



MINISTRY OF JUSTICE AND PUBLIC SECURITY
Administrative Council for Economic Defence – CADE
Office of Commissioner Diogo Thomson de Andrade

Administrative Inquiry No. 08700.003498/2019-03 (Confidential Case File No. 08700.004627/2019-72)

Complainant: Cade *ex officio*

Respondents: Google Inc, Google Brasil Internet Ltda.

Counsels: Ricardo Mota, Leonor Cordovil and others.

Reporting Commissioner: Gustavo Augusto Freitas de Lima

OPINION OF COMMISSIONER DIOGO THOMSON DE ANDRADE¹²
PUBLIC VERSION

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SUMMARY

1. INTRODUCTION	3
1.1. Technical Note No. 24/2023 (SEI 1325516 and 1325801), from the DEE/Cade	8
1.2. Technical Note No. 70/2024 (SEI 1481800 and 1481804), from the SG/Cade	14
1.3. Request by Commissioner Camila Cabral Pires-Alves	18
1.4. Opinion of the Reporting Commissioner Gustavo Augusto Freitas de Lima.....	19
2. SUPPLEMENTARY INVESTIGATION CONDUCTED BY THIS OFFICE	25
2.1. Google’s response to Decision No. 37/2025 (SEI 1612264).....	29
2.1.1. Additional submission filed by Google	35
2.2. Publishers’ responses to the official letters sent in the Supplementary Instruction..	38
2.2.1. Responses received from associations	39
2.2.2. From the responses submitted by news organisations.....	50
2.3. Technical submissions forwarded by civil society organisations pursuant to Order No. 38/2025 (SEI 1612370).....	55
2.3.1. Grupo Sinos (“Sinos”)	55
2.3.2. Brazilian Institute for Consumer Protection (“IDEC”)	56
2.3.3. Momentum – Journalism and Tech Task Force (“Momentum”).....	58
2.3.4. Open Markets Institute’s Center for Journalism & Liberty (“CJL”).....	61
2.3.5. Article 19 Brazil (“Article 19”)	64
2.3.6. Reporters Without Borders (“RSF”)	66
2.3.7. Sleeping Giants Brasil (“SGBR”).....	67
2.3.8. Foxglove	70
2.3.9. Getulio Vargas Foundation Centre for Technology and Society (“CTS”).....	72
2.3.10. Additional submission by Article 19, CTS, IDEC and Foxglove.....	76
3. INTERNATIONAL EXPERIENCE.....	77
3.1. Digital Markets, Competition and Consumers Act (UK)	77
3.2. Conduct Requirements for Google Search (UK).....	79
3.3. Directive 2019/790 (European Union)	80
3.5. Autorité de la Concurrence v. Google (France).....	82
3.6. Investigation A420 (Italy)	85
3.7. Implementation of <i>equo ecompenso</i> (Italy).....	87
3.8. Corint Media v. Google (Germany)	88
3.9. <i>Bundeskartellamt</i> v. Google News Showcase (Germany)	89
3.10. Digital Platforms Inquiry (Australia).....	90
3.11. News Media and Digital Platforms Mandatory Bargaining Code (Australia).....	91
3.12. Media and Digital Platforms Market Inquiry (South Africa).....	93
3.13. Summary of comparative experiences.....	95
4. PRELIMINARY THEORETICAL ELEMENTS.....	97
4.1. Journalism as a public good	100
4.2. Artificial intelligence, competition and information markets.....	105
5. COMPETITION ANALYSIS.....	110
5.1. Considerations regarding the analytical tradition of abuse of a dominant position	110
5.2. Considerations regarding the analytical tradition of exploitative abuses	111
5.2.1. European case law on exploitative abuses.....	114

5.3.	The legal classification of exploitative abuse under Brazilian law	119
5.4.	The conduct under investigation	123
5.5.	Market power, publishers’ structural dependence, and the absence of a need for an exhaustive formal definition of the relevant market.....	129
5.6.	Ecosystemic logic, incentives, cross-subsidy structure and pricing mechanisms	137
5.7.	Identification of the theory of harm	141
5.7.1.	<i>Structuring analytical rules for the evaluation of the theory of harm described.....</i>	<i>148</i>
5.7.2.	<i>Application of the summary of the analytical framework to the conduct under investigation</i>	<i>153</i>
5.8.	Final considerations	171
6. SCOPE AND LIMITS OF SOLUTIONS RELATED TO LAW No. 12.529/2011 IN LIGHT OF THE ALLEGED CONDUCT UNDER INVESTIGATION		174
6.1.	Regulatory-legislative solutions and negotiated remuneration mechanisms	176
6.2.	Self-regulatory mechanisms negotiated between industry players	177
6.3.	Opening up opt-out conditions and functional granularity of content uses	177
7. OPERATIVE PART		180

1. INTRODUCTION

1. This is an Administrative Inquiry initiated against Google Brasil Internet Ltda. (“Google”)³, by determination of the Administrative Council for Economic Defence (“Cade”), in the adjudication of Administrative Proceeding No. 08700.009082/2013-03.

2. At the time of the ruling on the aforementioned Administrative Proceeding, Commissioner Paula Farani de Azevedo Silveira submitted an opinion following a request for review for the archiving of the case, instructing Cade’s General Superintendence (“SG/Cade”) to initiate an Administrative Inquiry against Google, with the aim of *“investigating the conditions of competition and any abuse of a dominant position in the search market, as well as in the vertically related news market”* (SEI 0632620, §§43 and 143), as recorded in the judgment certificate (SEI 0629583).

3. This referral was incorporated into the opinion of the Reporting Commissioner, Polyanna Ferreira Silva Vilanova, and endorsed by the other Commissioners.

4. The decision was based on the content of the response to Official Letter No. 6069/2018, submitted by Globo Comunicação e Participações S.A., on behalf of G1 (“G1”), during the investigation of that case (SEI 0573870 – public version – and SEI 0573856 – restricted version).

5. In the reply to Official Letter No. 6069/2018, it is argued, in summary, that:

“(...) the Google search engine (Google Search) – a market in which it holds a monopoly, it must be said – has always indexed websites and continues to do so, making excerpts of their content and images available, as well as ‘caching’ them, that is, creating a snapshot of the page at the time of crawling, which is stored by Google and can be accessed without the user needing to visit the original website. (...)

This means that, even with the change to the Google News format, content producers or ‘publishers’ continue to be significantly disadvantaged, given that part of their content is made available on the Google Search website – precisely Google’s most successful product, used by billions of people every day – without any commensurate compensation being offered to these publishers.

This availability bolsters Google’s position in capturing advertising revenue, demonstrating the harmful nature of this practice, which has exacerbated the already precarious financial situation of many publishers, who depend on the platform whilst simultaneously competing for the same ‘advertising pie’.

³ Initially, the Administrative Inquiry was initiated against Google Inc. and Google Brasil Internet Ltda. (SEI 0635540). However, the first letter (SEI 0635979) was sent solely to Google Brasil Internet Ltda. and since then the company has made representations only on behalf of its Brazilian subsidiary.

This conduct, when examined from an antitrust perspective, may constitute 'exploitative abuse', i.e., conduct that does not have the direct and immediate intention of excluding a player from the market (abuse with exclusionary effects), but rather of exploiting them by appropriating part of their revenue.

It is worth noting that Google's recurring argument that content producers' websites have the 'option' not to be indexed by its search engine is unfounded. Such an option would exist if the players were operating in a free-market environment – which is not the case in reality.

In fact, over the years, Google has become the gateway for users to any content available on the internet, a natural consequence of its monopolistic position in the search engine sector, as explained. In this sense, not being indexed by Google can be even more detrimental to publishers, as their visibility will be severely impacted, with a consequent reduction in their competitiveness vis-à-vis other players who remain indexed by the search engine.

This does not mean, however, that Google can continue to use third-party content (and leverage its position vis-à-vis advertisers in the sale of advertising, to the detriment of the content producers themselves, who compete in the same advertising market), without offering them any form of remuneration, leaving content producers with no option but to prohibit the indexing of their content, which in practice amounts to a ban from the digital market." (SEI 0573856, initially restricted access content at Cade, subsequently made public via SEI 0641752).

6. In the context of this submission, two illustrative images were attached: (i) a screenshot of the Google Search results page, displaying a list of links with part of the article's title and two lines of summary; and (ii) a screenshot from Google Images, containing photographs of the articles accompanied by a brief description.

7. In response to the decision handed down by Cade's Tribunal, the SG/Cade issued Decision No. 4/2019 (SEI 0635540), ordering the initiation of this Administrative Inquiry against Google (the "Respondent"). On that occasion, it was emphasized that:

"The practice carried out by Google considered (...) to warrant greater attention relates to so-called 'scraping'. This conduct relates to an alleged 'scraping' of content from other competing websites by Google, which would then display the relevant content on its search page, creating an incentive for consumers to no longer need to visit the competing website to access that content. In this way, Google would be abusing its economic power with the aim of boosting access to Google-affiliated websites, such as Google Shopping and Google News, amongst others." (SEI 0635540, §4)

8. For the purposes of the Administrative Inquiry, the SG/ Cade sent letters to the Respondent and other economic operators involved in the conduct under investigation, as summarised in **Table 1** below.

Table 1 – List of letters sent by the SG/Cade for the purposes of the Administrative Inquiry

Letter/SEI	Recipient	Clarifications Requested	Responses
Official Letter 4517/2019 (SEI 0635979)	Google do Brasil Internet Ltda.	Clarifications regarding “(...) anti-competitive practices relating to scraping, conduct involving the alleged ‘scraping’ of content from other competing websites, which would subsequently cause the relevant content to appear on its search page”	0653851
Official Letter 4869/2019 (SEI 0639750)	G1 News Portal (Globo Group)	“Submit a new public version of the response to Official Letter No. 6069/2018/ Cade (SEI 0573870 and 0573856), as the version filed in Administrative Proceeding No. 08700.009082/2013-03 contains public information – information describing the conduct of the company in question, Google – which has been redacted.”	0641752
Official Letter 6805/2019 (SEI 0670631)	Estadão	Specific questionnaire attached to the Official Letter.	0686482 0678881, restricted access
Official Letter 6808/2019 (SEI 0670655)	El País	Specific questionnaire attached to the Official Letter.	0686487
Official Letter 6809/2019 (SEI 0670656)	DW - Deutsche Welle	Specific questionnaire attached to the Official Letter.	-
Official Letter 6811/2019 (SEI 0670659)	IG	Specific questionnaire attached to the Letter.	0686488
Official Letter 6812/2019 (SEI 0670660)	Land	Specific questionnaire attached to the Official Letter.	0678642, restricted access
Official Letter 6813/2019 (SEI 0670662)	CNN	Specific questionnaire attached to the Official Letter.	0686492
Official Letter 6814/2019 (SEI 0670663)	BBC Brazil	Specific questionnaire attached to the Official Letter.	0683419, restricted access
Official Letter 6815/2019 (SEI 0670665)	Yahoo News Brazil	Specific questionnaire attached to the Official Letter.	-
Official Letter 6817/2019 (SEI 0670668)	MSN	Specific questionnaire attached to the Official Letter.	0686493
Official Letter 6818/2019 (SEI 0670671)	The Antagonist	Specific questionnaire attached to the Official Letter.	0686497
Official Letter 6819/2019 (SEI 0670672)	Techtudo	Specific questionnaire attached to the Official Letter.	-
Official Letter 6820/2019 (SEI 0670674)	Blasting News	Specific questionnaire included in the Official Letter.	-
Official Letter 6821/2019 (SEI 0670676)	Nexo	Specific questionnaire attached to the Official Letter.	0686505
Official Letter 6822/2019 (SEI 0670677)	Brasil 247	Specific questionnaire attached to the Official Letter.	0740651 0678670, restricted access
Official Letter 6826/2019 (SEI 0670683)	24-hour Mail	Specific questionnaire attached to the Official Letter.	0686507

Official Letter 6827/2019 (SEI 0670684)	CorreioWeb	Specific questionnaire attached to the Official Letter.	0686685
Official Letter 6828/2019 (SEI 0670686)	Metrópolis	Specific questionnaire attached to the Official Letter.	0686511
Official Letter 6829/2019 (SEI 0670687)	Diário Catarinense	Specific questionnaire attached to the Official Letter.	0686525
Official Letter 6830/2019 (SEI 0670689)	Diário do Nordeste	Specific questionnaire attached to the Official Letter.	0743714 0690436, restricted access
Official Letter 6831/2019 (SEI 0670693)	Jornal do Comércio	Specific questionnaire attached to the Official Letter.	0686530
Official Letter 6832/2019 (SEI 0670694)	O Povo	Specific questionnaire attached to the Official Letter.	-
Official Letter 6833/2019 (SEI 0670695)	Piauí Magazine	Specific questionnaire attached to the Official Letter.	0686534
Official Letter 6834/2019 (SEI 0670696)	O Popular	Specific questionnaire attached to the Official Letter.	
Official Letter 6835/2019 (SEI 0670698)	Diário de Pernambuco	Specific questionnaire attached to the Official Letter.	0686537
Official Letter 6836/2019 (SEI 0670699)	Clarín	Specific questionnaire attached to the Official Letter.	-
Official Letter 6837/2019 (SEI 0670713)	Estado de Minas	Specific questionnaire attached to the Official Letter.	-
Official Letter 6839/2019 (SEI 0670715)	IstoÉ	Specific questionnaire attached to the Official Letter.	-
Official Letter 6840/2019 (SEI 0670717)	Forbes	Specific questionnaire attached to the Official Letter.	-
Official Letter 7306/2019 (SEI 0679872)	National Association of Newspapers	Specific questionnaire attached to the Official Letter.	0691155
Official Letter 8322/2019 (SEI 0696512)	Folha de São Paulo	Specific questionnaire attached to the Official Letter.	0744877 0714669, restricted access
Official Letter 8323/2019 (SEI 0696514)	Zero Hora	Specific questionnaire attached to the Official Letter.	0702584
Official Letter 8324/2019 (SEI 0696515)	Diário Lance!	Specific questionnaire attached to the Official Letter.	-
Official Letter 2445/2020 (SEI 0738672)	BBC News	“(…) to order BBC News to submit a publicly accessible version of the Response to Official Letter No. 6814/2019 (SEI 0670663), making public any information provided that does not fall within the provisions of the articles cited above, by 3 April 2020, failing which a ‘ ‘ shall be added to the public record of the restricted-access version.”	-
Official Letter 2446/2020 (SEI 0738680)	Publisher 247	“(…) to order Editora 247 to submit a new publicly accessible version of the Response to Official Letter No. 6822/2019 (SEI 0670677), making the information provided public by	-

		3 April 2020, failing which the restricted-access version shall be added to the public record, pursuant to Articles 51 to 54 of Cade’s Internal Regulations.”	
Official Letter 2596/2020 (SEI 0742063)	Folha de São Paulo	“(…) to order Folha de São Paulo to submit a new publicly accessible version of the Response to Official Letter No. 8322/2019 (SEI 0717813), making public the information provided that does not fall within the provisions of the articles cited above, by 10 April 2020, failing which the restricted-access version will be added to the public record.”	-
Official Letter 2599/2020 (SEI 0742066)	Verdes Mares Publishing House	“(…) to summon Editora Verdes Mares to submit a new publicly accessible version of the Response to Official Letter No. 6830/2019 (SEI 0690435), making public the information provided that does not fall within the provisions of the articles cited above.”	-
Official Letter 896/2023 (SEI 1180807 and 1180841)	Google do Brasil Internet Ltda.	Specific questionnaire attached to the Official Letter.	1203531
Official Letter 11502/2023 (SEI 1326122)	Google do Brasil Internet Ltda.	Statement by the Applicants regarding Technical Note No. 24/2023 (SEI 1325516 and 1325801).	1339355

Source: own compilation.

9. Furthermore, the case file contains additional submissions presented by the National Association of Newspapers (“ANJ”) (SEI 0725831; SEI 0779106 and Annex SEI 0779107; SEI 0834098; SEI 1109617; SEI 1272106). Google, for its part, also submitted supplementary statements (SEI 0785989; SEI 0891715; SEI 1257697).

10. By means of Order SG No. 298/2023 (SEI 1197481), the SG/Cade requested the Department of Economic Studies (“DEE/Cade”) to process and analyse the data submitted by Google in Statement SEI 1197459 – particularly in its Annex SEI 1197460 – submitted in response to Official Letter No. 896/2023/CGAA11/SGA1/SG/CADE (SEI 1180807). The aim was to assist the SG/Cade in assessing the evidence of breaches of the economic order investigated within the scope of this Administrative Inquiry.

11. In this context, by means of Official Letter No. 3573/2023 (SEI 1216781), the DEE/Cade requested further clarification from Google regarding its response to Official

Letter No. 896/2023 (SEI 1180807), which was duly added to the case file (SEI 1222110; 1222750; 1228612).

12. The DEE/Cade’s conclusions were consolidated in Technical Note No. 24/2023 (SEI 1325516 and 1325801).

13. Subsequently, the SG/Cade issued the Order to Close Administrative Inquiry No. 29/2024 (SEI 1481837), incorporating the reasons set out in Technical Note No. 70/2024 (SEI 1481800 and 1481804), and decided to close the case, given the lack of evidence of a breach of the economic order, pursuant to Article 13(IV) of Law No. 12,529/2011.

14. The content of Technical Note No. 24/2023 (SEI 1325516 and 1325801), prepared by the DEE/Cade, as well as Technical Note No. 70/2024 (SEI 1481800 and 1481804), from the SG/Cade, is set out in detail below.

1.1. Technical Note No. 24/2023 (SEI 1325516 and 1325801), from the DEE/Cade

15. In Technical Note No. 24/2023 (SEI 1325516 and 1325801), the DEE/Cade initially undertook an effort to define and characterise the conduct under investigation, understanding that it would involve three concurrent elements:

- i. “Scraping” content from competitors’ websites;
- ii. Displaying content deemed relevant on the search results page itself; and
- iii. Creating incentives for users to stop accessing the original website in order to access that content.





16. Notwithstanding this preliminary definition, the DEE/Cade noted that a proper understanding of the conduct under investigation required prior clarification of related technical terms, as well as the definition of concepts linked to the activities carried out by Google. It further emphasised that the correct assessment of the facts would depend on a precise understanding of the technical and operational aspects involved, particularly regarding the functioning of search engines and the manner in which journalistic content is displayed.

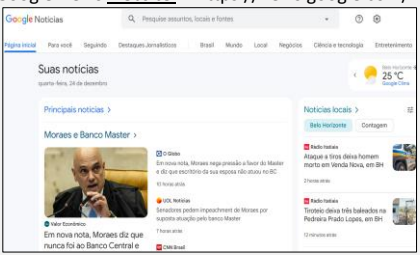

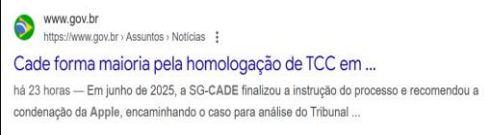
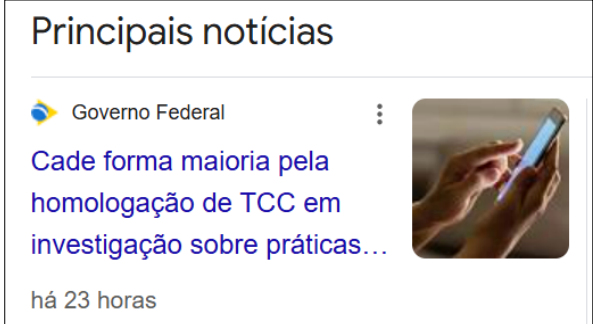
17. In this context, and in line with the understanding set out by the DEE/Cade, the main technical terms and concepts examined by it – notably those relating to Google’s activities in the news sector – were systematised and organised, with adjustments deemed relevant by this Office being made. The aim was to provide greater clarity and

consistency to the analysis, as well as to adequately support the understanding of the conduct under examination.

18. **Table 2** below provides a concise summary of some of the key concepts related to the conduct under investigation.

Table 2 – Summary of concepts related to the conduct under investigation

Term	Concept	Figure
<p>Google Search</p>	<p>The Google Search platform is structured as a <i>general</i> search engine, whose main interface (the ‘All’ tab) acts as an aggregator of universal results, combining web page indexing, advertising and specialised content modules (‘Toolbelt’). The adjacent sections on the interface – such as ‘Images’, ‘News’, ‘Videos’ and ‘Shopping’ – constitute <i>vertical</i> search tools, functioning as thematic filters that restrict the scope of the search to specific data formats. The layout of these features is dynamic, changing according to the identified search intent, with the aim of optimising the user experience and reducing transaction costs when accessing information.</p>	<p>Google Search home page <https://www.google.com/></p>  <p style="text-align: center;">*</p> <p>Possible sub-sections of Google Search following a search:</p>  <p style="text-align: center;">*</p> <p>“News” section of Google Search following a search:</p> 
<p>Top News</p>	<p>Integrated into the general search interface – Google Search – this is a prominent feature on the results page (“SERP feature”), activated algorithmically in response to queries with news-related intent or recent events. This module acts as an instant sub-aggregator, prioritising the display of links from publishers based on criteria of freshness and relevance, without the user needing to switch to a specific tab.</p>	

<p>Google News</p>	<p>Google News (accessible via its own domain <https://news.google.com/> or as an app) is a standalone vertical aggregation platform (dedicated news aggregator). Unlike the module integrated into the general search, this service offers advanced curation tools, feed customisation and topic tracking, functioning not only as a mechanism for retrieving information, but as a destination for the regular consumption of editorial content.</p>	<p>Google News <u>website</u> - <https://news.google.com/>:</p>  <p>Google News <u>app</u>:</p> 
<p>Crawling</p>	<p>“Search engines use web crawlers, also known as <i>spiders</i> or <i>web robots</i>. These crawlers are used to automate the search, capture and extraction of data.” (SEI 0475654, para. 42).</p>	
<p>Indexing</p>	<p>After crawling, “search engines process the pages that have been collected by the crawlers, creating an index, a sort of list of all the words on the pages found on the internet. This index is divided into manageable sections and stored on network servers.” (SEI 0475654, para. 42).</p>	
<p>Ranking</p>	<p>“When a user types a query into the search engine’s search box, the query is sent to the search engine’s processors and compared with all the documents stored in the index to identify the most relevant matches. Then, using an algorithm, the search engine system prepares a list of websites to present to the user, based on their relevance to the search performed.” (SEI 0475654, para. 42).</p>	
<p>Scraping</p>	<p>This refers to the technique of automated and mass collection of unstructured data available on the web. Carried out using scanning software (crawlers or spiderbots), this activity constitutes the primary input for the formation of search engine indexes. In a competitive context, scraping enables the structuring of information scattered across the web, allowing platforms to organise, classify and make third-party content retrievable for the end user.</p>	
<p>Snippet</p>	<p>This consists of the snippet of information displayed on the results page (‘SERP’) just below the redirect link, usually comprising a title, URL and a brief textual or visual summary of the destination content. Depending on its length and level of detail (rich snippets), it can alter traffic dynamics, ranging from a signposting tool to a perfect substitute for accessing the original site (zero-click search).</p>	<p>Examples from Google Search:</p>  

Source: own work. Figures obtained on 24 December 2025.

19. Having established the terminological and conceptual foundations, the DEE/Cade moved on to the strictly antitrust stages of its analysis.

20. With regard to the definition of the relevant market, the Department suggested considering different scenarios: (i) the general Google Search market, in the broad sense – encompassing all tab subdivisions (images, news, videos, etc.) –; (ii) the general search market in the strict sense, restricted to the ‘All’ tab; and (iii) the thematic news search market, which would include the news boxes on the search page (such as “Top Stories”), the “News” tab on Google Search, and Google News (Technical Note No. 24/2023, SEI 1325801, item 5.3).

21. With regard to the geographical dimension, it considered all markets to be national (SEI 1325801, p. 24).

22. With regard to the possible theories of harm applicable to the specific case, the DEE/Cade raised the hypotheses of exploitative conduct and exclusionary conduct.

23. As for exploitative conduct, it noted statements by market participants to the effect that Google would use, free of charge, journalistic content produced by third parties on Google Search and Google News, thereby enhancing its own products and capturing advertising revenue from players who bore the costs of content production. In this context, the DEE/Cade pointed out that the practice could potentially be classified as a case of “increasing a rival’s costs”.

24. From an exclusionary perspective, it was considered that the snippets displayed on Google Search and Google News, derived from the crawling of content from producers and aggregator web, could reduce traffic directed to the respective websites, insofar as consumers might be satisfied with the summarised information presented on Google’s platforms, remaining within its ecosystem and reinforcing potential lock-in effects and market foreclosure.

25. The DEE/Cade then systematised the following theories of harm (Technical Note No. 24/2023, SEI 1325801, item 6.4):

- i. Leveraging of a dominant position in “Universal Search” for “Thematic News Search”, considering only the “Top Stories” box and the “News” tab on Google Search (scenario restricted to the search engine);
- ii. Leveraging of a dominant position in “Universal Search” for “Thematic News Search”, considering both the news tab and box on Google Search and

Google News (in this scenario, the “Top Stories” box would be considered part of “Universal Search”); and

- iii. Leveraging a dominant position in “Search” for “Thematic News Search”, considering Google News exclusively.

26. Based on these hypotheses, the DEE/Cade established as a prerequisite for its configuration the existence of a dominant position on the part of Google, as a defining element of foreclosure capacity. To this end, it analysed the market shares of the Investigated Party, categorised by group of activities performed, in line with a categorisation analogous to that set out by this Office in **Table 2**.

27. Nevertheless, it considered that, rather than focusing on market shares in the search market, it would be more relevant to assess the extent to which news media rely on Google as a source of traffic; in other words, to evaluate how critical traffic from the platform is (SEI 1325801, p. 36). When analysing the responses to the official letters sent, it noted that the information obtained varied significantly and was not directly comparable (SEI 1325801, p. 39).

28. In order to obtain more consistent statistics, traffic source/destination data from Comscore was analysed. This analysis concluded that the percentage of traffic originating from Google Search generally did not exceed 30%, with the exception of specific cases in certain years. When considering only Google Web Search, these percentages were even lower.

29. Based on this data, the DEE/Cade inferred that, in general, there would be no substantial dependence on Google for traffic generation, which would allow for the exclusion of both the essential facility hypothesis and the market foreclosure hypothesis (SEI 1325801, p. 39). It was noted, however, that it was not possible to assess *“if a website were to leave Google, how many of the people who currently access it via Google would start accessing it directly, in a sort of disintermediation process”*.

30. In its analysis of incentives to close the market, the DEE/Cade noted that the economic rationale for such conduct could stem from the fact that Google competes with news outlets not only in thematic search but also in the digital advertising market. Furthermore, the platform could benefit from a better understanding of user profiles, derived from their browsing patterns, which could confer a competitive advantage in advertising offerings (SEI 1325801, p. 48).

31. Nevertheless, it concluded that there would be no incentives for the complete exclusion of news producers, given Google’s business model, which is based on

matching users with content. It was acknowledged, however, that there was a theoretical possibility of increased costs for producers if Google were to benefit from their content without bearing production costs.

32. On the other hand, it was noted that Google would also incur costs for organising, selecting and making content available, and that there could be compensation via increased traffic for producers (SEI 1325801, pp. 51–52). Finally, it was noted that concerns regarding digital advertising would be mitigated by competition from social media platforms such as Facebook and Instagram, and that any exclusion of producers would be relative, given the possibility of new players entering the market facilitated by the visibility provided by Google (SEI 1325801, p. 52).

33. As regards the materiality of the conduct – (i) content crawling; (ii) display of relevant content; and (iii) creation of an incentive not to navigate to the original website – the DEE/Cade concluded, in relation to item (i), that crawling occurs in practice, regardless of whether the websites are news sites, unless expressly prohibited in the *robots.txt* file (SEI 1325801, p. 53).

34. It further noted that since 1999 it has been possible to prevent indexing (*noindex*) and, since 2009, to configure permissions independently between Google Search and Google News, although not between different tabs within Search (SEI 1325801, p. 59). Thus, the hypothesis of “tie-in sales” between Search and Google News was dismissed (SEI 1325801, p. 56).

35. As for point (ii), it was concluded that Google did indeed display relevant content derived from the information on the original website. Publishers could influence the display format through meta-description tags and, since 2019, set the maximum length of snippets. Although there was no option to disable “featured snippets” exclusively, it was possible to disable snippets in general, including independently between Search and Google News. It was emphasised that such settings would not directly affect rankings. In Brazil, none of the media outlets analysed chose to block snippets (SEI 1325801).

36. With regard to item (iii), the analysis of responses to official letters and surveys indicated a divergence of views regarding the effects of snippets on traffic. Nevertheless, the DEE/Cade concluded that the evidence gathered pointed to a trend of increased traffic to the source websites, with insufficient evidence that snippets led consumers to stop accessing the links (SEI 1325801, p. 68).

37. The DEE/Cade also analysed data requested from Google and assessed the existence of compensatory efficiencies, particularly based on the volume of free traffic generated for news media, seeking to quantify this in monetary terms (SEI 1325801,

p. 78). It was concluded that the use of snippets would tend to increase traffic to the content originator (SEI 1325801, p. 80). From the consumer's perspective, the value associated with reduced transaction costs by obtaining the desired information directly from the displayed results was highlighted (SEI 1325801, p. 82).

38. Finally, the theories of harm initially put forward were compared with the data collected. The analysis conducted led the DEE/Cade to conclude that the evidence in the case file allowed the hypotheses of competitive harm previously outlined to be dismissed (SEI 1325801, p. 87).

1.2. Technical Note No. 70/2024 (SEI 1481800 and 1481804), from the SG/Cade

39. With regard to Technical Note No. 70/2024 (SEI 1481800 and 1481804), from the SG/Cade, it was initially stated that the main conduct under investigation consisted of *“alleged ‘scraping’ of journalistic content from other websites by Google, which would then display the relevant content on its search page, creating an incentive for consumers to no longer need to visit the news website to access that content”* (1481804, §5). Thus, in summary, the investigation concerned *“the possibility that Google was abusing its dominant position in the search market with the aim of boosting access to the thematic search engines within its own ecosystem”* (1481804, §5).

40. Having provided clarifications and considerations regarding the context of the conduct and related national and international decisions, the SG/ Cade proceeded to define the relevant market. Regarding the product dimension, it considered that, given the inherent complexity of digital markets and the methodological difficulties associated with the precise delimitation of their boundaries, the strict definition of the product dimension could be left open.

41. Given the recognised complexity of digital markets and their multifaceted, multi-sided nature, the authority concluded that an overly precise definition could result in a loss of efficiency, preferring instead to focus the antitrust authority's efforts on a more dynamic analysis centred on the alleged effects of the conduct and theories of harm.

42. Nevertheless, various analytical scenarios were identified as starting points for the authority's antitrust analyses, namely (i) the online search market, which refers *“broadly to the markets in which Google operates in relation to its internet search tools, whether general, such as Google Web Search, or thematic, with the news tab known as News Toolbelt—linked to the general search tool—and the independent news search tool known as Google News being particularly relevant to the present case”* (SEI 1481804, §252); and (ii) the news search market, which, being more restricted, offers users

general search tools, news filtering (News Toolbelt) and news search (Google News); it also recognised the interface between these and the online advertising sector.

43. As regards the geographical dimension, the SG/Cade considered there to be less controversy, adopting the same approach observed in precedents involving search engines. Thus, all relevant markets considered in the investigation were defined as being of national scope (SEI 1481804, §260).

44. Once the relevant markets involved had been defined, the assessment moved on to the configuration of a dominant position and the existence of market power.

45. The SG/Cade emphasised that, in the case of unilateral restrictive practices, verifying the existence of market power is a necessary – though not sufficient – condition for assessing the harmful potential of the conduct under investigation. In this regard, once evidence of a dominant position has been established, it becomes possible to proceed to the analysis of the conduct and its potential effects on competition (SEI 1481804, §266).

46. With regard to dominance, the SG/Cade highlighted that this Council's precedents involving search engines – such as the “Google/Yelp” case – have already recognised Google's dominance in the online search market (SEI 1481804, §269). Data from the StatCounter database would indicate a market share of over 90% in Brazil between 2009 and 2022, a picture corroborated by more recent information from the Department of Economic Studies (“DEE/Cade”) (SEI 1481804, §270).

47. Against this backdrop, it was concluded that, regardless of the market definition adopted – the broad online search market or a distinction between general search and news search – Google's market shares would exceed by a wide margin the 20% threshold usually considered for the purposes of presuming a dominant position (SEI 1481804, §276).

48. Thus, having resolved the discussion regarding the existence of Google's dominant position, the SG/Cade proceeded to analyse its ability to exercise market power to block internet users' access to news websites.

49. On this point, it was noted that a conclusive assessment of such capacity would require the collection of additional information from the market, since the evidence in the case file would not, in itself, be sufficient for such verification. However, in light of the principles of efficiency, procedural economy and speed, it was deemed unnecessary to conduct further investigations, accepting, for analytical purposes, the presumption of such capacity and directing the analysis towards the conduct under investigation and its

possible competitive effects, particularly considering that, in the absence of evidence of a breach of the economic order, the outcome of the investigation would, in any event, be the dismissal of the case (SEI 1481804, §282-284).

50. With regard to the analysis of the conduct, the SG/Cade chose not to assess it in isolation, but rather in the light of the theories of harm considered in the specific case (SEI 1481804, §§ 282–284).

51. Firstly, regarding the theory of predatory innovation and the blocking of essential inputs, the SG/Cade emphasised that the assessment of this type of practice requires the verification of three key elements: (i) the implementation of changes with the intention of harming rivals; (ii) the blocking of access to essential inputs; and (iii) the occurrence of actual harm to consumers (SEI 1481804, §322).

52. In this specific case, it was understood that the changes made by Google to its mechanisms for crawling, indexing, ranking and organising results were associated with technical justifications and aimed at improving the user experience, with no evidence that such changes were implemented with the aim of harming competitors (SEI 1481804, §323).

53. Furthermore, the SG/Cade considered that, although traffic from the search engine is relevant to news websites, the existence of multiple alternative means of accessing content – such as direct access, social media and other aggregators – would preclude the characterisation of Google as a supplier of an essential input under the doctrine of the essential facility (SEI 1481804, §338).

54. Finally, no evidence of actual harm to consumers resulting from the changes under investigation was found (SEI 1481804, §343).

