

CMA designation investigation into Google Search: invitation to comment

Response from DMG Media

1. DMG Media is the publisher of the Daily Mail, Mail on Sunday, Metro and i newspapers; MailOnline, metro.co.uk and inews.co.uk websites; and New Scientist magazine. We have a keen interest in the CMA's work in the digital sector and in the success of the new Digital Markets, Competition and Consumers (DMCC) Act. We are therefore pleased to offer our response to the CMA's invitation to comment (ITC) on its first designation investigation under the DMCC Act, which was published on 14 January 2025.
2. We fully support the approach that the CMA proposes to take to its investigation and believe the ITC sets out all the main issues that the CMA should investigate when designating Google Search as having Strategic Market Status. In particular, we are pleased to see that the CMA is considering how AI may be used to further entrench Google Search's position and be leveraged to exploit publisher content, without fair compensation. It also makes a good start in its consideration of the appropriate conduct requirements that should apply. We would urge the CMA to use the next nine months to focus on developing a set of impactful and sufficiently specific conduct requirements to ensure that compliance is effective and unambiguous – reducing the risk for all involved of protracted discussions about compliance and the waste of time and resources that entails.
3. Action to address ongoing concerns in search has been a long time coming - more than four years since the CMA first concluded Google had significant market power - the CMA must now make the most of these powers to ensure sufficient protections are in place for the many UK businesses and publishers beholden to Google.

SMS designation

4. Building on the detailed and thorough work previously undertaken by the CMA, we consider there continues to be overwhelming evidence to support the designation of Google Search at the end of this investigation – and that recent developments in AI further reinforce the need for such designation. We believe Google Search meets all the legislative requirements for designation. Not only UK newspaper publishers and

the wider digital advertising industry, but also UK consumers, are significantly disadvantaged by Google's current monopoly position both directly and indirectly, through passing on costs that impact many key services advertising on search (e.g., insurance, broadband, retail goods etc) and threatening the quality and sustainability of journalism here in the UK.

5. We agree with the CMA's proposal to look at both sides of Search, i.e. both the consumer-facing side and the advertiser-facing side and as such consider this through a single digital activity 'general search services'. It would make little sense to look at one and not the other, or to ignore their close relationship to each other. We also think it is essential to incorporate Google's AI services into the designation. This would reflect the practical reality that they are a key input into Google's Search services and are now embedded into the Search product¹, both in terms of outputs where AI Overviews are now endemic, but also inputs in that Google uses its monopoly position in Search to avoid paying for content used to train its AI, something that disadvantages other AI firms as well as content creators. This would also future-proof the designation as AI becomes more and more part of what Google offers. It would avoid legal arguments about the legitimacy of conduct requirements that affect how AI is used in the Search ecosystem.
6. The CMA's 2020 market study was an excellent piece of work, and we believe its findings hold equally true today. Google still benefits from economies of scale and scope, network effects, an unparalleled trove of data, (paid for) default positions on all the main access points (including mobile devices and most browsers), and an extraordinary ecosystem of products and services surrounding, reinforcing and protecting Google Search.
7. We would however note that since the publication of that study, two major US court cases have taken place, both providing additional evidence of monopolistic behaviour on the part of Google. In the first, consumer facing, court case, Judge Amit Mehta ruled in December 2024 that 'Google is a monopolist, and it has acted as one to maintain its monopoly.' Judge Mehta found that Google had acted to maintain its monopoly position by bundling its search services with Apple's Safari browser and others. The judge is currently considering remedies, and the case is likely to be subject to appeal, but the evidence presented of Google's monopolistic behaviour was overwhelming.
8. The second US court case which, while outside the scope of this investigation, is still relevant to understand Google's conduct, was originally launched by DMGT before

¹ Google are also reportedly planning even further changes to embed AI into Search, by enabling users to switch its Search page to an 'AI mode' - [Google Search will reportedly have a dedicated 'AI Mode' soon | The Verge](#).

being taken over by the Department of Justice. In it the court heard evidence demonstrating that, according to the DOJ, Google ‘used anticompetitive, exclusionary, and unlawful conduct to eliminate or severely diminish any threat to its dominance over digital advertising technologies’. Specifically, Google took control not only of the tools advertisers and publishers use to buy and sell ads, but the exchange that connects them. They then used this powerful position to extract higher fees from advertisers, and pass on as little as possible to publishers, all the while acquiring ever more user data. We would urge the CMA to consider the evidence advanced in the DOJ Search case, insofar as it impacts on the UK market.

