tied to specific names of Google products and remain technology-neutral, the following should be added to Interpretative Note 2:

### **Proposed Amendment:**

*The following should be added to Interpretative Note 2: “For the purpose of paragraph 3.a. of the Publisher CR, ‘evolve in an appropriate way’ includes the obligation to extend controls to any new product, feature, service, or technical architecture that uses publisher Search Content, regardless of whether that product or feature is marketed under a new name, delivered through a different technical mechanism, or operated by a different Google entity. Renaming a product, restructuring the technology stack used to ground responses, or altering the corporate structure of the entity offering the relevant service does not affect the application of the controls. The test is functional: whether publisher content was used by Google in the response Google provides to a user.”*

## 2.7. Proposed amendment to open-source dataset exemption to avoid Google’s circumvention of publisher control signals

There is a risk that Google will use Publisher Conduct Requirements Note 5 regarding the circumvention of publisher choice, to indirectly source publisher content from a party that may have a legal right to its use, but where the copyright holder wishes to restrict Google’s usage. To address this risk, the publisher control mechanism can be enhanced to ensure Google cannot rely on implied or indirect authorizations. Silence on a particular use, such as building, improving or monetizing general generative AI services, even where permission exists for general search, should be interpreted as withholding authorization for additional uses. To ensure the remedy properly protects media owners’ copyright, such direct signalling must take precedence and govern Google’s potential subsequent use. Specific language to this effect is below:

### **Proposed Amendment:**

*“We would not consider Google attempting to acquire content opted out of Google-Extended via open-source datasets to amount to circumvention, where these datasets have obtained content legally, and are explicitly authorized by the copyright holder to transfer that authorization to other parties. The open-source dataset exception does not apply where Google has reason to believe that the dataset contains content from publishers who have not opted in to a specific use by Google, or where the effect of using that dataset would be to undermine the practical effectiveness of publisher controls.”*

It would be unreasonable for the CMA to permit Google to circumvent publisher control signals by acquiring content through open-source datasets that themselves lack authorization by the copyright holders for use of their content in training or grounding AI services. We urge the CMA to close this loophole by clarifying footnote 60 of the [Publisher CR](#).

## Part 3: Fair Ranking Conduct Requirements must delivery genuine consumer choice and ensure output-based monitoring of results

3. [REDACTED]

The Fair Ranking CR's non-discrimination obligation (paragraph 2(c)) requires Google to rank “*organic search results relative to search features and/or search generative AI features on the SERP*” on an objective, non-discriminatory basis. This is the correct analytical framework. However, the CR's Interpretative Note 1 explicitly carves out “*the design and presentation of other search features*” from the non-discrimination obligation, creating a critical structural gap and significant asymmetry. Google can comply with the non-discrimination obligation for the blue link feed while simultaneously designing SERP features that structurally displace organic results. Expanding the physical space occupied by AI Overviews, Knowledge Panels, or shopping units to the point where organic results are pushed below the fold would undermine the effectiveness of the CMA's conduct remedies.

Google's AI Overviews (“AIOs”) are a Google product; they are not a neutral feature of their general search service. By placing AIOs above organic results, [REDACTED]

Google's conduct is directly analogous to the Microsoft/Windows Media Player bundling case, in which bundling of a Microsoft product into an operating system where Microsoft held dominance was found to constitute an abuse of that dominance. The unbundling principle is well-established in EU and UK competition law.

**Competition law consistency risk:** If the Fair Ranking CR were to normalise AIO placement above organic results without objective justification tested against publisher evidence, the CMA would risk approving conduct that may constitute an infringement under the Competition Act 1998 and Article 102 TFEU, both of which continue to apply alongside the DMCCA. The European Commission's ongoing investigation into Google Search under Article 6(5) of the Digital Markets Act 2022 is examining the same conduct.

The European Commission's 2017 *Google Search (Shopping)* Decision established, and the General Court and CJEU confirmed, that Google's own comparison-shopping service was not subject to the same ranking mechanisms as competing services (Decision, paragraph 380). Google's technical implementation of AIOs, Discover, and AI Mode continues to display Google's own content through mechanisms that bypass standard search ranking methodology, perpetuating precisely the same discriminatory treatment.

### 3.1. The “Scope” of the Fair Ranking CR

The obligation in paragraph 2.c., covering “*the ranking of organic search results relative to search features and/or search generative AI features on the SERP*”, must be interpreted to encompass exactly this risk. The following should be added to Interpretative Note 1:

**Proposed Amendment:**

*"The obligation in paragraph 2.c. of the Conduct Requirement encompasses decisions about the physical positioning, visual prominence, and space allocation on the SERP that affect the visibility of organic search results relative to other SERP features, including those containing Google's own products and services, paid-for content, and AI-generated responses. Decisions that have the effect of systematically reducing the aggregate visibility of organic results, whether through the introduction, expansion, or repositioning of other SERP features, are within the scope of this obligation to the extent that they reflect choices about the relative prioritisation of organic versus non-organic content on the SERP."*

In paragraph 2.a. and 2.b., the ranking and presentation of organic search results and within search generative AI features does not include AI Overviews, AI Mode or Discover:

- (1) AI Overviews or AI Mode – due to the increase in “zero click searches” and consumers relying on Google’s AI-generated results as the answer to a query, the triggering of AI Overviews should also be ranked in accordance with the ranking that third-party content needs to go through. AI Overviews should not occupy the first spot if the response provided does not fulfil the ranking criteria that is applied to third parties. As mentioned in our letter of 13 February 2025, Google’s AI Overviews now automatically leads users to AI Mode.<sup>39</sup> Therefore, Google’s AI Mode responses should also go through the ranking and not be presented at the top of the page preferentially if the answer is not relevant.
- (2) Discover – as mentioned in our letter of 13 February 2025, publishers are increasingly reliant on traffic from Discover. The CMA should include Discover as part of the Fair Ranking CR.

### 3.2. The “Non-discrimination and objectivity” of the Fair Ranking CR

Paragraph 4.b. of the Fair Ranking CR requires Google to apply *"the same, objective criteria in relation to its own products and services and the equivalent products and services of third parties."* This is necessary but requires greater specificity to prevent Google from defining *"objective criteria"* in ways that structurally advantage its own content and adjacent product offerings, including its Cloud infrastructure.

### 3.3. The Interpretative Notes of the Fair Ranking CR

**The Interpretative Notes state that the only generative AI products in scope are Google’s AI Overviews, AI Mode and Discover.** They are referred to as “guidance” such as would be taken into account by an administrative body exercising discretion rather than being expressed as an obligation or an order by an adjudication entity. Google is not the CMA. In this context, the CMA is making an adjudication decision and should make its position clear unequivocally and use a set of defined terms that leave no room for discretion by the party that is subject to the conduct obligation.

Much would be improved if they were expressed as defined terms as would be binding on a contractual obligation.<sup>40</sup>

<sup>39</sup> <https://searchengineland.com/google-ai-overviews-follow-up-questions-jump-you-directly-to-ai-mode-468016>

<sup>40</sup> The expressions are further defined on page 24 of the Fair Ranking CR with reference to useful language that could be incorporated into binding definitions: (iii) ‘search features’ such as OneBoxes, the Google Shopping carousel, in-set maps and integrated links to Google’s 59 Digital Markets Competition Regime Guidance (CMA194), December 2024, paragraph 3.20(b). 25 specialised search services.<sup>60</sup> The SERP also includes search generative AI features, such as AI Overviews.<sup>61</sup>

However, the problem created by those expressions is twofold; either the day after the date that the undertakings enter into force the names are changed (common practice by Google) or the technical systems and software that they use will be changed. The undertaking has to be changed to address the effects on the market and output measures – so that, irrespective of the methods chosen or descriptions given to the methods chosen, the effect is one of non-discrimination.

Indeed, the provision copied at paragraph 2 of the Interpretative Notes of the Fair Ranking CR states that “2. *For the avoidance of doubt, the principles do not apply to: (a) the design and presentation of other search features (as described in paragraph 1(c) of these interpretative notes);*” This also provides an avenue for avoidance by Google. This effectively enables Google to claim that everything unspecified is free from obligation. In one sentence, Google will have avoided the obligations imposed by competition law on it as a dominant entity; and the CMA could find itself being used as a shield for Google’s continuing anticompetitive practices.

The language in 2(a) of the Interpretative Notes of the Fair Ranking CR should thus be deleted.