55. In the absence of these elements, the SG/Cade concluded that there was insufficient evidence of predatory innovation or the blocking of essential inputs (SEI 1481804, §344).

56. Having dismissed this theory of harm, the SG/Cade proceeded to examine the hypothesis of self-preferencing – that is, the possible diversion or retention of traffic for its own benefit. According to this line of argument, *“once the search results are displayed on Google’s homepage, the user would either already be satisfied with the headline and excerpts of the article provided, or would click on the News Toolbelt and remain there. Similarly, one might envisage similar behaviour when accessing the Google News domain, with the user already satisfying their interests by reading the snippets available on the homepage or in the search results”* (SEI 1481804, §96).

57. Based on this premise, the SG/Cade analysed whether the manner in which search results are presented – in particular through the display of headlines, article excerpts and other informational elements – could result in the undue retention of traffic on the search engine’s own page or within Google’s ecosystem services, to the detriment of news portals. In this context, it was assessed whether such features had the potential to reduce the incentive or need for users to access the publications’ websites directly, which could constitute favouring the platform’s own services.

58. However, it concluded that *“there was no evidence of traffic retention or diversion”* (SEI 1481804, §390) and accordingly, *“no evidence of an infringement of the economic order related to Google’s conduct under investigation”* (SEI 1481804, §387).

59. The SG/Cade emphasised in its conclusions that *“it is not possible to assert that the display of snippets fully satisfies users’ wishes to the extent of rendering access to the website to which the content refers unnecessary, such that there is no evidence capable of indicating that Google is seeking to ‘retain’ users on its platform to the extent of blocking the flow of users to news websites”* (SEI 1481804, §414).

60. Furthermore, it also noted that *“observing the click history within Google’s tools, and taking into account the fact that Google News is a domain independent of Google Search, the link to which is only made available to the user if they carry out a specific search for it, it is also understood that there is no evidence of any attempt to divert traffic to its own tools; indeed, the data demonstrates that the search results, even when filtered through the News Toolbelt, direct the user to the pages of news providers”* (SEI 1481804, §415).

61. Finally, the SG/Cade proceeded to examine the theory of harm relating to the possible retention of traffic with a view to increasing advertising revenue. According to this hypothesis, the display of headlines, snippets and other information directly on the search engine’s results page could reduce the incentive for users to access news websites, keeping them within Google’s own environment for longer and potentially increasing opportunities for monetisation through advertising.

62. Nevertheless, upon assessing the evidence in the case file, and notably in light of the conclusions of the theory of harm previously discussed, the SG/Cade considered that the available data did not indicate robust evidence *“regarding the existence of a link between the conduct of Google currently under investigation and the possible reductions in advertising revenue allegedly experienced by some of the newspapers concerned”* (SEI 1481804, §405).

63. Accordingly, Technical Note No. 70/2024 (SEI 1481800) concluded that the Administrative Inquiry should be closed, pursuant to Article 13(IV) of Law No. 12,529/2011, in conjunction with Article 145(8) of Cade’s Internal Regulations (“RiCade”), the grounds for which were set out in Order SG No. 29/2024 (SEI 1481837).

64. In view of the decision by the SG/Cade to close the Administrative Inquiry, the National Association of Newspapers (“ANJ”) lodged an Administrative Appeal, based on Article 66, paragraph 4, of Law No. 12,529/2011, and Article 144 of the RiCade (SEI 1487668). The appeal was duly countered by the Respondent (SEI 1490861).

65. Upon reviewing the appeal, the SG/Cade, by means of Order SG No. 371/2025 (SEI 1529790), incorporating the grounds set out in Technical Note No. 7/2025 (SEI 1529756), decided not to hear the case, given the Appellant’s lack of standing to appeal.

1.3. Request by Commissioner Camila Cabral Pires-Alves

66. On 28 March 2025, Commissioner Camila Cabral Pires-Alves issued Decision No. 9/2025 (SEI 1539003), by which she proposed that the Administrative Inquiry be taken over by the Cade Tribunal, pursuant to Article 67(1) of Law No. 12,529/2011 and Article 145 of the RiCade. The proposal was ratified by the Plenary of Cade’s Tribunal (SEI 1544159).

67. The decision to assume jurisdiction was based, amongst other aspects, on the legal and economic complexity of the matter. At the time, the Commissioner emphasised that *“a ruling by the Administrative Court on the case under discussion is relevant, favouring the development of case law that, in a technical manner, demonstrates sensitivity to the specificities of such cases”* (SEI 1539003, §42).

68. In this context, it was suggested to the randomly selected Rapporteur that, in handling the case, they should consider *“a deeper examination of the theories of competitive harm, with a careful analysis of the possible scenarios and the DEE’s technical note, assessing both the potential anti-competitive effects and the actual effects of the conduct in question”*, as well as *“an examination of the aspects relating to the standing to appeal, particularly with regard to the appeal lodged by ANJ, so as to consolidate the Court’s understandings that contribute to strengthening legal certainty and predictability in CADE’s decisions”* (SEI 1539003, §48).

1.4. Opinion of the Reporting Commissioner Gustavo Augusto Freitas de Lima⁴

69. On 9 April 2025, the case was assigned to Commissioner Gustavo Augusto Freitas de Lima as rapporteur (SEI 1545544). Subsequently, on 11 June 2025, during the 249th Ordinary Judgment Session (“SOJ”), the Reporting Commissioner voted to close the Administrative Inquiry (Judgment Certificate, SEI 1579582).

70. Initially, when addressing the definition of the relevant market, the Rapporteur highlighted that, in cases involving leverage conduct, two distinct markets are usually identified: a source market, in which the investigated company holds a dominant position, and a target market, in which it would seek to leverage that position. In the present case, he understood that the source market would correspond to the online news search market.

71. He emphasised, however, that the precise delineation of this market presents a high degree of complexity, particularly due to technological transformations and changes in information consumption habits, which vary across different generations. In this context, he noted that the definition of the relevant market must consider multiple scenarios and analytical dimensions, and that it is unlikely to achieve a single, crystal-clear delineation.

72. Nevertheless, the Rapporteur considered it appropriate to make some additional delimitations. In this regard, he rejected the definition of the relevant market as the universal search market, arguing that the analysis should focus on the news search engine market, encompassing all platforms that allow users to actively search for journalistic content. Thus, he assessed that all digital platforms and networks capable of generating active user traffic to news portals should be considered in this context.

73. The Commissioner also considered that, within this expanded market for news search engines, it would not be appropriate to characterise Google as a monopolist, given that traffic directed to news portals is also generated by various other digital platforms and social networks, such as X, WhatsApp, TikTok, YouTube, Instagram, Facebook, LinkedIn and Telegram.

74. In addressing the definition of the downstream market, relating to news portals, the Rapporteur outlined his understanding of the characteristics he considered typical of these types of media outlets, citing the existence of an editorial line, the curation of daily news, the timeliness of content, the use of journalistic language, and the pursuit

⁴ It should be noted that the opinion was not included in the case file, so this report was prepared on the basis of limited access to the oral version delivered on 11 June 2025, at the 249th SOJ (Judgment Certificate, SEI 1579582).

of credibility and objectivity in the presentation of facts. Based on these criteria, he excluded from the definition of news portals other categories of websites, such as pages focused predominantly on the personal opinions of influencers or commentators, portals specialising in reviews or subjective assessments, satirical pages, and entertainment or celebrity platforms.

75. As for the geographical dimension, it concluded that this was a national market. Thus, it summarised the relevant markets in the case as: (i) the upstream market for online news search; and (ii) the downstream market for news portals. It highlighted that Google does not compete directly with news portals, operating solely in the upstream market by directing traffic to media outlets located in the downstream market. Although this structure does not, in itself, rule out the possibility of anti-competitive conduct, it indicated that any analysis should consider the vertical nature of this relationship.

76. In examining market share and dominant position, the Rapporteur referred to the technical analysis, according to which Google's share of the search market would be significantly high, even though a certain reduction was observed in 2022, with relative growth from competitors such as Bing and Yahoo. However, he considered that such estimates might be overstated, as they did not contemplate the traffic generated by other digital platforms, such as social media and messaging services, which also direct users to news portals. He, therefore, argued that Google's market share should be analysed in light of the total volume of traffic originating from different digital platforms and directed towards news portals.

77. Based on the data in the case file, it found that Google's share of traffic directed to the analysed portals ranged from approximately 30% to 68%, with a median of around 44% — a significant level, though lower than the share observed in the general search market.

78. In view of these factors, it concluded that Google holds a dominant position in the news search market, even though it faces significant competition from social media and messaging services. It emphasised, however, that the company does not hold a dominant position nor does it compete directly in the news portal market.

79. In analysing the conduct under investigation, the rapporteur noted that the allegations covered both exploitative and exclusionary practices.

80. With regard to the alleged exploitative conduct associated with increased costs for rivals, based on the argument that news portals would bear the costs of journalistic production whilst Google would appropriate the content and make it available to users free of charge, he concluded that there was no materiality. According to the Rapporteur,

the evidence indicated that the mechanisms for indexing and displaying snippets generate additional traffic for the portals, effectively functioning as a form of free publicity. He also emphasised that the media outlets themselves maintain active indexing, not exercising the option to block it via opt-out mechanisms. Thus, he pointed out that the conduct lacks materiality.

81. He also examined the theory of harm related to the leveraging of a dominant position, according to which Google would use its position in the news search market to expand its operations in the news portal market. This hypothesis was dismissed on the grounds that Google does not operate directly in this downstream market.

82. Finally, it analysed the theory of exclusionary harm associated with the scraping of journalistic content, which would allow users to access information without directly visiting the media outlets' websites, potentially reducing advertising and subscription revenues. The Rapporteur highlighted, however, that indexing occurs only with the authorisation of the portals themselves, which have opt-out mechanisms. Furthermore, he considered that the practice is justified under the rule of reason, as it constitutes a central element of the business model of search engines, facilitating users' rapid access to information and generating gains in efficiency and utility.

83. He also noted that similar practices of indexing and displaying links are also adopted by various other digital platforms and social networks. In this context, he indicated the existence of limits that should be observed in the scraping of journalistic content, such as the possibility of opt-out by the portals, the prohibition of access to content protected by paywalls or access restrictions, and the obligation to clearly indicate the source and the link to the original article.

84. In this context, the rapporteur also sought to define parameters for the practice of scraping and indexing journalistic content. In his assessment, there are clear limits that would already be sufficient to allay competition concerns.

85. Among these limits, he highlighted: (i) the possibility for news websites to choose not to have their content indexed, including on an article-by-article basis, allowing each publication to decide which content may be included in the collective search and which will remain restricted to subscribers; (ii) the prohibition on scraping content protected by paywalls or private access restrictions, permitting only the indexing of authorised headlines and snippets; and (iii) the requirement that indexed content must always contain a link to the original article, with clear identification of the source. Having observed these conditions, he concluded that there was no anti-competitive or unlawful conduct in the practice of scraping and indexing journalistic content.

86. Moving on to exploitative conduct, the rapporteur also rejected the argument of economic dependence on Google, emphasising that the existence of commercial dependence between companies does not, in itself, constitute a competition law infringement. He emphasised that news portals have alternatives for generating traffic, such as paid advertising or promotion through influencers and social media. Thus, he held that any such dependency would only have legal relevance if associated with unlawful conduct, which had not been proven in the case file.

87. As for the allegation of tied selling, relating to the supposed impossibility of blocking access by the search engine’s crawler following the integration of a dedicated news tab into the organic search results, it concluded that the evidence indicates that indexing increases the number of visits to news websites and contributes to the generation of revenue based on views and advertising. Furthermore, no evidence was found to demonstrate flaws in the functioning of the opt-out mechanism.

88. Despite these conclusions, the rapporteur expressed concern regarding the advancement of generative Artificial Intelligence (“AI”) systems, mentioning tools such as Gemini, ChatGPT and Copilot. He emphasised, however, that any conduct related to these services was not the subject of the ongoing investigation and could be examined in specific proceedings should evidence of a breach of the economic order emerge.

89. Although he concluded that there was no breach of competition law, the Rapporteur examined, for the sake of completeness, the existence of any compensatory efficiencies. On this point, he highlighted that, although the portals do not receive direct remuneration for the use of their content, Google offers significant consideration by directing free traffic to news websites. This dynamic was considered to generate economic efficiencies and benefits for consumers by facilitating rapid access to information and reducing search costs.

90. It was also emphasised that the provision of snippets can assist users in identifying the most relevant news items before accessing the full content, contributing to greater efficiency in navigation and to the directing of more qualified traffic to the websites.

91. Finally, the Rapporteur noted that similar disputes in other jurisdictions have been addressed predominantly through regulatory frameworks and legislative amendments, rather than through punitive antitrust decisions. In this regard, he indicated that the issue might require regulatory solutions, since Brazilian competition law does not expressly provide for obligations such as those advocated by the organisations representing the media.

92. In view of the body of evidence analysed, he concluded that there was no proof of a material breach of the economic order, and voted to close the Administrative Inquiry. He reserved, however, the possibility of future investigations into indexing mechanisms used by AI systems, including in the context of training these models, should evidence of a breach of the Competition Law and RICade emerge.

93. **Table 3** below summarises the positions of the DEE/Cade, the SG/Cade and the Reporting Commissioner.

Table 3 – Summary of the positions of the DEE/Cade, the SG/Cade and the Reporting Commissioner.

Theory of Harm	DEE/Cade <i>Technical Note No. 24/2023 (SEI 1325516 and 1325801)</i>	SG/Cade <i>Technical Note No. 70/2024 (SEI 1481800 and 1481804)</i>	Opinion of the Reporting Member Gustavo Augusto <i>(Judgment Certificate, SEI 1579582)</i>
Exclusionary conduct	He initially addressed exclusionary conduct broadly, analysing the incentives for foreclosure. It noted that the economic rationale for the conduct could stem from the fact that Google competes with news outlets not only in thematic search but also in the digital advertising market. Nevertheless, it concluded that there would be no incentives for the complete exclusion of news producers, given Google's business model, which is based on matching users with content. In conclusion, it was noted that concerns regarding digital advertising would be mitigated by competition from social media platforms such as Facebook and Instagram, and that any exclusion of news publishers would be relative, given the possibility of new entrants entering the market facilitated by the visibility provided by Google. Furthermore, it concluded that the evidence gathered pointed to a trend of increased traffic to the source websites, with insufficient evidence that the <i>snippets</i> led consumers to stop clicking on the links.	<p>Predatory innovation and blocking of essential inputs</p> <p>It found that the changes made by Google to its mechanisms for crawling, indexing, ranking and organising results were based on technical justifications and aimed at improving the user experience, with no evidence that such changes were implemented with the aim of harming competitors.</p> <p>It rejected the characterisation of Google as an essential facility, given the existence of multiple ways to access content. Finally, no evidence of actual harm to consumers resulting from the changes under investigation had been identified.</p>	<p>Increased costs for rivals</p> <p>According to the Rapporteur, the evidence suggests that the mechanisms for indexing and displaying snippets generate additional traffic for the portals, effectively functioning as a form of free advertising. He further emphasised that the media outlets themselves maintain active indexing, not exercising the option to block it via opt-out mechanisms. Thus, he pointed out that the conduct lacks materiality.</p>
		<p>Retention of traffic with a view to increasing advertising revenue</p> <p>It considered that the available data did not provide robust evidence "regarding the existence of a link between Google's conduct under investigation and the alleged reductions in advertising revenue experienced by some of the newspapers concerned".</p>	<p>Abuse of a dominant position</p> <p>This hypothesis was ruled out on the grounds that Google does not operate directly in this downstream market.</p>
		<p>Self-preferencing (possible diversion or retention of traffic for its own benefit)</p> <p>It concluded "due to the absence of any evidence of traffic retention or diversion" and thus, "due to the lack of evidence of an infringement of the economic order relating to the conduct of Google currently under investigation". It stated that "it is not possible to assert that the display of <i>snippets</i> fully satisfies users' wishes to the extent of rendering access to the website to which the content refers unnecessary, such that there is no</p>	<p>Scraping of journalistic content, which would allow users to access information without visiting the media outlets' websites.</p> <p>It emphasised that indexing occurs only with the authorisation of the portals themselves, which have opt-out mechanisms. It concluded that the scraping and indexing of journalistic content is not anti-competitive, provided that three conditions are met: (i) opt-out by the websites, including on a per-article basis; (ii) prohibition on</p>

		evidence to suggest that Google is seeking to 'retain' users on its platform to the extent of blocking the flow of users to news websites".	scraping content behind a paywall; and (iii) mandatory linking to the original source. Provided these conditions are met, it concluded that there is no anti-competitive or unlawful conduct in the practice of scraping and indexing journalistic content.
Exploitative conduct	<p>It noted statements from market participants to the effect that Google would use, free of charge, journalistic content produced by third parties on Google Search and Google News, thereby enhancing its own products and siphoning off advertising revenue from players who had borne the costs of producing the content. Possible classification of the practice as a case of "increasing a rival's costs".</p> <p>"Now, as analysed in the section on market foreclosure, there are different options available to news media for generating traffic. Consequently, the DEE considers that this hypothesis can be dismissed." (SEI 1325801, p. 82).</p> <p>Confusion regarding the classification of the theory of harm.</p>	Not addressed.	<p>It rejected the argument of economic dependence on Google, highlighting that the existence of commercial dependence between companies does not, in itself, constitute a competition law infringement. It emphasised that news portals have other alternatives for generating traffic, such as paid advertising or promotion through influencers and social media. Thus, it held that any dependence would only have legal relevance if it were associated with unlawful conduct, which had not been proven in the case file.</p>

Source: own elaboration.

94. At the same time, I filed a request for further consideration, with the aim of enabling a more in-depth technical examination of the matter and the possible supplementation of the evidence (SEI 1579582).

95. Furthermore, FENAJ appeared in the case file on 27 May 2025, submitting a statement and annexes (SEI 1567091 and 1567100).

96. Having regard to the evidence presented throughout the proceedings, as well as the statements and documents subsequently added to the case file, I considered it appropriate to examine certain factual and economic aspects relating to the conduct under investigation in greater depth.

97. Accordingly, the following is a description of the supplementary investigation carried out following my request for further information.

2. SUPPLEMENTARY INVESTIGATION CONDUCTED BY THIS OFFICE

98. As mentioned, in the context of the request for further information I made, I considered it necessary to expand the investigation of this Administrative Inquiry. To this end, I issued Decision No. 37/2025 (SEI 1612264), by which I summoned the Respondents to provide detailed clarifications regarding the questionnaire contained in the said decision, which were duly submitted (SEI 1654679).

99. In addition, I ordered the dispatch of official letters to various economic operators active in the markets related to the conduct under investigation, as detailed in **Table 4** below, so that they might also respond to a specific questionnaire drawn up by this Office.

Table 4 – List of official letters sent to market players in connection with the extension of the investigation by Office 2

<i>Letter/SEI</i>	<i>Recipient</i>	<i>Responses</i>
Official Letter 7737/2025 (1612306)	Brazilian Digital Media Association – ABMD	1643990
Official Letter 7740/2025 (1612319)	National Association of Newspapers – ANJ	1670090 1660433, restricted access
Official Letter No. 7741/2025 (1612320)	National Federation of Journalists – FENAJ	1642526
Official Letter 7742/2025 (1612321)	Association of Digital Journalism – Ajour	1644792 1644793, 1655916 and 1655917, restricted access
Official Letter 7743/2025 (1612322)	Brazilian Association of Radio and Television Broadcasters – ABERT	1656179 and 1656180 1656174 and 1656175, restricted access
Official Letter 7744/2025 (1612323)	National Association of Magazine Publishers – ANER	1656193
Official Letter 7745/2025 (1612324)	Brazilian Association of Journalists – ABJ	Response waived pursuant to Decision No. 40/25 (1616952)

Source: own compilation.

100. On 28 August 2025, the Brazilian Association of Journalists (“ABJ”) filed a formal request for exemption (SEI 1616683), arguing, in summary, that (i) it is a small organisation, composed solely of independent professionals and whose activities are restricted to the institutional defence of the profession; (ii) it does not possess, produce or control the databases or technical and strategic information requested; and (iii) the requirement to complete the questionnaire in full would be disproportionate to its actual circumstances and material capacity. In view of this, by means of Decision No. 40/2025 (SEI 1616952), I granted exemption from the obligation to respond to the questionnaire.

101. Furthermore, I also issued the Order No. 38/2025 (SEI 1612370), by which, considering the relevance and complexity of the matter, I invited civil society in general

to submit technical and factual contributions relating to the conduct under investigation and its potential competitive effects, allowing for the submission of documents, opinions, economic analyses and other relevant submissions.

102. Following Order No. 38/2025 (SEI 1612370), contributions were received, which are summarised in **Table 5** below.

Table 5 – List of contributions in response to Order No. 38/2025 (SEI 1612370)

<i>Sender</i>	<i>SEI identifier</i>
RBS – Zero Hora Editora Jornalística S.A.	1643322 1643327, restricted access ⁵
O Popular	1644124 1644129, restricted access
A Gazeta	1644240 1644245 and 1644248, restricted access
Sinos Group	1648680 1648687, restricted access
Folha de São Paulo	1653007, restricted access
Gazeta do Povo S.A. Publishing House	1652925 and 1652927
IDEC - Brazilian Institute for Consumer Protection	1653684 and 1653691
Momentum – Journalism and Tech Task Force	1655393 and 1655395 1655400 and 1655410, restricted access
Open Markets Institute’s Center for Journalism & Liberty (CJL)	1658137
Article 19 Brazil	1658332 1658336, restricted access
Reporters Without Borders (RSF)	1658518
Sleeping Giants Brazil (“SGBR”)	1658737
Foxglove Article 19 IDEC – Institute for Consumer Protection Centre for Technology and Society – FGV Direito Rio	1658751 and 1658752
Centre for Technology and Society (CTS) of the Getúlio Vargas Foundation (FGV)	1658686

Source: own compilation.

103. Initially, the deadlines for responses and the submission of contributions were set at 30 (thirty) calendar days, counted from the publication or signing of the respective communications. However, following requests for an extension of the deadline (SEI 1622302, 1624647, 1625875 and 1626574), Decision No. 44/GAB2 (SEI 1626631) granted an extension of a further 30 (thirty) calendar days, counted from the end of the initially granted deadline, for all addressees and for civil society.

104. Subsequently, new requests for an extension of the deadline were filed (SEI 1642834 and 1642835). Thus, on an exceptional basis and for the final time, an additional extension of 15 (fifteen) calendar days was granted, counted from the end of

⁵ It should be noted that a statement from RBS – Zero Hora Editora Jornalística S.A. was added to the case file in reference to Official Letter No. 7,740/2025, originally addressed to the ANJ. Having identified the inconsistency regarding the addressee, the aforementioned statement was treated, for the purposes of the investigation, as a contribution submitted in response to Order No. 38/2025 (SEI 1612370).

the last deadline set, and applicable to all addressees and civil society, in accordance with Decision No. 56/2025 (SEI 1659309).

105. During the investigation, meetings were also held with the Respondent on five occasions. These meetings were duly recorded by means of certificates attached to the case file: 19 December 2025 (SEI 1679891); 22 January 2026 (SEI 1693293); 23 February 2026 (SEI 1707462); 19 March 2026 (SEI 1720831); and 7 April 2026 (1731010). In addition, a meeting was also held with Ajor on 18 September 2025 (SEI 1625168); two with Foxglove, the first on 17 March 2026 (SEI 1719875 and 1719876) and the second on 1 April 2026 (SEI 1720831); one with Reporters Without Borders on 1 April 2026 (SEI 1728583); one with ANJ on 2 April 2026 (SEI 1728836); and one with ABERT on 6 April 2026 (SEI 1729755).

106. The set of responses to the aforementioned Orders and Official Letters will be described in detail below.

107. In brief, in its response to Order No. 37/2025 (SEI 1612264), Google argued that its relationship with news organisations is mutually beneficial: publishers gain from free traffic and the platform benefits from user engagement. The company also explained that its frequent algorithmic updates and the introduction of AI are solely intended to improve the relevance of search results. It further emphasised that it has always provided granular control mechanisms and asserted that it could find no commercial or legal basis justifying mandatory remuneration for the indexing of excerpts from journalistic content.

108. On the other hand, publishers provided information on changes in traffic volume, the existence of a lock-in effect, the impact of Artificial Intelligence Overviews (“AIO” or “AIOs”, i.e. summaries generated by Artificial Intelligence), the effectiveness of opt-out mechanisms, the ability of social media platforms to compete with Google, information asymmetries, and the need to introduce mandatory remuneration for the use of journalistic content.

109. With regard to contributions from civil society, the responses received highlighted, in addition to the points raised by publishers, information on the business model of journalism before and after digitisation, the impact of AI on the sector, and the damage to the quality of news production, as well as to the profession of journalism. Cases from other jurisdictions related to the Google ecosystem were also highlighted, including possible means of remuneration and/or remedies adopted.

110. Prior to presenting the evidence gathered, a brief preamble is warranted regarding the importance of civil society's participation in Cade's decision-making process and the reasons behind the comprehensive supplementary investigation conducted.

111. I believe it is necessary to point out, from the outset, that the supplementary investigation carried out in these proceedings was not guided solely by the aim of strengthening the evidence in the strict sense. It also reflected a broader institutional understanding of the need to increase the openness of competition policy to the involvement of civil society and of actors who, although not directly competing in the market under scrutiny, represent diffuse interests and perceive, with particular sensitivity, the social, economic and informational effects of any abuse of economic power.

112. I believe that in matters of this nature, one of the most significant ways of enhancing the authority's effectiveness lies precisely in creating space for distinct strands of competition concerns—arising from diverse experiences and institutional positions—to be expressed within the scope of the inquiry or administrative proceedings.

113. This openness proves even more important when the conduct under investigation transcends the classic logic of horizontal rivalry and extends to complex ecosystemic structures, with repercussions on information production, content circulation, remuneration for inputs, and the sustainability of economically and socially relevant actors.

114. Consequently, the participation of civil society organisations, research centres, professional associations and organisations dedicated to the defence of collective rights allows, in this context, not only to expand the range of information available to the authority, but also to shed light on dimensions of the competition problem that sometimes escape an analysis overly centred on the economic agents directly involved.

115. In this vein, the supplementary investigation has a dual rationale. On the one hand, it seeks to refine the case files in the face of conduct characterised by continuous technological evolution and accelerated transformations in market dynamics, particularly following the introduction of generative AI tools and new forms of attention retention in the search environment. On the other hand, it seeks to give concrete expression to the understanding that competition policy, especially in digital markets,

must operate with more permeable analytical boundaries, capable of incorporating varied empirical, institutional and social contributions.

116. **Finally, it is worth reiterating, as I have maintained in various dissenting opinions, that competition policy is, first and foremost, a public policy and an integral part of economic policy itself. In this context, it seems to me essential that Cade's decision-making process becomes progressively more democratic, more open and more receptive to public participation.**

117. **The transformation of antitrust into excessively cryptic language, closed to input from actors outside the traditional technical circuit, ultimately erects an artificial barrier to the expression of diverse perspectives on economic phenomena that concretely affect the lives of countless individuals, organisations and sectors.**

118. **While, of course, the technical, economic and legal parameters specific to this agency's operations must be upheld, I see no reason why this form of public policy should not be more pluralistic and inclusive. Otherwise, we would run the risk of, whilst seeking to reduce barriers to entry and protect the competitive process in markets, turning access to competition policy itself into a space unduly protected by artificial technical barriers and by a kind of closure of the marketplace of ideas. That is why I consider the effort to broaden the competition authority's horizons for listening and dialogue to be institutionally valuable, so as to include the voices that can and should participate in the development of competition policy.**

119. I shall now proceed to describe the responses submitted during the supplementary investigation.

2.1. Google's response to Decision No. 37/2025 (SEI 1612264)

120. In Decision No. 37/2025 (SEI 1612264), addressed to the Respondent, I ordered them to be requested to provide specific and detailed information regarding their relationship with Brazilian news outlets. Notably, they were questioned regarding the impact of their ecosystem on publishers' traffic and monetisation, as well as the effects of algorithmic changes and the changes brought about by the adoption of AI on user behaviour. The letter also covered publishers' dependence on Google, the influence of its vertical integration with digital advertising on media outlets' revenues, and the structuring of remuneration mechanisms for journalistic content.

121. In response to Decision No. 37/2025, on 11 November 2025, the Respondent submitted a consolidated response, in both a public version and a restricted-access version (SEI 1654679 and 1654676 respectively).

122. The response addressed multiple technical, competitive and market-related aspects concerning Google’s relationship with news organisations within its digital ecosystem.

123. Firstly, when asked about the impact of its frequent algorithmic changes, both in core updates and spam updates, the company stated that it uses a rigorous, data-driven process to improve the relevance and usefulness of results for users. Google emphasised that it does not have a specific methodology for measuring impacts restricted to Brazilian media outlets.

124. The Respondent reported conducting over 700,000 (seven hundred thousand) large-scale experiments in 2023, which resulted in over 4,000 (four thousand) improvements to the search platform. Furthermore, the company explained that it collaborated with external human evaluators, selected on the basis of criteria of expertise, authority and reliability, subjecting the metrics to multidisciplinary reviews.

125. The document also highlighted the existence of pre-launch tests for changes to the algorithm affecting news outlets. It was indicated that **[RESTRICTED ACCESS TO CADE AND GOOGLE]**.

126. Regarding the volume of traffic directed to media outlets, the Respondent submitted an attached spreadsheet titled Document 01 (SEI 1654677). The company also provided detailed information on traffic to publishers from Google Search, Google News and Google Discover using graphs. **Figure 1** below, for example, shows monthly traffic from 2011 to September 2025 for Brazilian websites:

Figure 1 – [RESTRICTED ACCESS TO CADE AND GOOGLE]

127. **[RESTRICTED ACCESS TO CADE AND GOOGLE]**.

128. Regarding the dependence of news organisations on its products, Google stated that it does not routinely assess this issue. The company argued that news websites receive traffic from a variety of sources, such as direct visits, mobile apps, social media platforms (such as Meta, Reddit, X and TikTok), and aggregators (such as Apple News and Flipboard). The statement also cited the DEE/Cade Technical Note, notably regarding its findings that the percentage of traffic originating from Google Search did not exceed 30%, which would rule out the hypotheses regarding Google as an essential infrastructure and theories of market foreclosure.

129. Furthermore, although it does not have internal analyses on exit costs or barriers to diversifying traffic sources, Google argues that websites receive traffic in accordance with the sources most important to their strategy. Thus, it pointed out that, whilst one portal may focus on customer loyalty and receive more traffic through subscriptions, another may specialise in social media and use these as its main source. In any case, it considers that this decision is entirely independent of the search platform.

130. Regarding the specific impact of AI tools, the company presented data collected from the control experiment. **[RESTRICTED ACCESS TO CADE AND GOOGLE]**.

131. In response to questions regarding snippet control and the use of content in AI, Google detailed the implementation of meta tags, highlighting that such mechanisms allow publishers to influence how their content is displayed in search results. The company also explained the creation of the Google-Extended agent in the *robots.txt* file to prevent the use of content in the training of Gemini models and described the effectiveness of specific opt-out protocols. Some examples include the *noindex* tag for excluding pages from search results, the *nosnippet* tag for blocking snippets in search results and on AIO, and the *max-snippet* tag for limiting the number of characters displayed.

132. In this context, Google stated that news organisations have always had granular tools to control the display of their articles:

“All news organisations have long had granular and effective tools to control how their content appears in Google Search results, including whether and how it is used in snippets or in features such as AIO” (SEI 1654679, p. 18).

133. In addressing the phenomenon of ‘zero-click search’, the company noted that the reported decline in click-through traffic reflected global consumer trends. Firstly, it presented data from the Reuters Institute for the Study of Journalism at the University of Oxford from 2024 showing that 54% of Brazilians consumed news on social media and 10% via podcasts. It then included its own analyses to corroborate this data.

134. Based on **Figure 2** below, Google presented data on total traffic to Brazilian websites originating from its platform between 2011 and September 2025.

Figure 2 – [RESTRICTED ACCESS TO CADE AND GOOGLE]

135. Furthermore, Google, referring to the DEE/Cade Technical Note, argued that searches without clicks may result from a variety of factors, such as the refinement of search terms, for example. **[RESTRICTED ACCESS TO CADE AND GOOGLE]**.

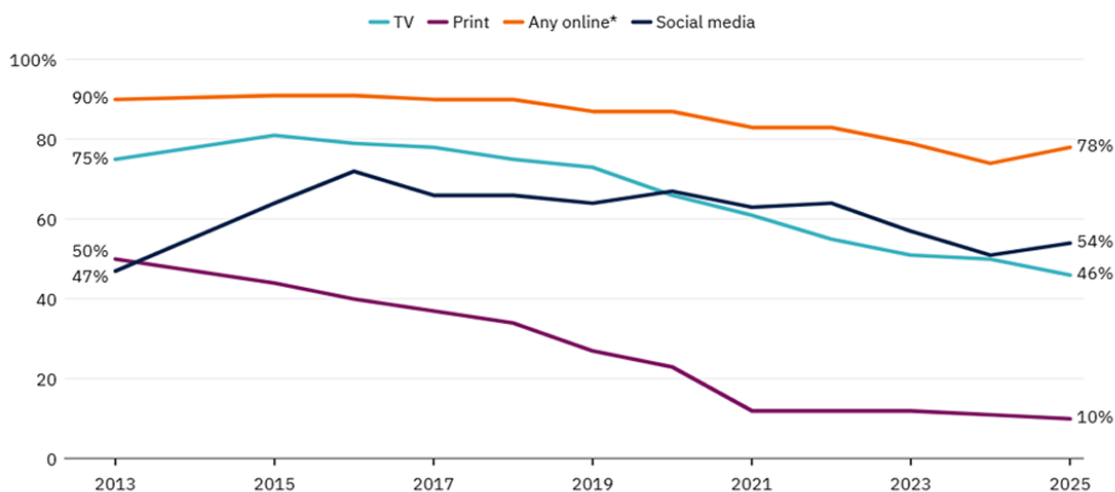
136. As for the discussion on behavioural changes influenced by the search engine, the Respondent emphasised that the trends merely reflect the market in general. In this context, Google cited a study by the Pew Research Center, which indicated a decline in the regular use of search engines for news in the United States from 27% in 2023 to 19% in 2025. The report also highlighted the phenomenon of ‘news avoidance’, attributing it to the ‘heavy news agenda’ in the country, and noted that, in 2024, almost one in two respondents stated that they avoided news frequently or sometimes. They also presented additional data from the Reuters Institute showing that social media was the only news source to grow between 2013 and 2025, as shown in **Figure 3** below:

Figure 3 – News consumption by channel type (TV, print, online, social media) from 2013 to 2025

Sources of news

2013–2025

Brazil



Also:

News podcasts: **10%**

AI chatbots: **9%**

* Incl. news websites/apps, social/video networks, news podcasts, and AI chatbots

[Get the data](#) • [Embed](#)



Source: Reuters Institute (SEI 1654676).