9. We would expect Google to argue that the development of generative AI is eroding Google’s market power by disrupting the way that people search. It is of course true that this is a new development since 2020. However, we do not believe that AI has reduced, or will reduce, Google Search’s substantial market power. While it may be the case that some people are trying out and experimenting with AI general assistants such as ChatGPT – there is no evidence that this will displace the well-established² dominant position that Google Search has as an integral platform. It is far too early to predict and understand its impact. In fact, designating Google Search, will help to protect any disruptive impact AI developments may have in time. It will ensure that Google is not able to leverage unfairly its entrenched power in search (and its large existing user-base) to undermine new innovative AI services.
10. The CMA should note that Google itself is a leading AI innovator (having bought the British company, DeepMind). Its powerful portfolio of products, and its privileged position as the starting point for most people’s online sessions, according to many industry analysts, put it in a unique position to capitalise on the opportunities of AI for its own advantage. The advent of AI does not undermine the case for designating Google Search under the DMCC Act. If anything, it strengthens the concerns about Google Search because AI further assists Google Search’s ability to provide only a single answer to a query (without needing to click through to any of the original underlying content). It therefore acts as an even more extreme gatekeeper than the traditional results page, which had up until this point at least some element of consumer choice in deciding which result to click on.
11. The CMA’s proposed avenues of investigation in paragraphs 26-28 of the ITC seem sensible to us, although we would urge the CMA not to get too distracted or expend too much of its resources on 27(c), the extent of competition between Google Search and other services.

² There is significant evidence from behavioural literature that people’s habits, once formed and repeated over time, can be very difficult to shift.

Conduct requirements

12. Businesses which rely on Google Search to reach their customers have waited a long time for the new DMCC regime to come into force. The issues they face are significant and ongoing. We are therefore encouraged to learn that the CMA plans to impose the first set of conduct requirements at the same time as announcing its proposed designation decision.
13. We encourage the CMA to impose as many measures as it can through carefully crafted and sufficiently detailed conduct requirements rather than pro-competitive interventions. This is because the conduct requirements will come into force earlier and do not require a separate process, imposing more burdens on businesses to engage and respond. The measures required by the news industry all seem well suited to conduct requirements, as they are focussed on protecting businesses from being exploited rather than measures to open competition – which will be much more challenging and may have uncertain impacts.
14. We would support any measures that prevent the leveraging of Google’s market power. We agree with the points made in the Financial Times’ letter to the select committee, which is referenced at footnote 47. It is not plausible for news publishers to opt out from Google’s web crawlers. This means that Google has privileged access to publishers’ copyrighted materials, which it is currently using without payment or attribution. It gives Google an unfair advantage over its AI competitors – particularly as publisher content is high quality, up to date information and therefore very valuable for AI.
15. We would support measures that prevent Google from tying its crawlers to its training and fine tuning of AI models. Publishers should be able to choose how their journalism is used. We believe this measure could be relatively straightforward to achieve through a conduct requirement.
16. We particularly welcome the CMA’s consideration of measures that would reduce the ability of Google to exploit its business users. This is the area that is of most importance to DMG Media and the sustainability of its UK business, growth and investment in journalism.
17. Turning to specific recommendations for conduct requirements, we will focus first on the risk of Google leveraging its dominant position in search into dominance in generative AI, as this was not an issue at the time of the CMA’s original Market Study but is now our main concern for the future health of our business, and the news publishing industry in general.