In paragraph 2(b) of the Interpretive Notes of the Fair Ranking CR, it states that “2. *For the avoidance of doubt, the principles do not apply to: (b) the ranking, design and presentation of paid-for (sponsored) content, including the placement of, or amount of space on the search results page allocated to, paid-for (sponsored) content...*” Google’s own products (e.g., AI Overviews, AI Mode) would not fall as part of the definition of web content and would not be ranked in accordance with the ranking algorithm. They are sponsored by Google and placed by Google in the SERPs.

In other words, it would be open to Google to claim that its own products such as AI Overviews, AI Mode or Discover are excluded from the obligations not to discriminate. This would be contrary to the thrust of the CMA’s investigation, as well as being inconsistent with current UK and EU law, and hence something that should be avoided by deleting the exclusionary language in its entirety.

### **3.4. Effective remedies must ensure Google does not unfairly restrict consumer choices in links returned with General Search results**

[REDACTED]

#### **Ensuring Google does not disintermediate rival publishers from consumer interaction**

The CMA notes that “*Effective attribution of content in AI-generated responses is important for both consumers and publishers.*”<sup>41</sup> We agree that visibility of rival publishers’ content is an essential factor in digital market competition. However, the CMA’s current focus on attribution within Google’s AI summaries overlooks a critical dimension of the problem: many media owners’ business models depend on maintaining *direct* interaction with consumers.

This direct engagement is central to how publishers create and sustain value. Consumers may use Google’s search and/or browser services to discover a publisher’s property, but meaningful interactions

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<sup>41</sup> Publisher Conduct Requirements, Paragraph 1.5(c).

occur on that media owner's own property, where audiences read articles, view ads, purchase subscriptions or tickets, and participate in membership or loyalty programs. For example, sports properties experience surges in traffic during transfer windows, as fans return repeatedly to follow player movements, activity that translates directly into advertising revenue and brand engagement.

Visibility alone is therefore insufficient. Publishers must remain *navigable* and accessible via open web standards that allow consumers to reach and interact with rival publishers' services directly. The CMA's current framing does not fully recognise this distinction, and its omission risks leaving unaddressed a key mechanism through which Google could disintermediate rival publishers from the visitors on whom their business models depend.

By prioritising AI summaries over referrals to rival publishers' properties, Google's conduct disintermediates these businesses from their audiences. If unaddressed, the CMA's current framing could inadvertently transform UK publishers into mere content suppliers for Google's AI outputs. This omission is inconsistent with the principle of Fair Ranking. Remedying the problem requires measures that ensure unbundled and non-discriminatory visibility in search results, allowing fair competition for both user attention and engagement.

### **Empowering consumer choice in search results to General Search**

The CMA accepts that choice needs to be restored where there is no choice.<sup>42</sup> The CMA appropriately notes that the scope of conduct requirements apply to Google's conduct, regardless of how consumers access the results of a general service search query.<sup>43</sup> However, the CMA's user choice conduct requirements focus only on the service-level utilised via access points.<sup>44</sup> We support the CMA's focus on ensuring consumers are aware of "*the broad range of available search providers*" and have the "*ability to choose quickly and easily between search providers*."<sup>45</sup> We believe this same freedom must also be applied to accessing rival publishers' content relative to that provided by Google.

Currently, the choice regarding the content within search results that enables user discovery of available providers, from whom they can choose quickly and navigate easily, is only explicitly referred to for publishers – not users – and the relationship between the publisher side and the user side of the Google machine is understated. Indeed, publisher side choice is dependent upon user side choice being restored. Without user side choice, publishers are reduced to merely being content creators that feed Google's AI products.

Under the DMCCA, Google's Strategic Market Status in General Search services imposes a "fair ranking" conduct requirement, mandating objective, non-discriminatory ranking of search results - the blue links to human-generated publisher properties relative to Google's own sources of information, such as AI-generated summaries like AI Overviews. Because of the prominent and discriminatory

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<sup>42</sup> Consultation: Publisher Conduct Requirement (28 January 2026): "*1.15 As set out further in our proportionality assessment, we consider that this inability to exercise sufficient choice can lead to the following adverse impacts on web publishers and end-consumers of web content...*" [https://assets.publishing.service.gov.uk/media/6979d0bf75d44370965520a0/Publisher\\_conduct\\_requirement.pdf](https://assets.publishing.service.gov.uk/media/6979d0bf75d44370965520a0/Publisher_conduct_requirement.pdf)

<sup>43</sup> Final Decision, 4.9(a)(i): "*We find that the following Google products are within the scope of the relevant digital activity: (a) Google Search: (i) however it is accessed;*" [https://assets.publishing.service.gov.uk/media/68e8b643cf65bd04bad76724/Final\\_decision\\_strategic\\_market\\_status\\_investigation\\_into\\_google\\_s\\_general\\_search\\_services.pdf](https://assets.publishing.service.gov.uk/media/68e8b643cf65bd04bad76724/Final_decision_strategic_market_status_investigation_into_google_s_general_search_services.pdf)

<sup>44</sup> Consultation: User Choice Conduct Requirement (28 January 2026), page 7: "*Users receive search services through 'access points'. These include, for example, web browsers, search apps and search 'widgets'.*" [https://assets.publishing.service.gov.uk/media/6979d0f35da1fd4ddea98c75/User\\_choice\\_conduct\\_requirement\\_v2.pdf](https://assets.publishing.service.gov.uk/media/6979d0f35da1fd4ddea98c75/User_choice_conduct_requirement_v2.pdf)

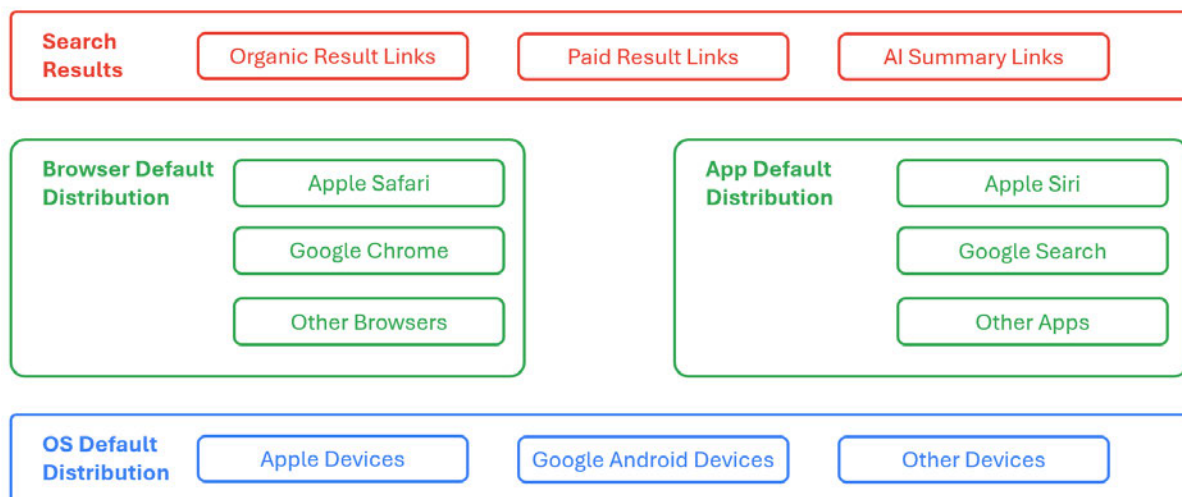
<sup>45</sup> We further support the CMA's finding that "*Experimental evidence has shown that choice screens increase engagement with a wider set of market competitors, increase choice comprehension, and increase confidence in decision-making, enabling consumers to exercise active choices in digital markets*" at User Choice Conduct Requirements paragraph 5.23.

display of Google’s own AI-generated summaries, rival publishers’ visibility in relation to user queries has been reduced and users have restricted access to links to rival publishers’ content.

This means that the Fair Ranking CR<sup>46</sup> has to provide true end user choice among a choice of products, both human-generated and Google’s AI-generated results. Setting Google’s AI-generated summary below human-generated products in organic links, not above them, best satisfies the fair ranking obligation under the DMCCA, as it prioritizes direct access to original sources before Google’s competing synthesized AI Overviews, avoiding user diversion from expected results in a general search service query.

After all, when a consumer navigates to Google Search, that consumer expects a list of relevant links rather than Google’s AI generated summary of rival publishers’ content. Consumers could choose to navigate directly to Google’s AI Mode or Gemini websites, but when they choose not to, the organic listing should be provided in line with consumer expectations. [REDACTED]

### Consumer Discovery and Navigation to Publisher Content



Basic non-discrimination principles apply to Google as a dominant supplier of a distribution system, and the Fair Ranking CR approach presupposes a choice being provided to users, so our request is to make the choice clear at the user level, based on output measures.