137. Regarding the quality of traffic directed to news outlets, Google explained that it provides journalistic content providers with tools, such as Google Analytics and Google Search Console, to understand their audience and improve their revenue. The company, however, stated that it does not have access to user information after redirection.

138. Nevertheless, Google indicated that it carries out quantitative assessments of traffic distribution. The financial value of visits to European websites, according to a 2019 Deloitte audit, ranges from EUR 0.04 to EUR 0.06 per click. A 2024 analysis by PwC estimated the value of visits in emerging countries, such as Brazil, at between USD0.02 and USD0.04.

139. Google further stated that it does not consider itself to be in competition with other platforms in the journalistic traffic market. The Respondent stated that it competes for users' general attention with various digital services and that, by offering more relevant results and attracting more users, traffic to websites also increases. And, despite claiming not to know what percentage of traffic it sends to news sites, it argued that users access news mainly via social media. It cited a survey submitted to Cade in 2021, in which 46.6% of Brazilian consumers accessed news directly; 18.2% via social media and only 13.7% via search engines.

140. Regarding the impact of algorithmic changes in Google's core updates and spam updates on news outlets of different sizes, the company argued that the updates are applied to all types of news outlets and always with the aim of encouraging better access to information. It detailed the history of systemic updates carried out on the platform since 2003, such as the creation of original content detection in 2007, the local news feature in 2008 and the launch of Google News Showcase in 2020.

141. The statement also highlighted ongoing investments in *the* Google News Initiative to promote quality journalism. Furthermore, Google explained that the algorithms evaluate technical and objective characteristics, such as relevance, location, prominence, timeliness, authority and page usability, and do not consider factors such as commercial relationships or ideological positions at the time of indexing.

142. Regarding its advertising revenue, the company clarified that it does not display adverts on the News tab of Google Search or on the Google News app, and that news-related searches on the main tab accounted for less than 0.3% of its revenue in Brazil in 2024.

143. The company stated that the majority of its advertising revenue is generated from commercial searches and cited an experiment conducted with 1% of users in the European Union, in which the removal of news links had no measurable impact on the Representative's advertising revenue, confirming, in its view, the negligible financial contribution made by news content to search advertising. **[RESTRICTED ACCESS TO CADE AND GOOGLE]**.

144. Furthermore, Google sought to refute the premise of vertical integration between the search and advertising markets, classifying them as components of the results page. It emphasised that the use of advertising is essential for the search and distribution service to be offered free of charge and that only a small fraction of strictly commercial 'queries' are monetised.

145. Indeed, the platform stated that news events do not normally attract advertisers, as they reach specific users, with few instances where news and advertisements are relevant. In view of this, Google claims it does not benefit from the decline in news clicks. The statement also cited conclusions from the DEE/Cade that the search engine operates in the broad digital advertising market, without the capacity for anti-competitive leverage.

146. Google also sought to detail the ways in which it communicates algorithmic changes on its platform. The company explained that frequent ‘core updates’ have an estimated implementation timeframe of six to forty-five days. The submission highlighted the use of channels such as the Google Search Status Dashboard and official profiles on X and YouTube to notify the publisher community.

147. The company claimed that, within the limits of disclosing information about changes or rankings, it offers users a good understanding of how it operates. Furthermore, it noted that, by providing detailed information on how the platform works, it exposes itself to the risk of manipulation of ranking criteria by websites, which may produce artificially optimised content (“clickbait”) to appear more relevant, to the detriment of the quality of information and the user experience, and that there is a risk of competitors appropriating its innovations.

148. Furthermore, Google emphasised that it had found no legal or commercial basis for requiring mandatory remuneration for journalistic content appearing in its search engines. The company cited examples from other jurisdictions, such as Australia, France, Canada and South Africa, explaining that remuneration had only been granted as a result of legislative obligations and not due to competition law infringements. The company emphasised that Google’s service generates revenue for media outlets and that all publishers are free to opt out of content indexing.

149. Google also cited regulatory experiences in Germany (2013) and Spain (2014), where attempts were made to impose remuneration on news organisations for the use of copyright-protected content. According to the company, in both cases payment was refused, and the resulting reduction in traffic is said to have contributed to the abandonment of these initiatives. It further argued that the suspension of services in Europe would have had a more significant impact on small publications, as they are more dependent on the visibility provided by digital platforms.

150. Google also highlighted the Google Showcase programme as a way of demonstrating support for journalism without relying on mandatory payment. The company stated that the programme involves news organisations contributing their expertise in exchange for payment calculated using objective and non-discriminatory

criteria. In Brazil, the tool encompasses more than 170 media outlets across more than twenty states of the Federation. Google cited partnerships with prominent groups, such as Band, Folha de São Paulo, SBT News and Veja. **[RESTRICTED ACCESS TO CADE AND GOOGLE]**. The company's statement described the relationship as a commercial exchange that benefits both media outlets and consumers.

151. Finally, when asked about the outlook for the relationship between the Google ecosystem and journalistic content over the next decade, Google pointed to a landscape of rapid technical changes and shifting user preferences. The company reported funding of over 300 million dollars for the Google News Initiative and partnerships in more than 100 countries, as well as the importance of creating a cooperative environment capable of fostering a vibrant and dynamic journalism market. The Respondent concluded by stating that rapid developments in technology and user behaviour are beyond its control.

2.1.1. Additional submission filed by Google

152. Google submitted a supplementary submission (SEI 1719005 and 1719007, in public and restricted versions, respectively), with the aim of reinforcing its arguments and commenting on the responses to the official letters sent to the associations. The submission added new data on the Brazilian news market and also presented a methodological critique of the technical studies produced by those entities.

153. The Respondent sought to strengthen its defence on five main grounds: (i) the general decline in publisher's traffic had occurred even before the implementation of the AIO, a phenomenon also observed in countries with different implementation dates; (ii) the traffic distributed by Google Discover had offset and even increased the overall level of traffic passed on to the media outlets; (iii) there were other reasons for the decline in traffic publisher's, particularly post-pandemic normalisation, changes in user behaviour and the different strategies adopted by the media outlets; (iv) the main driver of audience attraction would be the strategy adopted by publishers', as evidenced by the fact that many would have increased their visibility; and (v) AIO would be more efficient, as it would improve search quality and publishers could choose to opt out of the tool if they wished.

154. Firstly, the statement defended the position that the downward trend in organic search traffic had begun before the launch of AIO. In Brazil, the tool was only launched in August 2024, whilst the downward trend in organic search traffic is said to have begun in 2020. **Figure 4** below, included in the submission, illustrates organic searches, i.e., non-paid results on the SERP, for publishers listed by Google between October 2010 and April 2026. **[RESTRICTED ACCESS TO CADE AND GOOGLE]:**

Figure 4 - [RESTRICTED ACCESS TO CADE AND GOOGLE]

155. The Respondent emphasised that the phenomenon did not occur solely in Brazil. Google presented data from different regions to attempt to demonstrate that the downward trends had begun in identical periods and had occurred despite the different dates of AIO introduction in each location. Figure 5 below shows organic Search clicks for news websites in Europe, Australia, and Brazil, along with the respective dates on which AIO was introduced:

Figure 5 - [RESTRICTED ACCESS TO CADE AND GOOGLE]

156. Another argument used by the company to seek to rule out the new tool as the cause of the decline in publishers' traffic to websites was the questioning of the traffic analysis methodology. The Respondent claimed that considering organic search as the sole source of traffic would have provided an incomplete view of the digital ecosystem. Google emphasised that Discover had emerged as the main source of traffic for publishers and offset the declines in Search traffic. According to the Respondent, total traffic (Search, News and Discover) referred by the platform has grown over the years.

157. Figure 6, also from the submission, seeks to represent the total number of organic clicks to Brazilian news websites, including those originating from Google Discover and Google News. Google argues that the figure indicates an upward trend in traffic over time, irrespective of the launch of AIO:

Figure 6 – [ACCESS RESTRICTED TO CADE AND GOOGLE]

158. And, regarding the variation in traffic on Search and News, Google argued that this had been driven solely by factors independent of the search engine. The recent decline had mainly reflected post-pandemic normalisation, a period in which demand for real-time news had reached record levels. Therefore, the drop represented a natural stabilisation following extraordinary circumstances.

159. Furthermore, the report highlighted a potential structural shift in user behaviour. According to Google, consumers have come to prefer short-form, video-centric news on platforms such as TikTok and Instagram. The report cited data from the aforementioned Reuters Digital News Report 2025, which indicated that over 75% of respondents consume news in video format and 35% of Brazilians rely on social media platforms as their primary source of information. Consequently, it argued that the news' consumption would often occur without a direct click through to news portals, a fact

that would reduce traditional web traffic metrics without necessarily diminishing the reach of news brands or being influenced by Google's activity.

160. The Respondent also sought to demonstrate the media outlets' lack of dependence on the search engine. In this regard, the submission sought to refute the answers of Question 14 formulated in the context of the supplementary investigation letters.

161. The aforementioned question sought to analyse the media outlets' dependence on the Google ecosystem and asked the following clarification: "*what percentage of the digital advertising revenue of the associated media outlets is mediated by tools from the Google ecosystem (Ad Manager, AdSense, Ad Exchange)? (...)*". In this context, Google argued that the question had used erroneous metrics to measure the existence of dependence.

162. Firstly, the question had used the metric of digital advertising revenue mediated by Google tools, such as Ad Manager and AdSense. However, the response argued that this metric was inappropriate, as it would confuse the use of advertising tools with traffic acquisition. According to the Respondent, when a publisher adopts Google's adverts, all revenue generated based on its audience (including direct visits, social media traffic and app traffic) is processed through these tools. This would overestimate the inference of dependence on Google, as the revenue would not have been generated solely from traffic originating from its platform.

163. Furthermore, the company emphasised that considering digital advertising alone would similarly overestimate the metrics analysed. In fact, it would constitute only one component of publishers' overall revenue structure. It claimed that several outlets had begun to monetise their audiences through subscriptions, membership schemes and sponsored content, reinforcing the diversity of their business models. Thus, the Respondent argued that the percentage should have considered all revenue, including non-advertising revenue.

164. The submission also sought to refute the technical study by Autoritas, which several media outlets relied upon to demonstrate AIO's significant penetration in search results and the consequent decline in its organic traffic.

165. Google, however, pointed out methodological flaws in the aforementioned study, starting with the sampling. It alleged that Autoritas, in selecting the 5,023 keywords for its sample, had failed to ensure the consistency of the keywords with actual search volumes, nor had it differentiated the weights between them. The study also reportedly used outdated click-through rate curves based on screen scroll distance

(“*pixel drop*”) that were not specific to journalism to infer click losses due to the AIO appearing at the top of the page. The company, moreover, criticised the study’s exclusive focus on desktop browsing data, given that the majority of news consumption in Brazil occurs via mobile phones.

166. The statement also sought to demonstrate that each outlet’s audience depended primordially on its business choices and distribution strategies. The company presented case studies of successful outlets that had managed to adapt to this new market reality and had even significantly increased their visibility.

167. Metr p les, as declared in the submission, is said to have experienced massive growth through a model focused on social media. Terra, meanwhile, is said to have regained its competitiveness by repositioning itself as a mediatech platform and creating strategic verticals such as Entre Telas and Terra Byte. The Globo Group, on the other hand, is said to have consolidated a successful closed ecosystem with the launches of Globoplay, GETV and Globopop (a short-form video app with infinite scrolling). Among other examples, the statement also argued that independent outlets had also thrived through membership models, such as the ICL Not cias portal, which is funded exclusively by its more than 23,000 active members.

168. Finally, the submission stated that the AIO had proven beneficial, as it enhanced the user experience and improved click quality. Google sought to emphasise that media outlets retain absolute control over their content, being able to use standard mechanisms, such as the *no-snippet* and *max-snippet* tags, or the Google-Extended protocol, to opt out of the tool.

2.2. Publishers’ responses to the official letters sent in the Supplementary Instruction

169. As previously mentioned, in addition to Decision No. 37/2025 (SEI 1612264) sent to the Respondent, this Office ordered the dispatch of official letters to associations of news organisations. The aim was to improve understanding of the competitive dynamics, particularly regarding the impacts on traffic and potential dependence on Google.

170. Detailed information was requested regarding the composition and sources of traffic for each association’s websites. A precise breakdown was requested of the percentages originating from Google (including Organic Search, News and Discover) and other search engines, as well as from social media, direct visits and newsletters. The official letters requested the provision of data and concrete examples to demonstrate

how unilateral changes to algorithms or to the presentation of Google’s results could significantly affect click-through rates and user behaviour.

171. Furthermore, the request allowed for the submission of specific studies on these topics, as well as records of communications with Google and other platforms, the provision of case studies and empirical data illustrating the problems faced. The sharing of academic studies, sector reports and any legislative, regulatory or public policy proposals drawn up by the associations was also permitted, where applicable.

2.2.1. Responses received from associations

172. In response to the official letters sent, all seven journalism associations submitted a reply, as detailed below.

2.2.1.1. Brazilian Digital Media Association (“ABMD”)

173. The Brazilian Digital Media Association (“ABMD”) stated that it was unable to respond fully to the questions due to technical and financial constraints (SEI 1643990). In summary, it claimed that it lacks the capacity to collect and analyse large volumes of data as it is an organisation with limited resources. It also argued that access to this information would require the hiring of specialist services, as such data is not available to the general public. Furthermore, the association maintained that the request would pose a risk of breaching the General Data Protection Law (“LGPD”) and the trade secrets of its member organisations.

2.2.1.2. National Association of Newspapers (“ANJ”)

174. The National Association of Newspapers (“ANJ”) submitted a detailed analysis of the structural imbalance in the digital news market (SEI 1670090, restricted 1660433). It based its position on the absolute dominance exercised by Google in the online search market. According to the ANJ, the company holds a market share of over 90% in the search market and, [RESTRICTED ACCESS TO CADE] (SEI 1660433, page 3, penultimate paragraph). Moreover, it reported that the Respondent is responsible for directing over 40% of all traffic to news websites in Brazil between July 2023 and July 2025. This scenario would constitute a profound economic dependence of news outlets on Google.

175. According to research carried out by the digital data repository *SimilarWeb*, as indicated in the submission, the largest source of traffic for websites in the “News and Media” category in Brazil would come from organic search. The study, as shown in **Figure 7** below, considered traffic originating from search engines on desktop devices

between July 2023 and July 2025, and found that almost 50% of traffic would originate from organic results:

Figure 7 – Traffic source data for “News and Media” websites (July 2023 to July 2025)



Source: ANJ (SEI 1670090).

176. The organisation also pointed out that social media platforms would not be able to replace Google as a source of traffic. **[RESTRICTED ACCESS TO CADE]**. The association also reported that the traffic generated by social media platforms had declined significantly. Data presented indicated that the contribution of platforms such as Facebook to desktop traffic for major media outlets had fallen by between 56% and 90% (SEI 1660433, p. 5, third paragraph). In this context, Google is said to have taken the opportunity to consolidate its position as the main source of news traffic in the country and increased dependence on its ecosystem.

177. The ANJ also argued that Google’s vertical integration would have enabled the creation of a closed ecosystem encompassing search, monetisation, navigation and measurement markets. Whilst this would have resulted in a severe lock-in effect for content producers, Google would have exploited its vertical integration to leverage its market position. **[RESTRICTED ACCESS TO CADE]**

178. Another point raised was the alleged imposition of unilateral and opaque actions that would considerably expand the platform’s power. The ANJ claimed that the changes would be characterised by a lack of prior notice and that, according to reports from its members, these changes would produce immediate and negative variations in click-through rates. Since 2003, the algorithm is said to have undergone hundreds of changes (SEI 1670090, page 4, Footnote 6), most of them implemented without notice. This lack of transparency would make it impossible for media outlets to take swift action to mitigate operational losses.

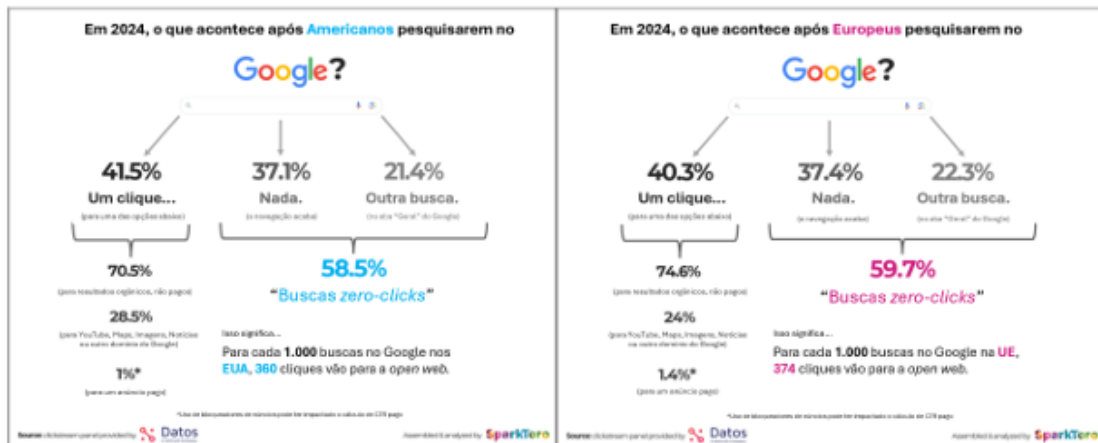
179. The constant instability faced by media outlets would lead to a disproportionate increase in costs, as publishers would need to employ editors and professionals dedicated exclusively to planning search engine optimisation (SEO) strategies and adapting to AI. The association argued that this dynamic would impose a unilateral

burden on producers, whilst the benefits of technological efficiency would be retained by the search engine.

180. The process of transforming the search engine into an ‘answer engine’ was described as a shift that would internalise informational value and reduce the need to visit websites directly. The impact of introducing generative AI tools, such as AIO, a synthesis drawn from multiple sources, including journalistic ones, displayed above organic results and news outlet links, would result in an estimated 26% decrease in organic traffic (SEI 1670090, p. 11, fourth paragraph).

181. This phenomenon could be the cause of a significant increase in no-click searches. According to a SparkToro survey presented by ANJ, by 2024, no-click searches would already account for more than half of the samples, as shown in **Figure 8** below:

Figure 8 – Google search results in the US and EU (2024)



Source: ANJ (SEI 1670090).

182. The ANJ argued that Google was not merely adapting to changes in user behaviour, but rather shaping new behaviour. This would allow the creation of a ‘walled garden’ that would retain attention and economic value within its own interface. Studies cited by the association (SEI 1660433, p.11, response five) indicated that the drops in audience figures were directly correlated with the introduction of AI in Google Search. This would even affect major media outlets, as even the country’s three leading news websites had reportedly seen their traffic fall by almost half in recent periods (SEI 1660433, p.7, response three).

183. Regarding the solutions presented by Google to date, the ANJ argued that they would be insufficient and, in many cases, ineffective. Programmes such as the Google News Initiative were seen as mere qualifying measures that would not resolve the issue of remuneration. The opt-out mechanism was similarly criticised for presenting a false

choice between allowing the unpaid use of content or accepting the total loss of digital reach and visibility.

184. The organisation also stated that restricting indexing would render publishers economically unviable, whilst permitting use would amount to tacit authorisation for free exploitation by AI models. The impact was considered even more severe for utility content and service reports, which were characterised as more susceptible to replacement by direct responses generated by the platform.

185. As for Google News Showcase, the statement classified the programme as being more reputational in nature than reparative. The actual impact of the tool on the total audience of members was estimated at a marginal range of between 1% and 3% (SEI 1660433, p. 26, first paragraph), with the amounts paid considered modest given the magnitude of the value captured by the Google ecosystem. The association also reported that the platform engages in intense lobbying and threats of de-indexing to prevent legislation that would require fair remuneration for the press. Faced with this scenario of market failure and abuse of a dominant position, the ANJ advocated for intervention by Cade and the creation of a mandatory and transparent remuneration model.

186. The proposal focused on the need to ensure a fair distribution of resources to safeguard the plurality and competitiveness of the Brazilian information ecosystem. The organisation emphasised that professional journalism plays an essential role in combating disinformation, a negative externality frequently generated and disseminated by the digital platforms themselves.

187. The association concluded that the lack of transparency and information asymmetry would make it impossible to accurately measure the damage, which would reinforce the need for regulatory action to correct the imbalance in bargaining power. The ANJ reiterated that the value of AIO to Google lies in its ability to meet all user needs without payment or express authorisation for the use of the journalistic content that feeds the system, thereby disrupting the sustainability cycle of the professional press in Brazil.

188. Finally, the statement highlighted that this imbalance would not only affect large media groups, but would hit regional and niche outlets even harder, as they are less able to bear the high costs of technological adaptation and the constant loss of advertising revenue.

189. The association emphasised that maintaining the *status quo* would pose an imminent risk to democracy, as the financial stranglehold on media outlets would compromise the production of reliable information. The ANJ requested that evidence of

abuse of a dominant position be duly considered in the administrative inquiry, with a view to establishing conditions that would allow for fair coexistence and adequate remuneration for the economic exploitation of information assets in the digital environment.

2.2.1.3. National Federation of Journalists (“FENAJ”)

190. The National Federation of Journalists (“FENAJ”) submitted a statement seeking to analyse the impacts of the dominance of digital platforms on the sustainability of journalism and labour relations in this sector (SEI 1642526). The organisation argued that there is a technological and economic lock-in effect, whereby media outlets have become dependent on Google, which accounts for almost 90% of searches in Brazil (SEI 1642526, question 7, penultimate paragraph). It was reported that this dependence had led to involuntary submission and that virtually any algorithmic change to the platform could result in sharp drops in traffic and advertising revenue.

191. In response to the claim of reduced traffic from the traditional online search engine, FENAJ noted that media outlets seek to offset these potential losses by focusing on alternative channels, such as social media. However, the organisation emphasised that success on these platforms is typically variable: whilst younger audiences seem to prefer social media for content discovery, for example, these platforms do not always guarantee visits to news websites. Consequently, the need to remain indexed on Google to ensure financial returns would remain essential.

192. The statement placed particular emphasis on the alleged systemic imbalances generated by this market dynamic. FENAJ asserted that current practices favour large media groups, as the criteria of authority and reputation are more readily recognised by the algorithm. Regional and local outlets, on the other hand, even when producing information of high public interest, would suffer a structural disadvantage due to their limited reach and technical SEO capabilities. This scenario would drive the creation of ‘news deserts’, particularly in remote areas and in relation to content of interest to minority groups.

193. Furthermore, a criticism of algorithmic logic was presented. It was argued that the current algorithmic system rewards content optimised for rapid engagement, to the detriment of investigative journalism, which requires more time to produce and, as a rule, generates fewer immediate clicks. This imbalance would undermine the diversity of information and the quality of journalistic coverage, which are essential to democracy.

194. On the labour front, the Federation linked the capture of advertising revenue by platforms to the precariousness of work. FENAJ sought to demonstrate that the formal labour market for journalists in Brazil shrank by 18% between 2013 and 2023 (SEI 1642526, Question 23, item IV), with the closure of positions in traditional roles and the replacement of formal employment contracts with precarious contracts. It even mentioned that media companies, when negotiating collectively, had justified the absence of pay rises by citing the structural crisis and the loss of funding to the digital ecosystem.

195. FENAJ concluded that the current model of discretionary agreements would be ineffective in sustaining the journalistic ecosystem. As a definitive solution to the bargaining imbalance, the organisation advocated for the implementation of a Contribution for Economic Intervention (“CIDE”) levied on the turnover of Big Tech companies. The proposal aims to create a “Journalism Fund”, managed on a tripartite basis (society, workers and companies), which would guarantee a stable source of funding not subject to algorithmic volatility. This solution would also allow for the prioritisation of regional diversity, independent media outlets and the recognition of professional work.

2.2.1.4. Digital Journalism Association (“Ajour”)

196. The Digital Journalism Association (“Ajour”) submitted its technical statement to Cade in which emphasised that the information asymmetry between digital platforms and content producers has reached a critical level (restricted SEI 1644793). According to Ajour, this alone would justify intervention by the competition authority. However, the organisation argued that Google had exerted a negative influence on the ecosystem, particularly through the misuse of data produced by journalists. Ajour believes that this has had a more significant detrimental effect on small newspapers, which threatens media pluralism in Brazil.

197. The organisation reported that Google’s conduct, particularly through the implementation of features such as snippets, had drastically reduced click-through rates for news outlets. A study indicated that approximately 30% of searches already provided direct answers within the platform’s interface (SEI 1644793, Question 1, first paragraph). The same study reportedly demonstrated that 60% of users would prefer to consume information without clicking on the original links. This scenario would indicate a structural change in the ecosystem. The current search would be centred on immediate answers, and this would allow Google to retain most of the traffic for its own benefit.

198. Indeed, the introduction of AIO would have exacerbated the decline in traffic due to the unauthorised use of journalistic content. According to Ajour, this would jeopardise

the very existence of professional journalism. **[RESTRICTED ACCESS TO CADE]** (SEI 1644793, Question 2, Table 4). Ajor cited cases adjudicated in other countries, particularly in South Africa and France, to demonstrate that the potential impact of AI on publishers' traffic is being discussed globally.

199. Furthermore, the association reported an alleged overall decline in traffic, especially for smaller news outlets. **[ACCESS RESTRICTED TO CADE]**

Figure 9 - [RESTRICTED ACCESS TO CADE]

200. **[RESTRICTED ACCESS TO CADE]**

Figure 10 - [RESTRICTED ACCESS TO CADE]

201. The association also emphasised that search engines and social media platforms would not compete directly with one another. Whilst the purpose of social media platforms is to build brand awareness, the aim of search engines is to generate effective traffic to websites. Indeed, according to Ajor, the traffic originating from these platforms is considered to be minimal. **[RESTRICTED ACCESS TO CADE]**.

202. Indeed, Ajor emphasised that distribution via social media would not be sufficient to replace Google's distribution. **[RESTRICTED ACCESS TO CADE]**. Another point raised by Ajor is that the traffic generated by social media has reportedly declined. The exception to this trend would be messaging apps. The strategic use of WhatsApp, for example, would allow the creation of communities and the direct transmission of content to consumers. **[RESTRICTED ACCESS TO CADE]**.

203. Regarding opt-out mechanisms, the organisation claimed that they would not effectively prevent Google from scraping data to feed its AI models. Ajor argued that there is little published data on the technical efficiency of these de-indexing tools and that they often do not work against bots. It also stated that some companies would not voluntarily comply with the opt-out guidelines. Ajor emphasised that the mere formal existence of an opt-out would not suffice, given the absence of clear legal standards and technical oversight. It therefore stressed the need for in-depth research into the phenomenon of zero-click searches.

204. In the field of financial sustainability, the statement sought to express a sense of a historical trend towards the transfer of advertising revenue to intermediaries. Google was identified as possessing a potentially unbeatable advertising capability due to its

detailed profile of user behaviour, an asset that newspapers would be unable to replicate individually.

205. The organisation described the situation as a systemic information asymmetry, in which Google’s technical and commercial opacity would have a direct impact on free competition. According to Ajor, Google has withheld information essential for optimising journalistic activities, thereby enabling the platform to maintain a virtually insurmountable competitive advantage and reinforcing a potential *lock-in* effect on media outlets. Ajor criticised the platforms’ current remuneration practices, describing them as discretionary and non-transparent.

206. Finally, the association sought to underpin the importance of a mandatory remuneration model that would consider: (i) the alleged impact of platforms on the distribution and consumption of information; (ii) the potential significance of these companies in the advertising market; and (iii) the so-called sustainability crisis in journalism. In summary, the proposed remuneration model sought to recognise the social function of journalism in combating disinformation and proposed that the distribution of resources be based on objective criteria to mitigate the potential capture of value by digital intermediaries and ensure the survival of the information ecosystem.

2.2.1.5. Brazilian Association of Radio Broadcasters (“ABERT”)

207. The Brazilian Association of Radio and Television Broadcasters (“ABERT”), in its submission (SEI 1656179, restricted 1656174), sought to demonstrate that its sector faced an unprecedented structural crisis resulting from Google’s abuse of its dominant position. The organisation emphasised that, in addition to the lock-in effect, the sector would suffer from a significant increase in operating costs to maintain its digital presence. It argued that this occurred without any corresponding increase in revenue, as the majority of revenue would have been captured by the platform due to its vertical integration between search and advertising.

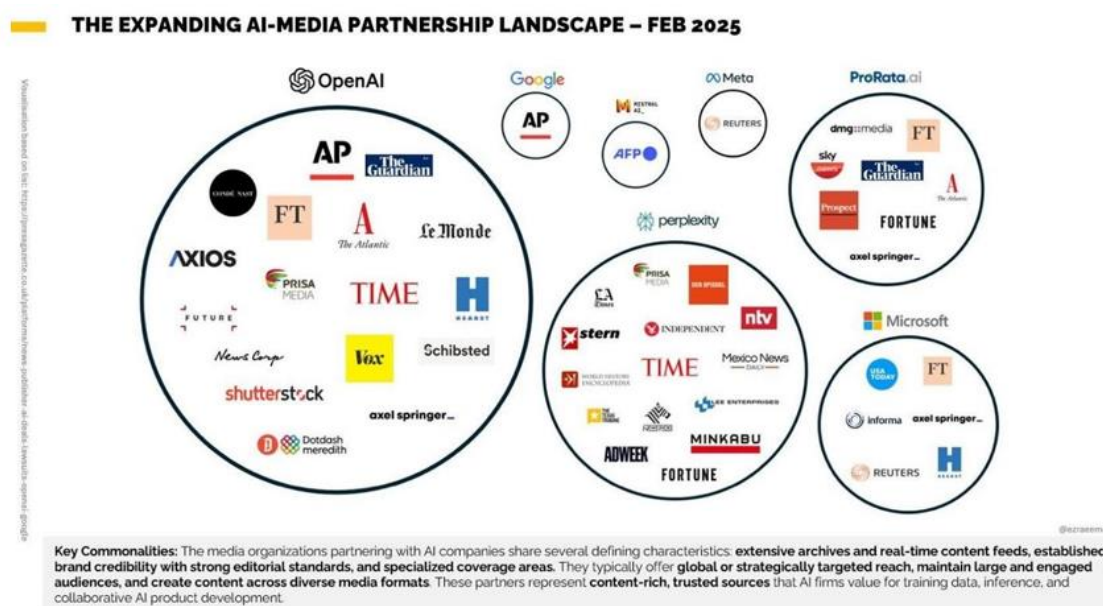
208. ABERT pointed out that a significant drop in traffic had occurred in recent years. It noted that it would be difficult to understand the reason, since, according to the entity, the platform is the largest holder of information in the sector and does not have a habit of sharing data with media outlets. Furthermore, the organisation stated that Google’s algorithmic changes increase market asymmetry: changes to the platform are made unilaterally and often without prior notice.

209. However, the main reason cited for the drop-in traffic was the introduction of AIO. With this, Google is said to have adopted a retention strategy and appropriated users rather than directing them to publishers. This move was characterised as a

misappropriation of value, whereby AI is said to have utilised third-party journalistic investment to deliver ready-made answers, thereby eliminating clicks and monetisation for the original producer. As reported by one member: *"in practice, it is already difficult to compete with the major portals and now also with tools that deliver ready-made answers without directing the user to the website [...] the platforms do not provide sufficient transparency on how the content is used [...] we feel that these technologies tend to concentrate attention and revenue even further on big tech companies, leaving local producers with little share."* (SEI 1656179, last paragraph of question 6)

210. **Indeed**, the case of Folha de São Paulo against OpenAI was cited as an example of the sector’s reaction against unpaid scraping. The association highlighted that there were direct agreements between AI providers and media outlets as another response to the crisis in journalism. ABERT highlighted a series of partnerships already established between AI companies and major media groups, as illustrated in **Figure 11** below. According to the Dutch public broadcaster Nederlandse Publieke Omroep (“NPO”), by early 2025, the following agreements would already have been signed:

Figure 11 – Agreements between AI companies and news outlets



Source: ABERT (SEI 1656179).

211. However, it was noted that, whilst such agreements might offer temporary relief, they often contain confidentiality clauses. In other words, they would not be capable of reducing market opacity or the disparities between major outlets and regional or local broadcasters.

212. Furthermore, ABERT proposed an analysis of alternative traffic sources. It noted that social media platforms (Instagram, TikTok, YouTube, among others), which are based on feed models, would not be suitable for replacing the value of intent-driven

searches. It illustrated this argument using a sample comprising five-member organisations, all from different regions of the country. Among them, only one had significant traffic from social media: a total of 45%, compared with a range of 1% to 5% for the other members (SEI 1656179, question 2).

213. Regarding the opt-out mechanism, the association reiterated that it would be merely illusory. The choice offered to publishers would be between allowing AI to be trained using their content or being excluded from search results. In practice, this would amount to technological coercion.

214. In view of this, ABERT argued that the remuneration model should be subject to direct regulatory intervention. It was suggested that a CIDE (Special Contribution for Digital Services) be created to fund journalism and ensure that the economic exploitation of data was fairly compensated. The association pointed out that various factors such as content, audience, production costs and added value should form part of the redistributive criteria. Additionally, it proposed a ban on confidentiality clauses in agreements with Google, as these would restrict the ability to appeal to the authorities in the event of abuse.

2.2.1.6. National Association of Magazine Publishers (“ANER”)

215. The National Association of Magazine Publishers (“ANER”), in its submission (SEI 1656193), emphasised that the fluctuations in traffic observed by its members were not isolated incidents, but rather a systematic pattern caused by Google’s dominant position. The organisation highlighted that, with a market share reportedly exceeding 90% in the search market, Google would have the capacity to shape user behaviour. This would force publishers to constantly adapt to unilateral and opaque algorithmic changes.