18. Regarding AI Overviews, the use of our copyrighted without payment or attribution is illegal and commercially predatory. We can find virtually no evidence of traffic being referred to our website from AI Overviews. We have no transparency as to what is going on. This is an area where conduct requirements could make a material difference to publishers' control over their intellectual property. Google may not be making *revenues* directly from AI Overviews at present, but it is certainly accruing *value* from them using publishers' content. The publishers should receive a fair share of that value, and not merely a share of direct revenues. The concept of value should be broadly defined, to include all direct and indirect benefits to Google.
19. Over the last six months we have seen AI Overviews featuring at the top of SERPs for an ever-increasing number of UK search requests. Traditional publisher snippets are forced down the page and links buried within the AI Overview are unlikely to be clicked on – as evidenced by the lack of referral traffic from AI Overviews. AI Overviews are different from previous feature boxes/carousels as they can be expanded to take up the majority of the page, pushing organic links even further down the SERP. We also believe conventional Search referral traffic has significantly reduced for keywords which are being summarised in AI Overviews. It is notable that some classes of content, for instance content about TV shows, are not being summarised. We believe this is because Google have not yet found an effective way of selling sponsored links in AI Overviews. A conduct requirement should demand that AI overviews do not include information without attributing it in a link, and links should not be permitted unless supported by a publisher licensing agreement. The same fair terms and conditions which the DMCC Act requires for use of publisher content in traditional search must apply to use in GenAI as well.
20. Google should be required to provide transparency about which websites it is crawling. It should also separate its crawlers so a publisher can agree separately to be crawled for search indexing; training or fine-tuning AI models or AI products; AI retrieval-augmented generation purposes; or displayed as any part of AI-generated content on search engine result pages. Publishers should also be free to block crawling for any purpose without a licence. Google have argued that the Google Extended crawler allows publishers to choose to opt out of crawling. This is not true. Google Extended allows publishers to opt out of Gemini and Vertex, but AI Overviews are served by the Googlebot, which is also the main search crawler. Publishers therefore cannot opt out their content being scraped for AI Overviews, which are direct competitors because they appear at the top of the SERP, often offering content which has been generated from our own, demoted journalism. Retrieval Augmented Generation (RAG), which means crawling not for training, but to produce up to the minute live outputs, exacerbates the problem because our content is copied to create an instant direct competitor. The only way to block this extraction is to block Google's Search Googlebot completely, which would remove DMG from Google Search – which would have a significant impact on our business.

21. More generally, defending our content against AI crawlers is hugely problematic. The current method used by most publishers, including DMG Media, is to block them using the robots.txt protocol. However, robots.txt is voluntary, it is not legally binding, does not physically prevent crawlers and gives no protection to publisher content which appears downstream – for instance on aggregators’ websites. It should be replaced with a mandatory system, backed by penalties.
22. Barriers to entry for competitors in search must be removed. ProRata.ai, in which we have a stake, is developing an answer engine which will have a built-in content provider attribution and revenue model. This could in time be a powerful constraint on Google search dominance and guarantee revenue for news publishers. However, at the moment Google’s dominance is set in stone by pre-installation agreements with mobile service providers and revenue share agreements with browsers – leveraging its dominance in mobile operating systems to reinforce its dominance in Browsers and Search, as well as other services. Of course, there is now an SMS investigation into mobile ecosystems, which we hope will address this problem. If it doesn’t, a conduct requirement could ban these pre-installation and revenue share agreements and force mobile providers to offer consumers a choice of search services.
23. It is very important to stress that the introduction of AI does not mean that traditional Google Search is no longer hugely important for news publishers, nor that the improvements called for in the Market Study can be ignored. On the contrary, given that as yet AI is not delivering any significant traffic or revenue to news publishers, the need for effective conduct requirements is greater than ever.
24. We would support measures that prevent the use of publisher content without fair terms and conditions (including payment terms). For DMG Media, this is the most important aspect of all. We do not currently receive a fair share of the value created by our journalism in Google Search (including AI Overviews). Google should be required to provide fair terms, including payment for use of publisher content wherever it is exploited to generate value of any kind to Google. As part of that requirement Google should be obliged to disclose to publishers, in a format that can be easily analysed, all the data necessary for publishers to accurately calculate the value of their content to Google. This was part of the original News Media Bargaining Code proposed in Australia, later diluted in legislation. It would be worth revisiting this aspect of the Australian Competition and Consumer Commission 2020 Concepts Paper³.
25. There may also be a case for setting out in the conduct requirements certain elements of the methodology for calculating the value, for example what types of direct and indirect value are to be included, so that lengthy subsequent debates between Google and the publishers can be avoided. If helpful we would be happy to have further discussions and present more detailed proposals about how to frame

