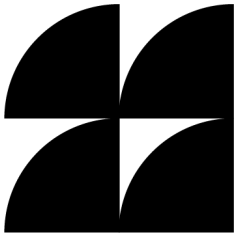
Knight Georgetown Institute

22 JULY 2025

# UK Competition and Markets Authority Strategic Market Status Investigation into Google's General Search and Search Advertising Services

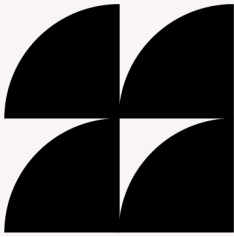
# Knight-Georgetown Institute (KGI) Response

Alissa Cooper
Zander Arnao
Reed Showalter
*Knight-Georgetown Institute*



# About the Knight-Georgetown Institute

The Knight-Georgetown Institute (KGI) is dedicated to connecting independent research with technology policy and design. KGI serves as a central hub for the growing network of scholarship that seeks to shape how technology is used to produce, disseminate, and access information. KGI is designed to provide practical resources that policymakers, journalists, and private and public sector leaders can use to tackle information and technology issues in real time. Georgetown University and the Knight Foundation came together to launch the institute in 2024. Learn more about KGI at https://kgi.georgetown.edu.



# Table of Contents

# I. Introduction

Online search plays a foundational role in how people access information, make decisions, and participate in digital life. In the United Kingdom, as around the world, Google's general search services are the default gateway to the web for most users, entrenching the company's power not only over search results, but also over the markets and public discourse shaped by those results. Against this backdrop, the UK Competition and Markets Authority's (CMA) provisional decision to designate Google as having Strategic Market Status (SMS) in general search and search advertising services is a critical and timely step toward ensuring fairer competition and greater choice in a core digital market.

The Knight-Georgetown Institute (KGI) welcomes the opportunity to comment on the CMA's provisional designation decision and roadmap for interventions. Drawing on research, enforcement activity, and regulatory developments across jurisdictions—including the United States, the European Union, and the UK—this response offers evidence-based recommendations to support the CMA's final designation and the design of effective, proportionate interventions.

Our comments support the CMA's overall conclusion and offer recommendations to strengthen its rationale, clarify the scope of the relevant digital activity, and refine the prioritization of proposed interventions. In particular, the comments highlight the importance of addressing barriers to entry, including Google's default status and control over essential data and distribution channels; ensuring AI-powered products like the Gemini AI assistant and AI Overviews are properly scoped under the designation decision and future interventions; and designing Conduct Requirements, including choice screens and publisher controls, in ways that are evidence-based, future-proof, and internationally coordinated.

Our comments are divided into three sections covering the provisional SMS decision in Section II, the roadmap prioritization in Section III, and a selection of the highest priority proposed Conduct Requirements in Section IV.

We commend the CMA's analysis to date and urge it to move thoughtfully to finalize the SMS designation and advance interventions that will promote meaningful and fair choices for UK users and businesses.

# II. Provisional Strategic Market Status Conclusion

This section provides analysis and feedback on five aspects of the CMA's provisional designation decision: (1) the evidence presented in support of the CMA's provisional conclusion, (2) the strength of Google's brand as an additional evidentiary factor, (3) the need to clarify the scope of the relevant digital activity, (4) concerns about considering the Gemini AI assistant as a regular "user" of Google search, and (5) support for the inclusion of AI Overviews and AI Mode in the scope of the relevant digital activity.

## A. Evidence presented supports the CMA's conclusion

In its provisional designation decision, the CMA has gathered strong evidence of Google's market power. When an undertaking has durable market power, it should at least be expected to control a sizable share of the relevant digital activity and to exhibit abnormally high returns from capital.[1] On these points, the CMA has marshalled comprehensive and compelling evidence:

- Google has captured 90-100% of all queries in the UK each year since 2018, while its closest rival Bing has received less than 5%;[2]
- Google's profit margin has exceeded 25% for the last four years and the proceeds from its general search services have been even higher;[3] and
- "Google" is literally synonymous with the act of searching the web in the minds of most consumers.[4]

These market realities can persist because effective substitutes for Google's general search and search advertising services are nearly nonexistent. While various digital services enable consumers to access information online and advertisers to reach consumers, none of these alternatives can play the same role as Google. The CMA's analysis of purported substitutes demonstrates that no other undertaking has been able to meaningfully challenge Google's offering for consumers and advertisers.[5] Under such conditions, a dominant firm such as Google faces limited competitive pressure and is likely to wield substantial market power.

This equilibrium is sustained by high barriers to entry and expansion in general search services, which prevent smaller providers of search engines from matching Google in quality. These barriers include the placement of Google's services as default across the web,[6] lack of access to data essential to

[1] CMA, "CMA194," 2.51-2.54.
[2] CMA, "Proposed Decision," 5.16-5.17.
[3] Ibid., 5.188-5.196.
[4] Ibid., 1.7.
[5] Ibid., 5.21-5.86, 5.100-5.186.
[6] CMA, "Proposed Decision," 5.146-5.152; Arnao, "The Google Search antitrust case is a triumph for behavioral economics"

delivering high-quality search results,[7] the high fixed costs of building search infrastructure,[8] and the need to cultivate an advertising network to ensure monetization.[9] The CMA's assessment of these barriers is thorough and accurately reflects insights from independent research.

## B. Strength of Google's brand as an additional aspect to include

While the CMA's analysis correctly characterizes the effects of these market features on competition, it omits another important consideration: the independent barrier to entry and expansion posed by Google's brand.

The evidence collected by the CMA firmly establishes the strength of the Google brand. As mentioned above, Google is *the* verb for searching the web, and "Google.com" is the most common search term on Bing.[10] This brand recognition undoubtedly affects consumers' perceptions of Google's quality and their willingness to try alternatives.[11] In his liability decision in the US Search Litigation, Judge Amit Mehta concluded that the Google brand represents a "major deterrent to market entry" and incentivizes controllers of search access points to maintain Google as their default.[12]

Although the CMA reports in its profitability analysis that it "recognise[s] that there is significant value in the Google brand,"[13] brand recognition does not factor at all in the CMA's rationale for the designation decision. This market reality is an important consideration for crafting Conduct Requirements and Pro-Competitive Interventions that are both effective and proportionate to addressing Google's market power in general search services.