216. ANER reported a possible lock-in effect generated by the vertical integration of the Google ecosystem. The dependency would be multidimensional, as publishers would use the platform for distribution (Search, News and Discover), monetisation (AdSense, Ad Manager and Ad Exchange) and measurement (Analytics). It was highlighted that over 90% of certain members’ display and video advertising revenue was reportedly generated through Google tools. Consequently, it would be impossible to replace one layer of the service without jeopardising the viability of the entire business model.

217. As for alternative sources, the association noted that social media platforms (TikTok, YouTube, Instagram, etc.) would serve as limited and imperfect competitors. Unlike Google Search, which tends to be intent-driven and generate high-quality traffic

and conversion, social media platforms operate via passive feeds. Traffic from social media was classified as lower quality, as it would have shorter dwell times and lower engagement. Furthermore, it was stated that it would represent only a declining fraction of publishers' total traffic.

218. On the other hand, the implementation of AIO has been described as a profound transformation that would shift Google's nature from a search engine to an answer engine. The strategic objective would be to retain users on the platform, using third-party content to generate summaries that would eliminate the need to visit the original website and attract more advertising. Indeed, it stated that some publishers report significant drops in traffic following the introduction of AIO: one member reported a fall of over 70% in visits; whilst another reportedly recorded a reduction of 40% to 50% in impressions and clicks (SEI 1656193, response 6, § 2).

219. ANER classified the opt-out mechanisms as a false choice. For publishers, this would present a coercive dilemma between allowing the free exploitation of their content to train AI and generate summaries, or blocking indexing and risking exclusion from the digital market and a total loss of audience. To date, they claim there is no granular technical option that would allow organic indexing without authorising the use of content by AIO.

220. The statement also alleged the existence of systematic opacity within the Google ecosystem. According to ANER, the company does not provide transparency regarding ranking criteria, AI activation or the mechanics of advertising auctions. An illustrative example of operational instability is said to have occurred in 2024 with the transition to Google Analytics 4, which is said to have resulted in the exclusion of publishers' historical data.

221. They emphasised that the impact of these practices would be disproportionate among players. Whilst large groups would have greater capacity to absorb the impact, small publishers and niche blogs would be at greater risk. According to the submission, for example, the HouseFresh website reportedly lost 95% of its traffic following algorithmic updates, and Ready Steady Cut reportedly recorded an 80% drop (SEI 1656193, response 17, §5).

222. Given the alleged inadequacy of the current model, ANER argued for the urgent need for a mandatory remuneration mechanism. Drawing on international precedents, it suggested: (i) mandatory arbitration, following the Australian model, to balance bargaining power; (ii) algorithmic transparency and transparency regarding traffic distribution; and (iii) a supplementary public fund to protect local journalism and

combat ‘news deserts’, which are already affecting around 30 million Brazilians (SEI 1656193, response 22, §4).

2.2.2. From the responses submitted by news organisations

223. Furthermore, a second group of media outlets provided contributions to the supplementary investigation. It should be noted, however, that these submissions were made in response to Decision No. 38/2025 (SEI 1612370), which was addressed to civil society. Accordingly, each of the additional considerations provided by the other publishers is set out in detail below.

2.2.2.1. RBS – Zero Hora Editora Jornalística S.A. (“Zero Hora”)

224. The newspaper Zero Hora and the RBS Group (“Zero Hora”), members of the ANJ, contributed to the proceedings by submitting their own response (SEI 1612319, restricted 1643327) to Official Letter No. 7740/2025 (SEI 1612319). The statement highlighted that there had been a decline in publisher traffic in recent years and the possible role of Google in this scenario, particularly regarding the use of AIO and changes made without transparency. As a solution, it proposed the implementation of mandatory remuneration.

225. Moreover, Zero Hora claimed a significant drop in its traffic over the last five years. According to the newspaper, the main factor behind this would be the implementation of changes such as Core Updates and Spam Updates. These changes were made without the involvement of publishers and are said to have influenced traffic, which is reportedly in constant decline. **[RESTRICTED ACCESS TO CADE]**.

226. Zero Hora highlighted that the reduction would have been even greater with the implementation of AI tools, as there would have been a change in user behaviour with the arrival of this new technology. According to the statement, there would have been a significant impact on the click-through rate from Search: **[RESTRICTED ACCESS TO CADE]**. The newspaper pointed out that Google would make use of publishers’ content not only with AIO, but would also compete for the space previously occupied by them on the new Discover profile page.

227. The submission argued that there is a lock-in effect in relation to Google. Four reasons were put forward for this: (i) Google’s dominant position in the search market; (ii) a lack of transparency, particularly regarding the lack of clarity on content indexing criteria and on algorithmic changes not previously communicated to publishers; (iii) opt-out mechanisms, which do not offer a realistic option; and (iv) the use of content without compensation, particularly for AI training.

228. Another point discussed was the possibility of competition between social media platforms and search engines. According to the submission, the objectives and outcomes on social media would be entirely different: **[RESTRICTED ACCESS TO CADE]**. Furthermore, it was emphasised that the proportion of traffic originating from each platform would be very different. **[RESTRICTED ACCESS TO CADE]**.

229. Google’s vertical integration was also mentioned, noting that, **[RESTRICTED ACCESS TO CADE]**.

230. Finally, the creation of a remuneration mechanism for media outlets was suggested. According to the newspaper, the current mechanisms are insufficient. **[RESTRICTED ACCESS TO CADE]**. Furthermore, the additional costs of training in SEO and Discover to continue reaching the digital audience were highlighted.

2.2.2.2. O Popular

231. The newspaper O Popular, in a submission (SEI 1612370, restricted 1644129) to Decision No. 38/2025 (SEI 1612370), highlighted concerns regarding reduced traffic and dependence on the Google ecosystem.

232. Initially, O Popular claimed a significant drop in traffic. According to the newspaper, the CTR had fallen from **[RESTRICTED ACCESS TO CADE]**. The click-through rate from Google’s organic search results is also said to have fallen from **[RESTRICTED ACCESS TO CADE]**. The publication attributes this reduction to Google’s use of AI tools. It noted, however, that the analysis was limited due to the migration to Google Analytics 4 and the loss of all data prior to 2024.

233. The submission also pointed to the possible existence of a *lock-in* effect. Google is said to have started offering increasingly comprehensive information on its own interfaces. This would discourage direct access to original sources and affect the media outlets’ revenue. Google’s vertical integration is said to have exacerbated this scenario. A significant portion of newspapers’ revenue would depend on their ecosystem. In the case of O Popular, **[RESTRICTED ACCESS TO CADE]** of digital revenue would come exclusively from the Google ecosystem.

234. However, according to the statement, social media could serve as a viable alternative to rebuild traffic. Over the past year, O Popular reportedly recorded growth across all platforms. The number of followers reportedly rose from 501,000 to 613,000 on Instagram (SEI 1644129, question 4, §2). Traffic received via this platform is said to have more than doubled in just one year. On Facebook, which was presented as the

social network offering the best remuneration, there was also a significant increase. Nevertheless, the volume of clicks generated by these platforms would be low. Monetisation, consequently, would be equally limited.

235. Finally, the creation of a remuneration mechanism for media outlets was suggested. However, no specific model was presented. O Popular merely argued that it should be an objective system, with clear criteria and ensuring proportionality.

2.2.2.3. A Gazeta

236. In its response (SEI 1644240, restricted 1644245) to Decision No. 38/2025 (SEI 1612370), A Gazeta claimed that changes to Google’s search engine had impacted its journalistic operations, as well as the recent shifts in the news market.

237. The newspaper reported that there had been a period of significant readership growth between 2020 and 2022 due to the pandemic and investment in distribution, both by Google and social media platforms. However, it argued that traffic had suffered sharp declines from 2023 onwards. It attributed the phenomenon to the possible saturation of the Web Stories distribution format and the implementation of Core Web Vitals metrics by Google. Although there was reportedly a partial recovery in 2024, it stated that performance in the second half of 2025 had been severely hampered by the implementation of AI in the search engine.

238. A Gazeta pointed out that AIO would be “cannibalising clicks” and reinforcing the phenomenon of zero-click search. It also claimed that it would alter the role of traditional SEO and leave publishers unclear as to how to ensure content visibility. It cited a Forbes study in which reductions in organic traffic, depending on its characteristics, would vary between 15% and 64% (SEI 1644240, question 2, §1). In the context of Gazeta, a drop of **[RESTRICTED ACCESS TO CADE]** in search traffic was reportedly recorded compared to 2024, and of **[RESTRICTED ACCESS TO CADE]** compared to 2023.

239. Regarding the lock-in effect, the company expressed the perception of a “coercion of dependency”, as publishers would have no bargaining power and a refusal to allow their content to be used by AI tools would result directly in the complete disappearance of the content from search results. The organisation criticised the lack of intermediate options to block only AI summaries, without the risk of losing general indexing or without blocking use in specific parts of the text. Furthermore, it reported inconsistencies and delays in the application of the opt-out tools offered by Google.

240. A Gazeta stated that social media could account for a significant proportion of the media outlet's traffic, offset the impact of losses in click-through rates, and reduce dependence on search engines. It recognised that social media had significantly altered users' behaviour regarding the discovery and consumption of information. As a result, the newspaper reported that it had been investing increasingly in social media. The company emphasised that platforms such as Instagram should be viewed as independent channels for reach and monetisation. It even presented its product strategy on Instagram as a case study for the brand.

241. On the financial front, the company stated that, as a local outlet focused on audience loyalty rather than volume, its business model would prioritise projects and direct sales over programmatic media. However, A Gazeta noted that, even so, tools such as Ad Manager and AdSense made a difference to the sustainability of its business.

242. As for remuneration mechanisms, A Gazeta stated that they are relevant but insufficient. It stated that it has an important partnership with Google. However, it described the revenue from the Google News Showcase programme as negligible and noted that the amount would not be enough to cover the costs of even three journalists. Furthermore, the audience generated by Showcase was also described as negligible, and its algorithm was characterised as lacking transparency and being volatile. In light of this, the newspaper argued for the need for remuneration or compensation that would reverse the 'zero-click' scenario and ensure the sector's sustainability.

2.2.2.4. Folha de São Paulo ("Folha")

243. Folha de São Paulo ("Folha") submitted a contribution (SEI 1653007) to the supplementary proceedings as a member of the ANJ and in response to a request made by the association's management, pursuant to Decision No. 38/2025 (SEI 1612370). It argued that the internet has had a severe and historic impact on professional journalism, resulting in the closure of numerous companies in the sector globally.

244. The newspaper claimed that the remaining media outlets had to migrate to the digital environment. According to the report, since the advent of the internet, such tools have frequently satisfied internet users' demands on the search results page itself and discouraged paid access to the original content. For this reason, they claimed to have to face a reduction in scope and increased competition from search engines.

245. Folha highlighted the second phase of this process as the most worrying. It warned that AI companies would pose a threat, as they would use such tools to learn from journalistic content and display direct responses. As such, they may become even more capable of discouraging redirection to publishers' links. Against this backdrop, the

company argued that Big Tech firms should be required to provide financial compensation to publishers who invest in the production of quality content.

2.2.2.5. Editora Gazeta do Povo S.A. (“Gazeta do Povo”)

246. Editora Gazeta do Povo S.A. submitted its contribution (SEI 1652925) to the supplementary investigation, in accordance with Decision No. 38/2025 (SEI 1612370). The institution reported a general perception of a decline in audience traffic from organic search. Based on unique user data from Google Analytics, the company noted that the share of organic search in its total audience had fallen by 5 percentage points over the last three years, from 52.7% in the second half of 2022 to 47.3% in the period from January to September 2025.

247. Given that the implementation of AI tools is recent, the publisher stated that it has not yet been able to measure the impacts of the change. It stated, however, that AIO would account for less than 1% of user volume and page views by September 2025. Furthermore, it stated that the tool could have negative effects if the consumption of summaries were to replace traditional search.

248. Regarding the possibility of a lock-in effect, Gazeta do Povo argued that opting out of search or blocking crawlers via *robots.txt* would not be viable alternatives. According to the publication, these would pose risks to the audience and to the objective of reaching the widest possible audience. The company described a scenario of forced dependency, in which the newspaper would provide content produced with significant editorial investment free of charge to be reworked by the platform’s AI without remuneration or recognition of copyright.

249. Regarding the role of social media, the publisher stated that it did not see direct competition with search engines. It highlighted that Google itself had already combined search with algorithmic curation in products such as Discover and Google News, which would give them social media characteristics and allow the platform to invest in audience acquisition across different formats.

250. Finally, Gazeta do Povo reported that tools from the Google ecosystem currently account for around 5% of its revenue. Although it participates in the Google News Showcase programme, the publisher considered the current remuneration to be insufficient. It reported that the transfer of funds would be unable to cover minimum operational costs and ensure the sustainability of a professional newsroom, especially in the face of digital environments marked by complexity and high demands. In view of this, the publisher advocated for the creation of more robust, transparent remuneration

mechanisms capable of addressing the use of content by AI technologies and algorithmic curation.

2.3. Technical submissions forwarded by civil society organisations pursuant to Order No. 38/2025 (SEI 1612370)

251. Finally, nine other civil society organisations submitted their contributions to this inquiry, in accordance with Decision No. 38/2025 (SEI 1612370). Their considerations are presented below in detail.

2.3.1. Grupo Sinos (“Sinos”)

252. Grupo Sinos submitted a contribution (SEI 1648680, restricted 16486870), in accordance with Decision No. 38/2025 (SEI 1612370), in which it sought to detail the impacts of Google’s practices on its digital operations between January 2024 and September 2025.

253. The organisation reported that, following the consolidation of its products on a single portal (abcmais.com) and the restructuring of its websites, an upward trend in click-through rates had been observed. This trend was reportedly interrupted between June and July 2025, a period during which there was a significant drop in **[RESTRICTED ACCESS TO CADE]** of the hearing.

254. According to the outlet, this decline was attributed to unilateral updates by Google, particularly the implementation of AI-generated summaries. Grupo Sinos highlighted the importance of disregarding location tags, which would also have severely harmed the group due to its nature as a regional outlet. The organisation also attributed the decline to the rise of aggregator sites, social media content and entertainment pages at the expense of professional journalism. It reported that, even without changes to its production standards, it had lost visibility on the platform.

255. The company expressed the perception of a lock-in effect. It stated that dependence on Google’s services would be inevitable for reaching the public. Grupo Sinos pointed out that the platform would retain the user and deprive them of the clicks that would serve as compensation for the cost of journalistic production. Although monetisation is facilitated by Premium Ads and not directly by the Google ecosystem, the group reportedly experienced a drop-in revenue due to a decline in audience numbers, with the shrinking of **[RESTRICTED ACCESS TO CADE]**.

256. Finally, Grupo Sinos, which claimed to have held a licensing agreement for the News Showcase programme since 2021, argued for the urgent need for remuneration

models for the use of content in AI tools to protect the sustainability of local and regional media outlets.

2.3.2. Brazilian Institute for Consumer Protection (“IDEC”)

257. The Brazilian Institute for Consumer Protection (“IDEC”), a non-governmental consumer protection organisation active on various fronts, including telecommunications and digital rights, submitted a statement (SEI 1653684) in response to Decision No. 38/2025 (SEI 1612370). In its submission, it argued that practices within the Google ecosystem could constitute an abuse of a dominant position and generate significant anti-competitive effects. The organisation did not present specific data on its activities, but made observations on the general context in which the conduct under investigation takes place.

258. The institute organised the competition issues raised into the following categories: (i) traffic diversion through the use of snippets without compensation; (ii) structural dependence of publishers, with significant percentages of traffic on their platforms coming from search, associated with the ‘too big to boycott’ logic; (iii) concentration of advertising revenue and leveraging of search power to strengthen its position in online advertising; (iv) disincentives to innovation; (v) lack of granular control and unilateral algorithmic changes that reduce control mechanisms; and (vi) retention of users within the Google ecosystem through direct responses and content reorganisation, reducing the need to access original sources.

259. According to the organisation, journalism is a public good with its own economic characteristics. With digitalisation, monetisation in this sphere would occur through digital subscriptions, advertising and indirect monetisation via third-party platforms. In these scenarios, dominant digital platforms would act as mandatory gateways in the flow of information between content producers and end consumers and would have come to perform multiple economic functions (distribution, hosting, aggregation and algorithmic curation, etc.), shaping a market architecture where intermediation would have become an unavoidable structural element. Consequently, asymmetrical vertical relationships could be established, in which platforms would appropriate journalistic content without providing publishers with adequate economic compensation.

260. In Brazil, IDEC cited a vulnerable scenario. It argued that independent media outlets would be structurally dependent on distribution via digital platforms and search engines, with 30.7% of publishers relying on search engines for over 50% of their organic traffic (SEI 1653684, § 20). They would face an economically unviable choice: joining the platform ecosystem would entail accepting unfavourable commercial terms and increasing dependence; not joining would result in marginalisation in the market and

growing difficulties in attracting new readers. This situation would have been exacerbated by zero-rating practices (where no data allowance is consumed for internet use on certain apps), which would consolidate consumption patterns favouring access via intermediaries at the expense of direct browsing of news websites.

261. As for the specific practices of the Google ecosystem, they argued that snippets would replace part of the consumption, satisfying the query without a click. This would alter the competitive dynamics, with Google capturing attention and value, affecting revenue. In June 2019, the majority of searches reportedly resulted in *zero-clicks*, where information is obtained without clicking on links, with the use of AI exacerbating the situation.

262. Regarding Accelerated Mobile Pages (a solution that improves loading speeds on mobile devices), the organisation stated that the tool would have helped keep users within the company's ecosystem, that *Google* would prioritise AMP content, and that the terms of use would grant the platform extensive rights to use publishers' content. It also linked other negative effects to the use of this mechanism: difficulties in establishing direct relationships with readers, reduced subscription conversion rates, limitations on interactive and personalisation features, less control over user data and advertising revenue; and dilution of brand recognition.

263. IDEC points out that Google Discover and Google News have expanded the platform's role to include functions typical of news aggregators, and not just search tools. It stated there would be intensive use of publishers' visual content without financial compensation. It also highlighted that the terms of participation in News would confer broad rights of use over the relevant content and that, even if acceptance were in theory optional, there would be concern about negative effects on the main search page.

264. As for AIO, the institute argued that the introduction of generative AI on the platform would worsen the asymmetry for the following reasons: (i) generated responses would increase zero-click searches, as the user would receive the summary and no longer visit the source; (ii) the AI would be trained using journalistic content extracted without authorisation or remuneration from news outlets; (iii) its use would constitute a barrier to entry, as dominant platforms would have the resources to invest in the sector; (iv) there would be risks to the quality and security of information; (v) the platform's design would be encouraging engagement with artificially generated text; (vi) there would be no clear options to disable AI summaries—, constituting a manipulative design; (vii) the AI would not apply editorial criteria, nor would it distinguish verified journalism from potentially misleading advertising material.

265. Therefore, the competition argument alleged was as follows: with its dominant position in the search market, Google could leverage that position to dominate the adjacent AI market and capture even more traffic and revenue, raising barriers to entry and reducing contestability. Furthermore, the integration would prioritise Google’s own service over direct links to competing publishers. Consequently, IDEC requested that Cade incorporate into its analysis the qualitative changes in the digital intermediation model since the advent of generative AI, keeping pace with the structural changes resulting from technological innovation.

266. According to the institute, any benefits to users arising from this practice would not necessarily outweigh the structural damage to the ecosystem. Some structural harm to end consumers resulting from the practices under investigation has reportedly been identified, highlighting that platforms with limited competition cause damage in terms of quality (misinformation, incentives for the production of sensationalist content and the deepening of information inequalities), choice (formation of echo chambers, exclusion of local media and obstacles to democratic participation) and innovation (disintermediation via AI, asymmetric control over data), with serious democratic impacts, such as reduced civic participation and polarisation, arguing that such dimensions would be essential competitive parameters in information markets.

267. The organisation also classified the conduct analysed under three established theories of harm in antitrust law: (i) exploitative (due to dependence on publishers); (ii) exclusionary (due to the imposition of technical and economic barriers and algorithmic discrimination); and (iii) forced free-riding (associated with generative AI, which would appropriate third-party journalistic material without authorisation). On this basis, it summarised the harms as a decline in quality, concentration of sources, encouragement of extreme content, disinformation and the trivialisation of consumption, which would be sufficient to justify the continuation of the investigation (also considering the Brazilian context, which, according to IDEC, is characterised by greater structural vulnerability).

268. Finally, it requested that Cade initiate Administrative Proceedings and recognise the existence of an abuse of a dominant position, with the appropriate sanctions. It proposed the imposition of an opt-in remedy as the default setting for the use of snippets and generative AI tools, so that these would only be activated upon the user’s express choice, thereby preserving consumers’ right to choose and their autonomy.

2.3.3. Momentum – Journalism and Tech Task Force (“Momentum”)

269. Momentum – Journalism and Tech Task Force (“Momentum”) submitted a contribution (SEI 1655393, restricted 1655400) in response to Decision No. 38/2025

(SEI 1612370). The organisation highlighted that the advent of generative AI, particularly the AIO product, had reshaped search services and drastically altered the balance between platforms and news organisations. It identified three key areas: (i) the framework of the discussion; (ii) the relevant risks to be considered; and (iii) possible mitigation measures.

270. As for the context of the discussion, it was pointed out that the scenario initially analysed by Cade is no longer the same. The concerns regarding snippets at the start of the investigation in 2019 have shifted to the analysis of summaries produced by generative AI that would power new search features. With the integration of these systems, search engines would have evolved into ‘answer engines’, which would synthesise information collected via scraping to offer personalised and direct answers to users. This innovation has the potential to reduce the need to click on original links, as AI responses would occupy a privileged position at the top of the page, and consequently influence the flow of attention, data and advertising revenue.

271. Momentum emphasised Google’s dominant role in Brazil. It argued that, in the country, 64% of internet users aged 16 or over would use the platform to search for news, a higher rate than in countries such as Mexico and Central American nations (SEI 1655393, §26). This habit would force news organisations to invest in search engine optimisation (SEO) and create a dependency on the platform for traffic acquisition. The introduction of AIO could expand the platform’s control over the flow of attention and advertising revenue. For this reason, it argued that authorities in other jurisdictions have adopted investigative approaches similar to Brazil’s.

272. The organisation contributed an analysis of developments in the jurisdictions of South Africa, Indonesia and the United Kingdom. Indeed, in South Africa, the Competition Commission recommended, in a 2025 interim report, that Google adjust its algorithms to prioritise local media and contribute to an annual compensation fund of between ZAR 300 and 500 million (between USD 18 to 30 million)⁶ to mitigate the erosion of local journalism.

273. Meanwhile, in Indonesia, the introduction of the AIO is said to have resulted in a 37% drop in traffic for KG Media, one of the country’s leading media groups. In the UK, meanwhile, the Competition and Markets Authority (CMA) has designated Google as holding Strategic Market Status (SMS) and classified the AIO as a factor that could further strengthen its market power. British studies, for example, have reportedly indicated that a website ranked in first place could lose around 79% of its traffic if the results were displayed below an AI summary.

⁶ Exchange rate as of 17 April 2026

274. Regarding the key risks to be considered, Momentum pointed out that the transition to ‘answer engines’ would pose significant risks to the sustainability of news organisations. First and foremost, it alleged that this would result in a loss of traffic for news organisations. Indeed, direct access to summaries would replace visits to the original material, increasing zero-click searches and making it harder to attract subscribers and secure advertising deals. The AIO architecture would enable a ‘cream skimming’ effect, whereby the platform captures the most valuable information and leaves media outlets with only informational scraps. This process would exacerbate the historical imbalance in the redistribution of value between technology companies and content producers.

275. Furthermore, Momentum raised concerns about the de-indexing of search results following an opt-out from AI tools. It claimed there was a lack of clarity regarding whether refusing to provide AI summaries would impact visibility in organic search results. Momentum reiterated that content producers would face a dilemma between accepting the use of their content or risking the loss of their audience. This uncertainty would create a lock-in effect and compel newspapers to accept detrimental conditions in order to maintain their digital presence.

276. It also argued that Google’s power over the digital advertising market was increasing. By allegedly retaining users for longer within its ecosystem, the platform would expand the collection of personal data for targeted advertising and strengthen its appeal to advertisers. This feedback loop would reinforce the search engine’s dominance and amplify its competitive advantages over publishers.

277. Issues regarding the misuse of intellectual property and harm to internet users’ access to information were also raised. Firstly, because copyright-protected journalistic content would be used both in training language models and in generating summaries via scraping. Secondly, due to the generation of superficial, less diverse information lacking the original context for the consumer.

278. Finally, Momentum suggested mitigation measures to be considered. Firstly, it proposed safeguards for the application of generative AI to journalistic content. Secondly, it recommended caution on topics of high public relevance, such as civic, historical and scientific matters, or during election periods, requiring enhanced standards of accuracy and verification to preserve informational integrity.

279. Finally, it argued that a technical distinction should be maintained between scraping for the indexing of results and its use for training AI models. This would allow publishers to choose to be indexed organically without necessarily feeding into generative systems.

280. The need for greater transparency on the part of the platform was also highlighted. Momentum stated that transparency regarding advertising and content in AI summaries is essential. It called for clear visual identification of advertising content using labels such as ‘sponsored’ or ‘ad’ to avoid user confusion and prevent self-preferencing strategies on the part of the search engine. Furthermore, it argued that search engines should disclose their general criteria for selecting sources and clearly label AI-generated responses. Thus, functional and visible links would be provided to the original sources and publication dates would be indicated to avoid confusion between new and old data.

281. Another point raised was the measurement and auditing of traffic impact. According to Momentum, platforms should provide aggregate and historical indicators on click-through rates. They should also distinguish traffic from organic results from that originating from AI summaries, so that authorities and researchers could gauge the real impacts on the sector.

282. Finally, it expressed support for remuneration or compensation mechanisms. It evaluated financial compensation models, drawing on experiences such as advertising revenue sharing, the establishment of sectoral funds (as proposed in South Africa), or collective bargaining models adopted in Canada and Australia. Such measures should address asymmetries in economic power and also consider the use of journalistic content for training AI models.

283. In light of the above, Momentum recommended rejecting proposals that underestimate the competitive effects of AI and suggested the adoption of proportionate mitigation measures to preserve informational plurality and the sustainability of public-interest journalism.

2.3.4. Open Markets Institute’s Center for Journalism & Liberty (“CJL”)

284. The Center for Journalism & Liberty (“CJL”), part of the Open Markets Institute, submitted a voluntary contribution (SEI 1658137) to the Administrative Inquiry, in accordance with the Decisory Order No. 38/2025 (SEI 1612370). The CJL is a Washington, D.C.-based organisation dedicated to promoting the use of antitrust policy to foster social values such as democracy, equity, innovation, sustainability and peace. Part of its work is dedicated to ensuring that the media industry serves democratic needs. To this end, it sought to combat market concentration and the harm caused by large digital platforms to the independent journalism economy.

285. In this regard, the CJL provided technical evidence regarding Google’s possible abuse of a dominant position in the search and news markets, whilst also seeking to demonstrate that market concentration and the role played by major digital platforms had undermined the economic foundations necessary for the press to fulfil its democratic mission.

286. In discussing the relationship between Google, search, advertising and AI products, the CJL argued that the services offered by the company were interdependent, particularly general search and search advertising. It stated that dominance in the search engine would attract a large number of companies that rely on advertising to reach customers.

287. Furthermore, it argued that Google had engaged in self-preferencing to bolster its position in both markets and that the company’s Ad Tech sector had relied entirely on its success in search to establish itself.

288. In the same vein, it presented international case law on the subject. It pointed out that federal courts in the United States had already ruled that Google held illegal monopolies, whilst the European Commission had imposed a fine of approximately EUR 3 billion for abusive practices in advertising technology. In South Africa, an inquiry also concluded that the platform’s practices distorted competition in the media market and warned of further harm with the advent of generative AI.

289. Still on the subject of AI, the institute reported that Google had positioned its search services as the main commercial portal for such tools, integrating the Gemini language model to generate summaries in AIO. It reported that this functionality had been implemented in Brazil in August 2024 without offering users or publishers the option to opt out. The CJL alleged that AIO had reduced the click-through rates that generate revenue for publishers and allowed Google to sell highly targeted ads on summaries that obscure access to the open web.

290. In analysing potential areas for the Administrative Inquiry to focus on, the institution initially addressed the possible damage to the quality of the information ecosystem. It stated that Google’s conduct had undermined consumers’ choice and their ability to access reliable information. In fact, it is alleged that Google prioritised sponsored results at the expense of reliable information. Furthermore, it accused the company of integrating AI products that are still prone to errors and capable of distorting journalistic content regardless of language. In short, it argued that Google should be held accountable for undermining trust and promoting the delivery of unverified or dangerous data to consumers.

291. Regarding the potential harm to the news media market caused by Google's dominance in search, the CJL recommended that Cade assess the terms and conditions governing the use of journalistic content. It emphasised that this should be done particularly in relation to the collection of data for AI products, including from YouTube, and the terms of financial compensation.

292. It suggested that Cade consider how Google exploited its position to compel publishers to accept the Accelerated Mobile Pages ("AMP") standard, at the risk of being downgraded in search results. It stated that, with AMP, publishers would lack sufficient means to refuse the service without being removed from the search index, which would render their businesses unviable. It pointed out that internal Google documents in the United States indicated the company was aware it could request consent, but chose to silently update its terms to make participation mandatory by default.

293. Furthermore, the institution suggested that Google's operations should be treated as an ecosystem rather than as individual markets. It argued that the ecosystem was designed so that each component—such as cloud computing, app stores, smartphones, email and video streaming—would reinforce dominance in the other markets. It stated that all products would collect user data that would feed into other services to create targeted recommendations, with the search engine being the primary source of this disproportionate power.

294. Finally, it argued that the clash between AIO and news publishers would constitute a case of abuse of a dominant position. The CJL stated that the 'zero-click' environment sought by Google would only be possible due to its infrastructural control over the viability of journalistic business models.

295. The organisation recommended that Cade analyse recent international cases that held Google liable. Firstly, it cited the European Union's action, which in April 2025 opened an investigation to determine whether the AIO contravenes the Digital Markets Act ("DMA"), the Copyright Directive and the European Media Freedom Act ("EMFA"). Secondly, it mentioned the case from June 2025, in which the European Commission and the CMA received complaints from independent publishers focusing on the inability to disable the tool or opt out without affecting search visibility.

296. Thirdly, it reported on the legal proceedings brought by Penske Media Corporation in September 2025. In this case, Google was accused of coercing the supply of content to AIO and of unjust enrichment by avoiding licensing agreements. Finally, the CJL highlighted the CMA's action between 2025 and 2027, which designated Google as having strategic market status and planned interventions focused on how AIO had undermined publishers' sustainability and the maintenance of the open web.

2.3.5. Article 19 Brazil (“Article 19”)

297. The organisation Article 19 Brazil and South America (“Article 19”) submitted a technical statement (SEI 1658332, restricted 1658336) in response to Decision No. 38/2025 (SEI 1612370). Article 19 is a non-governmental human rights organisation, founded in London in 1987, which works to defend freedom of expression and access to information worldwide, and has been present in Brazil for over 15 (fifteen) years.

298. In addressing the legitimacy and institutional role of Article 19, the organisation highlighted its experience in the formulation of regulatory frameworks such as the Brazilian Civil Rights Framework for the Internet and the General Data Protection Law (LGPD). It stated that it has participated in debates on the economic regulation of digital markets with bodies such as the Federal Supreme Court and Cade. It argued that the opening of a consultation period for third-party contributions recognised that informational pluralism transcends immediate economic interests and touches on structural dimensions of democracy.

299. In describing the context and transformations in the information ecosystem, the institution argued that the consolidation of digital platforms as intermediaries had undermined traditional funding models. It also commented on the role of journalism as a public good and its market failures. It stated that the latter occurred particularly in the fields of investigative, local and independent journalism.

300. It argued that, despite being forms of journalism in the public interest that generate positive externalities for society as a whole, producers in these categories would capture an ever-smaller share of that value. Thus, Article 19 reported that the digital evolution had systematically excluded the three main sources of journalism (classifieds, display advertising and print subscriptions) and had culminated in the current consolidation of power by platforms such as Google and Meta, which would concentrate advertising revenue and determine which voices would reach audiences.

301. In analysing the Google ecosystem and its interaction with journalism, Article 19 argued that platforms had undermined economic conditions particularly at three levels of the production chain: (i) production, as the lack of advertising revenue would directly impact the quantity and quality of the content produced; (ii) distribution, because platforms would control the algorithms that grant access to content in a non-transparent manner; (iii) consumption, given that platforms would keep consumers within their ecosystems and capture their data.

302. It mentioned international initiatives in Australia, the United Kingdom and Canada that had resulted in specific legislation to address the impact of platforms on journalism. Regarding the analysis of the situation in Brazil, it emphasised the need to move beyond traditional analyses to consider the control of integrated layers and Google’s systemic competitive advantage (‘ecosystem power’).

303. It argued that the competitive dynamics between media outlets and platforms would be characterised by vertical complementarity and horizontal competition. It stated that, in the vertical link, complementarity would not be harmonious, particularly due to the misappropriation of content. As for the horizontal dimension, programmatic advertising would have favoured platforms due to their ability to segment behavioural data. It reported that, according to the CMA, intermediaries would capture at least 35% of advertisers’ spending intended for content providers, which it termed an “ad tech tax”.

304. In addressing Google’s activities in news, the institution stated that tools such as AIO and AI Mode had deepened Google’s appropriation of value. These tools are said to have converted journalistic content into cognitive input for AI systems and replaced direct access to news outlets. It argued that SG’s technical notes had adopted a reductionist interpretation by limiting the market to the “News” tab and ignoring ecosystem logic, which had overlooked the problem of asymmetric value redistribution.

305. The organisation also advocated for the protection of the diversity and quality of information as a competitive objective and recommended that antitrust analysis should consider non-price effects. It argued that journalism is a public good that requires consideration of the public’s welfare, which goes beyond that of the traditional consumer. Article 19 also cited cases in which Cade had already recognised these factors as drivers of competition and competitive variables.

306. Regarding the effects on the information ecosystem, Artigo 19 also warned of the potential disproportionate impact on smaller companies, as well as the lock-in effect. It stated that structural dependence would force companies to accept unilateral terms to avoid becoming invisible. It also reported that, with generative AI, Google had gained free access to content for training purposes, whilst competitors would need to negotiate licensing agreements. Finally, it argued that the practices would constitute exploitative abuse, forced free-riding and exclusionary effects.