This means, for example, when searching for sports match fixtures, the organic link to a set of results from a sports property, such as GRV Media Ltd, would be ranked above Google’s AIO. The test for non-discrimination can be assessed against measurable output from independent data providers. For example, Authoritas’ keywords to check that organic links are being treated equally in search results (see the Authoritas study annexed to our complaint dated 30 June 2025) relative to Google’s own content in search results.

<sup>46</sup> [https://assets.publishing.service.gov.uk/media/6979d0db75d44370965520a1/Fair\\_ranking\\_conduct\\_requirement.pdf](https://assets.publishing.service.gov.uk/media/6979d0db75d44370965520a1/Fair_ranking_conduct_requirement.pdf)

### 3.5. Objective Criteria must be fair, not merely consistent

In response to the CMA's question 6.4(b) in its Fair Ranking Conduct Requirements, the objective criteria that Google relies upon in ranking search results must be fair, not merely consistent.

The Fair Ranking Conduct Requirement requires Google to apply "*objective and non-discriminatory criteria*". In the absence of a definition of "*objective*," Google can argue that any algorithmically-defined and consistently-applied criterion is, by definition, objective. This conflates methodological consistency with genuine competitive neutrality.

Criteria that structurally advantage Google's own content or infrastructure, even if applied consistently, are not objective in the competition law sense. The most significant example is latency. Google currently uses latency as one signal in its organic search rankings:

1. Google operates one of the world's largest content delivery networks. It can engineer latency advantages for content hosted on its infrastructure in ways that appear formally neutral but are structurally self-preferencing, such as using page load speed, server response time, or Core Web Vitals metrics in ways that systematically advantage publishers who use Google Cloud or Google's CDN.
2. AMP (Accelerated Mobile Pages) required publishers to host their content on Google's servers, a structural requirement that was only formally abandoned after regulatory pressure.
3. Latency differences of 50 milliseconds are imperceptible to any human user. Using such thresholds as ranking signals does not serve consumer interests, it serves Google's commercial interest in promoting its adjacent cloud and CDN businesses.
4. The measurement of latency performance from Google's own servers rather than a neutral vantage point.

Using such an artificial threshold as a ranking signal cannot be justified as serving users' interests and should be treated as a proxy for preferencing Google's adjacent businesses and infrastructure. The critical distinction the CMA must draw is between latency as a genuine proxy for user experience, which is a legitimate objective criterion, and latency as an instrument of infrastructural self-preferencing.

The correct test is whether a criterion serves consumer interests in receiving relevant, accurate, and accessible search results, not whether it is applied consistently across all publishers. Where a criterion has the effect of systematically shifting click volume to Google's own content, Google must bear the burden of demonstrating that the shift is an unavoidable consequence of pursuing consumer interests rather than a discriminatory design choice.

### **Mere Consistency of Objective Criteria is not sufficient to be meaningful to end consumers**

Paragraph 4 of the Fair Ranking CR does not define what makes a criterion "objective."

In the absence of a clear standard, Google can argue that any criterion it applies is, by definition, objective, since it is algorithmically-defined and consistently applied. This conflates methodological consistency with genuine objectivity. A criterion can be consistently applied while being substantively biased. Criteria that advantage content hosted on Google's infrastructure, content produced by entities with commercial relationships with Google, or content that supports Google's AI training pipeline may all be applied consistently while being substantively non-objective.

**Proposed Amendment:**

*Interpretative Note 4 should be amended to add: “The requirement to apply ‘objective and non-discriminatory criteria’ means that Google’s ranking criteria must be justifiable by reference to their tendency to serve the interests of end users, specifically, the relevance, accuracy, comprehensiveness, and accessibility of results to the user’s query. Criteria that primarily or materially serve Google’s commercial interests, infrastructure preferences, or AI product development requirements are not objective in this sense, regardless of how consistently they are applied. Where a ranking criterion has the effect of systematically advantaging Google’s own products, services, or commercial partners relative to functionally equivalent third-party content or services, Google bears the burden of demonstrating that the criterion serves user interests and that the differential effect is an unavoidable consequence of pursuing those interests rather than a discriminatory design choice.”*

The CMA lays out a series of laudable items for the “criteria” in the Fair Ranking CR Interpretive Notices. However, they raise the question of how they would work, including how they would be verified and assessed. How will the CMA know if Google has complied with the criteria?

They cannot be easily verified with objective evidence – an obligation not to take something into account is unworkable in its face. A more practical route would be one where a Google decision maker can be prevented from knowing something, or by putting in place protective information control barriers such that information obtained from interactions with competitors cannot be accessed by a decision maker.

These types of information controls are common in relation to ensuring competition in downstream products in telecommunications. As such, consultation with Ofcom may provide the CMA with sensible and practical information controls to prevent information abuse.

**Applying the same objective criteria to its own products as a route to discrimination**

The current language for the criteria in the Fair Ranking CR is unlikely to constrain Google’s conduct at all. It can, for example, continue to operate a discriminatory system relying on latency thresholds and an objective rationale for preferring and promoting its own product over those of rivals. Since it has integrated all of its products into a system that has been engineered for its own benefit, its own products are likely to trigger faster responses than those of third parties. This is a function of both scale and time from being the unconstrained monopolist for over a decade; its competitors need time to establish competing systems with equivalent latency and to achieve minimum efficient scale before they will be able to compete effectively. The obligation is thus inadequate to the task.

**3.6. SERP Design and Presentation Must Be Within Scope of Non-Discrimination**

Interpretative Note 1 to the Fair Ranking CR carves out “*the design and presentation of other search features*” from the non-discrimination obligation. This creates a structural vulnerability. Google can comply with non-discrimination obligations for the blue links while simultaneously designing SERP features that physically displace organic results, for example by expanding AIOs visual real estate (or Knowledge Panels or shopping units) to the point where organic results are pushed below the visible fold. Such a design decision would undermine the effectiveness of the CMA’s proposed conduct remedies.

Furthermore, in paragraph 6 of the Interpretative Notes of the Fair Ranking CR, it appears that the CMA has been taken in by the Google argument that it should remain free to innovate. While there is some force in the point, that should not become a route to enabling Google to innovate in a way that is exclusionary of rivals; the above language is too broad and general and insufficiently qualified.

The language needs to be accompanied by a clear provision that those new features cannot be exclusionary by intent or effect including in advance of Google putting new products and features on the market. Google should be required to test and trial them in small sample sizes as originally advocated by the CMA in its 2020 DAMs report.<sup>47</sup>

The obligation in paragraph 2(c), covering “*ranking of organic search results relative to search features and/or search generative AI features on the SERP*,” must be interpreted to encompass decisions about physical positioning, visual prominence, and space allocation on the SERP that affect the visibility of organic results relative to Google's own products and services to address this risk.

### **Proposed Amendment:**

*The following should be added to Interpretative Note 1: “The obligation in paragraph 2(c) encompasses decisions about the physical positioning, visual prominence, and space allocation on the SERP that affect the visibility of organic search results relative to other SERP features, including those containing Google's own products and services, paid-for content, and AI-generated responses. Decisions that have the effect of systematically reducing the aggregate visibility of organic results, whether through the introduction, expansion, or repositioning of other SERP features, are within the scope of this obligation to the extent that they reflect choices about the relative prioritisation of organic versus non-organic content on the SERP.”*

### **Publisher protection against punitive downranking**

Media owners have a valid concern that Google may desire to use ranking to penalize those media owners who do not grant rights beyond unaltered versions of their content and the destination address of such content in search listings.

Paragraph 3(b)(i) of the draft Publisher CR prohibits Google from maintaining or introducing ranking signals “*whose purpose is to downrank opted-out Search Content*.” While the spirit of this language is commendable, Google’s proposed language in footnote 59 explicitly states Google “*may not be able to control for all possible second order effects*.” This acknowledgment, while realistic, should not become a license for Google to impose commercially damaging second-order effects that it could control for but chooses not to.

### **Proposed amendment to the definition of “downrank”**

The CMA should make explicit in the Interpretative Notes that Google is expected to design the new publisher control in a manner that minimises adverse second-order effects on organic ranking and require Google to provide evidence that any second-order effects are genuinely unavoidable rather than merely inconvenient. Google should bear this burden of demonstration.