## C. Clarifying the definition and scope of the relevant digital activity

Under the DMCCA, the CMA can designate an undertaking as having SMS with regard to a "digital activity," which may include a service that the undertaking offers over the internet.[14] For the purposes of its SMS designation, the CMA defines the digital activity "general search services" as the provision of:

> *a service that searches the world wide web, and can draw on other sources, to return information on any subject (general search); and a service that enables advertising to users of general search (search advertising)*[15]

The proposed decision goes on to explain that the products included in the general search digital activity are:

[7] CMA, "Proposed Decision," 5.155-5.169.
[8] Ibid., 5.171-5.5.178.
[9] Ibid., 5.179-5.5.183.
[10] Ibid., 5.23.
[11] Allcott et al., "Source of Market Power in Web Search."
[12] United States District Court for the District of Columbia, "United States v. Google LLC," 160.
[13] CMA, "Appendix C," C.100.
[14] United Kingdom, "Digital Markets, Competition, and Consumers Act," s. 3(1).
[15] CMA, "Proposed Decision," 4.6.

> *Google Search however it is accessed and including all information it returns through its underlying infrastructure (including generative AI features), including on its search engine results page (SERP)*[16]

This section makes three observations related to the digital activity definition about (1) the need for a more comprehensive list of which Google products are in or out of scope, (2) the durability of factors considered in scoping decisions, and (3) distinguishing the scope of the relevant digital activity from the scope of products affected by interventions.

### Comprehensive listing of products in or out of scope

On its face, the broad definition of "general search" would appear to cover quite a few separately branded Google services, including the Gemini AI assistant, Google Lens, Google Assistant (activated via voice or app on a variety of devices), and NotebookLM.[17] While the CMA provides a lengthy rationale for why it does not consider the Gemini AI assistant to be in scope for the digital activity, it does not do so for these other products. The CMA should provide a more comprehensive list of which Google products are in and out of scope of the relevant digital activity so as to create more clarity about its proposed designation decision.

### Durability of factors considered in scoping decisions

In explaining its decision to consider the Gemini AI assistant out of scope of the relevant digital activity, the CMA discusses a variety of supply- and demand-side factors.[18] Several of these factors are not very durable, i.e., they would be relatively straightforward for Google to change if making such a change were viewed as being advantageous to the firm. Over-reliance on these factors could therefore create uncertainty for market participants about the scope and stability of the designation decision. For example:

- **Branding.** Google has engaged in numerous product rebrands over the years, and has a reputation for having multiple differently branded products in the market that provide similar functions.[19] Its suite of generative AI products has undergone several rebrands in the span of the last few years, including the consolidation of Bard and Duet AI under the Gemini brand.[20] Over-reliance on branding as a factor would create the circumstances under which a relatively simple branding change could exempt Google's general search product from the designation, for example if Gemini and search become more integrated to the point where Gemini becomes part of Google's search branding.

- **Current search API usage.** The CMA notes that today the Gemini AI assistant uses the Google Search API for grounding purposes to respond to a minority of prompts.[21] This is a

[16] Ibid., 4.10.
[17] Google, "Gemini"; Google, "Hey Google"; Google, "Try Google Lens"; Google, "Understand Anything."
[18] CMA, "Proposed Decision," 4.12-4.21, 4.40-4.71.
[19] Amadeo, "A Duo of Google Meet Apps is Officially Here, and It's Confusing."
[20] Langley, "Google's AI product lead explains why the company is doing a 'clean-up' and renaming everything 'Gemini'."
[21] CMA, "Proposed Decision," 4.51.

> design decision that is fully within Google's control, that Google could change any time, and that may presently be influenced by the fact that both its search and AI products are facing scrutiny from antitrust and competition authorities in multiple jurisdictions. In other words, it may be simple for Google to (significantly) increase the proportion of prompts that use search results for grounding once the CMA finalizes its designation decision. Over-reliance on this factor could be easily undermined without providing an indication of what threshold would cause the CMA to reconsider, and without regular reporting requirements from Google about the prevalence of grounding.

In light of this, the CMA's decision could be strengthened by emphasizing that its decisions about which products are in or out of scope of the relevant digital activity – not just the Gemini AI assistant, but all such products that the CMA might consider in the future – are based on the totality of supply- and demand-side factors.

### Scope of digital activity versus scope of products affected by interventions

The CMA is required to define the relevant digital activity for the purposes of conducting its analysis about whether an undertaking meets the SMS conditions in respect of the digital activity. Thus, the digital activity definition serves the narrow and limited purpose of scoping the set of activities in which the undertaking's market power and strategic significance are assessed.

When it comes to considering interventions, a much broader array of products that do not fall within the scope of the digital activity may be affected. For example, the CMA may choose to pursue interventions to increase choice or support fair dealing across all search access points, as described further in Section IV(A) below. If it were to do so, this would imply obligations across a swath of services (Search, Gemini, Google Lens, etc.), applications (Chrome, Google mobile apps, widgets, etc.), and devices (tablets, wearables, home devices, etc.).

It is therefore important for the effectiveness of future interventions that these two scoping considerations – one for the assessment of SMS, and the other for the applicability of interventions – be understood as distinct and different. While the definition of the relevant digital activity is narrow by necessity, the scope of products affected by interventions will need to be much broader in order to be effective.

It would be worth the CMA clarifying that its lengthy analysis of whether the Gemini AI assistant is in or out of scope of the digital activity does not bear on whether that product may be affected by interventions. Without clarification of this point, the CMA's conclusion that the Gemini AI assistant is "at least an access point to Google's general search"[22] muddies the boundary between these two categories and could be read to imply that the scoping decision about the digital activity has some bearing on the application of future interventions.

[22] Ibid., 4.12.