307. In concluding its submission, Artigo 19 suggested converting the inquiry into an administrative sanctioning procedure and holding a public hearing. It stated that potential remedies could include structural separation between content and advertising businesses, as well as a requirement for algorithmic transparency, amongst others. It

also attached a technical analysis that highlighted the opacity of Google Discover and News Showcase and summarised the main competition concerns identified in Google’s practices within the journalism sector.

2.3.6. Reporters Without Borders (“RSF”)

308. Reporters Without Borders (RSF) submitted a voluntary contribution (SEI 1658518) in response to Decision No. 38/2025 (SEI 1612370). RSF is an international, non-governmental, non-profit organisation with consultative status with the UN and UNESCO. The organisation works globally to defend the freedom, pluralism and independence of journalism. The institution reported that the ongoing investigation is essential to address market failures and alleged abuses of a dominant position that would threaten the economic viability of professional journalism and the very health of the information ecosystem.

309. RSF began its statement with an analysis of the case’s importance for the future of journalism and democracy. It noted that the platform’s relationship with media outlets would reinforce the power of media conglomerates and, consequently, the agendas of those who control them. Furthermore, it cited similar cases in France, Australia, South Africa and the European Union.

310. In discussing the Google ecosystem, RSF argued that Google acts as a gatekeeper and operates in various markets. Thus, it pointed out that the company’s dominance is not limited to the relevant online search services market, but also extends to the online advertising market, amongst others. It therefore alleged that the conduct could be classified under the theory of harm arising from both (i) exploitative abuse and (ii) exclusionary abuse. The organisation argued that Google’s position would create structural dependency and allow for the imposition of unilateral terms on content producers. It stated that this would impact media plurality and affect democracy.

311. In analysing the potential risks and impacts of generative AI and AIO, the organisation stated that the transition to ‘answer engines’ would represent a paradigm shift. By ceasing to act solely as a link indexer, the platform would also assume an editorial curatorial role and exacerbate the damage to the journalism sector. RSF cited studies seeking to demonstrate that providing direct answers on the results page would discourage users from clicking on the original link and would consolidate zero-click searches.

312. Finally, RSF suggested to Cade the development of remuneration mechanisms for the use of journalistic content. It stated that it would be necessary to ensure that licensing agreements followed fair, reasonable and non-discriminatory (“FRAND”)

criteria. Finally, it suggested that Cade consider the application of structural or behavioural measures aimed at restoring competitiveness and ensuring that technological innovation did not occur at the expense of publishers.

2.3.7. Sleeping Giants Brasil (“SGBR”)

313. *Sleeping Giants Brasil (“SGBR”)* submitted a contribution (SEI 1658737) to the Administrative Inquiry. SGBR is a civil society organisation dedicated to combating disinformation and the monetisation of harmful content. The organisation reported that the investigation should consider the profound changes in the news market potentially resulting from the integration of generative AI tools into Google’s search and advertising infrastructure.

314. Regarding the interaction between Google Search, Android and data infrastructure as a factor reinforcing its dominant position, the organisation asserted that the search engine holds around 80% of the global market share. In Brazil, it indicated that Google’s market share has frequently remained above 95% in the platform market and above 97% in the mobile segment. The organisation cited a study claiming that 100% of Brazilian internet users would use a mobile phone to connect, and 60% would access the internet exclusively via mobile.

315. Furthermore, it was claimed that approximately 80% of active devices in the country would run on the Android system. Therefore, the organisation argued that Android’s dominance would intensify Google’s power in the search market, as the system would distribute pre-installed proprietary services. This integrated architecture for collecting and processing metadata would generate value for advertising targeting and consolidate the company’s power.

316. The SGBR also made observations regarding digital advertising. The organisation sought to clarify that the activity would be structured into four main categories. The first category, search advertising, would operate using explicit signals of intent and would constitute the largest segment in terms of value. The second, social media advertising, would focus on profiles within walled gardens on each platform. The third, display advertising, would cover adverts on websites outside the search environment and utilise automated intermediation systems. The fourth and final category, digital classifieds, would involve specialised thematic platforms with low reliance on behavioural data.

317. Regarding programmatic advertising, the organisation stated that this model had become the main revenue driver for financing the production of digital content. The system operates through instant auctions, known as real-time bidding (‘RTB’). The

auctions depend on the interaction between ad servers, supply-side platforms ('SSPs'), demand-side platforms ('DSPs') and ad exchanges.

318. However, the entity noted that Google would control the key components of this chain. According to the ruling in the case *United States v. Google LLC (2025)*, cited by SGBR, Google would hold more than 90% of the market share in SSPs, around 50% in ad exchanges and approximately 80% in DSP platforms. The organisation concluded that this vertical integration would confer cumulative advantages and create unequal conditions of competition.

319. Regarding search advertising, the organisation indicated that the architecture of this segment would operate on a logic diametrically opposed to that of display advertising. Given that purchases take place in proprietary auctions managed by Google Ads itself, but without the use of open RTB. The organisation described how the results page would function simultaneously as a navigation tool and a monetisation environment.

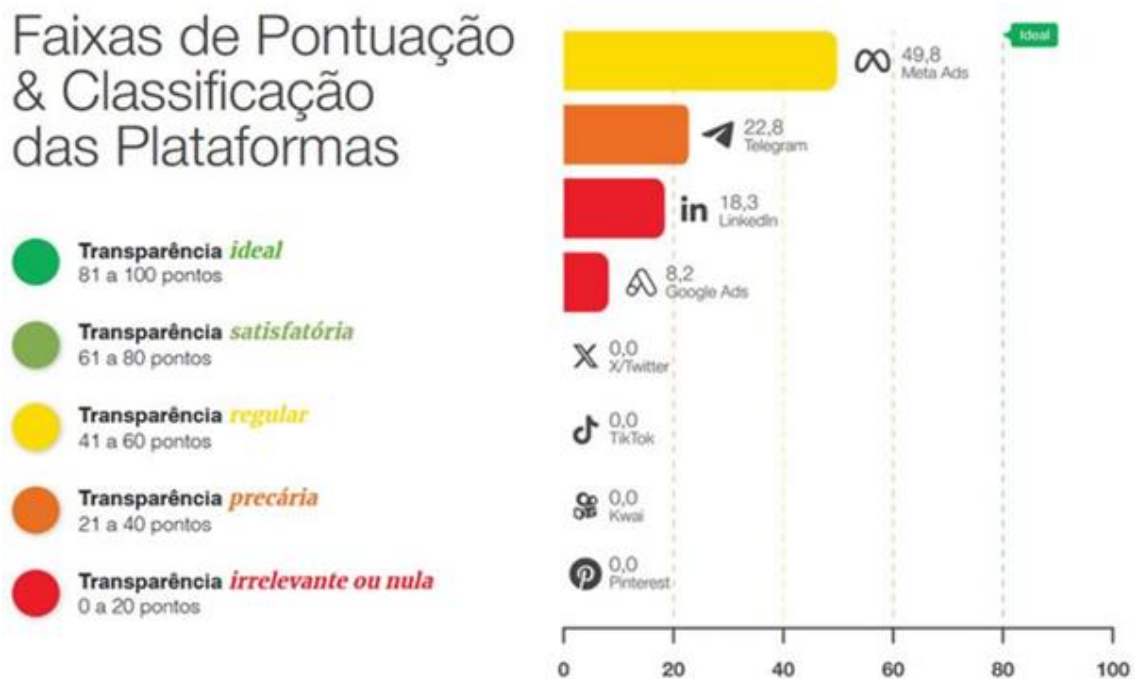
320. The organisation characterised the model as a cumulative cycle of economic reinforcement. Third-party journalistic content would increase the attractiveness of the SERP, which would boost exposure to adverts and increase the platform's revenue. The organisation argued that this integration of search, data and advertising would create barriers to entry and operate as a means of illegally maintaining a monopoly.

321. For this reason, SGBR criticised the SG/Cade's interpretation during the investigation. The organisation argued that the SG/Cade had adopted an excessively narrow view by conditioning the investigation on the demonstration of a measurable diversion of traffic. The organisation maintained that the abuse of market power also occurred through control of intermediation and the content presentation architecture. The organisation also disagreed with SG/Cade's stance in acknowledging that the available data was insufficient to determine the impact of snippets. The organisation emphasised that the investigation had failed to examine the impact of the company's control over the remuneration of journalistic content producers.

322. The opacity of the programmatic advertising system was cited as a factor that may exacerbate Google's market power within the news ecosystem. The organisation claimed that digital advertising forms the economic core of the Google ecosystem. It noted that Alphabet Inc. generated US\$64.6 billion in advertising revenue in the second quarter of 2024, and that 77.8% of the company's total global revenue came directly from ad placements on its platform. The organisation asserted that this opacity would prevent the system from being audited, exacerbate information asymmetries and protect the company's dominant position.

323. In this context, the organisation argued that the lack of transparency was one of the platform’s key characteristics. To this end, it used the Advertising Transparency Index (“ATI”) developed by NetLab/UFRJ as a basis. As illustrated in **Figure 12** below, the study classified Google’s performance as “irrelevant”, with a score of 8.2 points out of a total of 100:

Figure 12 – Platform performance in the advertising transparency index



Source: SGBR (SEI 1658737).

324. Regarding the role of AIO, SGBR argued that the new tool would use large language models to provide direct responses at the top of the page. This functionality would summarise content and replace direct access to the original media outlets. The organisation mentioned that Pense Media would have recorded reductions of more than a third in search revenue throughout 2024, as around 20% of searches would already have started displaying the AIO.

325. The organisation also stated that this tool would perpetuate the lack of transparency in programmatic advertising and reinforce mechanisms of path dependency and lock-in. It concluded that the system would exacerbate information asymmetry and undermine the economic sustainability of journalism.

326. Finally, it acknowledged the progress brought about by Decision No. 38/2025, which expanded the scope of the investigation and allowed for contributions from civil society. The organisation concluded by reinforcing its argument that the practices under

investigation formed a systemic whole that would affect competition and informational plurality. The organisation advocated for converting the Administrative Inquiry into an Administrative Proceeding to ensure an in-depth analysis of the alleged exclusionary conduct arising from the combination of search, data, advertising and generative AI.

2.3.8. Foxglove

327. Foxglove, together with Article 19; IDEC and CTS – FGV Rio, submitted a statement (SEI 1658751) in response to Decision No. 38/2025 (SEI 1612370). The organisations also submitted an independent study (SEI 1658752) conducted by the firm Autoritas. The study sought to assess the penetration of AIO in Google search. The contribution noted that these tools would have a significant impact on the visibility of journalistic content in Brazil.

328. The organisations reported that jurisdictions such as the European Union, the United Kingdom, Italy and the United States are investigating the issue. They highlighted that the CMA has designated Google’s general search service with ‘Strategic Market Status’. According to the organisations, the UK authority has explicitly added AIOs to its scope of concern. Therefore, the organisations suggested that Cade launch a new investigation should it consider the issue to be outside the scope of the current inquiry.

329. In arguing that Google’s AI is harmful and may constitute an abuse of a dominant position, the organisations highlighted the phenomenon of ‘zero-click’. The statement sought to explain that Google maintains an implicit agreement with publishers, allowing access to all website content in exchange for indexing on the results page to ensure visibility. The organisations emphasised that Google had breached this agreement by training its AI with data extracted without permission or compensation.

330. Thus, it argued that this behaviour is reportedly causing publishers to lose visitors and advertising revenue, as well as the opportunity to be discovered by new subscribers, and depriving them of compensation for the use of their content. The statement also noted that Google would have removed publishers entirely from the SERPs if they chose to disallow scraping. Such removal would represent, pursuant to the submission, a “death sentence” for these businesses, as Google holds 90% of the search market.

331. They further alleged that Google would compete directly with publishers for the sale of advertising space and that it would favour its own products by placing AIO at the top of the SERP page. The organisations classified this action as a clear abuse of a dominant monopoly position. They argued for the need for effective protection of the news ecosystem with fair opt-out options and financial compensation.

332. Regarding the evidence supporting the impact of AIO on publishers' traffic, the submission included an explanation of the methodology used by Autoritas. In the methodology, the authors detailed how the Autoritas study proceeded to measure the severity of visitor loss to Brazilian publishers. The analysis compiled a set of 5,000 keywords that consumers would frequently use on Google's search engine. The research sought to analyse the results pages to assess the appearance, size and sources of AIOs.

333. The researchers then sought to use standard search engine optimisation methods to estimate the impact of these tools on website traffic. The report highlighted that Google had refused to share detailed data for calculating the impact, and the lack of data had forced them to adopt a conservative estimate. The study concluded that there would be a clear reduction in traffic, although the actual impact was likely to be greater.

334. Also, in the findings, the organisations reported that AI features would be triggered by the use of 35.3% of keywords. The Autoritas report also highlighted considerable variation by category. The Sports section, for example, would have seen the tool used in only 5% of cases. Conversely, in the Media and Technology sector, the rate of AI usage would be 70.6%.

335. It was also noted that text blocks generated by AIO would occupy an average of 546 pixels on desktop screens. This space would amount to just over half the vertical space on a typical desktop screen. The research detailed variations in this spacing, with the maximum impact of 708 pixels in the Health category. In other words, the report indicated that, by pushing the links down, the top organic result would see its click-through rate drop from 21.4% to 8.93% when AIO appears.

336. Consequently, the study estimated that publishers would lose around 58.3% of visitors per search with the AIO present. This scenario would cause a minimum drop of 20.6% in publishers' total traffic after accounting for overall penetration. The organisations described the figure as devastating for ad-supported publishers. Furthermore, the study sought to demonstrate the lack of correspondence between organic results and AIO sources.

337. The report sought to demonstrate that 86.7% of the pages displayed in AI responses do not correspond to the top ten organic links. The researchers also pointed out that YouTube would dominate the citations, with a majority presence in eighteen of the twenty categories analysed. The platform would account for approximately 14.4% of all generative mentions.

338. The report challenged the claim that Google does not display AIOs for factual and urgent news topics. The research reportedly showed the feature appearing in the

‘Current Specific News’ category with a penetration rate of 35.3%. Other news sections were also reportedly affected, such as older news at 28.3%, general news at 25.0% and local or regional news at 32.9%.

339. The organisations also highlighted the following direct quote from Autoritas: *"Having conducted over 50 public and private studies of Google's SGE (Search Generative Experience (Beta Version and predecessor to AIOs) and AI Overviews), this is what was expected. Once a news story has been on the web for a very short period of time, it seems very likely that it is a candidate to be summarised by an AIO."* In this regard, they highlighted that Google is threatening the integrity of the information ecosystem, as AIOs contain glaring errors and are replacing real journalism in consumers' daily lives.

340. With regard to the impacts on information environments, democracies and the rule of law, the statement declared that the consequences would go beyond the dynamics of market competition. It emphasised that Google's actions would divert traffic and revenue away from news outlets and threaten independent journalism by reducing the capacity to produce high-quality reporting.

341. The organisations explained that publishers would be unable to absorb an average 20.6% drop in traffic without suffering serious financial consequences. Financial cuts would lead to staff reductions in newsrooms. A decline in the number of journalists would affect the diversity of reporting, whilst a weakening of investigative journalism would limit exposure to alternative viewpoints in polarised societies.

342. The organisations highlighted a particularly profound impact on local, regional and special-interest journalism. Large publishers would be able to secure compensation agreements with Google, but smaller outlets would not have the same opportunities. The statement emphasised the importance of independent journalism in promoting transparency and accountability in democratic societies.

343. They therefore concluded that AI tools would reduce citizens' access to reliable sources and erode the information environment. The statement then urged Cade to incorporate the findings into the ongoing investigation and argued that AI products pose a serious existential risk to democracy.

2.3.9. Getulio Vargas Foundation Centre for Technology and Society ("CTS")

344. The Centre for Technology and Society ("CTS") of the Getulio Vargas Foundation ("FGV") submitted a contribution (SEI 1658686) to the Administrative Inquiry, in response to Decision No. 38/2025 (SEI 1612370). It stated that its institutional mission

is to study the legal, social and cultural implications of advances in information and communication technologies. The organisation also stated that a programme grant from *the* Open Society Foundation had enabled it to prepare its submission to the inquiry.

345. Firstly, the CTS presented a background to the case and an analysis of the dispute between news outlets and Google in other jurisdictions. The organisation highlighted that the Competition Authority in France fined Google EUR 250 million in March 2024 for failing to comply with previous commitments made in the press, online communication and digital advertising sectors. Furthermore, it cited the ongoing proceedings before the CMA, as well as Australia’s News Media Bargaining Code and Canada’s Online News Act.

346. With regard to the materiality of the conduct, the CTS pointed out that scraping constitutes a massive, unpaid and compulsory extraction of journalistic content. The organisation sought to explain that the conduct encompasses the crawling and indexing stages, during which Google extracts journalistic information as input for subsequent stages such as snippets. The organisation argued that snippets would replace the original content and divert organic traffic and revenue from news portals to the platform. The institution added that AIO would intensify this dynamic, as it would frequently satisfy user demand and discourage access to publishers.

347. The organisation claimed that the practices under investigation could not be separated from their copyright aspects in the civil sphere. Regarding the competitive dimensions of copyright infringements, the organisation stated that the systematic appropriation of protected content would act as a mechanism reinforcing Google’s monopolistic economic power. The organisation also cited the Federal Constitution and the Brazilian Civil Code regarding copyright protection referring to cases from the Superior Court of Justice to argue that the unauthorised use of content in digital environments constitutes independent exploitation and unfair competition, a factor illustrated by the lawsuit filed by Folha against OpenAI in 2025 for content appropriation and similar infringements.

348. Furthermore, regarding the substance of the conduct and the inadequacy of Google’s own alternatives, the organisation argued that tools such as Discover and Showcase would not mitigate the harm and structural imbalances present in the ecosystem. The organisation explained that Google Discover would operate with algorithmic opacity and would systematically favour a restricted subset of media outlets, asserting that Google Showcase, for its part, would exhibit a complete lack of transparency in its partner selection criteria.

349. The CTS concluded that these initiatives would function as tools for the Respondent to control and manipulate the flow of attention. It reiterated that the evolution of scraping of AIO results would have preserved and amplified this pattern of misappropriation of protected material without remuneration. The organisation argued that the platform had disproportionately exacerbated the competitive imbalance for local and regional media outlets, which would have even less bargaining power.

350. In analysing Google's market power, the institute began with a traditional relevant market approach. The CTS identified three interdependent markets that had been affected by the conduct: (i) the general search market; (ii) the search market specialising in journalistic content; and (iii) the online advertising market as the main affected niches.

351. Regarding the high market share, the organisation highlighted that Google would have significantly exceeded the legal presumption of a dominant position of 20%. According to the submission, the company would hold 91.91% of the search market in Brazil in May 2025. The organisation reported that the Respondent would have reached around 39% of the global digital advertising market in 2023 and exceeded 50% of the US market during 2024.

352. As for the high barriers to entry and low rivalry, the CTS indicated that the massive accumulation of traffic data, network effects and high switching costs would have created insurmountable obstacles for new entrants. The organisation mentioned that the European Commission had recognised similar barriers in the antitrust cases involving Google Search (Shopping) and Microsoft/Yahoo! Search Business.

353. Taking an ecosystemic approach, the organisation argued that the company's real market power stemmed from the coordinated integration of multiple complementary services. It explained that this unified infrastructure would lead to corporate lock-in and severe lock-in effects for publishers. The CTS suggested the adoption of analytical methods such as cluster analysis, network of complementarities, factor analysis and the snowball selection process. As interim conclusions, the organisation argued that the Respondent's operational dominance would operate systemically, since Google would simultaneously determine both the flow of user traffic and the final forms of content monetisation.

354. The institution identified three types of harm: (i) exploitative; (ii) exclusionary; and (iii) ecosystemic. Specifically, regarding exploitative harm, the organisation maintained that Google would arbitrarily take advantage of publishers' dependence to extract financial value without fair compensation, conduct prohibited by Article 36 of Law No. 12,529/2011. The organisation cited that the instant summaries generated by

AI would cause a sharp drop in the CTR from 15% to 8% by 2025. The institution claimed that 518 newspapers would have closed in Brazil by 2025, a figure that would have raised the documented total to 1,460 closures since 2021.

355. Regarding exclusionary harm, the CTS argued that the search engine's continued capture of readers' attention would have excluded independent media outlets from the natural advertising competition. The organisation cited research estimating that 64.82% of global Google searches would have ended without any clicks on external links during 2020.

356. The organisation highlighted that the search engine had generated approximately US\$4.7 billion solely through the use of news content in 2018. As for ecosystemic harm, the institution stated that the company had engineered the integration of different services in layers to raise dynamic barriers and hinder the entry of new competitors. The CTS explained that the native integration between the Chrome browser and the Android mobile operating system had hindered so-called informational multi-homing by the media themselves.

357. Regarding remedies, the CTS began by offering considerations on collective bargaining and the rebalancing of bargaining power. The body proposed the institutionalisation of collective bargaining to mitigate the extreme asymmetry of power between content producers and the search ecosystem. It also cited Cade case law and Bill No. 4,675/2025 as legal references for the arrangement.

358. Furthermore, it suggested that absolute clarity be imposed regarding the algorithmic criteria involved in SERP ranking and asserted that the proper disclosure of these metrics would prevent the unlawful self-preferencing of Google's own products, as well as curb discriminatory practices against the publishing sector.

359. Another point raised was the algorithmic destruction of journalistic content protection, in which the organisation argued that Cade needed to demand the rigorous cyber-elimination of AI models trained unlawfully using vast amounts of third-party copyrighted material. The organisation explained that the FTC had applied this technical-structural remedy of algorithm destruction against the company WW International Inc. in 2022.

360. Regarding collective licensing models and proportionality in negotiations, it advocated the establishment of a new collective management organisation linked to standardised licences under the FRAND regime. The organisation presented the third-party return on investment ('RIT') formula as an appropriate financial model for

objectively pricing the additional profit margin unduly extracted by the monopolistic platform.

361. On co-design and effective user choice, the institution proposed the immediate civil development of computer interfaces with free and fair options on Google’s homepage. The organisation asserted that this neutral format would restore genuine control to the human user and eliminate the compulsory retention generated by the AIO’s self-generated blocks.

362. With regard to interoperability, portability, and autonomy over AI systems, the organisation requested a ruling requiring the corporation to ensure bidirectional technical integration with third-party AI services through the use of universal and standardised application programming interfaces (APIs). It firmly argued that free portability would stimulate market competition based on innovation and respect for original data.

363. Regarding carousel models and display symmetry, the organisation strongly recommended the visual adoption of an autonomous and impartial module designed to display equal blocks from multiple sources. The institution also pointed out that a carousel-style interface would counteract the excessive flow of engagement restricted to Big Tech’s native products.

364. Finally, it stated that Google’s investigated actions would have solidified a serious competitive risk beyond infringements of the country’s current copyright law. The organisation concluded its submission with the fundamental premise that the antitrust authority would need to act to convert the inquiry into an administrative proceeding and thus impose the aforementioned legal remedies necessary for the protection and indispensable maintenance of the professional press.

2.3.10. Additional submission by Article 19, CTS, IDEC and Foxglove

365. In a further submission filed on 2 April 2026, Foxglove, with the support of the organisations Article 19, Idec and CTS/FGV, argued that Google occupies an “entrenched dominant position” by virtue of its ecosystem of digital services. In highlighting the search market — which they classified as a “virtual monopoly” — it was alleged that the Investigated Party *“imposes exploitative conditions on news organisations and, as a result, obtains inputs (content and users/data) on terms far more favourable than market conditions (e.g., at zero monetary cost)”*. It further stated that this asymmetry was substantially exacerbated by the launch of the AIO tool.

366. Furthermore, they rebutted criticisms levelled by Google against Autoritas' empirical study, pointed to a lack of transparency in the methodologies and analytical exercises presented by the platform, and cited recent antitrust precedents from France and South Africa to support their allegations.

367. Finally, the signatories requested that the case be converted into an Administrative Proceeding, *“given the maturity of the issue, the significant amount of resources already expended by CADE and the parties involved, and the losses that news organisations have been accumulating as a result of the practices currently under review”*.

368. Having presented these summaries of the contributions gathered during the supplementary investigation, I shall now present a brief overview of international experience regarding the debate surrounding the case in question.

3. INTERNATIONAL EXPERIENCE

369. With regard to comparative practice, the SG/Cade, through Technical Note No. 70/2024 (SEI 1481800 and 1481804, §§45 et seq.), examined investigations related to the present case within the scope of international jurisdictions.

370. Notwithstanding the thoroughness of the survey conducted by the technical body, this section aims to update and expand upon it, with the inclusion, in particular, of cases, studies and regulations, also covering the subject of generative artificial intelligence tools.

371. We shall now proceed to present the materials gathered by my Office and received in contributions submitted during the supplementary investigation.

3.1. Digital Markets, Competition and Consumers Act (UK)

372. In 2019, the UK's Competition and Markets Authority (“CMA”) launched a market study on online platforms and digital advertising – also addressing the impact of this on relationships established through search engines – in which it assessed market power in search, control of user data and competitive distortions within this chain⁷.

⁷ COMPETITION and MARKETS AUTHORITY (CMA). **Online platforms and digital advertising: Market study final report**. London: CMA, 1 July 2020. Available at: https://assets.publishing.service.gov.uk/media/5efc57ed3a6f4023d242ed56/Final_report_1_July_2020.pdf . Accessed on: 2 Mar. 2026.

373. Among the report’s final conclusions, it was noted that Google holds a dominant position amongst general search services. The document also highlighted that media sustainability is dependent on digital advertising.

374. Having identified a lack of effective competition and bargaining asymmetry in relation to publishers, the CMA recommended the establishment of a unit dedicated to digital markets, responsible for drafting a new competition regulatory framework and codes of conduct for market participants.

375. In 2023, the UK government introduced the draft Digital Markets Bill, which was subsequently passed in 2024 as the Digital Markets, Competition and Consumers Act (“DMCC”)⁸, establishing the procedure for identifying firms with a Strategic Market Status (“SMS”), through investigations that consider, amongst other criteria, substantial market power, third-party dependence on the subject of the analysis, and turnover. Such designation subjects these relevant economic operators to codes of conduct imposed by the competition authority.

376. In 2025, Google Search was designated as holding a Strategic Market Status⁹. As for Google News, the CMA did not identify a situation of strategic market position, which is why it did not recognise the presence of relevant digital activity nor impose specific requirements regarding conduct in that environment. Nevertheless, the Authority emphasised that this conclusion does not rule out the possibility of future intervention in this area.

377. On the other hand, the ‘News’ tab, available on Google’s main search page (toolbelt), was included in the SMS designation, as it is a Google Search tool. This and all other tools on the search page are included in the SMS designation, including the AIO.

378. In the decision identifying the SMS, a significant level of third-party dependence on Google’s search services was noted, constituting essential tools for businesses to carry out their functions. Such market power and strategic position, according to the CMA, require measures to improve such platforms for British users and businesses. It is

⁸ UNITED KINGDOM. **Digital Markets, Competition and Consumers Act 2024**. 2024, c. 13. Available at: <https://www.legislation.gov.uk/ukpga/2024/13/contents>. Accessed: 2 Mar. 2026.

⁹ COMPETITION AND MARKETS AUTHORITY (CMA). **Final decision – strategic market status investigation into Google’s general search services**. London: CMA, 2025. Available at: https://assets.publishing.service.gov.uk/media/68e8b643cf65bd04bad76724/Final_decision_-_strategic_market_status_investigation_into_Google_s_general_search_services.pdf. Accessed on: 2 Mar. 2026.

projected that Google will maintain its position for at least the next five years and that the new AI Overview tools will reinforce these circumstances.

379. In August 2025, the organisations Foxglove, the Independent Publishers Alliance and the Movement for an Open Web filed a complaint against Google’s AI Overview with the CMA and the European Commission¹⁰. To date, however, no specific decision has been made on the case.

3.2. Conduct Requirements for Google Search (UK)

380. In January 2026, the CMA launched a public consultation to establish a code of conduct for Google Search following its designation as an SMS¹¹. Among the proposals put forward are specific measures relating to publishers:

Controls

(...)

2. Google shall provide publishers with effective controls to withhold their Search Content from being used in:

- a. the training and grounding of its broader generative AI services; and
- b. the grounding of its search generative AI features.

3. In relation to the controls described in paragraph 2, Google:

a. shall ensure that those controls evolve in an appropriate way as generative AI services and features evolve;

b. shall not:

i. maintain or introduce ranking signals whose purpose is to downrank opt-out Search Content in general search outside of search generative AI features; or

ii. cause Search Content to be presented or displayed differently in general search outside of search generative AI features depending upon whether it is opted in or out through those controls; and

c. shall not attempt to circumvent any publisher’s choice to withhold its Search Content by acquiring that content through other sources.

Transparency

4. Google shall:

a. publish clear and detailed information explaining how Search Content is used for the training and grounding of its generative AI services and features;

b. ensure that the effect and scope of the controls described in paragraph 2 is transparent and can be well-understood by publishers.

¹⁰ FOXGLOVE. **Legal challenge: Google theft of news**. 2025. Available at: <https://www.foxglove.org.uk/2025/07/04/legal-challenge-google-theft-of-news/>. Accessed on: 2 Mar. 2026.

¹¹ COMPETITION AND MARKETS AUTHORITY (CMA). **Introduction to the consultation: Google’s general search services: Proposed Conduct Requirements**. London: CMA, 28 Jan. 2026. Available at: https://assets.publishing.service.gov.uk/media/6979d05275d443709655209f/Introduction_to_the_consultation.pdf. Accessed on: 2 Mar. 2026.

5. Google shall provide publishers with clear and detailed metrics on user engagement with their Search Content where it is used in its search generative AI features.

Attribution

6. Google shall:

a. **take reasonable steps to ensure that Search Content is sufficiently attributed when used in search generative AI features (...)**¹²

381. Furthermore, other proposed conduct guidelines established by the Authority cover the possibility of opting out of generative AI tools without retaliation and transparency regarding the use of publishers' content by the Google platform, with precise indication of the source of the reproduced information.

382. The CMA has also established guidelines to ensure fair ranking criteria¹³. Following consultation with civil society, the authority will decide whether the measure will be made permanent.

3.3. Directive 2019/790 (European Union)

383. In 2019, the European Parliament and the Council of the European Union published Directive 2019/790, which deals with the protection of copyright in the digital market.

384. Among the matters covered, the directive encourages financial contributions towards the production and reproduction of journalistic content:

The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry and thereby foster the availability of reliable information. It is therefore necessary to provide at Union level for harmonised legal protection for press publications in respect of online uses by information society service providers, which leaves the existing copyright rules in Union law applicable to private or non-commercial uses of press publications by individual users unaffected, including where such users share press publications online. Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available to the public of press publications of publishers established in a Member State in respect of online uses by information society service providers within the meaning of Directive

¹² COMPETITION AND MARKETS AUTHORITY (CMA). **Publisher's conduct requirement: Google's general search services.** London: CMA, 28 January 2026. Available at: https://assets.publishing.service.gov.uk/media/6979d0bf75d44370965520a0/Publisher_conduct_requirement.pdf. Accessed on: 3 Mar. 2026.

¹³ COMPETITION and MARKETS AUTHORITY (CMA). **Fair ranking conduct requirement: Google's general search services.** London: CMA, 28 Jan. 2026. Available at: https://assets.publishing.service.gov.uk/media/6979d0db75d44370965520a1/Fair_ranking_conduct_requirement.pdf. Accessed on: 3 Mar. 2026.

(EU) 2015/1535 of the European Parliament and of the Council (13). The legal protection for press publications provided for by this Directive should benefit publishers that are established in a Member State and have their registered office, central administration or principal place of business within the Union¹⁴.

385. In this context, the Directive has granted publishers of press publications exclusive rights over the digital use of their publications by platforms and aggregators, specifically addressing the rights of reproduction and making available to the public, already provided for in Directive 2001/29/EC, which covered only individual authors¹⁵. The new legislation extends this protection to publishers.

386. The protection covers news produced under the editorial responsibility of a professional media outlet. Scientific and academic publications are excluded, as are blogs and news websites without an institutional editorial link. The rights, however, do not apply to references to content via links alone, to the reproduction of mere facts, or to the use of isolated terms or very short extracts. The regulation set a deadline of 2021 for Member States to implement the measures to comply with the provisions.

3.4. Investigation into AI Overview AT.40983 (European Union)

387. In December 2025, the European Commission launched an antitrust investigation against Google for using content in the AI Overview tool¹⁶ without appropriate compensation:

*On 09/12/2025, the Commission decided to initiate antitrust proceedings against Google and Alphabet in case **AT.40983 – Google AI & Data-related practices**, within the meaning of Article 11(6) of Council Regulation No 1/2003 and Article 2(1) of Commission Regulation No 773/2004, for a suspected breach of EU rules (Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the Agreement on the European Economic Area). The conduct which will be further investigated is the following. First, **Google’s practice of using publishers’ web content to generate AI Overviews and AI Mode summaries on Google Search, without offering these web publishers the possibility to refuse Google’s use of such content without losing access to Google Search and without appropriate compensation.** (...) This decision to initiate antitrust proceedings covers the entire EEA. The initiation of proceedings does not signify that the Commission has made a*

¹⁴ EUROPEAN UNION. European Parliament and Council. **Directive (EU) 2019/790** of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32019L0790> . Accessed on: 4 Mar. 2026.

¹⁵ EUROPEAN UNION. European Parliament and Council. **Directive 2001/29/EC** of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. Official Journal of the European Union, L 167, 22 June 2001, p. 10. Available at: <https://eur-lex.europa.eu/legal-content/PT/LSU/?uri=CELEX:32001L0029>. Accessed on: 20 March 2026.

¹⁶ EUROPEAN COMMISSION. **Press release IP/25/2964**. Brussels: European Commission, Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2964. Accessed on: 4 Mar. 2026.

*definitive finding of an infringement but merely signifies that the Commission will deal with the case as a matter of priority*¹⁷.

388. The investigation examines Google’s conduct in light of the prohibition on the abuse of a dominant position, as set out in Article 102 of the Treaty on the Functioning of the European Union (TFEU) and Article 54 of the Agreement on the European Economic Area (EEA)¹⁸. No report has been published to date.

389. In February 2026, the European Publishers Council filed an antitrust complaint regarding the same tool, alleging that Google is using content from news organisations without authorisation, compensation or opt-out mechanisms, thereby diverting traffic and audience away from¹⁹. The authority has not yet reached a decision on the case.