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<sup>47</sup> 8.129, CMA DAMS Final Report, 2020 available at [https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final\\_report\\_Digital\\_ALT\\_TEXT.pdf](https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf)

**Proposed Amendment:**

*“Google shall not downrank publisher content that has not opted-in for particular uses by Google beyond availability within Google’s organic Search listings.”*

**Ensuring competition of rival publishers’ content to Google’s content**

Regarding the Publisher CR,<sup>48</sup> the CMA states that “Google has introduced AI-generated responses to Google Search through features such as AI Overviews and AI Mode”. This is an incorrect description that ignores the lack of ranking of Google’s own AI products and hence, the inherent discrimination in the systems used to place Google’s AI products in Google’s SERPs to the effect of obscuring and reducing the visibility of rival publishers in the SERP. Because of the prominent and discriminatory display of Google’s own AI products, publishers’ visibility in relation to user queries restricts consumers’ access to more relevant links to competing properties.

Moreover, unless rival publishers’ properties are allowed to compete on fair terms for visibility in responses to General Search queries, [REDACTED]

[REDACTED]. By reducing the volume of visits to rival publisher properties when consumers use Google’s dominant General Search service, Google would unfairly pressure publishers to allow Google to use their brand (as a link) to legitimise and promote Google’s own AI-generated summaries of their own content.

Without providing a remedy to fair ranking in General Search, all content owners and creators will be forced to compete as mere links within Google’s content (i.e. the AI-generated summaries of rivals’ content), which increases Google’s market power over creators. The CMA recognises that people create content that is shown in organic results. We refer to these as “human results” as they are generated by people running their businesses – [REDACTED]

[REDACTED] Such an outcome would strengthen Google’s dominant position while weakening open competition in online content discovery and access.

**3.7. The Paid Search exclusion must not become a circumvention vehicle for the prohibition on Google’s discriminatory downranking**

The CMA states it does not believe it necessary to address issues in ranking results within Paid Search, given the advertiser bid amount is a key criteria influencing the rank.<sup>49</sup> Paragraphs 3 and Interpretative Note 2 of the Fair Ranking CR explicitly exclude paid-for search results from the scope of the non-discrimination and objectivity obligations.<sup>50</sup> The CMA’s reasoning is understood: advertiser bids are a legitimate ranking factor in a different system. However, the exclusion as currently drafted creates a structural vulnerability.

As the CMA itself noted (paragraph 1.27 of the Fair Ranking CR), the distinction between organic and paid-for content is becoming increasingly blurred for users who experience one integrated SERP. Knowledge panels, shopping units, local service ads, and AI-generated responses blend editorial and

<sup>48</sup> [https://assets.publishing.service.gov.uk/media/6979d0bf75d44370965520a0/Publisher\\_conduct\\_requirement.pdf](https://assets.publishing.service.gov.uk/media/6979d0bf75d44370965520a0/Publisher_conduct_requirement.pdf)

<sup>49</sup> Consultation: Fair Ranking Conduct Requirement (28 January 2026), paragraphs 1.27ff.

<sup>50</sup> Fair Ranking Conduct Requirement: “Nothing in this conduct requirement shall apply to Google’s ranking or presentation of paid-for search results, features or content.”

[https://assets.publishing.service.gov.uk/media/6979d0db75d44370965520a1/Fair\\_ranking\\_conduct\\_requirement.pdf](https://assets.publishing.service.gov.uk/media/6979d0db75d44370965520a1/Fair_ranking_conduct_requirement.pdf)

commercial content in ways users cannot easily disaggregate. [REDACTED]

A similar obligation must apply to the placement of organic search results, relative to paid search results. Any conduct remedies applied to Google's organic search results risk being undermined if Google were to place a significant set of paid search links above organic search result links. Such a tactic would enable Google to comply formally with obligations relating to organic ranking while effectively displacing rival content from prominent positions on the results page. This would nullify the intended competitive impact of the remedy by allowing Google to maintain preferential visibility for its own services or paying partners, thereby preserving its market power through commercial rather than algorithmic means.

**Proposed Amendment:**

*The following provision should be added: "Nothing in this paragraph shall permit Google to use the distinction between paid-for and organic content as a mechanism to circumvent the objectives of this Conduct Requirement. Where Google places its own products, services, or content on the SERP, whether through mechanisms that are or could be classified as paid-for, the position, prominence, and visual treatment afforded to that content shall be determined by criteria that are accessible to third-party rivals offering equivalent products or services on the same objective basis."*

In terms of the transparency obligation in the Fair Ranking CR, it states that Google shall provide "sufficient notice and information" (see paragraphs 5.a. and 5.b. of the Fair Ranking CR). The CMA affords too much discretion to Google where it allows Google to determine how much information is disclosed. At a minimum, definitions and precision are needed for what "sufficient notice" and "sufficient information" mean.

**Transparency** in Interpretative Note 7 provides too much discretion to Google to determine the meaning of terms that allow it to strip the provision of meaningful effects such as "sufficiency" or "materiality" that is undefined with relation to any objectively verifiable criteria.

The CMA's statement of change does in itself refer obliquely to an output measure in guidance Interpretative Note 9 in the section highlighted **in bold** below.

*"9. Paragraph 5.b. of the conduct requirement only applies to 'material changes', which the CMA would expect to include changes that are actionable (ie **those changes in response to which publishers could take action to avoid or reduce the impact of the change on their ranking**), made to meet a specific policy objective (eg preventing spam), or where changes are made to comply with a regulatory requirement. We would not require Google to provide advance notice of changes that represent minor everyday ranking improvements. The CMA would also expect 'changes' to include the introduction of new ranking criteria, policies or procedures."*

We strongly suggest that these obligations cut across the existing EU investigations and strike at the heart of Google's discredited objective justifications. Indeed, it has sought to argue that its discriminatory policies were for the laudable prevention of spam for over 15 years, which has been exposed in European Decisions referred to above and the subsequent court cases and ongoing

investigations to have misled the authorities. In consequence, the Interpretative Notes in the Fair Ranking CR need to be revised with no reference to the discredited arguments concerning Spam.

The language is also too limited and insufficiently definite. The objective of the conduct requirement is to ensure Google conducts itself in accordance with the law. In achieving that end, the best mechanism to assess the outcome is whether the green shoots of competition by the many very much smaller players than Google will be enabled. That can and should be measured by the CMA to assess the effectiveness of its CRs on market participants.

Small drafting points include reference to “Transparency” in the Conduct Requirement and “Transparent” in the Interpretative Notes. We understand that both sections should refer to the same terminology. The same issue is present with “Non-discrimination and objectivity” in the CR and “Non-discriminatory and objective” in the Interpretative Notes.

## References to “materiality” throughout the Conduct Requirements

**Materiality** in terms of changes can thus be defined in relation to the effect on competitors or competition, or percentages of UK or regional or traffic volumes with relation to affected market participants, and exit and entry rates as is routinely conducted by the CMA’s Microeconomics Unit.<sup>51</sup>

The scale of materiality can be defined accordingly against the smallest identifiable relevant digital activity that is affected by the change.

For example, it is wholly inadequate for the obligations that are imposed on the CMA to simply require Google to comply with the law and for the CMA to observe as explicated in paragraph 4.24 copied below.

*“4.24 We expect to maintain regular dialogue with Google about the interpretation of ‘material impacts’”*

The CMA “recognise[s] the need for certainty as to the scope of an SMS designation, both for Google and for third parties.”<sup>52</sup> The CMA’s conduct requirements create legitimate expectations for third parties.<sup>53</sup> Third parties have a right to be heard as their economic interests are affected. The CRs need to be identified objectively and capable of objective assessment by third parties at a low cost,

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<sup>51</sup> Ref MOW House of Lords submission and provide it to the CMA for completeness (enclosed)

<sup>52</sup> Proposed Decision, (24 June 2025), paragraph 4.20.

<sup>53</sup> In *R (Osborn) v Parole Board* [2013] UKSC 61, Lord Reed speaks about the values served by the requirements about procedural fairness.