## D. Gemini AI assistant as a "user" of Google search

Given that the scope of products affected by interventions may be wider than the scope of the relevant digital activity, it is important to accurately characterize the relationships between the products to lay a sound foundation for considering proposed interventions. The CMA's description of the relationship between the Gemini AI assistant and Google search leaves out important context. The CMA describes this relationship as follows:

> *In some contexts, the Gemini AI assistant calls on Google Search through an application programming interface (API). We understand that this means the Gemini AI assistant submits a query to and receives results from Google Search. We consider that, in these contexts, the Gemini AI assistant is acting as a user of Google's general search.*[23]

The CMA describes the Gemini AI assistant as a "user" of Google search, but available evidence suggests that the Gemini AI assistant has preferential access to Google's search technology that other "users" do not have. During the US Search Litigation remedies trial, Eli Collins, Vice President for Products at Google DeepMind, described the Gemini app's programmatic access to Google search as follows:

> *Google Services internally provide an API to their service, so Google Search and Google Maps and Photos provide APIs that the Gemini app can access. So in the case of Search, we can -- we can issue a Search query that goes to these API [sic] that Search provides, and that API provides a list of web documents pertaining to that Search. … It gives us programmatic access to the Search engine.*[24]

The remedies trial provided anecdotal evidence of the limitations other companies face when trying to gain programmatic access to Google search. Testimony from an OpenAI witness indicated that despite observing other competitors such as Meta that were seemingly able to gain API access to Google search, Google had been unwilling to conclude a deal with OpenAI for the same access.[25] In another case, Yahoo Japan made arrangements with Google for syndicated access to search results beyond Google's standard syndication offering, but even that deal applied to only a subset of what is returned on the Google SERP, and it capped the number of syndication queries that Yahoo Japan could issue per day.[26]

Thus, while the Gemini AI assistant may avail itself of Google search APIs, there appear to be multiple cases where other "users" are not able to obtain equivalent access at a reasonable cost. Clearly, Google controls those terms and likely considers competitive dynamics when negotiating with potential rivals in a way that it does not when providing API access to the Gemini AI assistant.

---

[23] Ibid., 4.14(b).
[24] Aguilar Aldape and Collins, "Minute Entry for proceedings held before Judge Amit P. Mehta," 3351-3367.
[25] Aguilar Aldape and Turley, "Minute Entry for proceedings held before Judge Amit P. Mehta," 414-416.
[26] Dahlquist and Adkins, "Minute Entry for proceedings held before Judge Amit P. Mehta."

### E. Inclusion of AI Overviews and AI Mode in the relevant digital activity

The CMA's proposal to include AI Overviews and AI Mode within the scope of the relevant digital activity is welcome. This lays the foundation for ensuring that interventions focused on fair dealing or trust and transparency can be applied to these important components of the search user experience.

The inclusion of AI Overviews and AI Mode will help mitigate avenues through which Google could otherwise exploit its market power. Absent their inclusion, the application of interventions to the rest of the search user experience and SERP could give Google an even greater incentive to drive users and advertisers to AI Overviews and AI Mode where those interventions would not apply.[27] Google has tremendous latitude in the design and presentation of its services and could rapidly adjust the user experience (on both its general search services and across its ecosystem of services) to shift usage.[28]

This risk is particularly high for AI Overviews and AI Mode. The fact that AI Overviews already appear in response to more queries in the UK than ChatGPT, the most-used AI assistant, points to the inherent advantages Google has in distribution by virtue of controlling search, Android, and Chrome, among other platforms.[29] In 2024, Google's services were used by 60-70 million logged-in users on mobile and 20-30 million logged-in users on desktop in the UK.[30] By contrast, other leading providers of AI assistants such as OpenAI and Perplexity own no existing platforms that they can use to instantaneously deliver their products to 90%+ of the UK population. The significant usage of AI Overviews reflects Google's ability to leverage its market power in general search services to strengthen its position in the related market for AI assistants by tying its AI assistant technology into its search engine.

# III. Roadmap Prioritization

While it is understandable for the CMA to be deeply interested in the outcome of the US Search Litigation, making the CMA's next steps contingent on what emerges from a US district court is problematic for several reasons. This section addresses these concerns in three parts: Section III(A) describes the need for interventions that address entry barriers to be moved into the CMA's highest priority category, Category 1; Section III(B) details how a package of remedies akin to those proposed by the Plaintiffs in the US Search Litigation would address the entry barriers that the CMA describes at length in its provisional designation decision; and Section III(C) explains why factors specific to the US legal system and market should not constrain interventions in the UK.

---

[27] Cooper et al., "Considerations for Effective Search Competition Remedies," 13; Scott Morton et al., "Judicial Remedies to Restore Competition in Web Search," 9.
[28] For instance, Scott Morton and colleagues contemplate how Google could leverage Chrome to undermine the US Search Litigation remedies. Google already uses Chrome to nudge users toward its digital services. If Chrome, as a search access point, were not covered by the remedy package, Google could aggressively push Chrome to users in order to maintain its market position. See Scott Morton et al., "Judicial Remedies to Restore Competition in Web Search," 9.
[29] CMA, "Proposed Decision," 5.19-5.20.
[30] Ibid., 5.237.

## A. Category 1 interventions must address barriers to entry

While the designation decision is exceptionally clear about the barriers to entry and expansion present in general search services, no Conduct Requirement in Category 1 meaningfully addresses these barriers. Under the DMCCA, Conduct Requirements (CRs) and Pro-Competitive Interventions (PCIs) are supposed to be effective and proportionate,[31] yet the prioritization of interventions in the Roadmap relegates the ones most likely to be effective for later consideration.

Of particular concern is the absence in Category 1 of interventions designed to effectively curtail Google's default status across the web. The CMA's own analysis has documented the market realities and the robust literature in behavioral economics identifying the power of defaults to influence consumer behavior.[32]

Echoing the CMA's findings, investigations by competition authorities in other jurisdictions have yielded significant evidence of default effects in search.[33] Judge Mehta's liability opinion in the US Search Litigation centers on the power of defaults, finding that:

- Google spends *7 times* more on securing defaults than it does on research and development;[34]
- 70% of all U.S. queries flow through an interface where Google's search engine is pre-selected as default;[35] and
- Google's default status deprives competitors of access to distribution and thereby to the scale and data needed to monetize and raise the quality of their search engines.[36]

These findings closely parallel aspects of the CMA's rationale for designating Google search as having SMS. With those findings established, Category 1 interventions will need to be designed to address Google's dominance over distribution in order to meet the effectiveness prong of the "effective and proportionate" test.