3.5. Autorité de la Concurrence v. Google (France)

390. In 2019, France, in transposing European Union Directive 2019/790, enacted Law No. 2019-775²⁰ amending its Intellectual Property Code (“IPC”) to create a related right – attributed not to the author of the work, but to those who contribute to its production and dissemination – for publishers and press agencies, providing for remuneration when platforms such as Google reproduce their content.

*Article L218-4 of the CPI (Creation Act No. 2019-775 of 24 July 2019 – Art. 4)
The remuneration due in respect of related rights for the reproduction and communication to the public of press publications in digital format shall be based on revenue derived from exploitation of any kind, whether direct or indirect, or, failing that, assessed at a fixed rate, particularly in the cases provided for in Article L. 131-4. The amount of such remuneration shall be determined in the light of factors such as the human, material and financial investments made by publishers and news agencies, the contribution of press publications to political and general information, and the extent of the use of press publications by platforms. Providers are required to provide press*

¹⁷ EUROPEAN COMMISSION. **Investigation AT.40983**. Brussels: European Commission, 2025. Available at: https://ec.europa.eu/competition/antitrust/cases1/202551/AT_40983_156.pdf. Accessed on: 5 Mar. 2026.

¹⁸ TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (TFEU). **Article 102**. “Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States. Such abuse may, in particular, consist in: (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; (b) limiting production, markets or technical development to the prejudice of consumers; (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.”. Available at: <https://eur-lex.europa.eu/legal-content/PT/TXT/?uri=CELEX%3A12016E102>. Accessed on: 6 Mar. 2026.

¹⁹ EUROPEAN PUBLISHERS COUNCIL (EPC). **Our AI Complaint**. 2026. Available at: <https://www.epceurope.eu/our-ai-competition-complaint>. Accessed on: 6 Mar. 2026.

²⁰ FRANCE. **Law No. 2019-775**. Paris, 25 July 2019. Available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000038821358>. Accessed on: 6 March 2026.

publishers and news agencies with all information relating to the use of press publications by their users, as well as all other information necessary for a transparent assessment of the remuneration referred to in the first paragraph of this Article and its distribution²¹.

391. In the same year, Google announced that it would only continue to display snippets containing content from news outlets if publishers granted a licence for such use free of charge:

Currently, when we display news search results, you see a headline, which links directly to the relevant news site. In some cases, we also provide a preview of the article, such as a few lines of text or a small image called a 'thumbnail'. These headlines and previews help you decide whether the result matches your search and whether you want to click on it. When the French law comes into force, we will no longer display content previews in France for European news publishers, unless the publisher has specifically indicated that this is their preference. This will apply to search results across all Google services²².

392. Press associations reported the strategy to the *Autorité de la Concurrence*, alleging abuse of a dominant position and exploitation of economic dependence. In 2020, the French authority, having verified Google's dominant position in the search market, concluded that these infringements had been committed and identified harm to publishers in its preliminary analysis:

The Autorité has found that serious and immediate harm has been caused to the press sector as a result of Google's behaviour, which, in the context of a major crisis in this sector, deprives publishers and news agencies of a vital resource to ensure the continuity of their activities, and this at the crucial time of entry into force of the Law on Related Rights. It has ordered interim measures allowing publishers and news agencies, if they so wish, to enter into negotiations in good faith with Google with a view to discussing both the terms and conditions for the reuse and display of their protected content and the corresponding remuneration. These negotiations must take place within a limited period of three months following the publisher or news agency's request and, in respect of remuneration, must include the period since 24 October 2019. During the negotiation period, Google shall continue to display text excerpts, photographs and videos in the manner chosen by the publisher or news agency concerned. In addition, in order to ensure a balanced negotiation, the interim measures provide for a principle of neutrality in the negotiations in terms of the way in which the protected content of the publishers and agencies concerned is indexed, classified and more generally presented via Google's services, as well as a principle of neutrality in those

²¹ FRANCE. **Intellectual Property Code. Article L218-4.** Version of 24 Oct. 2019. Available at: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000038826736/2019-10-24. Accessed on: 6 Mar. 2026. Free translation

²² GOOGLE. **New copyright rules in France: our compliance with the law.** 5 Oct. 2023. Available at: <https://blog.google/intl/fr-fr/nouvelles-de-lentreprise/impact-initiatives/comment-nous-respectons-le-droit-dauteur/>. Accessed on: 6 Mar. 2026. Free translation.

*negotiations in terms of the other commercial relations that Google has with publishers and news agencies*²³.

393. As an interim measure, the authority ordered the platform to negotiate in good faith with publishers and press agencies, applying transparent, objective and non-discriminatory criteria, in order to remunerate the reproduction of protected content. It also provided for retroactive compensation from the entry into force of Law No. 2019-775 and the submission of monthly reports to the authority on compliance with the established obligations, until the final decision on the merits.

394. In 2021, the authority fined Google €500 million for failing to comply with the interim injunctions, primarily for failing to negotiate in good faith with publishers, limiting the scope of negotiations and linking remuneration to other services (such as News Showcase). In addition to the fine, it imposed a new obligation to reopen negotiations to present comprehensive and non-discriminatory compensation proposals within two months of the decision, subject to a daily penalty of €300,000²⁴.

395. In 2022, the authority concluded its substantive review, accepting commitments submitted by Google, namely: (i) to submit compensation proposals, (ii) to refer the case to arbitration in the event of a deadlock, bearing the arbitration costs, (iii) to remain neutral regarding indexing criteria during negotiations, and (iv) to be monitored by a Trustee²⁵.

396. In March 2024, the authority imposed a new fine of €250 million on Google for failing to comply with part of the 2022 commitments. Furthermore, it highlighted that press content had been used to train the generative AI tool, without compensation or an opt-out option.

397. The platform proposed corrective measures to address these issues, including a review of the methodology for calculating remuneration and the provision of information on the use of data and artificial intelligence²⁶. The combination of interim measures, sanctions and commitments led Google to remunerate, by 2025, more than

²³ COMPETITION AUTHORITY. **Decision 20-MC-01**. Paris, 2020. Available at: https://www.autoritedelaconurrence.fr/sites/default/files/integral_texts/2020-06/20-mc-01_en.pdf. Accessed on: 9 Mar. 2026.

²⁴ AUTORITÉ DE LA CONCURRENCE. **Decision 21-D-17**. Paris, 2021. Available at: https://www.autoritedelaconurrence.fr/sites/default/files/attachments/2022-02/21-d-17_en.pdf. Accessed on: 9 Mar. 2026.

²⁵ AUTORITÉ DE LA CONCURRENCE. **Decision 22-D-13**. Paris, 2022. Available at: <https://www.autoritedelaconurrence.fr/sites/default/files/commitments/2022-10/Decision%2022D13%20V%20EN.pdf>. Accessed on: 9 Mar. 2026.

²⁶ COMPETITION AUTHORITY. **Decision 24-D-03**. Paris, 2024. Available at: https://www.autoritedelaconurrence.fr/sites/default/files/attachments/2025-03/24d03_eng.pdf. Accessed on: 9 March 2026.

450 French publishers²⁷. In 2021, amidst the competition dispute, it had already signed compensation agreements with two of the country’s leading press organisations, *Alliance de la Presse d’Information Générale*²⁸ and *Agence France-Presse*²⁹.

3.6. Investigation A420 (Italy)

398. In 2009, the *Autorità Garante Della Concorrenza e del Mercato* (“AGCM”) launched investigation A420 against Google, following a complaint by the Italian Federation of Newspaper Publishers (“FIEG”), based on Article 82 of the former Treaty of Rome (now Article 102 TFEU) and Article 14 of the Italian Antitrust Law No. 287/1990. In summary, the complaint highlighted the risk of exclusion from the main search results page if publishers chose not to appear on Google News, as well as a lack of control over the handling of their content.

399. The AGCM recognised Google’s dominant position in the search and online advertising intermediation market, particularly with regard to search engine advertising, highlighting that indexing on the platform is a determining factor for websites to attract visitors and generate advertising revenue, a circumstance that subjects the conduct to the scrutiny of Article 102 TFEU.

400. With specific regard to Google News, the authority characterised the service as an aggregator that collects, indexes and displays journalistic content – headlines, snippets and images – produced by third parties. It emphasised, in this regard, that

The continuously updated content displayed on Google News Italy is therefore not produced by Google, but is automatically extracted from the web pages of online newspaper publishers using computerised algorithms that collect content, classify the information gathered and determine the ranking of news items and articles on the site. Inclusion on the Google News Italy portal, by increasing the visibility of certain journalistic content, can enhance an online publisher’s ability to attract users and, consequently, generate advertising revenue. However, the manner in which third-party journalistic content is used on the Google News Italy service was deemed in the initial decision to constitute an abuse of a dominant position with

²⁷ GOOGLE. **Google and DVP announce an extended agreement on neighbouring rights**. 2024. Available at: <https://blog.google/intl/fr-fr/nouvelles-de-lentreprise/chez-google/google-et-dvp-annoncent-un-accord-prolonge-sur-les-droits-voisins/>. Accessed on: 9 Mar. 2026.

²⁸ AGENCE FRANCE-PRESSE (AFP). **AFP and Google sign an agreement on neighbouring rights**. 2021. Available at: <https://www.afp.com/en/agency/inside-afp/press-release/afp-and-google-sign-agreement-neighbouring-rights>. Accessed on: 9 Mar. 2026.

²⁹ GOOGLE. **APIG and Google announce an agreement on neighbouring rights**. 2024. Available at: <https://blog.google/intl/fr-fr/nouveautes-produits/explorez-obtenez-des-reponses/apig-google/>. Accessed on: 9 Mar. 2026.

distorting effects on competition in the markets for online advertising collection and intermediation³⁰.

401. In this context, given the identified link between the news aggregation service and Google’s general search service, the AGCM concluded that any publisher wishing to remove its content from Google News would effectively exclude it from Google Search results pages. Given the platform’s leading position, the authority recognised that this arrangement effectively deprived publishers of the real possibility of deciding on the presence of their content on Google News, since visibility on the search results page is significant for their business.

402. In December 2010, the proceedings were closed following Google’s acceptance of commitments, which the AGCM considered adequate to address the competition concerns:

*In the opening decision of this investigation, an alleged abuse of a dominant position was identified, consisting of preventing online publishers from removing their content from the Google News Italy service without this affecting its indexing on the general Google Web Search engine. **The commitment whereby Google Inc. ensures the maintenance of a separate crawler for Google News is deemed sufficient and proportionate to address the competition concerns identified in the opening decision, allowing publishers to exercise control over their content in a manner conducive to its monetisation through online advertising intermediation***³¹.

403. Accordingly, the authority closed the case without formally declaring an infringement of Article 102 TFEU, adopting a compromise solution centred on behavioural remedies³².

404. During the proceedings, an opinion was issued by *the Autorità per le Garanzie nelle Comunicazioni* (“AGCom”)³³, the Italian regulatory agency responsible for supervising the communications sector, with powers that also extend to the protection of competition specifically within that sector. On that occasion, it agreed with the AGCM’s decision to accept Google’s commitment to keep indexing on Google Search and Google News separate, but highlighted, as a point of concern, the failure to address compensation for publishers for the use of their content.

³⁰ ITALIAN COMPETITION AND MARKET AUTHORITY (AGCM). **Weekly Bulletin No. 51/2010**. Rome, 2010. p. 8. Available at: <https://www.agcm.it/dotcmsDOC/bollettini/51-10.pdf>. Accessed on: 10 Mar. 2026. Free translation.

³¹ *Ibid.*

³² *Ibid.*, p. 29

³³ *Ibid.*, p. 27

3.7. Implementation of *equo compenso* (Italy)

405. In 2021, Italy transposed European Union Directive 2019/790 on the establishment of related rights for press publishers into national law and introduced Article 43-bis into Copyright Law No. 633/1941, creating the *equo compenso* regime – remuneration payable by digital platforms to publishers of journalistic publications for the online reproduction of their content:

The Autorità per le Garanzie nelle Comunicazioni adopts a regulation to identify the reference criteria for determining the equo compenso referred to in the first sentence, taking into account, amongst other things, the number of online views of the article, the years of activity and the market relevance of the publishers (...) and the number of journalists employed, as well as the costs incurred for technological and infrastructure investments by both parties, and the economic benefits accruing to both parties from the publication in terms of visibility and advertising revenue³⁴.

406. This regime was regulated by Resolution No. 3/23/CONS³⁵, issued by AGCom – which is responsible for regulating, supervising and arbitrating cases in which this compensation is disputed. According to the aforementioned Resolution, publishers may request this compensation from platforms, which may not limit the visibility of media outlets during negotiations. If no agreement is reached within thirty days, they must submit financial proposals to the communications authority. The calculation is based on guidelines set out in a Methodological Note drawn up by the authority to provide mathematical instructions for measuring these indicators³⁶.

407. In the practical application of the scheme, AGCom has already issued decisions setting the *equo compenso* in specific cases. Gruppo Editoriale Italiano (“GEDI”), which encompasses a number of Italian media outlets, has secured compensation for the use of its publications in 2021 and 2022 by Microsoft on the Bing search engine³⁷ and by

³⁴ ITALY. Law No. 633 of 22 April 1941. **Protection of copyright and other rights related to its exercise.** Available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1941-04-22;633> . Accessed on: 10 Mar. 2026. Free translation

³⁵ AUTORITÀ PER LE GARANZIE NELLE COMUNICAZIONI (AGCOM). **Annex to Resolution No. 3/23/CONS of 30 May 2023.** Available at: https://www.agcom.it/sites/default/files/migration/attachment/Allegato%2030-5-2023_0.pdf. Accessed on: 10 Mar. 2026.

³⁶ ITALIAN COMMUNICATIONS REGULATORY AUTHORITY (AGCOM). **Methodological note for the determination of fair compensation pursuant to Article 43-bis of the LDA.** Rome, 2024. Available at: <https://www.agcom.it/sites/default/files/media/allegato/2024/nota%20metod..pdf>. Accessed on: 10 Mar. 2026.

³⁷ AUTHORITY FOR GUARANTEES IN COMMUNICATIONS. **Resolution No. 278/24/CONS.** Available at: https://www.agcom.it/sites/default/files/provvedimenti/delibera/2024/Delibera_278_24_CONS_Equo%20compenso_GEDI%20Microsoft.pdf. Accessed on: 10 Mar. 2026.

Meta³⁸. Meanwhile, Google has entered into voluntary licensing agreements with Italian publishers for the Google News Showcase product from 2021 onwards³⁹.

408. Following on from the discussion regarding the impact of Google’s handling of journalistic content, in October 2025, FIEG (the same organisation that filed the complaint in 2009) lodged a complaint with the AGCM and AGCom against AI Overview, alleging that the presentation of summarised responses generated by artificial intelligence reduces traffic to news websites⁴⁰. To date, no official decision has been made.

3.8. Corint Media v. Google (Germany)

409. In 2013, Germany granted press publishers an exclusive right to the online availability of their publications, including on search platforms⁴¹. In 2019, this right was declared inapplicable by the Court of Justice of the European Union (“CJEU”), as it was a rule specifically aimed at information society services that should have been notified to the European Commission⁴².

410. Following the repeal of the previous legislation, Germany relied on European Union Directive 2019/790 to re-enact a neighbouring rights regime in 2021, amending sections of its Copyright Act. The reform maintained the exclusive right of publishers to control the reproduction and online availability of their publications by digital platforms:

Section 87g. Rights of publishers of press publications. (1) Publishers of press publications have the exclusive right to make their press publications available to the public and to reproduce them, in full or in part, for online use by information society services. (2) The rights of publishers of press publications do not encompass: 1. the use of facts contained in the press publication, 2. the

³⁸ AUTHORITY FOR GUARANTEES IN COMMUNICATIONS. **Resolution No. 180/25/CONS**. Available at: https://www.agcom.it/sites/default/files/provvedimenti/delibera/2025/Delibera_180_25_CONS_Equo%20compenso_GEDI%20Meta_con%20omissis.pdf. Accessed on: 10 Mar. 2026.

³⁹ REUTERS. **Google signs deals with Italian publishers for content on News Showcase**. Rome, 24 Mar. 2021. Available at: <https://www.reuters.com/business/media-telecom/google-signs-deals-with-italian-publishers-content-news-showcase-2021-03-24/>. Accessed on: 10 Mar. 2026.

⁴⁰ THE GUARDIAN. **Italian news publishers demand investigation into Google’s AI Overviews**. London, 16 Oct. 2025. Available at: <https://www.theguardian.com/technology/2025/oct/16/google-ai-overviews-italian-news-publishers-demand-investigation>. Accessed on: 10 Mar. 2026.

⁴¹ BUNDESRAT; BUNDESTAG. **Eighth Act Amending the Copyright Act. Federal Law Gazette Part I 2013 No. 23, p. 1161, 14 May 2013**. Available at: https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl113s1161.pdf. Accessed on: 11 March 2026.

⁴² CURIA. **Judgment of the Court (Grand Chamber), 12 September 2019, Nederlandse Federatie van Postwinkels and Nederlandse Mediafederatie v e-commerce platform, Case C-160/20, ECLI:EU:C:2021:262**. Available at: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=217670&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=13346817>. Accessed on: 11 Mar. 2026.

*private or non-commercial use of a press publication by individual users, 3. the creation of hyperlinks to a press publication, and 4. the use of individual words in or very short extracts from a press publication*⁴³.

411. In the context of this implementation, in 2021 Corint Media (the successor company to VG Media, with over 470-member organisations) submitted a licensing proposal to Google based on the revised neighbouring rights legislation, claiming a significant share of the search engine's revenue in Germany and arguing that the use of its content requires paid authorisation⁴⁴. The dispute was referred to the Arbitration Board of the German Patent and Trademark Office in 2022, which set a provisional payment of €5.8 million and subsequently served as the basis for an agreement under which Google began paying €3.2 million annually to the group from 2023 to 2026⁴⁵.

412. In 2025, organisations in the German media sector filed a complaint against Google's AI Overview, alleging breaches of European regulations by displaying AI-generated responses directly in search results without directing users to the original sources, thereby turning the platform into a competitor to journalistic content itself and diverting traffic. The complaint, however, was filed under the European Digital Services Act and does not fall within the remit of the German competition authority⁴⁶.

3.9. *Bundeskartellamt v. Google News Showcase (Germany)*

413. In 2021, Google became subject to a special regime for the control of abuse, as it was identified by the competition authority *Bundeskartellamt* as a company with significant competitive power in various markets. This classification was based on the platform's position in general search, its central role in the online advertising chain, network effects, the competitive advantage derived from exceptional access to data, and its financial strength, enabling the authority to prohibit potentially anti-competitive practices⁴⁷.

⁴³ FEDERAL MINISTRY OF JUSTICE. **Act on Copyright and Related Rights (Urheberrechtsgesetz – UrhG)**. English version. Available at: https://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html#p0041. Accessed on: 11 Mar. 2026.

⁴⁴ CORINT MEDIA. **Corint Media offers Google a licence agreement**. Berlin, 20 Oct. 2021. Available at: <https://www.corint-media.com/en/corint-media-offers-google-a-licence-agreement/>. Accessed on: 11 Mar. 2026.

⁴⁵ GOOGLE. **An update on our implementation of the press ancillary copyright in Germany**. 6 June 2023. Available at: <https://blog.google/intl/de-de/unternehmen/engagement/presseleistungsschutzrecht-google-corint-media-einigung-mehrjaehrige-interimsvereinbarung/>. Accessed on: 11 Mar. 2026.

⁴⁶ CORINT MEDIA. **Alliance of the media and digital industry files DSA complaint against Google's 'AI Overviews'**. Berlin, 18 September 2025. Available at: <https://www.corint-media.com/en/alliance-of-the-media-and-digital-industry-files-dsa-complaint-against-googles-ai-overviews-2/>. Accessed on: 11 Mar. 2026.

⁴⁷ BUNDESKARTELLAMT. Case summary B7-61/21: **Bundeskartellamt determines Google's paramount significance for competition across markets**. Bonn, 5 Jan. 2022. Available at:

414. Under this special regime, the German authority examined whether the Google News Showcase product could exclude competing news aggregation services and place publishers at an unfair disadvantage. However, in 2022, the proceedings were closed after Google made four commitments: (i) to abandon plans to integrate Showcase into general search results, (ii) to ensure that participation in the programme does not influence search rankings, (iii) to amend contracts so as not to hinder publishers' exercise of their neighbouring rights; and (iv) to expand access to the programme for more publishers⁴⁸. At the time, the *Bundeskartellamt* chose not to directly regulate the amount of remuneration owed by Google for the use of journalistic content – a function assigned to the Arbitration Board of the Patent and Trademark Office, according to the case report:

The proceedings also addressed the possibility of an antitrust analysis of the adequacy of the remuneration offered and paid by Google for the related right, possibly with the aim of establishing a provisional minimum remuneration. The Bundeskartellamt decided not to carry out a more detailed analysis in this regard. An important factor in this decision was the existence of a specialised body, the Arbitration Board of the German Patent and Trade Mark Office, which can be called upon by collecting societies and users in disputes concerning the use of copyright-protected works or services and the remuneration due in connection therewith. This route has been utilised by Google and Corint Media. In March 2023, the Arbitration Board proposed remuneration based on an annual amount of €3.2 million as an interim measure⁴⁹.

3.10. Digital Platforms Inquiry (Australia)

415. In 2019, the Australian Competition and Consumer Commission (“ACCC”) published the findings of its Digital Platforms Inquiry (“DPI”), which examined the competitive impact of online search engines on the media and advertising markets, notably the impact of such aggregators on the distribution of news and journalistic content⁵⁰.

https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Missbrauchsaufsicht/2022/B7-61-21.pdf?__blob=publicationFile&v=2. Accessed on: 11 Mar. 2026.

⁴⁸ BUNDESKARTELLAMT. Alphabet/Google. Proceedings against large digital companies. Bonn. Available at:

https://www.bundeskartellamt.de/EN/Digital_economy/proceedings_against_large_digital_companies/Alphabet_Google/Alphabet_Google_node.html. Accessed on: 11 Mar. 2026.

⁴⁹ BUNDESKARTELLAMT. **Case report: Antitrust review of ‘Google News Showcase’. Reference number V-43/20.** Bonn, 1 Aug. 2023. p. 14. Available at: https://www.bundeskartellamt.de/SharedDocs/Entscheidung/DE/Fallberichte/Missbrauchsaufsicht/2023/V-43-20.pdf?__blob=publicationFile&v=7. Accessed on: 11 Mar. 2026. Free translation.

⁵⁰ AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (ACCC). **Digital Platforms Inquiry – Final Report.** Canberra, June 2019. Available at: <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>. Accessed on: 27 Feb 2026.

416. The key findings of the inquiry indicated that Google holds a dominant position in general search, given that approximately 95% of searches in the country are conducted via the platform. Consequently, this situation was deemed indicative of the company's ability to create barriers to entry and foster economic dependence, particularly amongst publishers, for whom Google constitutes a key distribution channel.

417. In this context, according to the report, the absence of ranking for publishers' links on search platforms would entail significant revenue losses and potentially harm their business models. For this reason, the ACCC concluded that Google holds significant bargaining power in its negotiations with news media companies. As for Google News, however, the Commission did not identify the same level of relevance, noting that the tool is used by few consumers when compared to, for example, Apple News⁵¹.

418. Specifically, regarding snippets, the Authority's analysis focused on their use in Google Search, since, at the time, this functionality was exclusive to that platform. In this context, an asymmetrical scenario was identified, in which the platform unilaterally controls the content and length of the excerpts displayed.

419. Publishers, in turn, would have no choice but to refuse such display, with no room for negotiation, and would have to accept less favourable terms in order to maintain their ranking on the search results page. On the one hand, there was a fear that refusal would result in a lower ranking and reduced visibility; on the other, granting permission could reveal the content of the article in such a way as to render access to the page unnecessary, reducing traffic and, consequently, advertising revenue⁵².

420. Recognising this imbalance, the ACCC chose not to recommend a mandatory licensing regime at that time, proposing instead that the issue be addressed through a code of conduct – subsequently implemented in the form of the News Media and Digital Platforms Mandatory Bargaining Code – which obliges digital platforms, including Google, to negotiate specific terms with media outlets⁵³.

3.11. News Media and Digital Platforms Mandatory Bargaining Code (Australia)

421. In 2021, based on the recommendations of the Digital Platforms Inquiry, the Australian government enacted the News Media and Digital Platforms Mandatory Bargaining Code. The instrument aims to address significant imbalances in bargaining power between large digital platforms with market power and Australian media

⁵¹ *Ibid.*, p. 42

⁵² *Ibid.*, p. 232

⁵³ *Ibid.*, p. 233

companies, enabling platforms to remunerate publishers for the value that news content generates for their services:

52ZE (1) The bargaining news business representative for a registered news business may notify a responsible digital platform corporation for a designated digital platform service that it wishes to bargain over one or more specified issues relating to the registered news business' covered news content made available by the designated digital platform service⁵⁴.

422. The provision provides for (i) the possibility of designating a platform where there is an imbalance of bargaining power and the platform has not contributed to the sustainability of journalism⁵⁵; (ii) the registration of media companies with the Australian Communications and Media Authority (“ACMA”) so that they may claim the rights provided for (in accordance with criteria regarding revenue, purpose and editorial standards set out in the code)⁵⁶; and (iii) mandatory good-faith negotiations between designated platforms and registered publishers, with the possibility of adjudication by ACMA-appointed arbitrators in the event of a deadlock⁵⁷. The authority also prohibits platforms from penalising publishers in any way prior to the final decision of the negotiations.

423. In 2022, the Australian government presented a report on the first year following the Act’s approval, acknowledging the Code’s success. No specific platforms had been designated by that point, but the established provisions served as an incentive for various agreements signed between platforms and news organisations⁵⁸. According to the document, Google had entered into 23 commercial agreements with publishers by 2022, including News Corporation, Minderoo Foundation, Nine Entertainment and Seven West Media⁵⁹.

424. In the previous year, the Competition Authority authorised, for a period of 10 years, a collective bargaining agreement between Google, Facebook and Country Press Australia (“CPA”) – an organisation representing 81 local and independent news publishers in regional communities:

⁵⁴ AUSTRALIA. **Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021**. Compilation No. 01. Federal Register of Legislation. Canberra, 27 Feb. 2021. Available at: <https://www.legislation.gov.au/C2021A00021/latest/text>. Accessed on: 27 Feb. 2026.

⁵⁵ *Ibid.*, art. 52E

⁵⁶ *Ibid.*, 52 F ff.

⁵⁷ *Ibid.*, arts. 52 ZG, ZH and ZI

⁵⁸ AUSTRALIA. **DEPARTMENT OF THE TREASURY**. News Media and Digital Platforms Mandatory Bargaining Code. The Code’s first year of operation. November 2022, p. 4. Available at: <https://treasury.gov.au/sites/default/files/2022-11/p2022-343549.pdf>. Accessed on: 27 Feb. 2026.

⁵⁹ *Ibid.*, p. 5

5.5. The ACCC has decided to grant authorisation to enable CPA and its current and future members to: collectively bargain with each of Facebook and Google concerning payment for content produced by those members and featuring on those platforms; make and give effect to agreements arising from the collective negotiations; and engage in discussions and exchange information regarding those negotiations. 5.6. The Proposed Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act⁶⁰.

425. As to whether such an arrangement would constitute an antitrust infringement, the ACCC considered that the benefits outweigh the harms:

4.39. The ACCC considers that the Proposed Conduct is likely to result in public benefits in the form of: reduced transaction costs; improved input into negotiations; contributing to the sustainability of Australian news businesses. The ACCC considers that the Proposed Conduct is unlikely to result in significant public detriment, including in the form of a lessening of competition among CPA members to provide news content⁶¹.

3.12. Media and Digital Platforms Market Inquiry (South Africa)

426. In 2023, the Competition Commission of South Africa launched the Media and Digital Platforms Market Inquiry (“MDPMI”), a market inquiry aimed at investigating the impact of digital platforms on the economic sustainability of local media and the competitive dynamics of the news ecosystem. The inquiry was launched in light of evidence of competitive threats arising from the use and distribution of journalistic content on digital platforms, as well as from the advertising technology and generative AI services markets⁶².

427. The report was published in December 2025 and describes the massive shift in news consumption towards online platforms, the sharp decline in traditional advertising revenue – particularly in print and television media – and the growing dependence of media outlets on Google, Meta and other intermediaries for audience reach and monetisation.

⁶⁰ AUSTRALIA. **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (ACCC)**. Final Determination AA1000551: Country Press Australia (CPA) – collective bargaining with Facebook and Google. 5 Aug. 2021. Available at: <https://www.accc.gov.au/system/files/public-registers/documents/Final%20Determination%20-%2005.08.21%20-%20PR%20-%20AA1000551%20CPA.pdf>. Accessed on: 27 Feb. 2026.

⁶¹ *Ibid.*, 52 F.

⁶²SOUTH AFRICA. COMPETITION COMMISSION. **Media and Digital Platforms Market Inquiry (MDPMI)**. Final Report (Non-Confidential). Pretoria, November 2025. Available at: https://www.compcom.co.za/wp-content/uploads/2025/11/CC_MDPMI-Final-Report_Non-Confidential-1.pdf. Accessed on: 12 Mar. 2026.

428. The competition authority identified Google’s dominant position, as it holds around 95% of the search market in the country. It also points out that, although the dissemination of news content actively contributes to the development of the search engines themselves⁶³, there are adverse effects on competition arising from the under-representation of local and community media in search engine rankings, with an impact on the quality, diversity and ‘public good’ nature of journalism:

*Google’s monopoly position and the unequal bargaining position of the media means **there has not been an equitable share of value between Google and news publishers in South Africa** both historically and currently. **This inequity has materially contributed to the erosion of the media in SA and will continue to do so unless remedied.** (...) The Google algorithm distorts competition between news media organisations insofar as it a) overrepresents global news media in SA for search and Top Stories, and b) under-represents vernacular and community media. These issues are exacerbated by SEO requirements for the algorithm and for core updates to the algorithm where there is insufficient transparency on how the media will be affected and how to avoid traffic loss. (...) **AI-powered search is likely to cause an even greater extraction of value by search engines from news publishers unless news publishers have the option to opt-out of AI summaries and a market develops for news content.** (...) **An imbalance in bargaining power that enables the extraction and monetisation of news media content, distorting competition for news content distribution and monetisation.** Evidence of the effect includes practices designed to extract news content from the media and the higher value derived by search engines for news content relative to the media itself⁶⁴.*

429. Accordingly, the authority has proposed competition remedies for Google to be in place for five years, which include (i) a contribution of ZAR 687 million (approximately USD 42 million)⁶⁵ to journalism funds during the period the remedies are in force, through various digital transformation and journalism development programmes; (ii) payment of ZAR 71 million (approximately USD 4 million)⁶⁶ per year to Google News Showcase partners; (iii) giving publishers control over generative AI summaries; and (iv) extending global antitrust rules to South Africa⁶⁷.

⁶³ *Ibid.*, pp. 19–21

⁶⁴ *Ibid.*, p. 43. Available at: https://www.compcom.co.za/wp-content/uploads/2025/11/CC_MDPMI-Final-Report_Non-Confidential-1.pdf. Accessed on: 12 Mar. 2026.

⁶⁵ Exchange rate as of 17 April 2026

⁶⁶ Exchange rate as of 17 April 2026

⁶⁷ SOUTH AFRICA. COMPETITION COMMISSION. **Media and Digital Platforms Market Inquiry (MDPMI). Final Report – Annexure 8: Remedial Actions (Non-Confidential)**. Pretoria, November 2025. Available at: https://www.compcom.co.za/wp-content/uploads/2025/11/CC_MDPMI-Final-Report_Non-Confidential_Annexure8_Remedial-Actions.pdf. Accessed on: 12 Mar. 2026.

3.13. Summary of comparative experiences

430. An analysis of the various foreign cases, laws and precedents allows for the identification of distinct models of intervention – through copyright law and competition law. **Table 6** below summarises the main findings identified:

Table 6 – Summary of foreign cases concerning Google’s use of journalistic content

<i>Jurisdiction</i>	<i>Regulation</i>	<i>Conduct analysed</i>	<i>Outcomes</i>
United Kingdom	Digital Markets, Competition and Consumers Act; and Conduct Requirements for Google Search following identification of Strategic Market Position	Reliance on third parties and bargaining asymmetry between the platform and publishers; Use of journalistic content by AI Overview without transparency and control.	Control over <i>opting out</i> of AI Overview, attribution of authorship for reproduced content, fair ranking.
European Union	Directive 2019/790	Reproduction of journalistic content without compensation; Use of journalistic content by AI Overview without compensation or control.	Transposition into the legal systems of member states of the Directive granting press publishers exclusive rights over the reproduction and making available of their content; An investigation into AI Overview has been launched.
France	Granting of related rights to press publishers (through the Intellectual Property Code)	Abuse of a dominant position and exploitation of economic dependence by requiring free authorisation for the reproduction of journalistic content; Training of AI using third-party content.	Fines totalling EUR 750 million imposed by the competition authority; Good-faith negotiations with publishers, submission of compensation proposals, arbitration discussions, indexing neutrality, monitoring by a Trustee, provision of information on the use of content by AI.
Italy	<i>Equo Compenso</i> (under the Copyright Act)	Link between Google News and Google Search; Abuse of a dominant position through the automated extraction of journalistic content on Google News;	Maintenance of a separate crawler for Google News; Compensation agreements with media outlets before AGCom.

		Reproduction of journalistic content without compensation.	
Germany	Granting of related rights to press publishers (through the Copyright Act)	Reproduction of journalistic content without compensation; Google News Showcase; Use of content by AI Overview without directing the user to the original source, diverting traffic.	Annual payment of EUR 3.2 million to Corint Media until 2026; Commitments by Google not to integrate News Showcase into the search results page, not to link it to general search ranking criteria, to ensure the exercise of related rights, and to expand access to more publishers; Discussion of compensation proposals at the Patent and Trademark Office.
Australia	News Media Bargaining Code	Imbalance of bargaining power between publishers and Google Search; Lack of control over the use of journalistic content in snippets; Reproduction of journalistic content without compensation.	Negotiation in good faith with publishers, discussion in arbitration; Agreements with publishers concluded outside the Code.
South Africa	Media and Digital Platforms Market Inquiry	An imbalance in bargaining power that enables the extraction and monetisation of journalistic content by the platform, without equitable sharing with press publishers.	Contributions to journalism development funds, payments to News Showcase partners, controls on AI tools, enforcement of global antitrust rules.