In discussing fairness, at [71], Lord Reed states: “*The second value is the rule of law. Procedural requirements that decision-makers should listen to persons who have something relevant to say promote congruence between the actions of decision-makers and the law which should govern their actions (see eg Fuller, The Morality of Law, revised ed (1969), p 81, and Bingham, The Rule of Law (2010), chapter 6).*”

Bingham's 8 principles of the rule of law are:

1. The law must be accessible and so far as possible intelligible, clear and predictable.
2. Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.
3. The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.
4. Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.
5. The law must afford adequate protection of fundamental human rights.
6. Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve.
7. The adjudicative procedures provided by the state should be fair.
8. The rule of law requires compliance by the state with its obligations in international law as in national law.

commensurate with their business activity. Since many publishers are smaller businesses, it is only adequate for their ends if the processes are simple, clear and swift. For the CMA to refer to a “regular dialogue” suggests that the obligations are accepted to be unclear and will require ongoing discussions – if so then they would have succeeded in trapping the CMA into becoming a creature of Google’s system, a vehicle for abuse and a shield from the application of the duty imposed by law on a dominant operator not to discriminate against rivals, however small.

## **Part 4: The CMA’s current due process for those affected and harmed is defective**

### **4. Due process in monitoring Google’s ongoing compliance with conduct requirements**

There is a lack of due process in the CMA’s policing of the CR remedy for those whose livelihoods are on the line. The CMA is responsible for assessing and making sure that its remedies are effective in addressing the anticompetitive practices that the CMA has identified, not Google. The process for assessing compliance with the CR is a different matter than Google’s obligation to comply. The CR focuses on Google’s internal complaints process, which is a separate matter from the CMA’s duty to secure an effective remedy.

#### **Necessity to assess the effectiveness of remedies imposed by Google’s conduct obligations.**

The CMA has also overlooked the importance of trialling and testing remedies before they come into force. In the CMA’s 2020 DAMS Report,<sup>54</sup> the CMA noted the importance of an ongoing<sup>55</sup> trialling and testing monitoring regime. Excluding such a provision risks being inconsistent and going against what is a legitimate expectation.

The CMA appears not to have fully explained the process by which it will assess the effectiveness of its remedies in restoring competition. If the CMA were to so discharge its duties, the CMA should be mindful that peoples’ livelihoods in the UK are at stake. UK residents have rights that need to be respected. This means it is required to adopt an open and transparent process. Output measurement of visibility in SERPs such as the data that Autoritas has provided as part of our complaint dated 30 June 2025 is critical, as is publisher testing and verification with their own evidence of traffic received from improved site visibility following the changes required to achieve fair ranking.

For example, regarding the Site Reputation Abuse Policy (page 8 of the Fair Ranking CR), as the CMA is aware, the European Commission is investigating Google’s site reputation abuse policy under the Digital Markets Act<sup>56</sup> and has sent out RFIs to publishers as part of the investigation.

The central issue is that it isn’t for Google to assess its impact on markets – it makes that assessment for its own commercial ends in any event and is unlikely to launch or continue with a product that is unprofitable or lacks utility – the problem is that many of its actions exclude competitors unfairly while providing some utility to end users. The issue is thus not the absolute impact on the market – but the benefit to the end user and consumer preferences without distortion imposed by the distributor that should be measured. Output measures only should be taken as being sufficiently verifiable for this purpose.

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<sup>54</sup> [https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final\\_report\\_Digital\\_ALT\\_TEXT.pdf](https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf)

<sup>55</sup> 8.129, CMA DAMS Final Report, 2020

<sup>56</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_2675](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2675)

The CMA should ask Google what data sets it gathers so that the “clear and detailed information” can be outlined more specifically at the outset.

The CMA expects Google to provide data (user impressions, user engagement with the publisher’s Search Content, Click-through-rate and also attribution data). The CMA adds that Google should “*keep the information up to date*”.<sup>57</sup> The CMA should specify that this data should be updated on a on a timely basis (old reports are of little value for publishers to be able to adapt their publication strategies according to how users interact with their content via Google Search).

The CMA’s provisional view is that “*it would not be necessary for Google to provide performance data on a ‘per feature’ basis.... because it is currently not clear to what extent (if any) there is an actionable benefit to the provision of performance data such as ‘Clicks’ and ‘Impressions’ on a ‘per-feature’ basis*”. As outlined in the evidence we submitted on 13 February 2026, Google Search Console currently doesn’t specify where the ‘Clicks’ are originating from on the SERP, which is a significant limitation. Providing this information would assist with analytics for publishers and should be included as part of the CMA’s conduct requirements.

Also, the evidence shows that Google Search Console only stores data for the last 16 months. The CMA should require Google to extend this. Publishers should be able to have access to historical data so that they are able to perform analytics and assess how well their content is doing over the years.

We agree with the CMA that publishers should have access to ‘Click Quality’ of traffic. This includes whether the clicks were long clicks or short clicks. These are terms used by Google in press releases so there should be no issues of definition or implementation as a result.

We restate our comments above that the obligation and its interpretation cannot be delegated to Google to determine as it is the CMA’s non-delegable duty to oversee and establish compliance or non-compliance; and we remind the CMA that the DMCCA refers to conduct requirements per digital activity which operates in pursuit of specific conduct, rather than an option to be exercised in Google’s discretion. So, the language should potentially read:

*“Where the complaints received in relation to a ranking policy or procedure indicate that its adverse impact on a digital activity in the UK may be material, as defined with relation to [criterial overseen by CMA] with relation to its impact on that digital activity in the UK then paragraph 8 of the conduct requirement requires Google to take action to avoid possible material adverse impacts on that digital activity in the UK arising from any ranking policy or procedure.”*

The “obligations” in paragraphs 16, 17 and 18 of the Interpretive Notes to produce reports and establish an improved complaints procedure are vague, insufficiently specified and unenforceable. They appear to be entirely optional for Google and prejudice the objectives of the DMCCA.

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<sup>57</sup> [https://assets.publishing.service.gov.uk/media/6979d0bf75d44370965520a0/Publisher\\_conduct\\_requirement.pdf](https://assets.publishing.service.gov.uk/media/6979d0bf75d44370965520a0/Publisher_conduct_requirement.pdf) (page 21)

#### 4.1. Practical challenges to assessing Google's compliance with non-discrimination and objective ranking criteria

The CMA identifies a series of laudable obligations on Google. However, these obligations raise important questions about how compliance could be effectively implemented, verified, and assessed in practice.<sup>58</sup>

These obligations present a significant enforcement challenge. It is inherently difficult, if not impossible, to verify objectively whether Google has “*not taken something into account.*” Such a negative duty is almost unworkable in practice. A more viable approach would be to prevent decision-makers within Google from accessing information that could create conflicts of interest, by establishing robust information-control barriers. These barriers would ensure that individuals making ranking or product-design decisions cannot access sensitive data obtained through Google's commercial dealings with competitors.

This approach mirrors long-standing information-control mechanisms used in telecommunications to prevent anti-competitive conduct in downstream markets. Consultation with Ofcom could help the CMA develop practical, sector-tested models for these types of safeguards.

#### 4.2. Due Process requires independent adjudication, not only Google's self-assessment

The proposed complaints process in the Fair Ranking CR places the initial burden of raising and evidencing concerns on publishers, and relies on Google's own assessment of its compliance. This arrangement is structurally inadequate for the following reasons:

- Publishers harmed by Google's ranking decisions face significant informational asymmetry. The CMA's own evidence shows that publishers spend between £100,000 and £140,000 annually attempting to understand and respond to Google's ranking changes.<sup>59</sup> A process that requires publishers to compile and submit further evidence imposes additional costs on those already disadvantaged by Google's conduct.
- Google has a structural incentive to design its complaints process to minimise successful complaints. If the burden of identifying non-compliance rests primarily on complainants, Google can render compliance effectively unenforceable by making the complaints pathway slow, opaque, and burdensome.
- Any justification advanced by Google in response to an identified concern must be subject to evidence testing and independent scrutiny before being accepted. The defendant's burden of proof is a fundamental principle of competition law enforcement.

The CMA should establish an independent adjudication mechanism — analogous to information control barriers used in telecommunications regulation to prevent downstream anti-competitive conduct — through which publisher evidence can be heard, Google's response can be tested, and a binding determination reached within a defined, fast-track timeframe.

The CMA should also note that the importance of trialling and testing remedies before they come into force was explicitly acknowledged in the CMA's 2020 Digital Advertising Markets Study. Excluding such a provision from the current CRs creates a legitimate expectation risk and is inconsistent with established CMA practice.

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<sup>58</sup> Fair Ranking Conduct Requirements, Obligation 4.

<sup>59</sup> Fair Ranking Conduct Requirements, paragraphs 1.13 and 1.23.

#### **4.3. Six-month cycle of reporting provides insufficient monitoring of the effectiveness of Google's conduct obligations**

It is reasonable to ask for Google to have output measures and to use a third-party for the purposes of preparing the report of Google's ongoing compliance.