## B. Delayed interventions must be included in Category 1

Most of the remedies proposed by the Plaintiffs in the US Search Litigation directly address the barriers to entry identified by the CMA. Therefore, when the CMA revisits the prioritization of potential interventions in the fall, the delayed interventions should be expected to move into Category 1.[37]

The Plaintiffs' proposed remedies in the US Search Litigation are designed to be comprehensive, responding to the interlocking, mutually-reinforcing dynamics of competition in general search services. Omitting certain components would allow Google to maintain the current barriers that prevent rivals from competing effectively. No search engine can operate without access to a web index

[31] CMA, "Roadmap of possible measures to improve competition in search," 2.16.
[32] CMA, "Proposed Decision," 5.146-5.152.
[33] Arnao, "The Google Search antitrust case is a triumph for behavioral economics."
[34] United States District Court for the District of Columbia, "United States v. Google LLC," 246.
[35] Ibid., 217.
[36] Ibid., 216.
[37] United States et al., "Plaintiffs' Revised Proposed Final Judgment."

and algorithms to rank and return results to users. Those results cannot improve in quality without user data. Users who generate that data cannot be reached without access to distribution channels and the opportunity to build a brand. None of this can take place without monetizing the results. A successful package of interventions must address this interlocking dynamic by including interventions aimed at distribution, quality improvement through data access, and syndication.[38]

Interventions in each of these categories have an important role to play in remedying the adverse effects of Google's market power along each step of the search value chain:

- **Distribution**: Restricting Google's payments for exclusive default status could significantly lower the barrier to entry posed by the role of defaults.[39] As a result of this remedy, smaller competitors could contend for default status across the web, enhancing their access to distribution and the diversity of search engines to which consumers are regularly exposed. These changes could strengthen the ability of Google's rivals to achieve scale, acquire data, and challenge negative perceptions of their quality.[40]

- **Data sharing**: Requiring Google to share essential data for building a search engine (i.e., "user-side" data and the web index) could directly reduce barriers to entry posed by high fixed costs and network effects.[41] These data sources are useful for returning quality results.[42] Their sharing would alleviate the chicken-and-egg problem of needing a large user base to obtain high-quality data, the upfront costs of which are prohibitive for many potential rivals.

- **Syndication:** Obliging Google to syndicate its search and advertising technology would reduce entry barriers posed by high fixed costs and address the immediate need for monetization.[43] A new entrant could benefit from this syndication by immediately being able to display high-quality results to users and deliver targeted advertisements without first having to build out its own advertising network. The license terms could be designed to gradually narrow access to Google's infrastructure over time so as to incentivize the entrant to develop the capabilities of its own general search services.[44]

## C. The CMA's mandate requires affirmative intervention independent from US enforcement

Bringing delayed interventions into Category 1 will be critical to remedy the adverse effects of Google's market power. It is also essential to fulfill the legal mandate of the DMCCA. The implication that antitrust enforcement in the US may be sufficient to resolve all concerns under the DMCCA is

[38] Cooper et al., "Considerations for Effective Search Competition Remedies," 11.
[39] United States et al., "Plaintiffs' Revised Proposed Final Judgment," 7-10.
[40] Allcott et al., "Source of Market Power in Web Search."
[41] United States et al., "Plaintiffs' Revised Proposed Final Judgment," 14-17.
[42] Lei et al., "Trade-offs in Leveraging External Data Capabilities."
[43] United States et al., "Plaintiffs' Revised Proposed Final Judgment," 20-26.
[44] Hoppner and Uphues, "A Ladder of Investment to Competition for Online Search Services."

misguided because the CMA's legal authority and scope are meaningfully distinct from the legal context in the US Search Litigation. The CMA's obligations to promote fair dealing, open choices, and trust and transparency through Conduct Requirements, as well as its obligations to remedy, mitigate, or prevent adverse effects on competition require the CMA to act affirmatively to fulfill its mandate regardless of the outcomes of the US antitrust litigation.

This section explains three reasons why the CMA should prioritize the delayed interventions to meet this mandate: (1) the proposed US remedies may largely only apply in the US; (2) US remedies will be crafted based on a variety of US-specific factors that do not similarly apply in the UK; and (3) current uncertainty about the search/AI nexus is a reason for stronger, not weaker, intervention.

### US litigation remedies may be restricted to the US

The geographic scope of DMCCA enforcement is distinct from the potential scope of US enforcement remedies, such that the CMA must act to protect UK users and businesses regardless of US enforcement. Many of the Plaintiffs' proposed remedies in the US Search Litigation may only be applicable within the US. Most significantly, the Plaintiffs emphasized during the remedies trial that their proposal to restrict Google's ability to pay for defaults and preferential treatment is limited to contracts within the US.[45] If the judge adopts any form of distribution restrictions that are applicable only within the US, Google would retain its ability to prevent rivals from gaining default status in the UK and elsewhere. With the majority of the world's search users residing outside the US, this presents a limitation on the impact that the US decision could have globally and within the UK, and one that the CMA could help to shore up by pursuing interventions that address distribution barriers.

Other remedies could be similarly limited in their geographic applicability. For example, Plaintiffs' proposed final judgment limits the data to be included in user-side data sharing to users who reside in the US.[46] If the goal of such a remedy is to help rivals improve their quality by reducing their data disadvantages as compared to Google, then it would seem critical to ensure that data from UK users be included in a similar measure adopted in the UK.

Ultimately, US law is limited to that which has a nexus to US markets. This limit on geographic application means there is a near certainty that some set of behavior adversely affecting competition in the UK will not be reached by US enforcement. The CMA has an independent duty to draw its own conclusions about which interventions can effectively and proportionally create benefits for UK users and UK customers in light of its finding of SMS. The US Search Litigation remedies will not necessarily be applicable or sufficient to meet the goals of the DMCCA with respect to UK search rivals, businesses, and users.

### The CMA is not bound by US-specific legal factors

The CMA has its own distinct mandate for how to promote competition as defined by its laws. While US law may often inform how other jurisdictions consider local law, there are important differences.

[45] Sallet, "Minute Entry for proceedings held before Judge Amit P. Mehta," 49.
[46] United States et al., "Plaintiffs' Revised Proposed Final Judgment," 7.