Source: own compilation.

431. In European Union countries – France, Italy and Germany – remuneration agreements with publishers were concluded primarily within the framework of neighbouring rights under Directive 2019/790. However, in France, the competition authority played a central and emblematic role: the *Autorité de la Concurrence* imposed good-faith negotiations and imposed fines on Google for non-compliance, demonstrating that copyright law and competition law can act in a complementary manner. In the United Kingdom, Australia and South Africa, intervention took place through competition law.

432. It is important to note that no specific remedies were applied to Google News (in the cases presented in this section) as a standalone service – the interventions focused on Google Search and, more recently, on AI Overview. The global trend towards intensified discussions regarding the tool, with opt-out without retaliation in the UK and antitrust investigations opened in the European Union, reinforces the need to raise this issue in this case.

433. The body of international experience sheds light on the discussion regarding potential exploitative abuse arising from Google’s use of its dominant position to appropriate publishers’ journalistic content without adequate compensation.

4. PRELIMINARY THEORETICAL ELEMENTS

434. Having concluded this brief review of the case law and before proceeding to the actual competition analysis of the conduct under investigation, I consider it useful to set out two theoretical premises that inform the subsequent reasoning.

435. The first concerns the specific economic characteristics of journalism, which precisely because of these features, is regarded as a public good, particularly its historical reliance on bundling mechanisms and the progressive weakening of this arrangement with the platformisation of news consumption and distribution.

436. The second concerns the way in which artificial intelligence reshapes, in digital markets, the very terms of the competition debate. This is because AI not only intensifies already familiar dynamics of intermediation, data extraction, attention retention and the leveraging of dominant positions, but also creates new forms of appropriation, recombination and economic reuse of content produced by third parties, requiring, therefore, a more careful analysis of the conditions under which this input is used, the distribution of value within the ecosystem, and the effects of this transformation on rivalry and competitive dynamics among the affected players.

437. Underlying both theoretical premises is the special protection provided for in Article 220, paragraph 5, of the Federal Constitution against the formation and existence of monopolies and oligopolies in the media. Included in the chapter on social order, this provision fulfils a dual function. On the one hand, it seeks to prevent economic concentration from compromising the media’s role in fulfilling its fundamental purpose of channelling the exercise of the freedoms of opinion, expression and information. On the other hand, it reinforces the centrality of these media as an institutional pillar of democracy⁶⁸.

438. In this sense, the original constituent power deemed it appropriate to add an additional layer of protection to market regulation and to the constitutional principle of

⁶⁸ ANDRADE, Diogo Thomson de. **Digital constitutionalism and free competition: limits and scope of the constitutional principle and the defence of free competition in the digital age**. 2024. 309 pp. Thesis (Academic Doctorate in Constitutional Law) — Brazilian Institute of Education, Development and Research, Brasília, 2024. Available at: https://repositorio.idp.edu.br/bitstream/123456789/5358/1/TESE_DIOGO%20THOMSON%20DE%20ANDRADE_DOUG%20DIR_2023.pdf. Accessed on: 4 Apr. 2026.

free competition itself, reinforcing the capacity for state intervention as already enshrined in the constitutional economic order. This is not a matter of setting aside the foundations of free enterprise, but of recognising that, in the field of mass media, the Constitution has placed particular emphasis on the preservation of pluralism of information and the prevention of power structures capable of compromising the circulation of ideas.

439. It is worth noting that, although this is a provision of considerable normative weight, its constitutional interpretation must always be weighed against the other pillars of the economic order, in particular free enterprise and the exceptional nature of state intervention in the economy. It is precisely for this reason that the provision has been understood and applied by Cade as a guiding principle for the defence of competition in the media sector, justifying the imposition of restrictions in specific cases. It has also served as the basis for sector-specific regulations formulated by authorities such as the Brazilian National Telecommunications Agency (Agência Nacional de Telecomunicações - ANATEL) and Brazilian National Cinema Agency (Agência Nacional do Cinema - ANCINE).

440. This has also been the interpretation adopted by the Federal Supreme Court (“STF”), which on several occasions has invoked the provision to affirm the protection of informational pluralism and the free circulation of ideas⁶⁹. The Court has thereby reinforced the need for a diverse, inclusive media environment that is conducive to the realisation of freedom of expression and communication. Whilst recognising that the State must prevent excessive concentration in this field, the STF itself also points out that such limits must be implemented through legislative and regulatory mechanisms available to the bodies responsible for regulating competition and competitiveness in the media, including Cade, ANATEL and ANCINE.

441. Another relevant aspect of these decisions, both within the STF and Cade, lies in the breadth accorded to the scope of Article 220, paragraph 5, of the Constitution. As can be seen from the issues considered by the STF, including data protection, freedom of programming, age ratings and the Press Law, constitutional protection is not limited to traditional media, but extends to all media that play an essential role in ensuring

⁶⁹ In the Action for Non-Compliance with Fundamental Rights (ADPF) 130 (Presiding Justice Ayres Britto, 2009), the Court invoked Article 220(5) to reject the Press Law and establish that media concentration threatens the free circulation of ideas, which is essential to democracy. In Direct Action of Unconstitutionality (ADI) 2.404 (Justice Dias Toffoli, 2016), the provision was identified as a structural guarantee of diversity in the media and of broadcasters’ freedom of programming. In ADI 6,387 (Justice Rosa Weber, 2020), informational pluralism based on the same provision was articulated in conjunction with the protection of personal data as a democratic value. Available at: <https://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/adpf130.pdf>. Accessed on: 9 2026.

pluralism of information and the free circulation of ideas. In this vein, the interpretative extension of the provision to digital media appears natural.

442. Similarly, when examining Cade’s case law in which this provision was invoked to justify restrictions on economic concentration, a thematic variety emerges that goes beyond the media in the strict sense. For example, there are cases relating to the distribution of newspapers and magazines⁷⁰, sports broadcasting rights⁷¹, and concentration in pay-TV⁷².

443. In this regard, in my opinion as Federal Attorney in Merger Case No. 08012.013152/2007-20 (DGB/Chinaglia), in which my interpretation of Article 220 is endorsed by the rapporteur’s opinion, I emphasised that:

(...) a monopoly on distribution may hinder or, at the very least, impede or limit access to information, as well as (...) direct or restrict it in such a way as to infringe upon the right to freedom of the press, the legal substance of which, as set out in Article 220, caput, is, precisely, protection against any form of restriction on the manifestation of thought, creation, expression and to information, whether these take place in any form, medium or process.”
(SEI 0033326, p. 804, physical version, or p. 327, digital version)

444. It therefore seems equally natural that Article 220, paragraph 5, should also serve, within the scope of Cade and the defence of competition, as a basis for decisions in specific cases involving digital media, as well as for public policy proposals, the definition of institutional priorities and, eventually, legislative improvements.

445. In academic work, I have already advocated for this interpretative broadening of the constitutional provision as a basis for greater attention to cases involving major gatekeepers of the digital economy. This is justified because the mediating role played by such agents is undeniable, even when they do not directly produce the information, since they control the ways in which communication is structured and access to information takes place in the virtual public sphere.

⁷⁰ From the perspective of Article 220(5), the value of competition relates to the very foundations of a democratic society when analysing the communications sector. (Opinion of the reporting Commissioner Paulo Furquim in Concentration Act No. 08012.013152/2007-20 (DGB/Chinaglia), SEI 0033332, p. 2363, physical version)

⁷¹ In the sector under analysis, efficiency must be measured by the effects generated on the plurality, diversity and quality of the media product offering, in accordance with the opinion of the SG/Cade in Concentration Act No. 08700.004494/2018-53 (Disney/Fox). (SEI 0554780)

⁷²In Merger Case No. 08700.001390/2017-14 (AT&T/Time-Warner), the opinion of the SG/Cade emphasises the need for competition analysis in the communications sector to prioritise diversity, plurality of content and free access to information (SEI 0377280), whilst also considering the trend towards concentration in the media market outlined in the opinion of the reporting commissioner (SEI 0399995).

446. This interpretation becomes even more relevant when adopting a digital constitutionalism framework, particularly in a case such as this, which deals precisely with journalistic information and its intermediation through artificial intelligence mechanisms by an agent that clearly holds a monopolistic position⁷³.

447. It is, therefore, also from this constitutional perspective—grounded in an interpretation influenced by digital constitutionalism and aimed at translating the demands of the digitalised society into the system of fundamental guarantees and freedoms established by the Constitution—that we shall examine the public good nature of journalism and the competitive implications of the use of artificial intelligence in information markets.

4.1. Journalism as a public good

448. The first theoretical premise concerns the economic nature of the good in question. Journalism cannot be understood, for competition law purposes, as undifferentiated informational content.

449. As Macedo & Moreira (2025) observe, drawing on Doyle (2013) and Olson (1971), journalism is an activity with characteristics associated with public goods, in so far as its benefits extend beyond the sphere of immediate consumers and have positive effects on the community. Part of the literature goes further and places it within the category of merit goods, precisely because its socially desirable provision is not ensured by the free play of individual preferences and the market⁷⁴.

450. This point can be formulated in broader terms. The High-Level Panel on Public Interest Media (2025), following a line of thought dating back to McChesney & Nichols (2010), maintains that access to reliable information constitutes a fundamental resource

⁷³ ANDRADE, Diogo Thomson de. **Digital constitutionalism and free competition: limits and scope of the constitutional principle and the defence of free competition in the digital age**. 2024. 309 pp. Thesis (Academic Doctorate in Constitutional Law) — Brazilian Institute of Education, Development and Research, Brasília, 2024. Available at: https://repositorio.idp.edu.br/bitstream/123456789/5358/1/TESE_DIOGO%20THOMSON%20DE%20ANDRADE_DOUT%20DIR_2023.pdf. Accessed on: 4 Apr. 2026; BALAGUER CALLEJÓN, Francisco. **The Constitution of the Algorithm**. Zaragoza: Manuel Giménez Abad Foundation, 2022.

⁷⁴ MACEDO, Bernardo Gouthier; MOREIRA, Miguel Silveira. **Digital transformation and the economic sustainability of public interest journalism: considerations based on cases from Argentina, Brazil and Colombia**. *Internet & Society Journal*, vol. 6, no. 1-2, pp. 166–197, Dec. 2025. Available at: <https://revista.internetlab.org.br/transformacao-digital-e-sustentabilidade-economica-do-jornalismo-de-interesse-publico-consideracoes-a-partir-de-casos-da-argentina-brasil-e-colombia/>. Accessed on: 16 Mar. 2026; DOYLE, Gillian. **Understanding Media Economics**. 2nd ed. London: SAGE, 2013; OLSON, Mancur. **The Logic of Collective Action: Public Goods and the Theory of Groups**. Cambridge, MA: Harvard University Press, 1971.

of the contemporary information economy and that public interest media, in this context, performs a function analogous to that of the system's infrastructure of trust⁷⁵.

451. The metaphor is telling, since without a stable production of verifiable information, it is not merely individual journalistic enterprises that are undermined, but the very quality of the information environment in which markets, citizens and institutions make decisions. Journalism, in this sense, is not merely one economic sector among others, but a fundamental component of the functioning of the information system.

452. The public dimension of journalism, therefore, is not limited to its immediate utility for the individual reader, but also encompasses the scrutiny of public and private powers, the reduction of socially relevant information asymmetries, the production of verifiable knowledge about matters of collective interest, and the strengthening of the material conditions for democratic deliberation.

453. To this extent, the damage to journalism affects not only a specific economic sector, but the quality of the information system in the broadest sense. It is precisely this systemic nature that explains why the erosion of its economic base produces effects that go beyond the contractual relationship between platform and publisher and affect, in a more diffuse manner, the circulation of reliable information, the plurality of sources, and the very public sphere of opinion-forming.

454. It is also worth noting that journalism, as an economic good, is not only socially valuable but also economically unique. Its production depends on high and continuous fixed investments, involving activities such as fact-finding, verification, editing, maintaining sources, specialised coverage, legal liability, institutional structure and the building of reputation over time. **It is, therefore, an activity whose social value often does not immediately coincide with the private sector's ability to generate revenue.**

455. These costs should not be confused with those associated with generic, amateur or purely opinion-based content. **The unique nature of journalism lies precisely in the fact that it establishes robust processes of verification and accountability, producing new and reliable information on an ongoing basis. It is this capacity for original production—and not merely for dissemination—that gives it a unique significance within the information ecosystem.**

⁷⁵ HIGH-LEVEL PANEL ON PUBLIC INTEREST MEDIA. **The Economic Imperative of Investing in Public Interest Media**. Statement of the High-Level Panel on Public Interest Media. Sept. 2025; MCCHESENEY, Robert W.; NICHOLS, John. **The Death and Life of American Journalism: The Media Revolution That Will Begin the World Again**. Philadelphia, PA: Nation Books, 2010.

456. This economic uniqueness has direct competitive consequences. Whenever the good produced generates diffuse positive externalities, but its private remuneration is precarious or indirectly appropriable by third parties, a persistent situation of underinvestment tends to arise.

457. Journalism, in this sense, suffers precisely from such a problem, given that its social value consistently exceeds the portion of value that the media outlet manages to internalise through circulation, advertising or subscription revenues. There is, therefore, a structural mismatch between the social value produced and the appropriable private remuneration, that is, a dynamic in which perennial positive externalities are not properly priced by fragmented agents.

458. This particularity becomes clear when examining the historical logic of financing the activity, given that journalism was, for a long time, sustained by a *bundling* mechanism.

459. The newspaper brought together, in a single product, heterogeneous content and varying degrees of commercial appeal. Within this structure, as explained by Geradin (2019), Gabszewicz, Resende & Sonnac (2015) and Picard & Dal Zotto (2015), sections with greater market appeal, as well as advertising revenue associated with the audience as a whole, subsidised the production of costlier and less immediately profitable content, such as investigative reporting, local political coverage and monitoring of public policies⁷⁶.

460. Within this structure, the news outlet also functioned as a multi-sided platform, connecting readers and advertisers and facilitating cross-subsidisation arrangements that were both economically and editorially sound. The sustainability of the business thus depended less on the individual profitability of each news story and more on the outlet's ability to bundle audiences, credibility, attention and editorial diversity into a single product.

461. It is also worth noting that digitisation did not instantly disrupt this arrangement. In its early stages, the relationship between search platforms and *publishers* could be described as largely symbiotic.

⁷⁶ GERADIN, Damien. **Complements and/or Substitutes? The Competitive Dynamics Between News Publishers and Digital Platforms and What It Means for Competition Policy**. TILEC Discussion Paper No. 2019-003, 2019; GABSZEWICZ, Jean; RESENDE, João; SONNAC, Nathalie. **Media as Multi-sided Platforms**. In: PICARD, Robert G.; WILDMAN, Steven S. (eds.). **Handbook on the Economics of the Media**. Cheltenham: Edward Elgar Publishing, 2015. pp. 3–35; PICARD, Robert G.; DAL ZOTTO, Cinzia. **The Dimension of Ownership and Control of Media**. In: VALCKE, Peggy; PICARD, Robert G.; SUKOSD, Miklós (eds.). **Media Pluralism and Diversity: Concepts, Risks and Global Trends**. London: Palgrave Macmillan, 2015. pp. 54–66.

462. Media outlets provided the content and informational credibility that made the search valuable to the user; the platforms, in turn, reduced distribution costs, expanded potential reach and directed audiences to the pages of content producers. There was, therefore, a genuine complementarity between indexing and visits to the source website, albeit one already fraught with tensions inherent to digital intermediation. This element is crucial to the analysis of the themes explored in this opinion.

463. It so happens that the platformisation of news consumption has profoundly altered the terms of this complementarity. Macedo & Moreira (2025), drawing on the literature on the media market, describe the shift towards an ecosystem marked by the atomisation of consumption, personalisation, aggregation, redirection and the progressive unbundling of journalistic content⁷⁷.

464. In this new scenario, users no longer consume the ‘newspaper’ as a package but instead access isolated fragments, mediated by search engines, feeds and other discovery platforms. The asset of greatest economic value is no longer the aggregated editorial product but is, increasingly, the fragmented unit of attention captured at the point of intermediation.

465. The economic impact of this unbundling is asymmetrical, given that digital platforms now capture the most monetisable aspects of attention and discovery, whilst news organisations bear the fixed costs of original news production, including those associated with less profitable but socially essential editorial sections.

466. Consequently, internal cross-subsidies between editorial sections, the direct connection between reader and news brand, and the outlet’s ability to capture, on its own, the advertising revenue associated with the attention generated by its content are simultaneously weakened. Viewed through this analytical lens, platformisation does not eliminate the need for journalism, but shifts an increasing share of the economic value made possible by the original product to digital intermediaries.

467. **The South African MDPMI report (2025) is particularly useful in showing that the economic erosion of newsrooms rapidly translates into an erosion of the public good itself, creating a situation characterised by less institutional oversight, greater**

⁷⁷ MACEDO, Bernardo Gouthier; MOREIRA, Miguel Silveira. **Digital transformation and the economic sustainability of public interest journalism: considerations based on cases from Argentina, Brazil and Colombia.** *Internet & Society Journal*, vol. 6, no. 1–2, pp. 166–197, Dec. 2025. Available at: <https://revista.internetlab.org.br/transformacao-digital-e-sustentabilidade-economica-do-jornalismo-de-interesse-publico-consideracoes-a-partir-de-casos-da-argentina-brasil-e-colombia/>. Accessed on: 16 Mar. 2026

vulnerability to disinformation, the expansion of news deserts, and a reduction in pluralism, particularly in local, regional, and historically disadvantaged communities⁷⁸.

468. **The same point is made, in broader terms, in the statement by the High-Level Panel, which notes that when the infrastructure of reliable information weakens, the conditions for investment, public trust, social coordination and the functioning of the information market itself also deteriorate. The loss is not merely sectoral; it is systemic.**

469. This analysis takes on a new dimension when it is subsequently transposed to the contemporary debate on artificial intelligence. As noted in the European Parliament’s report on copyright and AI (Peukert, 2025), the central economic issue, in markets based on the training and reuse of content, lies not only in the remuneration of the existing stock of works, but also in the preservation of the future flow of creative, reliable and high-quality data, without which the very social and economic utility of AI tends to deteriorate⁷⁹.

470. In journalistic terms, this amounts to saying that society does not depend solely on the archive of previously published material, but on the continued production of original, verifiable content that is responsive to current events. The economic problem, therefore, is not merely one of the retrospective distribution of value, but of the prospective preservation of the very raw material whose extraction is under debate.

471. **It is precisely because of these dynamics that journalism takes on a unique significance in the present case. The extraction of value discussed here does not concern just any input, but an activity whose sustainability depends on structurally delicate financing arrangements, whose social relevance transcends the bilateral relationship between platform and supplier, and whose weakening has a direct impact on the plurality, reliability and quality of the information ecosystem as a whole. And here again, it is worth highlighting the special protection required by the Federal Constitution in Article 220, paragraph 5, against monopolistic or oligopolistic arrangements that may undermine this plurality, reliability and quality in access to journalistic information, given its systemic relevance.**

⁷⁸ COMPETITION COMMISSION OF SOUTH AFRICA. **Media and Digital Platforms Market Inquiry (MDPMI): Final Report**. Pretoria, Nov,2025; Available at: <https://www.compcom.co.za/final-report-launch/>; HIGH-LEVEL PANEL ON PUBLIC INTEREST MEDIA. **The Economic Imperative of Investing in Public Interest Media**. Statement of the High-Level Panel on Public Interest Media. Sept. 2025.

⁷⁹ EUROPEAN PARLIAMENT. PEUKERT, Christian. **The Economics of Copyright and AI: Empirical Evidence and Optimal Policy**. PE 778.859. Brussels: European Parliament, Dec. 2025. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2025/778859/IUST_STU\(2025\)778859_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2025/778859/IUST_STU(2025)778859_EN.pdf).

4.2. Artificial intelligence, competition and information markets

472. On the other side of this dual problem, the incorporation of generative artificial intelligence tools into search services does not, in my view, represent a mere incremental product refinement. It is a broader reconfiguration of the way in which information is collected, processed, synthesised, prioritised and returned to the end user.

473. In digital markets, this transformation is particularly significant as it shifts economic value not only between direct competitors, but also between the dominant platform and the agents that produce the informational inputs on which it depends. As shown by May (2024), Stucke & Ezrachi (2025) and Hagiu & Wright (2025), artificial intelligence, in this context, does not operate as a peripheral accessory, but as a general-purpose technology capable of reorganising multiple downstream markets and simultaneously altering cost structures, distribution routes and mechanisms of value appropriation⁸⁰.

474. As May (2024) outlines⁸¹, the competitive dynamics of generative AI can be observed, at least analytically, in three interconnected stages, namely: (i) the training of foundational models; (ii) fine-tuning or refinement; and (iii) the commercial deployment of applications. This breakdown is important because competitive pressures, entry costs and bottlenecks are not distributed uniformly throughout the chain.

475. The key point is that competition in AI is not confined to a single ‘model market’, but, in reality, depends on a value chain in which different layers feed back into one another.

476. Advantages gained at one stage can be transferred to another; economic power already held in adjacent markets can be mobilised to condition access to inputs, distribution and scale; and vertical integrations can reinforce lock-in or dependency effects at more than one level of the chain. Stucke & Ezrachi (2025), Hagiu & Wright

⁸⁰ OECD – ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. MAY, Richard. **Artificial Intelligence, Data and Competition**. OECD Artificial Intelligence Papers, No. 18. Paris: OECD, May 2024. Available at: https://www.oecd.org/en/publications/artificial-intelligence-data-and-competition_e7e88884-en.html; STUCKE, Maurice E.; EZRACHI, Ariel. **Antitrust & AI Supply Chains**. Antitrust Law Journal, Chicago, American Bar Association, 2025; HAGIU, Andrei; WRIGHT, Julian. **Artificial intelligence and competition policy**. Information Economics and Policy, Amsterdam, Elsevier, 2025.

⁸¹ OECD – ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. MAY, Richard. **Artificial Intelligence, Data and Competition**. OECD Artificial Intelligence Papers, No. 18. Paris: OECD, May 2024. Available at: https://www.oecd.org/en/publications/artificial-intelligence-data-and-competition_e7e88884-en.html;

(2025) and, from an institutional perspective, Lancieri, Edelson & Bechtold (2025) agree on this point⁸².

477. At the base of this chain lie some crucial inputs. The literature converges in identifying, among the main ones, data, computational capacity, capital, specialised talent and access to marketing channels. Taken together, these factors suggest a concrete risk of concentration across multiple layers, from training to deployment. **Competition in AI, therefore, cannot be understood solely through the prism of the model's technical performance, but also through the structure of access to inputs and distribution channels.**

478. Not all data inputs, however, are equally relevant to competitive dynamics. The OECD itself (May, 2024) points out that volume, variety, timeliness, accuracy and uniqueness can substantially alter the competitive value of the information base.

479. In many contexts, it is more important to control qualified, up-to-date and hard-to-replicate sources than simply to accumulate large stocks of data. This is particularly important in information markets, where the usefulness of the product depends on the reliability and constant renewal of the cognitive input used to train or refine it. This point is raised in May (2024) and reappears, in a dynamic context, in Peukert (2025)⁸³.

480. **This observation gains further weight in the context of generative AI. As the tool leads to the proliferation of synthetic, summarised or reprocessed content, the relative value of original, verified, up-to-date information sources produced by agents who bear the real costs of research, fact-checking and editorial responsibility tends to increase. Once again, this is a central point for the analysis of the specific case.**

481. It is no coincidence that recent literature on AI and copyright has shifted the focus from the mere appropriation of the past stock of works to the preservation of the future flow of high-quality data and content. From this perspective, the economic concern ceases to be merely retrospective and takes on a dynamic dimension as well, as it shifts to understanding how to sustain, over time, the production of the very inputs on which AI systems depend to function, evolve and maintain social utility⁸⁴.

482. When agents already established in adjacent digital markets also have access to data from other services under their exclusive control, these advantages cease to be merely quantitative, instead operating as economies of scope and as barriers to entry.

⁸² LANCIERI, Filippo; EDELSON, Laura; BECHTOLD, Stefan. **AI Regulation: Competition, Arbitrage and Regulatory Capture**. Theoretical Inquiries in Law, vol. 26, no. 1, 2025.

⁸³ EUROPEAN PARLIAMENT. PEUKERT, Christian. **The Economics of Copyright and AI: Empirical Evidence and Optimal Policy**. PE 778.859. Brussels: European Parliament, Dec. 2025. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2025/778859/IUST_STU\(2025\)778859_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2025/778859/IUST_STU(2025)778859_EN.pdf).

⁸⁴ *Ibid.*

483. When it comes to firms that are already dominant in search, advertising, operating systems, cloud services or distribution channels, privileged access to usage data and previously established relationships with users and advertisers tends to accelerate the internalisation of AI-related gains and make it difficult for rivals—including technically capable players—to challenge them. A dynamic of cumulative competitive advantage thus emerges, in which pre-existing assets reinforce the capacity to capture the economic benefits of innovation⁸⁵.

484. Having set out these initial ideas, the commercial deployment stage deserves special attention here. As May (2024) observes, it is precisely at this level that ecosystemic effects, switching costs, bundling practices and distribution advantages become most visible.

485. The company that controls the end-user access interface, the operating system, the cloud, the productivity suite or the main gateway to content and services often holds the shortest route to converting technical capability into economic scale. In such cases, control over distribution can be as important as, or even more important than, the model's technological merit in isolation.

486. **This means that competition in AI may be distorted not only by those who develop the best model, but also by those who manage to integrate it most effectively with existing user bases, data sets and sales channels.** In such scenarios, innovation in AI tends to be absorbed by already established ecosystems, reinforcing dependencies and expanding the power of agents that act simultaneously as suppliers of the technological input, distributors of access and operators of demand.

487. It is worth highlighting, in this context, the role of product integration, a topic that will be analysed in this case and which tends to take on growing relevance in other discussions on AI and competition. It is precisely through this mechanism of linkage or leverage that AI-based functionalities can take on an exclusionary character, insofar as they are coupled with a pre-existing product or service already supported by significant market power.

488. Although there is debate, in each specific case, as to whether the AI feature constitutes a mere functional evolution of the original product or a distinct product, I believe that this issue should be examined with caution and without preconceptions. In

⁸⁵ STUCKE, Maurice E.; EZRACHI, Ariel. **Antitrust & AI Supply Chains**. Antitrust Law Journal, Chicago, American Bar Association, 2025; HAGIU, Andrei; WRIGHT, Julian. **Artificial intelligence and competition policy**. Information Economics and Policy, Amsterdam, Elsevier, 2025; LANCIERI, Filippo; EDELSON, Laura; BECHTOLD, Stefan. AI Regulation: **Competition, Arbitrage and Regulatory Capture**. Theoretical Inquiries in Law, vol. 26, no. 1, 2025.

many cases, the integration of the AI functionality into the original infrastructure forms part of the dominant firm's strategy to expand uses, reinforce dependencies and transfer advantages from one market to another, which justifies treating this relationship, from a competition perspective, as a form of product tying and, consequently, of leverage.

489. To this we must add a further element, given that AI usage cycles also generate new data. Interactions with users, corrections, clicks, time spent on the interface and signs of satisfaction can feed back into service improvements, reinforcing the advantages of incumbents with greater scale and closer proximity to end-user demand.

490. **There is also a distributional and macroeconomic dimension that cannot be overlooked. Athey & Scott Morton (2025), in dialogue with Tucker (2025), demonstrate that market power in the supply of AI can raise marginal costs downstream, limit entry and variety, shift rents to the upper level of the chain, and produce welfare losses even when the new technology generates productivity gains⁸⁶.**

491. **In other words, it is not enough to state that AI makes certain processes more efficient. It is necessary to examine who captures these gains and under what conditions of access the rest of the economy is able to participate in them. The technical efficiency of the model does not, in itself, resolve the underlying distributional and competitive issue.**

492. This point is particularly relevant in information markets. If the AI provider or the dominant infrastructure operator can strategically price access to the technology, or make such access subject to rules that squeeze the remuneration of content producers, productivity gains may coexist with the economic weakening of the agents who produce the informational inputs on which AI itself depends.

493. The hypothesis of competitive harm, therefore, is not limited to the exclusion of technological rivals. It also extends to the asymmetric redistribution of value produced in downstream segments of the chain and the possibility that concentrated power upstream may disrupt the economic incentives of downstream input producers.

494. Lancieri, Edelson & Bechtold (2025), as well as Lianos (2025), add an important institutional dimension. AI regulation does not develop in a political or economic vacuum, but in an environment of competition between jurisdictions, regulatory

⁸⁶ ATHEY, Susan; SCOTT MORTON, Fiona. **Artificial Intelligence, Competition, and Welfare**. NBER Working Paper no. 34444. Cambridge, MA: National Bureau of Economic Research, Nov. 2025; TUCKER, Catherine. **How Will the Monetisation Strategy Used to Support AI Affect Welfare?** Working Paper. Cambridge, MA, 2025.

arbitrage and the risk of the regulatory process being captured by firms interested in preserving their advantages⁸⁷.

495. This observation is significant as it shows that competition policy, whilst central, does not act in isolation, since its effectiveness depends on coordination with regimes governing privacy, intellectual property, the cloud, data and interoperability. Thus, in general-purpose technologies, strategic shifting between legal regimes may form part of the very exercise of economic power.

496. At the same time, uncertainty does not call for inaction. Lianos (2024), in treating AI as part of a technological wave marked by asymmetries, hyper-evolution, cross-cutting use and autonomy, proposes a competition policy approach that is more attentive to the risks of concentration in complex systems.

497. The point of this formulation, in my view, is not to authorise intuitive interventions or those unconnected to evidence, but to recognise that, in technologies characterised by rapid diffusion and potentially cumulative effects, institutional delay may allow the consolidation of positions that are difficult to reverse.

498. This is not, of course, a matter of treating innovation in AI as unlawful in itself. The point here is different.

499. When generative features are implemented by a platform that is already dominant in search, public access control and the use of third-party content, innovation ceases to be a neutral factor in competition analysis. It becomes an integral part of the very exercise of economic power.

500. Put another way, this section does not yet offer a conclusive judgement on the specific case. It merely outlines the broader context within which it must be understood, namely that of a technology capable, in certain circumstances, of exacerbating pre-existing asymmetries in access to inputs, users and the economic value produced within the information chain. It is precisely the dynamic concern highlighted by Peukert (2025) that is projected here onto journalistic content⁸⁸.

⁸⁷ LANCIERI, Filippo; EDELSON, Laura; BECHTOLD, Stefan. **AI Regulation: Competition, Arbitrage and Regulatory Capture**. Theoretical Inquiries in Law, vol. 26, no. 1, 2025; LIANOS, Ioannis. **Synthetic Futures and Competition Law: Towards the Emergence of Precautionary Principle-Minded Approaches**. UCL Research Paper Series, n. 6, 2024.

⁸⁸ EUROPEAN PARLIAMENT. PEUKERT, Christian. **The Economics of Copyright and AI: Empirical Evidence and Optimal Policy**. PE 778.859. Brussels: European Parliament, Dec. 2025. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2025/778859/IUST_STU\(2025\)778859_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2025/778859/IUST_STU(2025)778859_EN.pdf).

5. COMPETITION ANALYSIS

501. Having made these brief theoretical observations on the dual problem of the present case, this section seeks to organise the competition analysis with a focus on a specific theory of harm, without delving into others that have been sufficiently examined in the case file.

502. Thus, the theories of harm already explored by the DEE/Cade – increased costs for rivals, leveraging of a dominant position, scraping of journalistic content that allows access to information without redirecting to publishers, and tying – as well as by the SG/Cade – predatory innovation and blocking of essential inputs, retention of traffic with a view to increasing advertising revenue, and self-preferencing in the event of traffic diversion or retention for one’s own benefit – and subsequently analysed in the opinion of the Reporting Commissioner, have, in my view, already received sufficient analytical treatment in the course of the proceedings and in previous decisions.

503. There remains, however, a need for a more detailed examination of the exploitative aspect of the conduct, even though this has been addressed in part in the aforementioned statements. For this reason, I shall focus here on the aspect of **abuse of a dominant position** that I consider relevant, specifically with regard to alleged **exploitative abuse** (or abuse of economic dependence), whether or not associated with elements of exclusionary abuse.

504. The discussion will thus proceed in five interconnected steps: first, I shall offer some observations on the analytical tradition of abuse of a dominant position and its subcategory, exploitative abuse; next, I shall examine the construction of exploitative abuse in the European context and its place within the open-ended framework of Article 36 of Law No. 12.529/2011; then, I will reconstruct the economic rationale behind the conduct under investigation and the corresponding theory of harm; next, I will set out the applicable logical tests/rules of judgement; and, finally, I will apply these tests to the conduct under investigation.

5.1. Considerations regarding the analytical tradition of abuse of a dominant position

505. As outlined by the OECD (2020), abuse of a dominant position generally refers to strategies through which firms with market power seek to strengthen, protect or exploit that position to the detriment of the competitive process and the affected parties. In digital markets, such strategies can take various forms, such as denial of access,

predatory pricing, exclusivity, tying, abusive leverage, self-preferencing, and also exploitative practices⁸⁹.

506. The value of this summary lies in recalling that abuse of dominance constitutes a broad, generic category. It generally encompasses both conducts aimed **at excluding or hindering** competition and conduct aimed **at imposing unfair conditions on users, consumers or dependent business partners**.

507. This broader formulation is important for two reasons. The first is that **a dominant position, in itself, is not unlawful. The unlawfulness lies in the abusive use of that position**. The second is that **the identification of abuse cannot be purely formalistic**. The OECD itself emphasises the need for an effects-based approach, exercising caution against both over-regulation and under-regulation, especially in digital markets characterised by rapid innovation, economies of scale and significant information asymmetries.

508. In platform markets, a dominant position does not merely translate into high market share. **It also manifests itself in the ability to unilaterally define the conditions of access, visibility, ranking, monetisation and use of inputs supplied by third parties**. As explored below, Balasingham & D’Amico (2025) describe this quality as a form of qualified dominance by the rule setter; Bostoen (2023), in turn, draws attention to the fact that vertically integrated platforms come to play a ‘dual role’: they distribute their partners’ products or content and, at the same time, compete with them⁹⁰.