The Fair Ranking CR and Publisher CR both propose a six-month reporting obligation on Google's compliance. This interval is structurally insufficient. A six-month cycle allows Google to fall out of compliance for extended periods while presenting aggregated or average performance data that suggests overall compliance. Google could engage in discriminatory practices for nearly three months of each reporting period while formally appearing to meet its obligations in the aggregate.

We do not object to Google certifying that it believes it remains in compliance on a six-month cycle. However, the CMA's assessment and monitoring of Google's compliance requires access to output measures, in particular, outbound navigation from Google Search to rival publisher content, on a continuous basis. One practical and proportionate mechanism would be to require Google to publish a publicly accessible microsite providing aggregate data on outbound navigation to third-party publisher content from general search services on a daily basis, analogous to the data Google already publishes through Google Trends, Google Flu Trends, and COVID-19 Search Trends. Such a microsite would enable the CMA, publishers, and independent researchers to monitor on an ongoing basis whether Google's SERP designs are steering consumer behaviour away from original sources to content Google generates or hosts on its own properties (e.g., YouTube, News, etc.). Important metrics to which rival publishers require access in order to compete fairly against Google's properties include: the click-through rates that monitor quantity of impressions generated from their content, and clicked on, which is further segregated depending on where the impressions appeared (by the consumer point to view and how the consumer interacts with publishers' content used by Google – for e.g., separate grouping for Google.com search results, Gemini/AI Overviews, Discover, and Google News, etc.). Google should also report metrics for each publisher on when its content is accessed by Retrieval-Augmented Generation (“RAG”) systems, even if the content is not explicitly cited or linked in results. To level the playing field, the results of impressions and clicks visible to rival publishers should include not only their own but other properties returned by Google, including Google's own properties (e.g., YouTube, Google Discover, Google News, etc.) This proposed remedy is administratively simple and extremely low-cost.

#### **4.4. Google must not be permitted to use the complaints process as a gaming mechanism**

Paragraph 4.23 of the Fair Ranking CR proposes to measure market impact, in part, by the volume of complaints received. This approach creates a perverse incentive. Google has every incentive to design its complaints process to be sufficiently burdensome that publishers cease to use it, thereby reducing the measured volume of complaints and falsely signalling compliance.

Complaint volumes are an input measure, not an output measure, and should not be used as a primary indicator of compliance.

#### **Proposed Amendment to the definition of "impact on markets" in the Fair Ranking CR**

Google should not be granted explicit permission to be a market maker. The CMA notes its concern that Google may not sufficiently take into account the impact of its decision on markets.

Paragraph 4.20ff of the Fair Ranking CR discusses that Google does not have sufficient incentives to mitigate the market impacts of its rankings. However, installing a complaints process does not remedy Google's incentive structure.

Requiring Google to publish its own study of market impacts asks the fox to guard the hen house. Google has a great incentive to minimize any perception of market impact, rather than truly mitigate the actual impacts on fair market functioning.

Measuring impacts by the quantity of complaints (in paragraph 4.23 of the Fair Ranking CR) shifts the burden onto the companies impacted, rather than leaving it to Google to objectively demonstrate its rankings do not discriminate against rival publishers or other business services that compete with its own offerings.

Moreover, by shifting the burden of compliance onto Google's rivals, this introduces a perverse incentive for Google to make its complaints process so ineffective that complainants cease to use it. Imagine Google implemented an automated: "Your message is very important to us, please stand by as our staff investigates" response to all submissions.

#### **4.5. Ensuring effective and legally consistent remedies for Google's search ranking conduct**

The CMA's proposed approach risks creating a legal shield behind which Google could evade accountability, given potential inconsistencies with EU and UK competition law. Both regimes continue to apply in parallel, and the EU is pursuing its own enforcement actions. Any divergence could harm the consistent application of competition law, undermine private damages actions, and potentially cause the CMA to breach its statutory duties under the Enterprise and Regulatory Reform Act 2014 ("ERRA 2014").

While differences exist between the Digital Markets, Competition and Consumers Act ("DMCCA") and competition law, a structured approach is needed to avoid overstepping the limits of competition law analysis.

The DMCCA operates alongside, and does not replace, the Competition Act 1998 and Article 102 TFEU as retained in UK law. The CMA's conduct obligations must be designed so that compliance with the CRs does not inadvertently normalise or legitimise conduct that would separately constitute an infringement of competition law. The risk of the CMA becoming a mechanism through which Google evades underlying competition law liability is real and must be actively guarded against.

The CMA states at paragraph 1.11 of the Fair Ranking CR that it "*has not seen direct evidence that Google's individual ranking decisions are unfair.*" The CMA notes in the same footnote that it has not carried out an algorithmic audit. This statement is difficult to reconcile with the established findings of the European Commission in *Google Search (Shopping)*,<sup>60</sup> confirmed on appeal to the General Court

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<sup>60</sup> See, for example, para (379) of the *Google Search (Shopping)* (27 June 2017) decision, which refers to Google's comparison shopping service not being subject to the same ranking mechanisms, as its competitors, including adjustment algorithms, which contributed to the self-preferencing abuse, as found by the Commission available at CASE AT.39740 *Google Search (Shopping)* (27 June 2017) available at [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39740/39740\\_14996\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf)

and CJEU, and now binding on UK courts.<sup>61</sup> These concerns were also raised by multiple publishers in the present investigation.<sup>62</sup>

As established by the European Commission, Google’s own comparison-shopping service was not subject to the same ranking mechanisms as those applied to competing services, rendering its conduct inherently discriminatory. The Commission’s Decision recorded that:

*“(380) First, Google’s own comparison shopping service is not subject to the same ranking mechanisms as competing comparison shopping services, including adjustment algorithms such as [...] and Panda.”*

That conduct has been found to be ongoing, as confirmed in the Commission’s 18 March 2025 press release and the current investigation under the Digital Markets Act (“DMA”) into Google Search.<sup>63</sup>

The CMA’s current approach risks expending resources assessing whether Google’s ranking systems are “fair” in theory without first identifying whether discrimination exists in practice. Moreover, the CMA appears to assume that all results displayed in Google’s SERPs pass through the same ranking engine, which is demonstrably not the case. Google’s products in Search and Discover (such as AI Overviews and AI Mode) do not go through the same ranking mechanism as third-party content. Therefore, the CMA should instead begin with an output-based assessment, identifying instances of discriminatory outcomes, before moving to justification.

The fairness of ranking outcomes must be assessed against objective, proportionate measures that reflect the competitive effects in the relevant market. For instance, if Google uses geo-blocking<sup>64</sup> or other mechanisms that reduce the visibility of UK competitors, the results may remain broadly relevant yet still be discriminatory and unlawful under UK competition law.

### Assessing Fair Ranking must proceed in two steps

The CMA’s discussion of transparency mechanisms rightly identifies the perception of unfairness but should focus primarily on outcomes.<sup>65</sup> The correct analytical approach has two steps:

- **Step 1 (Output-based assessment):** Assess whether ranking results are discriminatory in effect, using objective output measures such as outbound click volume to rival publisher content versus to Google’s own properties. At this stage, the reasons for the ranking are irrelevant. If results are non-discriminatory in effect, this can be assessed objectively using the visible outputs in search results without the need to probe Google’s internal rationale. If the results distort competition on the merits by disadvantaging rivals, there is a prima facie concern.

<sup>61</sup> See CAT Judgment (Preliminary Issue) in *Skimbit Ltd & Others v Google & Others* (9 July 2025) available at <https://www.catribunal.org.uk/sites/cat/files/2025-07/14245721%3B%2015895723%20%28T%29%3B%2015965723%3B%2016365724%20%28T%29%20-%20Judgment%20%28Preliminary%20Issue%29%20%5B2025%5D%20CAT39%209%20Jul%202025.pdf>

<sup>62</sup> See para 1.9(b) in the Fair Ranking CR

<sup>63</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_811](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_811)

<sup>64</sup> We understand that as part of Google’s Discover Core Update dated February 2026, Google is proposing a “locality filter” feature in the United States. This is a technical change that limits competition by geography and prioritizes the return of results from US-based publishers for US users. Crucially, Google has deliberately suppressed the ‘Follow’ button and other user-directed curation tools, forcing readers into an algorithmic black box that prioritizes geography over explicit choice.

<sup>65</sup> Fair Ranking Conduct Requirements, paragraphs 1.9ff.

- **Step 2 (Objective Justification):** If discrimination is identified in outputs, Google bears the burden of demonstrating an objective justification that is proportionate to the identified harm.