These differences have substantial impact on how remedies are shaped. In the US Search Litigation, remedies will be crafted according to a variety of US-specific factors that differ from the UK legal regime. These include:

- The constraints and affordances of US antitrust law, specifically Section 2 of the Sherman Antitrust Act as it applies to monopolization and attempted monopolization, which have a notoriously difficult standard for proving willful anticompetitive action;[47]
- Legal precedents in the jurisdiction where the case is being tried, including those established under *US v. Microsoft Corp*., which, among other things, arguably create lax standards for illegal tying in digital markets compared to every other market;[48] and
- Applicable Supreme and Circuit Court jurisprudence, some of which articulates restrictively defined purposes that remedies must fulfill and some of which is internally inconsistent about the nexus between conduct and remedies.[49]

The remedies ultimately applied in the US Search Litigation will be shaped to a significant extent by legal constraints unrelated to the CMA's legal standards and proportionality tests. These differences are more than oddities; some remedies that would effectively promote future competition or ensure fair dealing may be precluded by legal interpretation of competition laws in the US. Areas where the legal remedies overlap between the US and UK bolster one another and promote more effective enforcement. Areas where US enforcement potentially fails to protect competition in the ways contemplated by the DMCCA require more proactive intervention. In either case, there is no reason why the CMA should delay or limit the task of meeting its objectives under the DMCCA.

The same can be said for institutional factors that will shape the implementation of remedies in the US. The Plaintiffs' proposed data sharing remedies provide a useful example here. The Plaintiffs propose that data may only be shared with "qualified competitors," with qualification subject to a variety of tests to be judged by the Plaintiffs and the court, including a showing that potential qualified competitors do not pose risks to US national security. Were the CMA to propose a data sharing intervention, it may want to set different eligibility standards for firms to be able to receive data. The US data sharing regime may also exclude UK firms, explicitly or implicitly. It may also include fundamentally different privacy, security, and access requirements than those legally appropriate

[47] United States, "Sherman Antitrust Act," §2; United States Supreme Court, "United States v. Grinnell Corp." See also, Elhauge, "Defining Better Monopolization Standards," noting that the Grinnell standard is difficult to apply because "[i]t seems obvious that often firms willfully acquire or maintain monopoly power precisely through business acumen or developing a superior product," and it is difficult to conceive "of cases where a firm really has a monopoly thrust upon it without the aid of any willful conduct."

[48] United States District Court for the District of Columbia, "United States v. Microsoft Corporation."

[49] For cases cited by Plaintiffs in US v. Google, see, e.g., United States Court of Appeals for the District of Columbia Circuit, "United States v. Microsoft Corporation"; United States Supreme Court, "Ford Motor Co. v. United States." For those cited by Defendants, see, e.g., United States Supreme Court, "Brown v. Plata" (finding that "the scope of the remedy must be proportional to the scope of the violation, and the order must extend no further than necessary to remedy the violation"); United States Supreme Court, "Ragsdale v. Wolverine World Wide, Inc." (stating that a remedy must be "tailored to the harm suffered"). Both of the latter cases were cited to restrict remedies that would more effectively address competition concerns outside the narrow bounds of the specific proven aspects of a given instance of litigation. See, e.g., Simmons et al., "Brief of Bipartisan Former Antitrust Enforcers as Amicus Curiae in Support of Neither Party."

under UK law. Therefore, a data sharing regime imposed in the US would not obviate the need for one in the UK, if the CMA were to find such an intervention to be effective and proportionate. Delaying or limiting the consideration of these interventions pending further US litigation merely delays the timeline for UK users and businesses to benefit from the competition the DMCCA uniquely protects.

### Uncertainty about the search/AI nexus is a reason for stronger intervention

The DMCCA has an explicit forward looking duty to prevent future adverse effects on competition and UK users. The CMA's provisional decision paints an uncertain picture of the nexus between general search services and AI assistants as well as their future development. Digital markets that are dominated by large players only occasionally face such disruptive, contestable periods of competition. The uncertainty over AI markets is one such potential change. In these nascent markets, competitive threats could grow to make entirely new markets. On the other hand, new innovation could instead be leveraged and controlled by existing dominant players.[50] This possibility is uncertain, but this time of uncertainty is also when interventions to protect competition are maximally effective because they can set the ground rules for new markets to develop in a competitive manner. This should further galvanize the CMA to bring the delayed interventions forward to Category 1 to guard against Google extending its market power in search into adjacent markets.[51]

The threat of Google controlling and squelching innovation in nascent AI markets is not abstract. Google is already well-positioned to extend its market power with AI assistants in several ways.[52] Absent restrictions on Google's distribution agreements, the company may attempt to widen their scope to include Gemini, as it appears to have done by paying Samsung for pre-installations of the Gemini app.[53] Google could further leverage its market power in general search by integrating Gemini across its ecosystem of related services, both as a standalone branded product and as a layer on top of existing ones. Beyond this, Google may use its existing data, search access point, and hardware advantages to exclude or deprioritize competition which may rely on those elements as infrastructure. This risk should bear on the CMA's prioritization of interventions because the ability to extend market power from a relevant digital activity into adjacent markets, and the ability to substantially influence the behavior of other undertakings, are key markers of SMS under the DMCCA.[54] The fact that, in the case of AI assistants, Google could weaponize its market power to block innovative, homegrown providers from accessing distribution should add further impetus to prioritizing the delayed interventions.

This is one of several hypothetical outcomes if the CMA does not act on its mandate to protect future competition. Uncertainty about the particularities of how a technology may develop should not prevent broad ground rules to promote fair dealing, open choices, and trust and transparency. Failing to do so could sacrifice the competition CMA is tasked with protecting.

---

[50] Showalter and Edelson, "Captured Innovation."
[51] This is especially true in relation to the existing U.S. antitrust enforcement which is primarily ex-post action focused on past dominance and only imperfectly able to address forward-looking harms.
[52] Arnao, "Robust Google Search Antitrust Remedies for an Uncertain AI Future"; CMA, "Proposed Decision," 5.223-5.224.
[53] CMA, "Proposed Decision," 5.141.
[54] Ibid., 5.232.