³ <https://www.accc.gov.au/by-industry/digital-platforms-and-services/news-media-bargaining-code/news-media-bargaining-code/concepts-paper>

such conduct requirements to ensure these are sufficiently clear, rather than too vague or broad. As seen in the EU through the DMA, there is significant risk that Google interprets such requirements widely - leading to many more months of wrangling between it and third parties.

26. The final offer mechanism set out in section 38 of the DMCC Act provides for a backstop, but the CMA should ensure that Google is incentivised to reach reasonable deals well before that mechanism kicks in. It will be a long time (perhaps 2-3 years) before publishers receive fair value for their journalism if the final offer mechanism is used, time and effort better spent investing in the growth of UK journalism. There is no reason to have a long implementation period for conduct requirements covering these aspects.
27. We would support improvements to the Google Search results rankings, including the implementation of an effective complaints process for businesses which are listed in SERPs. Many businesses have been badly damaged by Google core algorithm changes, usually applied with little or no warning, explanation or appeal. On two occasions, in 2018 and 2019, core algorithm changes caused us to lose around half of our referral traffic. Google should be required to warn of algorithm changes, explain their purpose and likely consequences, and operate an effective and speedy appeals process.
28. Indeed, Google should offer an effective complaints process across all products and services in which it makes arbitrary decisions which can affect business revenue, such as page classification and brand safety. An egregious example of this was Google's 2024 Spam Update which forced MailOnline to de-index articles featuring retailer discount codes. These were popular with users and provided a valuable revenue stream which has now arbitrarily been reduced to zero.
29. Google should be required to ensure that search rankings are non-discriminatory. There should be no discrimination for commercial reasons, such as refusing to buy Google products or services, nor for reasons based on positions taken on issues of public policy.
30. Google should make its web index and click and query data available to competitors on fair and reasonable terms and via a method that is no less performant than the manner through which Google can access its index, click and query data. However, there should be an important caveat: Google should not be free to sell RAG data, or any other data scraped by the crawler it uses for search, unless its scraping is compliant with UK copyright law and under license from the copyright holder.
31. Finally, we welcome the fact that this investigation will cover Search advertising in addition to Google Search. Google has built its business by ruthlessly cross-promoting its various services, and Search advertising cannot be viewed in isolation

without reference to Google's other advertising services, which are also market-dominant.

32. Therefore, Google should not be allowed to share its data across its various owned and operated services. It should be required to seek separate user consent for each distinct service.
33. Google should be required to guarantee fair and transparent auctions for publishers' ad inventory.

Conclusion

34. We very much welcome the DMCC regime and are most impressed with the careful thought which has clearly gone into drafting the CMA's ITC document, which shows that the CMA understands the sector extremely well. The potential interventions listed in the ITC are proportionate and necessary – now is the time for the CMA to step up and support UK businesses and publishers beholden to Google Search. We hope and expect that the CMA will look to act as fast as possible within the confines of the Act, taking into account that publishers, digital advertisers and consumers are suffering harm now, and have been for many years, as a result of Google's monopolistic position. A thorough and comprehensive set of conduct requirements, put in place and enforced as speedily as possible, is a pro-UK business and investment approach that directly aligns with the CMA's pro-growth mandate.
35. We look forward to engaging on these issues in more detail as the CMA's investigation progresses.

Peter Wright
Editor Emeritus
DMG Media
February 2025