For example, if rival content appears in positions 2, 3, and 6 on the SERP while Google’s own competing content and links occupy positions 1, 4, and 5, the differential visibility can be measured to determine whether self-preferencing has occurred. Similar issues were found in the *Google Search (Shopping)* case,<sup>66</sup> where Google did not apply its own ranking systems consistently to its own products.

Accordingly, Google should be expressly required to deliver non-discriminatory outcomes as part of its conduct obligations. The burden of proof should rest with Google to demonstrate that any differential treatment is objectively justified. The CMA should not dilute this responsibility or make compliance easier for Google in circumstances where evidence suggests a breach of competition law.

Third-party providers such as Autoritas already publish keyword-level data capable of supporting output-based assessment. The CMA should use this capability rather than relying solely on Google’s own reporting of its internal systems.

## Part 5 The CMA’s User Choice Conduct Requirement

We understand that promoting user choice is one of the key pillars of the DMCCA under the “open choices objective” and that at first sight, a user choice screen is a positive remedy – however, in practice, it often undermines consumer choice<sup>2</sup> and acts a further reinforcement of the big platforms’ position.

We appreciate this CR is a way to bring the changes brought under the EU’s DMA to the UK and allows the CMA to expand the choice screen to cover additional devices and browsers (see paragraph 4.11 of the User Choice CR).

However, there are three key issues with choice screens:

1. When offering an integrated product (such as the browser) within an operating system (such as a mobile device or tablet), this combination means that the two become a single integrated product and thus, the illusion of a choice screen becomes irrelevant as it does not address features and functionality.
2. Consumers compare and choose between differentiated products (preferred colours, features and functionalities). They do not directly compare competing products when they are identical or when the choice includes dominant players within an already distorted market.
3. A choice screen adds friction that ultimately frustrates the consumer’s user experience, who already experiences “pop-up” fatigue. In addition, the format of the choice screen can be easily manipulated to favour one browser over another (see further below). The bigger browsers, such as Chrome, benefit from higher brand recognition that quickly translates into brand preference.

The European Commission’s *Android* case provides a complementary example, centred on default bias and user interface design. To address foreclosure arising from preinstallation and default search settings,

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<sup>66</sup> CASE AT.39740 Google Search (Shopping) (27 June 2017) available at [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39740/39740\\_14996\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf)

Google introduced a “choice screen” intended to allow users to select alternative search engines. Empirical assessments, however, showed that the intervention produced less than a one percent shift in market share.

This outcome was not accidental. The initial design of the choice screen suppressed viable alternatives, preserved Google’s default prominence, and failed to alter the deeper mechanisms governing search defaults on Android devices. As Cooper et al. and Ostrovsky et al. document demonstrates, Google retained control over ranking, presentation, and switching frictions, ensuring that the formal availability of choice did not translate into effective competition. Switching costs remained high, presentation favoured Google, and the moment of “choice” was isolated from the broader user journey where defaults exert their strongest influence.

A remedy that would be more effective would be one that provides the supply of differentiated products at wholesale level (i.e., at the level of browsers themselves and their development) such as an access remedy to the relevance search engine on FRAND terms and/or the data available to the browser owners.

For example, in the *USA v Google (Search)* [2020] remedies final judgment (5 December 2025), the US Department of Justice (“DOJ”) has included obligations to disclose certain data and syndication of search results.<sup>67</sup> We note that in the CMA’s roadmap (23 June 2025),<sup>68</sup> it includes “*restrictions on Google’s ability to share data within its ecosystem*” as a category 3 measure and “*addressing barriers to entry and expansion posed by Google’s distribution agreements with OEMs, MNOs, Browser Vendors and other parties*” and “*requiring sharing of certain data with search competitors to support competition and innovation*” as areas that the CMA will consider subject to international developments.

We believe that these alternative remedies that the CMA has reserved to a later date would be more effective in achieving fairer digital markets and thus would urge the CMA to consider them much earlier.

## Part 6 The CMA’s Data Portability Conduct Requirement

This reflects the obligation in the DMA (Article 6(9)). We support the CMA’s inclusion of this conduct requirement.

We note that the implementation timeline that the CMA has accounted for is “*no later than three months after it is imposed*” (see paragraph 4.17 of the Data Portability CR<sup>69</sup>). Considering the CMA notes that the API is already in place in the EEA, the engineering for this should not need to take as long as 3 months. We urge the CMA to reduce the timing on the implementation.

For compliance, we commend that the CMA has included that they would maintain regular communication with stakeholders that use the API, which would enable them to raise issues with the CMA if they believe that Google is failing to comply with the CR (see paragraph 4.20).

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<sup>67</sup> <https://www.justice.gov/atr/media/1421546/dl?inline>

<sup>68</sup> <https://assets.publishing.service.gov.uk/media/6859810e0eaa6f6419fade671/Roadmap.pdf>

<sup>69</sup> [https://assets.publishing.service.gov.uk/media/6979d0915da1fd4ddea98c73/Data\\_portability\\_conduct\\_requirement\\_v2.pdf](https://assets.publishing.service.gov.uk/media/6979d0915da1fd4ddea98c73/Data_portability_conduct_requirement_v2.pdf)

## Part 7 No Countervailing Benefit in Google's integration of generative AI services in its Search

We note that any breach of a conduct requirement where the CMA has opened a conduct investigation could be exempt if there is a countervailing benefit in accordance with [section 29, DMCCA](#). Any countervailing benefit proposed by Google that AIOs are beneficial to consumer is misleading for the following reasons:

- Consumers cannot turn off AIOs (Google is an SMS player in Search so choice is limited).
- Consumers are fed with one answer in AIO (which limits freedom of expression).
- Consumers are being trained through presentation, familiarity and experience to rely on AIOs as being the most “relevant” answer at the top (or close to the top) of the page. This is not necessarily true (see below concerns from health companies of misleading and inaccurate summaries in AI Overviews).
- This is a type of “**forced switching**” relying on prior training (for general search) that the most relevant results are at the top of the SERP.

## Part 8 Legal Framework & the UK's approach to AI & Key Issues

### 8.1 Legal Framework: The CMA's powers and types of conduct requirements

As an overarching point, the DMCCA provides the UK with the unique opportunity to tailor remedies for outcomes in accordance with the principles set out in the DMCCA that can help drive growth in the UK economy. The CMA will apply the following four principles when crafting the CR<sup>70</sup>:

- (a) Outcome-focused CR where the outcome will be relatively easy for the CMA and third parties to assess.
- (b) Action-focused CR where the CMA will impose actions that a firm must take.
- (c) Higher-level requirements based on the permitted types set out in the DMCCA.
- (d) More detailed requirements – more likely where a firm has failed to comply effectively with higher-level requirements and/or there are persistent issues that need correcting.

The Conduct Requirements must be of a permitted type (pursuant to [section 20, DMCCA](#)).

We understand that the Fair Ranking CR falls as part of an “outcome-focused CR” where the non-discrimination obligation is imposed by the CMA and it is for the SMS firm (Google) to design the method of compliance.

We understand that the User Choice CR, Data Portability CR and Publisher CR fall more within “action-focused” CRs where the obligations are more specific outlining specific actions that the SMS firm must take.

### 8.2 The UK's approach to Artificial Intelligence (“AI”)

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<sup>70</sup> See [CMA Digital Markets Competition Regime Guidance](#), para 3.27 to 3.30

Currently in the UK, the Copyright, Designs and Patents Act 1988 (“**CDPA 1988**”) provides a limited exemption for text and data mining (“**TDM**”) of copyrighted materials when used for research for non-commercial purposes (see section 29A, CDPA 1988). Google’s scraping of web content, including copyrighted content, and repurposing it in its AIO constitutes a commercial purpose, which falls outside this exemption. Accordingly, Google must obtain appropriate licenses or otherwise comply with the CDPA 1988.

Although the UK Government launched a Copyright & Artificial Intelligence (“**AI**”) Consultation in December 2024 to explore reforms to copyright law addressing AI technologies, its preferred policy approach being a broad text and data mining exception combined with an ‘opt-out’ mechanism for rights holders, the CDPA 1988 remains unchanged. Currently, expert working groups are assisting the Government in developing practical, workable solutions to inform legislative and policy response.

In the UK High Court’s decision in *Getty v Stability AI*, Getty abandoned the claim regarding training and development due to a lack of evidence that such training and development took place in the UK. Therefore, Google’s current practice with its AIOs in the UK potentially violates section 29A of the CDPA 1988.