# IV. Highest Priority Conduct Requirements

This section includes preliminary reflections on two of the proposed Category 1 Conduct Requirements: (1) choice screens and (2) transparency, attribution, and choice for publishers.[55]

## A. Choice screens

Choice screens have been perhaps the most widely used approach to promoting competition in general search services globally.[56] While they are intuitive and enable users to actively select their default services, they have a poor track record of stimulating competition and require careful attention to the details of their design. In addition to the Android choice screen deployed in the UK, empirical assessments of choice screens implemented elsewhere demonstrate that their impact on actual market outcomes, though positive, has been mostly negligible:

- **EEA Android Choice Screen:** In 2020, Google designed a choice screen for users of Android devices in the European Economic Area (EEA) as part of an antitrust case brought by the European Commission. The effect of this choice screen amounted to a reduction in Google's market share by less than 1%.[57]

- **Russia Android Choice Screen**: In 2017, Google created a similar choice screen to resolve an antitrust action by Russia's competition authority. This intervention was estimated to have reduced Google's market share by 10%,[58] though this result may have been magnified by the presence of Yandex, a popular homegrown search engine, in the market.[59]

- **EEA Browser Choice Screen:** In 2009, Microsoft agreed to enable users of its Windows operating system to select their default web browser via a choice screen. The choice screen cut the market share of Internet Explorer, then Microsoft's flagship web browser, by between 1.4 and 2%.[60] Notably, when Microsoft accidentally deprecated the choice screen in an update to Windows, more than 14 months passed before this error was noticed by regulators.[61]

The CMA's Roadmap mentions its intention to mandate choice screens for "key" access points such as Chrome and Android.[62] If the choice screen CRs eventually adopted do not apply to all search access points, this could create potentially perverse incentives. As discussed above, if certain access

[55] The CMA should also bear in mind the practical limits of data portability for stimulating competition and innovation. While data portability can in theory facilitate consumers' ability to switch services, few undertakings design their businesses around imported data. This market reality will likely diminish the benefits of a CR aimed at fostering data portability. See Nicholas and Weinberg, "Data Portability and Platform Competition."
[56] See Decarolis et al., "Competition and Defaults in Online Search."
[57] Ibid., 2.
[58] Ibid., 2.
[59] Ibid., 27.
[60] Vasquez Duque, "Active Choice vs. Inertia?", 61.
[61] Lancieri and Pereira Neto, "Designing Remedies for Digital Markets," 2.
[62] CMA, "Roadmap of possible measures to improve competition in search," 3.5.

points are free from choice screen obligations, Google may benefit from steering users toward these access points (either through distribution agreements or the design of its own services).[63] Google could aggressively funnel its search users to the Gemini AI assistant or a similar future product, for instance, if some form of choice obligation applies to other search access points but not to the Gemini assistant.[64]

Choice-enabling CRs should conceive of choice design broadly, beyond the simple, point-in-time choice screens that have been attempted thus far. In other contexts where choice screens have been implemented, they have appeared as one-off interfaces listing various options in the market.[65] This relatively ineffective design need not be repeated. The aim of a choice intervention is to support the ability of consumers to actively make informed decisions about which digital service is selected as their default.[66] Naturally, this support can take many forms. For instance, researchers have suggested creating a "defaults tab" or "quiz" to educate and re-engage users on their choice over the long-term.[67] Thinking creatively about CRs to support consumer choice will become especially important with AI assistants, as it is unclear if users will want a single choice screen that mixes traditional search engines and AI assistants.

Whatever the shape of the CR, the design of choice screens during implementation will require careful scrutiny. Experience in Europe demonstrates that Google cannot be trusted to design its own choice screens.[68] Fortunately, the CMA is well-equipped to ensure that choice screens are effectively designed and rolled out. The CMA's intention to articulate high-level principles for choice architecture will be key.[69] To buttress this guidance, the CMA should also issue guidelines governing the testing of choice screens and enable external stakeholders to formally give their input during this process.[70] A variety of options for market testing exist, including concept testing, usability testing, and behavioral experiments.[71] The CMA should play an active role in ensuring these best practices are incorporated into the implementation of its CRs.

## B. Transparency, attribution, and choice for publishers

The Category 1 CR focused on transparency, attribution, and choice for publishers is welcome, and seems likely to have by far the greatest impact of the proposed Category 1 CRs. While the CMA acknowledges the wider debate about publisher control over AI-related uses of content, Google plays a unique role. For most publishers, Google's web crawler, Googlebot, has been and continues to be the only must-carry crawler online. A 2024 study found that over 99% of websites at least partially

[63] Cooper et al., "Considerations for Effective Search Competition Remedies," 13; Scott Morton et al., "Judicial Remedies to Restore Competition in Web Search," 9.
[64] Cooper et al., "Considerations for Effective Search Competition Remedies," 13.
[65] Ibid.
[66] Ibid., 18.
[67] Petrie, "Beyond Choice Screens."
[68] Cooper et al., "Considerations for Effective Search Competition Remedies," 7.
[69] CMA, "Roadmap of possible measures to improve competition in search," 3.5.
[70] Cooper et al., "Considerations for Effective Search Competition Remedies," 22-23.
[71] Petrie, "Designing Better Digital Competition Remedies."

authorize Googlebot to scrape and index their content.[72] This landscape is changing rapidly, but the fact remains that being indexed by Google for search purposes remains a high priority for many web publishers, and they presently have no ability to control how their content indexed for search is used in search-based AI features.[73]

The CMA's interventions here will also be intertwined with wider developments in the industry and internationally. Cloudflare, a content delivery network that serves 20-30% of global internet traffic, recently announced that it has started blocking AI crawlers by default[74] while offering publishers experimental access to a pay-per-crawl feature that allows them to charge crawlers for access to their sites.[75] Industry efforts are underway to provide a richer set of mechanisms for publishers to signal their preferences or control crawler activity than what the web's historical mechanism (robots.txt) has offered.[76] And the Plaintiffs' proposed remedies in the US Search Litigation include providing publishers with the ability to opt out on a model-by-model basis from having their content used to train or fine-tune any of Google's generative AI models or products.[77] Establishing transparency, attribution, and choice mechanisms in the UK that align with the technical specifications and frameworks being adopted across the industry and globally will be critical.

# V. Conclusion

The CMA's provisional designation of Google as holding Strategic Market Status in general search services is supported by robust evidence and justified by the significant barriers to entry and expansion in this market. As the CMA moves forward, its final decision and intervention roadmap should reflect the full scope of Google's entrenched advantages—including brand power, control over distribution channels, and data access. The CMA should prioritize interventions that directly address these barriers, particularly those aimed at opening up access points to more choice and empowering competitors through fairer defaults, data sharing, and syndication. Clarity on product scope, especially as it pertains to AI-integrated search experiences like the Gemini AI assistant and AI Overviews, will be essential to ensure interventions are future-proof and proportionate. The Knight-Georgetown Institute urges the CMA to proceed with ambition and urgency, informed by developments in other jurisdictions but ultimately grounded in the needs of UK users and businesses.

[72] Longpre et al., "Consent in Crisis," 36.
[73] Aguilar Aldape and Collins, "Minute Entry for proceedings held before Judge Amit P. Mehta."
[74] Vallurupalli, "Cloudflare Just Changed How AI Crawlers Scrape the Internet-at-Large."
[75] Allen and Newton, "Introducing pay per crawl."
[76] Krishnan and Nottingham, "Progress on AI Preferences"; ai.robots.txt, "ai.robots.txt."
[77] United States et al., "Plaintiffs' Revised Proposed Final Judgment," 16.

# Bibliography

Aguilar Aldape, Diana, and Eli Collins. "Minute Entry for proceedings held before Judge Amit P. Mehta: Evidentiary Hearing held on 5/2/2025." District Court for the District of Columbia, May 2, 2025. https://www.courtlistener.com/docket/18552824/united-states-of-america-v-google-llc/?page=10#minute-entry-424269920.

Aguilar Aldape, Diana, and Nick Turley. "Minute Entry for proceedings held before Judge Amit P. Mehta: Evidentiary Hearing held on 4/22/2025." United States District Court for the District of Columbia, April 22, 2025. https://www.courtlistener.com/docket/18552824/united-states-of-america-v-google-llc/?page=10#minute-entry-423150773.

ai.robots.txt. "ai.robots.tx." Last modified July 2025. https://github.com/ai-robots-txt/ai.robots.txt.

Allcott, Hunt, Juan Camilo Castillo, Matthew Gentzkow, Leon Musolff, and Tobias Salz. "Sources of Market Power in Web Search: Evidence from a Field Experiment." National Bureau of Economic Research, January 2025. https://www.nber.org/papers/w33410.

Allen, Will, and Simon Newton. "Introducing pay per crawl: Enabling content owners to charge AI crawlers for access." Cloudflare, July 1, 2025. https://blog.cloudflare.com/introducing-pay-per-crawl/.

Amadeo, Ron. "A Duo of Google Meet Apps is Officially Here, and It's Confusing." *WIRED*, August 6, 2022. https://www.wired.com/story/google-meet-duo-video-chat-app-merger/.

Arnao, Zander. "The Google search antitrust case is a triumph for behavioral economics." Knight-Georgetown Institute, October 11, 2024. https://kgi.georgetown.edu/research-and-commentary/the-google-search-antitrust-case-is-a-triumph-for-behavioral-economics/.

———. "Robust Google Search Antitrust Remedies for an Uncertain AI Future." Knight-Georgetown Institute, July 22, 2025. https://kgi.georgetown.edu/research-and-commentary/google-search-antitrust-remedies-ai.

Competition and Markets Authority. "Appendix C: Profitability Analysis." June 24, 2025. https://assets.publishing.service.gov.uk/media/68598a4c9d116ab6d9eca7ce/Annex_C_Profitability_analysis.pdf.

———. "Digital markets competition regime guidance: CMA194." December 19, 2024. https://assets.publishing.service.gov.uk/media/6762f4f6cdb5e64b69e307de/Digital_Markets_Competition_Regime_Guidance.pdf.

———. "Strategic market status investigation into Google's general search services: Proposed Decision." June 24, 2025. https://assets.publishing.service.gov.uk/media/68598b13eaa6f6419fade67b/Proposed_decision.pdf.

———. "Strategic market status investigation into Google's general search services: Roadmap of possible measures to improve competition in search." June 24, 2025. https://assets.publishing.service.gov.uk/media/6859810eeaa6f6419fade671/Roadmap_.pdf.

Cooper, Alissa, Jasper van den Boom, and Zander Arnao. "Considerations for Effective Search Competition Remedies." Knight-Georgetown Institute, November 4, 2024. https://kgi.georgetown.edu/wp-content/uploads/2024/12/KGI-Considerations-for-Effective-Search-Competition-Remedies.pdf.

Dahlquist, David, and Jesse Adkins. "Minute Entry for proceedings held before Judge Amit P. Mehta: Evidentiary Hearing held on 5/2/2025 Evidentiary." United States District Court for the District of Columbia, May 2, 2025. https://www.courtlistener.com/docket/18552824/united-states-of-america-v-google-llc/?page=10#minute-entry-424269920.

Decarolis, Francesco, Muxin Li, Filippo Paternollo. "Competition and Defaults in Online Search." *American Economic Journal (Forthcoming)*. Accessed July 14, 2025. https://www.cresse.info/wp-content/uploads/2023/09/2023_ps9_pa2_Li.pdf.

Elhauge, Einer. "Defining Better Monopolization Standards." *Stanford Law Review* 56, no. 2 (2003): 253-344. https://www.jstor.org/stable/1229611.

Google. "Gemini." Accessed June 14, 2025. https://gemini.google.com/.

———. "Hey Google." Accessed June 14, 2025. https://assistant.google.com/.

———. "Try Google Lens." Accessed June 14, 2025. https://lens.google/.

———. "Understand Anything." Accessed June 14, 2025. https://notebooklm.google/.

Hoppner, Thomas, and Steffen Uphues. "A Ladder of Investment to Competition for Online Search Services." June 13, 2025. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5284865.

Krishnan, Suresh, and Mark Nottingham. "Progress on AI Preferences." Internet Engineering Task Force, June 29, 2025. https://www.ietf.org/blog/ai-pref-progress/.