The Government decided to reconsider its position on the Data (Use and Access) Bill after it was defeated many times in the House of Lords. That reconsideration is on-going.

Furthermore, the Government’s white paper on AI regulation<sup>71</sup> puts forward a pro-innovation approach with the following three objectives:

- (a) **Drive growth and prosperity** – via regulatory certainty to remove existing barriers to innovation and prevent the emergence of new ones.
- (b) **Increase public trust in AI** – the regulatory framework should address AI risks.
- (c) **Strengthen the UK’s position as a global leader in AI** – by promoting interoperability with other regulatory approaches and minimising cross-border frictions.

The framework regarding regulating the use of AI is underpinned by five value-focused cross-sectoral principles: (1) safety; (2) appropriate transparency and explainability; (3) fairness; (4) accountability and governance; and (5) contestability and redress.

“Fairness” means that AI systems should not discriminate unfairly against individuals or create unfair market outcomes. The rationale behind this principle includes consideration of compliance with competition law.<sup>72</sup>

We agree that competition in the AI sector should continue to flourish so that companies are incentivised to invest in the UK. However, the attribution system of tracking how copyright protected material is used needs to be promoted so that publishers are also incentivised to do business in the UK.

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<sup>71</sup> <https://assets.publishing.service.gov.uk/media/64cb71a547915a00142a91c4/a-pro-innovation-approach-to-ai-regulation-amended-web-ready.pdf>

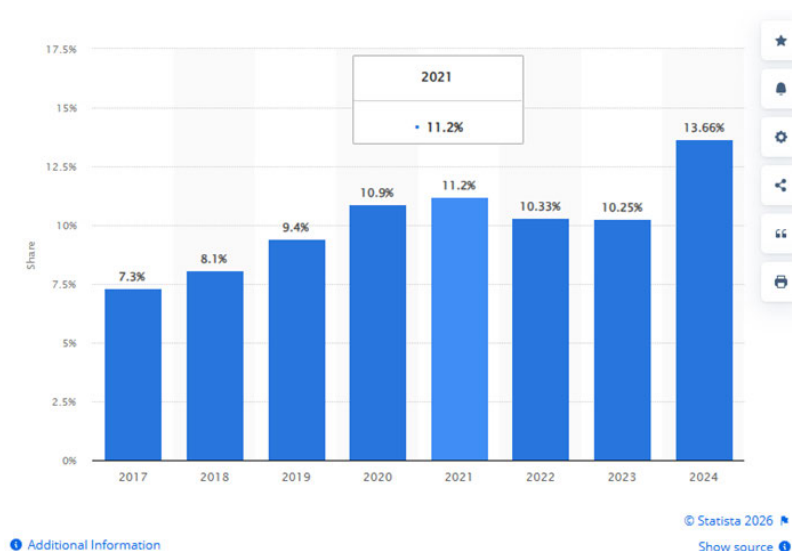
<sup>72</sup> <https://assets.publishing.service.gov.uk/media/64cb71a547915a00142a91c4/a-pro-innovation-approach-to-ai-regulation-amended-web-ready.pdf> (see pages 29 to 30)

### 8.3 Additional Key Issues for Publishers and Google Search

Now that Google Search is competing with Gen-AI companies such as OpenAI, Perplexity, etc., Google’s search engine is merging its offering into an answer engine. There is an increasing number of “zero-click” searches where the consumer is fed the answer directly from Google’s AIO which is prominently displayed in its SERP.

Google has leveraged its strong position in gathering content from rival publishers’ properties for the purpose of displaying links to those properties in Google Search to train its LLM models (Bard, Gemini, PALM 2, Gemma, etc.). Google competes with other LLMs but also competes with publishers for ad revenue. The output of AI Overviews as narrative answers in Google Search (instead of links to publishers’ content) means Google is in competition with publishers for traffic.

We are gathering evidence of Google’s increase in promotion of YouTube results in its AI Overviews. Advertising on YouTube generates increased returns for Google (please see graph below).<sup>73</sup>



As the CMA noted in its Final Decision,<sup>74</sup> Google has started rolling out ads in AI Overviews too and has admitted that the monetization has remained strong. In the Alphabet Investor Relations 2025 Q1 Earnings Call, Philipp Schindler, SVP and CBO for Google stated that in late 2024, Google launched ads within AI Overviews on mobile in the USA and that “for AI Overviews overall, we see the monetization at approximately the same rate, which gives us a strong base on which we can innovate even more, so I’m very happy with this”.<sup>75</sup>

High quality journalism was the focus of the Cairncross Review in 2019,<sup>76</sup> which called for policy makers’ attention on the importance of this industry in the UK and to protect it from the increasing

<sup>73</sup> <https://www.statista.com/statistics/289659/youtube-share-of-google-total-ad-revenues/>  
<sup>74</sup> [https://assets.publishing.service.gov.uk/media/68e8b643cf65bd04bad76724/Final\\_decision\\_-\\_strategic\\_market\\_status\\_investigation\\_into\\_Google\\_s\\_general\\_search\\_services.pdf](https://assets.publishing.service.gov.uk/media/68e8b643cf65bd04bad76724/Final_decision_-_strategic_market_status_investigation_into_Google_s_general_search_services.pdf) para 5.149  
<sup>75</sup> <https://abc.xyz/investor/events/event-details/2025/2025-Q1-Earnings-Call/>  
<sup>76</sup> [https://assets.publishing.service.gov.uk/media/5c6bfcd4e5274a72b933311d/021919\\_DCMS\\_Cairncross\\_Review\\_.pdf](https://assets.publishing.service.gov.uk/media/5c6bfcd4e5274a72b933311d/021919_DCMS_Cairncross_Review_.pdf)

dependence that many small and medium-sized enterprises have on Google and other online platforms to reach their audiences (instead of print media). One of the key pillars of the UK's democracy is the right to a free and diverse press. Nowadays, most of news is consumed via the internet and Google is one of the principal gates to access such content (either through Google Search, Discover or other means).

The Cairncross Review pointed out the dramatic cutting of costs and revenue declines. One of the ways that publishers addressed the fall in print media is to pivot their business model to digital advertising.

It is widely reported that news and other publishers are suffering as a result of large Gen-AI companies other than Google scraping their web content and repurposing it in their "answer engines" so end users no longer need to click through to the underlying publisher's material. Drops in traffic mean independent publishers are unable to sustain their business through advertising thus needing to (a) change their business model to subscription (thereby altering the offering product as it is no longer free for users), (b) if large enough, try to make a licencing deal with Google, or (c) lay off staff and shut down their business.

This leads to the variety of different voices and choices being further squeezed from consumers. The effects are also felt across the job economy in the UK. In 2024, after a decade of job growth, digital roles fell by 120k to 1.77m (5.2% of all jobs) from 1.89m. Digital Publishing alone has lost 50,000 jobs year-on-year. Middle-skill, high-value roles are hollowed out, replaced by low-value positions or exported. The cumulative effect is the hollowing-out of the domestic tech ecosystem: SMEs are stifled and the wider economy suffers. Successive House of Lords reports have drawn attention to the cause: platforms eating up digital advertising with adverse effects on journalism. And when advertising is restricted, the products being advertised are also restricted. See, for example the House of Lords [The Future of News](#).

Further, the health sector has reported that as a result of Google's AI search results impacting publisher traffic, verified and accurate results are displayed lower in the SERP, implying they have lower quality, while Google's AIOs are inaccurate and misleading, potentially damaging to people's health. They are contributing to drops in open web traffic and "zero-click" open web searches, meaning users miss important source content.

For example, a recent report assesses the impact of Google's AI search results on the health sector. Some of the key concerns relate to Google inaccurately summarising the content, which users then rely on:<sup>77</sup>

*"o Health organisations warn that AI-generated information panels may cause users to miss important source content, hindering a nuanced understanding of their condition and limiting access to support. The outcome could be a reduction in quality of life.*

*o By giving the exact (potentially inaccurate) information for which people search with no context or clear onward user-journey, Google's results risk widening the health inequality gaps these organisations aim to reduce."*

Google's ability to leverage its position in Search to get a headstart at the expense of publishers goes against the DMCCA's principle of fairness. It seems that Google's main priority was to compete at

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<sup>77</sup> <https://pifonline.org.uk/resources/google-ai-summaries/>

breakneck speed with the AI companies at the expense of safety and accountability – preferring to deliver fake or inaccurate results rather than build sustainable AI systems in accordance with the UK Government’s principles.