Lancieri, Filippo, and Caio Mario S Pereira Neto. "Designing Remedies for Digital Markets: The Interplay Between Antitrust and Regulation." *Journal of Competition Law & Economics* 18, no. 3 (2022): 613-669. https://academic.oup.com/jcle/article-abstract/18/3/613/6415615.

Langley, Hugh. "Google's AI product lead explains why the company is doing a 'clean-up' and renaming everything 'Gemini'." *Business Insider*, February 8, 2024. https://www.businessinsider.com/google-ai-bard-gemini-ai-generative-llm-alphabet-rebrand-duet-2024-2.

Lei, Xiaoxia, Yixing Chen, and Ananya Sen. "Trade-offs in Leveraging External Data Capabilities: Evidence from a Field Experiment in an Online Search Market." March 2024. https://questromworld.bu.edu/platformstrategy/wp-content/uploads/sites/49/2024/06/PlatStrat2024_paper_112.pdf.

Longpre, Shayne, Robert Mahari, Ariel Lee, et al. "Consent in crisis: the rapid decline of the AI data commons." Proceedings of the 38th International Conference on Neural Information Processing Systems, June 5, 2025. https://proceedings.neurips.cc/paper_files/paper/2024/file/c3738949a80306cc48a8ea8ba0560f9d-Paper-Datasets_and_Benchmarks_Track.pdf.

Nicholas, Gabriel, and Michael Weinberg. "Data Portability and Platform Competition: Is User Data Exported From Facebook Actually Useful to Competitors?". New York University School of Law Engelberg Center on Innovation Law & Policy, November 2019. https://www.law.nyu.edu/sites/default/files/Data%20Portability%20and%20Platform%20Competition%20-%20Is%20User%20Data%20Exported%20From%20Facebook%20Actually%20Useful%20to%20Competitors.pdf.

Petrie, Gemma. "Beyond Choice Screens: Exploring browser choice design interventions." Mozilla Research, 2024. https://research.mozilla.org/browser-competition/remedyconcepts/.

———. "Designing Better Digital Competition Remedies: Lessons from User Research." Knight-Georgetown Institute, February 2025. https://kgi.georgetown.edu/wp-content/uploads/2024/12/GPetrie_Designing-Better-Remedies.pdf .

Sallet, Jonathan. "Minute Entry for proceedings held before Judge Amit P. Mehta: Evidentiary Hearing commenced on 4/21/2025." United States District Court for the District of Columbia, April 21, 2025. https://www.courtlistener.com/docket/18552824/united-states-of-america-v-google-llc/?page=10#minute-entry-423014162.

Scott Morton, Fiona, David Dinielli, Alissa Cooper, Gene Kimmelman, and Margaret O'Grady. "Judicial Remedies To Restore Lost Competition in the Market for General Search." Yale Tobin Center for Economic Policy, September 4, 2024. https://tobin.yale.edu/sites/default/files/publication-documents/2024-09/Judicial%20Remedies%20To%20Restore%20Lost%20Competition%20in%20the%20Market%20for%20General%20Search-for%20posting.pdf.

Showalter, Reed, and Laura Edelson. "Captured Innovation: Technology Monopoly Response to Transformational Development." *University of Chicago Business Law Review* 4 (2025). https://businesslawreview.uchicago.edu/print-archive/captured-innovation-technology-monopoly-response-transformational-development.

Simmons, Ian, Peter Herrick, Andrew Ezekoye, and Joshua Cayetano. "Brief of Bipartisan Former Antitrust Enforcers as Amicus Curiae in Support of Neither Party." United States District Court for the District of Columbia, May 6, 2025.

https://www.courthousenews.com/wp-content/uploads/2025/05/antitrust-enforcers-google-amicus-brief.pdf.

United Kingdom. "Digital Markets, Competition, and Consumers Act." 2024. https://www.legislation.gov.uk/ukpga/2024/13/contents.

United States. "Sherman Antitrust Act." 1890. https://www.law.cornell.edu/uscode/text/15/chapter-1.

United States, Colorado, Connecticut, et al. "Plaintiffs' Revised Proposed Final Judgment." March 7, 2025. https://coag.gov/app/uploads/2025/03/2025.03.07-Plaintiffs-Revised-PFJ.pdf.

United States Court of Appeals for the District of Columbia Circuit. "United States v. Microsoft Corporation: Opinion of the Court." June 28, 2001. https://www.justice.gov/atr/case-document/file/504276/dl.

United States District Court for the District of Columbia. "United States v. Google LLC: Memorandum Opinion." August 5, 2024. https://files.lbr.cloud/public/2024-08/045110819896.pdf?VersionId=mHMw8uSvPbFCwI.7.yAY8wRXM0.UCmrD.

———. "United States v. Microsoft Corporation: Memorandum and Order." December 11, 1997. https://law.justia.com/cases/federal/district-courts/FSupp/980/537/1883068/.

United States Supreme Court. "Brown v. Plata: Opinion of the Court." May 23, 2011. https://tile.loc.gov/storage-services/service/ll/usrep/usrep563/usrep563493/usrep563493.pdf.

———. "Ford Motor Co. v. United States: Opinion of the Court." March 29, 1972. https://www.loc.gov/resource/usrep.usrep405562/.

———. "Ragsdale v. Wolverine World Wide, Inc: Opinion of the Court." March 19, 2002. https://www.law.cornell.edu/supct/html/00-6029.ZO.html.

———. "United States v. Grinnell Corp: Opinion of the Court." June 13, 1966. https://tile.loc.gov/storage-services/service/ll/usrep/usrep384/usrep384563/usrep384563.pdf.

Vallurupalli, Daniella. "Cloudflare Just Changed How AI Crawlers Scrape the Internet-at-Large; Permission-Based Approach Makes Way for A New Business Model." Cloudflare, July 1, 2025. https://cloudflare.net/news/news-details/2025/Cloudflare-Just-Changed-How-AI-Crawlers-Scrape-the-Internet-at-Large-Permission-Based-Approach-Makes-Way-for-A-New-Business-Model/default.aspx.

Vasquez Duque, Omar. "Active Choice vs. Inertia? An Exploratory Assessment of the European Microsoft Case's Choice Screen." *Journal of Competition Law & Economics* 19, no. 1 (2023): 60-74. https://doi-org.proxy.library.georgetown.edu/10.1093/joclec/nhac009.