5.2. Considerations regarding the analytical tradition of exploitative abuses

509. Turning to the specific features of the category of exploitative abuse, it should be noted, first of all, that its interpretative tradition stems primarily from the European experience of applying Article 102 of the Treaty on the Functioning of the European Union (“TFEU”), which mentions, among abuses of dominance, “*other unfair trading conditions*” – a concept also explored in the context of amendments developed specifically for digital markets under German Section 19⁹¹.

⁸⁹ OECD – ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. **Abuse of Dominance in Digital Markets**: Background note by the Secretariat. DAF/COMP/GF (2020)4. Paris: OECD, 2020. Available at: [https://one.oecd.org/document/DAF/COMP/GF\(2020\)4/En/pdf](https://one.oecd.org/document/DAF/COMP/GF(2020)4/En/pdf); BALASINGHAM, Baskaran; D’AMICO, Alessia S. **Beyond exclusion: revisiting exploitative abuses in digital platform markets**. Journal of Competition Law & Economics, Oxford, Oxford University Press, 2025; BOSTOEN, Friso. Abuse of platform power: leveraging conduct in digital markets under EU Competition Law and beyond. New York: Concurrences, 2023.

⁹⁰ *Ibid.*

⁹¹ TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (TFEU). **Art. 102**. Consolidated version. Available at: <https://eur-lex.europa.eu/legal-content/PT/TXT/?uri=CELEX%3A12016E102>. Accessed on: 16 Mar. 2026; EUROPEAN COMMISSION. **Antitrust and cartels overview**. Brussels: European Commission.

510. **In theoretical terms, exploitative abuse is conducting whereby a dominant undertaking leverages its position of strength to extract economic value from consumers or business partners on terms that are unfair, disproportionate or not reasonably grounded in a balanced competitive relationship.** Such extraction may take the form of excessive pricing, undue compression of the remuneration paid to the supplier, or the imposition of unfair commercial terms. The common feature is that **the counterparty has no real alternative in the market and is subject to terms that it would not obtain in a minimally functional competitive environment**⁹².

511. It should be noted that, in platform markets, the typical manifestation of exploitative abuse tends to shift from the realm of ‘excessive pricing’ to that of ‘unfair commercial conditions’.

512. As noted by Botta (2023), Bostoen (2019; 2023) and the OECD (2020), **the peculiarity of the digital environment lies in the fact that the “price” is often not expressed in monetary terms, but in the form of data transfer, exposure to advertising, loss of attention, acceptance of opaque rules, or tolerance of economically burdensome uses of content and other inputs. Therefore, limiting the analysis to the question of the monetary value charged would obscure precisely the central point of the competition issue discussed here**⁹³.

513. The literature on economic dependency abuse also sheds light on this shift. Bougette, Budzinski & Marty (2019) show that exploitation in vertical relationships typically arises when the supplier invests in specific assets, faces high switching costs and lacks comparable distribution channels, such that their ‘risk premium’ vis-à-vis the dominant buyer or distributor becomes high. In digital ecosystems, this dependency can be reinforced by network effects, data centralisation and switching costs, turning the

Available at: https://competition-policy.ec.europa.eu/antitrust-and-cartels/overview_en. Accessed on: 16 Mar. 2026.

⁹² *Ibid.*

⁹³ BOTTA, Marco. Exploitative abuses: recent trends and In: AKMAN, Pinar; BROOK, Or; STYLIANOU, Konstantinos (org.). Research Handbook on Abuse of Dominance and Monopolization. Cheltenham: Edward Elgar Publishing, 2023.; BOSTOEN, Friso. Abuse of platform power: leveraging conduct in digital markets under EU Competition Law and beyond. New York: Concurrences, 2023; BOSTOEN, Friso. **Online platforms and pricing: Adapting abuse of dominance assessments to the economic reality of free products.** Computer Law & Security Review, vol. 35, pp. 263–280, 2019; OECD – ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. **Abuse of Dominance in Digital Markets:** Background note by the Secretariat. DAF/COMP/GF (2020). Paris: OECD, 2020. Available at: [https://one.oecd.org/document/DAF/COMP/GF\(2020\)4/En/pdf](https://one.oecd.org/document/DAF/COMP/GF(2020)4/En/pdf).

platform into an indispensable business partner even without a traditional exclusivity contract⁹⁴.

514. Along the same lines, Lee (2026), in examining the concepts of abuse of economic dependence and abuse of superior bargaining position, argues that these categories fulfil a complementary function to traditional dominance control precisely because they bring a vertical dimension of market power to the centre of the analysis. The point here is not merely a company's ability to raise prices or exclude rivals in the traditional sense, but also its capacity to condition the behaviour of economic partners who depend on it to reach users, generate revenue, gain visibility or secure distribution⁹⁵.

515. In digital markets, this superior bargaining position can manifest itself in the unilateral imposition of commercial conditions on actors who, although formally independent, lack a functionally equivalent means of accessing demand.

516. Thus, exploitation in these cases tends to appear less in the form of excessive monetary pricing and more in the platform's management of terms of content use, attribution, ranking, attention retention and traffic return. It is precisely for this reason that the lens of economic dependence, as developed by Lee (2026), helps to understand why certain conduct may take on an exploitative character even outside the narrower paradigm of 'excessive pricing'.

517. However, it does not follow from this that every asymmetry in the digital market should be treated as exploitative abuse. On the contrary, Röller (2007) warns that antitrust intervention in this area should be reserved for special circumstances: significant barriers to entry, the absence of market self-correction, the lack of a more appropriate structural remedy, and the absence of an effective sectoral regulator, or the insufficiency thereof.

518. The value of this warning, for the purposes of this opinion, lies not in artificially restricting competition law protection, but in regulating its application and preventing the open-ended provision of Article 36 of Law No. 12,529/2011 from being turned into

⁹⁴ BOUGETTE, Patrice; BUDZINSKI, Oliver; MARTY, Frédéric. **Exploitative Abuse and Abuse of Economic Dependence: What Can We Learn From an Industrial Organisation Approach?** *Revue d'économie politique*, vol. 129, no. 2, pp. 261–286, 2019; BALASINGHAM, Baskaran; D'AMICO, Alessia S. **Beyond exclusion: revisiting exploitative abuses in digital platform markets.** *Journal of Competition Law & Economics*, Oxford, Oxford University Press, 2025.

⁹⁵ LEE, Sangyun. **Abuse of economic dependence (superior bargaining position) in competition law: concerns, benefits, and safeguards.** *Journal of Antitrust Enforcement*, Oxford, pp. 1–38, 2026. DOI: 10.1093/jaenfo/jnag005.

an instrument of indiscriminate intervention, dissociated from objective criteria and detached from the limits inherent to⁹⁶ competition analysis.

519. It is precisely for this purpose that I shall now set out certain parameters, in order to assess, on the basis of verifiable evidence, whether circumstances exist that justify the application of the aforementioned provision in relation to exploitative abuse.

520. It is also worth noting that recent literature rejects the false dichotomy according to which one must choose between exploitation and exclusion, a point that will be relevant later on when presenting the possible theories of harm identified. In this regard, Röller (2007), Bostoen (2023), Bougette, Budzinski & Marty (2019), Balasingham & D'Amico (2025) and the OECD itself (2020) converge on the essential point: the same conduct can simultaneously transfer value from the dependent partner to the dominant platform and reinforce barriers to entry, lock-in and loss of competitive diversity⁹⁷.

5.2.1. European case law on exploitative abuses

521. As outlined above, the functional tradition of analysing exploitative abuses has developed, to a large extent, within European case law built upon Article 102 TFEU. It is not, therefore, a merely academic category. The text of the Treaty itself prohibits, amongst other conduct, the imposition of 'other unfair trading conditions', the application of unequal conditions to trading partners, and the imposition of 'additional obligations' unrelated to the subject matter of the contract⁹⁸.

⁹⁶ RÖLLER, Lars-Hendrik. **Exploitative Abuses**. ESMT Business Brief No. BB-107-002. Berlin: ESMT European School of Management and Technology, 2007; BALASINGHAM, Baskaran; D'AMICO, Alessia S. **Beyond exclusion: revisiting exploitative abuses in digital platform markets**. *Journal of Competition Law & Economics*, Oxford, Oxford University Press, 2025; OECD - ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. **Abuse of Dominance in Digital Markets**: Background note by the Secretariat. DAF/COMP/GF (2020)4. Paris: OECD, 2020. Available at: [https://one.oecd.org/document/DAF/COMP/GF\(2020\)4/En/pdf](https://one.oecd.org/document/DAF/COMP/GF(2020)4/En/pdf).

⁹⁷ RÖLLER, Lars-Hendrik. **Exploitative Abuses**. ESMT Business Brief No. BB-107-002. Berlin: ESMT European School of Management and Technology, 2007; BOSTOEN, Friso. *Abuse of platform power: leveraging conduct in digital markets under EU Competition Law and beyond*. New York: Concurrences, 2023; BOUGETTE, Patrice; BUDZINSKI, Oliver; MARTY, Frédéric. *Exploitative Abuse and Abuse of Economic Dependence: What Can We Learn From an Industrial Organisation Approach?* **Revue d'économie politique**, vol. 129, no. 2, pp. 261–286, 2019; BALASINGHAM, Baskaran; D'AMICO, Alessia S. *Beyond exclusion: revisiting exploitative abuses in digital platform markets*. **Journal of Competition Law & Economics**, Oxford, Oxford University Press, 2025; OECD - ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. **Abuse of Dominance in Digital Markets**: Background note by the Secretariat. DAF/COMP/GF (2020). Paris: OECD, 2020.

⁹⁸ TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (TFEU). **Art. 102**. Consolidated version. Available at: <https://eur-lex.europa.eu/legal-content/PT/TXT/?uri=CELEX%3A12016E102>. Accessed on: 16 Mar. 2026; EUROPEAN COMMISSION. **Antitrust and cartels overview**. Brussels: European Commission. Available at: https://competition-policy.ec.europa.eu/antitrust-and-cartels/overview_en. Accessed on: 16 Mar. 2026.

522. It is true that the European experience has been (and still is) more extensive in the analysis of exclusionary conduct than in that of exploitative abuses. Nevertheless, the available precedents reveal a sufficiently clear common thread: the commercial condition imposed by the dominant undertaking becomes abusive when it exceeds what is necessary for a legitimate objective, entrenches economic dependence and causes appreciable harm to trading partners or affected third parties⁹⁹.

523. The classic *SABAM* precedent (Case 127/73) already contained, in embryonic form, this logic. In that case, the Court of Justice of the European Union (“CJEU”) recognised that an entity holding a de facto monopoly in the collective management of copyright could abuse its position by demanding a blanket and indiscriminate assignment of present and future rights, as well as by extending, beyond what is necessary, its control over such rights¹⁰⁰.

524. The rationale behind the judgment lies precisely in the idea that the pursuit of a legitimate objective – protecting authors’ rights – does not authorise the imposition of terms that exceed the limit necessary for that purpose and which, as a result, unjustly restrict the economic freedom of the other party.

525. In *Tetra Pak II* (Decision 92/163/EEC; Cases T-83/91 and C-333/94 P), the Commission and, subsequently, the European courts expanded on this reasoning by deeming abusive those contractual clauses which, without an adequate connection to the subject matter of the contract, restricted the use, modification, maintenance and disposal of equipment purchased by customers¹⁰¹.

526. The decisive factor here was not merely the economic burden imposed by the clauses, but the fact that they went beyond the contractual purpose and reinforced the customers’ economic dependence on the dominant undertaking. The language of *Tetra Pak II* (Decision 92/163/EEC; Cases T-83/91 and C-333/94 P) links, in a particularly useful

⁹⁹ PADILLA, Jorge. **What Is an Exploitative Abuse?** Working Paper. Washington: GW Innovation and Competition Lab / Compass Lexecon, 15 Nov. 2024.

¹⁰⁰ EUROPEAN UNION. Court of Justice. **Case 127/73, Belgische Radio en Televisie v. SV SABAM and NV Fonior**. [1974] ECR 51. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61973CJ0127%2801%29>.

¹⁰¹ EUROPEAN COMMISSION. **Tetra Pak II**. Commission Decision 92/163/EEC, OJ 1992 L 72/1. Available at: <https://eur-lex.europa.eu/eli/dec/1992/163/oj/eng>. Acesso em: 13 abr. 2026; EUROPEAN UNION. General Court. **Case T-83/91, Tetra Pak v. Commission**. [1994] ECR II-755. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61991TJ0083_SUM. Accessed on: 13 Apr 2026; EUROPEAN UNION. Court of Justice. **Case C-333/94 P, Tetra Pak International SA v. Commission**. [1996] ECR I-5951. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61994CJ0333>. Accessed on: 13 Apr 2026

way, the notion of contractual unfairness to that of the artificial strengthening of dependence.

527. The *AAMS* precedent (Case T-139/98) moved in the same direction. The Commission deemed abusive clauses that limited, without demonstrated necessity, the introduction of new cigarette brands, the maximum volume of products and the mechanisms for expanding distribution¹⁰².

528. Here too, the central issue was not a high tariff in the abstract, but the imposition of unnecessary and disproportionate operational conditions by a dominant player, with the effect of curtailing the commercial freedom of partners and restricting their access to the market.

529. More recently, the European Commission's decision in the *Apple – App Store Practices* case (Case AT.40437) provided a more systematic formulation of the legal test for unfair commercial conditions. As summarised by Padilla (2024), the Commission stated that such conditions, to be classified as abusive, must: (i) be imposed by a dominant undertaking on its commercial partners; (ii) be unfavourable or detrimental to the interests of those partners or third parties, including consumers; and (iii) not be necessary for the achievement of a legitimate objective, or, in any event, not be proportionate, as they go beyond what is strictly necessary¹⁰³.

530. It is worth noting that the *Apple – App Store Practices* decision (Case AT.40437) also refuted two recurring objections regarding exploitative abuse. The first is that the authority should demonstrate a specific causal link between dominance and the conduct in question. The second is that it would be necessary to compare the clause imposed by the dominant firm with the practices of non-dominant firms.

531. The Commission held, as explained by Padilla (2024), that it is sufficient to demonstrate that the position of relative dominance allows the incumbent to impose the terms in question and that, when practised by a dominant operator, such terms are capable of causing appreciable harm.

¹⁰² EUROPEAN COMMISSION. **Amministrazione Autonoma dei Monopoli di Stato (AAMS)**. OJ 1998 L 252/47; EUROPEAN UNION. General Court. **Case T-139/98, Amministrazione Autonoma dei Monopoli di Stato v. Commission**. [2001] ECR II-3413. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61998TJ0139>. Accessed on: 13 Apr 2026

¹⁰³ EUROPEAN COMMISSION. **Case AT.40437 – Apple – App Store Practices (music streaming)**. Decision of 4 March 2024. Available at: <https://eur-lex.europa.eu/eli/C/2024/3554/oj/eng>; PADILLA, Jorge. **What Is an Exploitative Abuse?** Working Paper. Washington: GW Innovation and Competition Lab / Compass Lexecon, 15 Nov. 2024.

532. In the same vein, the General Court observed, in *Google Shopping* (Case T-612/17), that a “*dominant undertaking is subject to certain restrictions*” which do not apply to non-dominant operators. **The analytical consequence is straightforward, indicating that the test does not require treating dominance as irrelevant nor assuming that what is lawful for a marginal operator automatically applies to the dominant one**¹⁰⁴.

533. In the context of digital platforms, Botta (2023) identifies further development of this case law through recent national decisions. In *Google Ads Rules* (Decision 19-D-26), the French *Autorité de la Concurrence* stated that a dominant undertaking may impose unfair commercial conditions when it holds such a high market share that its customers have no choice but to accept the terms of the transaction it sets¹⁰⁵.

534. On this basis, the authority classified Google as an indispensable trading partner for digital advertisers, deemed unfair rules that had been repeatedly and opaquely modified, rejected objective justifications, and further examined the potential anti-competitive effects of the rules on the downstream market.

535. The French ruling on *Google News* (Decisions 20-MC-01 and 21-D-17) is even more closely related to the subject matter of this case. Following the entry into force of French legislation on neighbouring rights, Google made the display of snippets conditional upon publishers granting a free licence¹⁰⁶.

536. The *Autorité de la Concurrence* concluded that Google acted as an indispensable commercial partner for media outlets, that the requirement for a free licence frustrated the purpose of Directive 2019/790 and French legislation – aimed at ensuring fair remuneration –, that there was no sufficient objective justification, and that the

¹⁰⁴ **Google and Alphabet v Commission (Case T-612/17)**, EU:T:2021:763. Luxembourg, 10 Nov. 2021. Available at: <https://op.europa.eu/en/publication-detail/-/publication/50446875-7767-11ec-9136-01aa75ed71a1>. Accessed on: 16 Mar. 2026.

¹⁰⁵ AUTORITÉ DE LA CONCURRENCE (France). **Decision 19-D-26 of 19 December 2019** regarding practices employed in the online search advertising sector. Paris, 19 Dec. 2019. Available at: <https://www.autoritedelaconcurrence.fr/en/decision/regarding-practices-implemented-sector-online-search-advertising-sector>. Accessed on: 13 Apr 2026; BOTTA, Marco. *Exploitative abuses: recent trends and In*: AKMAN, Pinar; BROOK, Or; STYLIANOU, Konstantinos (org.). *Research Handbook on Abuse of Dominance and Monopolization*. Cheltenham: Edward Elgar Publishing, 2023.

¹⁰⁶ AUTORITÉ DE LA CONCURRENCE (France). **Decision 20-MC-01 of 9 April 2020 on requests for interim measures by the Syndicat des éditeurs de la presse magazine, the Alliance de la presse d'information générale and others and Agence France-Presse**. Paris, 9 Apr. 2020. Available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-demandes-de-mesures-conservatoires-presentees-par-le-syndicat-des-editeurs-de>. Accessed on: 13 Apr 2026; AUTORITÉ DE LA CONCURRENCE (France). **Decision 21-D-17 of 12 July 2021 on compliance with the injunctions issued against Google in Decision 20-MC-01 of 9 April 2020**. Paris, 12 July 2021. Available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-au-respect-des-injonctions-prononcees-lencontre-de-google-dans-la-decision-ndeg>. Accessed on: 13 Apr 2026

excluded newspapers suffered a concrete competitive disadvantage. The analytical framework employed in *Google News* (Decisions 20-MC-01 and 21-D-17) – indispensable partner, unfair condition, lack of justification and relevant effects – offers, in my view, the most useful comparative precedent for analysing the case at hand.

537. Under German law, the *Facebook* case (Decision B6-22/16) of the *Bundeskartellamt* is relevant in demonstrating that, in digital ecosystems, exploitation can take the form of imposing data usage terms that are not necessary for the functioning of the service and that extract value from users under conditions of information asymmetry and dependence¹⁰⁷.

538. The usefulness of this precedent lies less in its specific normative basis and more in demonstrating that the combination of dominance, opacity, a lack of genuine choice, and excessive data or content capture can be treated as exploitative abuse on platforms.

539. Finally, although it does not directly involve debates concerning exploitative abuse, it is worth noting that recent European case law on refusal to contract provides a useful theoretical framework for understanding the power exercised by dominant platforms over agents who depend on them to access users, markets or relevant functionalities.

540. In *Bronner* (C-7/97)¹⁰⁸, the CJEU adopted a strict test, stating that for a refusal of access to constitute an abuse, it would be necessary to demonstrate that the denied resource was truly indispensable, that is, that there was no current or potential substitute. The Court further made it clear that it is not sufficient to assert that developing a proprietary alternative would be more expensive, less efficient or economically disadvantageous for the rival.

541. This understanding, however, was qualified more recently in the *Android Auto* case (C-233/23)¹⁰⁹, which dealt with a refusal of interoperability on a digital platform open to third-party use. There, the Court indicated that the same strict *Bronner* test

¹⁰⁷ BUNDESKARTELLAMT (Germany). **Decision B6-22/16 (Facebook)**. Bonn, 6 Feb. 2019. Available at: <https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Missbrauchsaufsicht/2019/B6-22-16.html>. Accessed on: 13 Apr 2026

¹⁰⁸ EUROPEAN UNION. Court of Justice of the European Union. **Oscar Bronner GmbH & Co. KG v. Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co. KG and others. Case C-7/97**. Judgment of 26 November 1998. Available at: <https://op.europa.eu/en/publication-detail/-/publication/306707d4-0525-4134-b45d-c572b81b759a> . Accessed on: 2 Apr. 2026.

¹⁰⁹ EUROPEAN UNION. Court of Justice of the European Union. **Alphabet Inc., Google LLC and Google Italy Srl v. Autorità Garante della Concorrenza e del Mercato. Case C-233/23**. Judgment of 25 Feb. 2025. Available at: <https://curia.europa.eu/site/upload/docs/application/pdf/2025-02/cp250019en.pdf>. Accessed on: 2 Apr. 2026.

should not be automatically applied when dealing with infrastructure designed precisely to host applications, add-ons or services developed by third parties.

542. As Ibáñez Colomo (2025) notes¹¹⁰, in situations of this kind, the focus of the analysis shifts. Rather than asking, in the abstract, whether the infrastructure is indispensable in an absolute sense, what matters is whether the refusal to contract, to allow interoperability or to facilitate access is capable of unduly hindering competition and preserving, without sufficient justification, the dominant platform's position.

543. The relevance of this development, at a theoretical level, lies in showing that, in digital markets, the notion of essentiality does not disappear, but neither should it be treated in a rigid and mechanical manner. Rather, it becomes particularly useful for identifying situations of structural dependence, the absence of functionally comparable alternatives, and the platform's superior bargaining position.

544. In other words, recent case law suggests that, in digital ecosystems, the analysis of refusal to contract must look not only at the formal ownership of the infrastructure, but also at the role it plays in practice and the degree of dependence it creates on third-party agents.

545. **In light of all the foregoing, I therefore understand that recent European rulings – both within the European Commission and in the Member States mentioned here – converge on four propositions: (i) exploitative abuse is not limited to excessive pricing; (ii) unfair commercial conditions may, in themselves, constitute an anti-competitive infringement; (iii) the central test revolves around imposition, harm, necessity and proportionality; and (iv) in digital platforms, the notion of an indispensable business partner, the power to set rules and asymmetric economic dependence takes on particular significance.**

5.3. The legal classification of exploitative abuse under Brazilian law

546. In Brazilian law, there is not yet a body of case law as clear and well established as that found in Europe regarding the treatment of exploitative abuse. This absence, however, should not be confused with a lack of legislative provision. On the contrary, the structure of Article 36 of Law No. 12,529/2011 provides, in my view, a sufficiently open and flexible basis for the classification of exploitative arrangements, including in digital markets.

¹¹⁰ IBÁÑEZ COLOMO, Pablo. **How Android Auto Reshapes the Law of Refusal to Deal (and What It Means in Practice)**. SSRN, 23 Oct. 2025. Available at: <https://ssrn.com/abstract=5648051>. Accessed on: 2 Apr. 2026.

547. This stems, first and foremost, from the legislative framework itself. Article 36 covers “acts manifested in any form” which have as their object or may produce the effects described in its items; and paragraph 3 makes it clear that the conduct listed there is merely illustrative, as indicated by the phrase “in addition to others”, which precedes the list of subsequent items.

548. The Brazilian legislature’s choice was, therefore, deliberately open-ended and effects-oriented, rather than based on a closed typology of unlawful acts. In the same vein, Frazão (2017)¹¹¹ highlights that:

By defining the antitrust infringement by its effects, Law No. 12.529/2011 assumes considerable scope, opening the way for its application to extremely diverse business practices, as can be inferred from the list of conduct set out in paragraph 3 of Article 36. When it is noted that this list is still merely descriptive and that the practices are independent of the form of the legal acts, being conditioned solely on the possibility of equally broad anti-competitive effects, it is observed that there is an extremely broad scope for identifying antitrust infringements.

549. It is precisely within this framework – open and effects-oriented – that it becomes possible to classify exploitative practices, even in the absence of a consolidated case-law tradition in this regard. This is because, by not restricting the antitrust infringement to previously defined types, Article 36 allows the antitrust authority to investigate, on the basis of empirical and verifiable criteria, whether certain conduct – even if not traditionally classified as abusive – is capable of producing adverse effects on competition.

550. At the same time, this regulatory flexibility coexists with the identification of infringements by object in cases where judicial precedent has already demonstrated, with a sufficient degree of certainty, the intrinsic harmfulness of certain practices, thereby dispensing with the need for an in-depth analysis of effects.

551. Thus, as I have already discussed in Administrative Proceeding No. 08700.000284/2022-72 (CRECI/GO), whilst infringements by object remain confined to well-established scenarios, the scope of infringements by effect plays a central role in the assessment of exploitative conduct, enabling Brazilian competition law to respond, in a flexible and reasoned manner, to arrangements not yet fully established in case law. This is precisely the case in the present assessment, which is grounded in an analysis by effect.

¹¹¹ MELLO, Ana Frazão Vieira de. *Competition Law, 1st edition*. Rio de Janeiro: Saraiva Jur, 2017.

552. Secondly, item IV of Article 36, particularly in its reference to the abusive exercise of a dominant position, provides the general framework to capture value extraction that does not take the form of a refusal to deal, classic excessive pricing, or outright exclusion. It is precisely this flexibility that allows Brazilian law to align, in practical terms, with the categories explored by the European Commission under Article 102 TFEU.

553. In terms of specific arrangements, several items of paragraph 3 of Article 36 offer complementary avenues. Item X covers discrimination against purchasers or suppliers through the differential setting of prices or ‘operational conditions for the sale or provision of services’. Item XVIII, in turn, expressly addresses “making the sale of one good conditional upon the purchase of another”, revealing that Brazilian law already provides, by way of example, for forms of contractual coercion and leverage within economic relations.

554. Even where the practice does not fit perfectly into a single item, the combination of the main provision, paragraph 2 – even if one accepts the existence of scenarios of dominant position at a level different from that specified therein – and the illustrative list in paragraph 3 makes it possible to capture unilateral impositions of unfair conditions on dependent partners. In this vein, exploitative conduct similar to that addressed in the European context under Article 102(a), (c) and (d), may find functional expression in Brazilian law through the general clause of Article 36 (main provision), item IV and paragraph 3, in conjunction with items such as IV, V, VIII, X, XII and XVIII.

555. It is worth noting that this interpretation is consistent with the Brazilian institutional environment itself. In the context of CADE’s contribution to the Ministry of Finance, as part of the process of gathering input for the regulation of digital platforms, it was highlighted that paragraph 3 of Article 36 presents an illustrative, rather than exhaustive, list, and it was also recognised that the law may cover practices of an exploitative nature¹¹². In a recent doctrinal reflection, former Commissioner Victor Oliveira Fernandes also emphasises that the open-ended definition of Article 36 allows Brazilian law to be adapted to new forms of abuse of dominance in digital markets¹¹³.

556. In the same vein, in my opinion in Voluntary Appeal No. 08700.009572/2024-54 (TCC Apple Inc. and Apple Services LATAM LLC.), I emphasised that:

¹¹² ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENCE (CADE). **CADE’s contributions to the Ministry of Finance**. Brasília: CADE. Available at: <https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/contribuicoes-do-cade/contribuicoes-cade-ministerio-fazenda.pdf>. Accessed on: 16 Mar. 2026.

¹¹³ FERNANDES, Victor Oliveira. **Towards data portability and interoperability under Brazilian competition law: crafting appropriate legal standards for abuse of dominance**. Competition Policy International Antitrust Chronicle, 2023.

“8. (...) it is essential to stress that CADE’s jurisdiction to investigate infringements of the economic order is based on the provisions of Article 36 of Law No. 12.529/2011, which constitutes an open classification of conduct that potentially or actually generates harmful effects on competition arising from ‘acts manifested in any form’.

9. It should be noted that the use of the term ‘acts’ demonstrates the breadth of this jurisdiction, encompassing events linked to the manifestation of human will, to which the Competition Act attributes legal effects.

*10. (...). Thus, **there are no categories of legal acts that can be automatically excluded from the scope of the Antitrust Authority in advance and in absolute terms.***

11. The determining factor for the exclusion of a legal act from CADE’s jurisdiction is precisely the absence of a fit within the open definition of Article 36 of Law No. 12,529/2011. This requires the Competition Authority to carry out an in-depth analysis and interpretation of these acts, in order to ascertain their harmfulness (potential or actual) to the competitive environment.” (SEI 1536672, emphasis in the original).

557. Similarly, the joint recommendation issued by Cade, the National Data Protection Authority (ANPD), the Federal Prosecution Service (MPF) and the National Consumer Secretariat (Senacon) regarding the amendment to WhatsApp’s privacy policy, whilst not constituting a binding precedent on the merits, illustrates an important point: Brazilian authorities have already identified, in digital contexts, the competitive risk inherent in the unilateral imposition of new terms by an entity with significant structural power and high dependence on the user or partner¹¹⁴.

558. I understand, therefore, that the absence of established Brazilian case law under the specific label of 'exploitative abuse' does not prevent, but rather invites, the development of analytical criteria that are reproducible in other cases whilst remaining responsive to the specificities of the individual case.

559. The decisive point is not to mechanically import foreign categories, but to recognise that the Brazilian legislature has already left the regulatory pathways

¹¹⁴ ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENCE (CADE); NATIONAL DATA PROTECTION AUTHORITY (ANPD); FEDERAL PUBLIC PROSECUTOR’S OFFICE (MPF); NATIONAL CONSUMER SECRETARIAT (SENAÇON). **Joint recommendation on WhatsApp’s privacy policy**. Brasília, 2021. Available at: https://cdn.cade.gov.br/Portal/assuntos/noticias/2021/Recomendac%CC%A7a%CC%83o_WhatsApp_-_Assinada.pdf. Accessed on: 16 Mar. 2026; ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENCE (CADE). **CADE, MPF, ANPD and SENACON recommend that WhatsApp postpone the entry into force of the new privacy policy**. Brasília: CADE, 7 May 2021. Available at: <https://www.gov.br/cade/pt-br/assuntos/noticias/cade-mpf-anpd-e-senacon-recomendam-que-whatsapp-adie-entrada-em-vigor-da-nova-politica-de-privacidade>. Accessed on: 16 Mar. 2026.

sufficiently open to identify and sanction exploitative conduct when it amounts to the abusive exercise of a dominant position.

5.4. The conduct under investigation

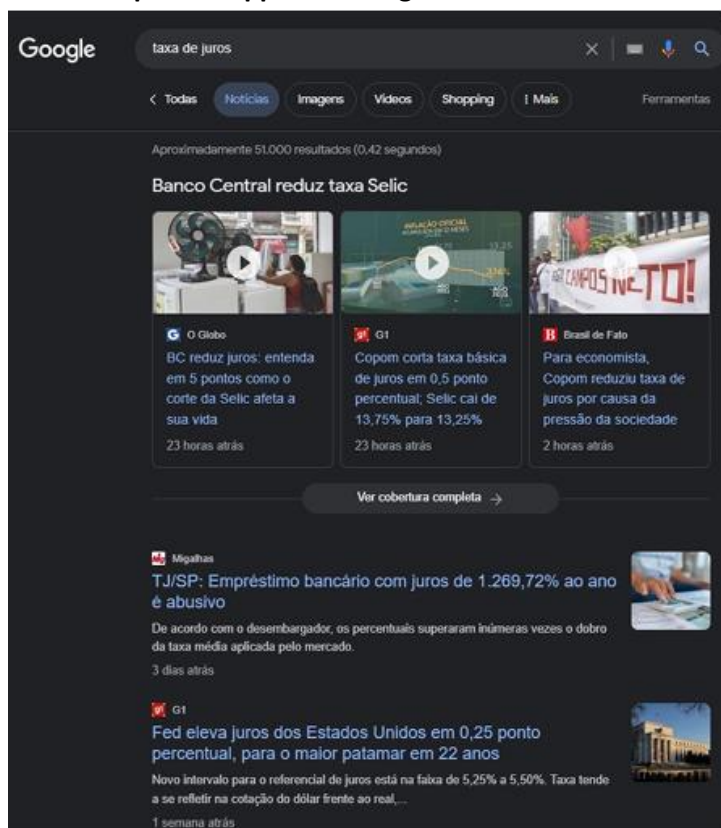
560. That said, it is necessary to clarify the conduct under scrutiny.

561. To this end, it is important to clarify that the present Administrative Inquiry was initiated with the broad objective of *“investigating the conditions of competition and any abuse of a dominant position in the search market, as well as in the vertically related news market”* (SEI 0632620, §§43 and 143). The order initiating the proceedings by the SG/Cade (Decision No. 4/2019, SEI 0635540) effectively limited the scope of the investigation to scraping conduct.

562. Based on this definition, the display of snippets and other extracts of journalistic content on Google’s SERP, without adequate remuneration, constitutes the primary focus of the conduct investigated in this Administrative Inquiry, initiated in 2019 following a complaint which, at the time, described the scraping carried out by the Investigated Party as capable of boosting advertising revenue to the detriment of publishers, who remain responsible for the costs of content production.

563. More specifically, the practice consists of the automated collection (crawling and indexing) of journalistic content available on the web (scraping), followed by its partial reproduction – through titles, text excerpts, images and other metadata (snippets, see **Figure 13**) directly on the search engine results page (SERP), in formats such as enriched organic results and information panels. This display occurs without immediate redirection to the source website and, in many cases, proves sufficient to satisfy the user’s informational needs, reducing the likelihood of clicking on the publisher’s link.

Figure 13 – Example of snippets in Google’s thematic news search results



Source: Annex I of Technical Note No. 70/2024 of the SG/Cade (SEI 1481804)

564. As a direct consequence of this arrangement, Google would enhance its results page, improve the user experience within Google’s own environment, and increase the commercial value of its search and advertising infrastructure. The publisher, in turn, would continue to bear the costs of fact-checking, writing, editing, verification and editorial responsibility.

565. The conduct therefore involves the extraction and internalisation of value from a third-party input for the benefit of a platform that is allegedly dominant in relation to vertically dependent agents, without any consideration being defined in negotiations between the parties.

566. Although the case was filed in 2019, the launch in 2024 of AIO introduced additional relevant elements to the analysis.

567. In technical terms, this consists in a complementary layer to the traditional search mechanism, combining indexing, content retrieval, and generative models to reorganize and present information in a unified textual format (**Figure 14**), thereby significantly altering the dynamics of access, visibility and content monetization in the digital environment.

Figure 14 – AI Overview searching for sports news



Source: Zero-Hora/GZH (SEI 1643322).

568. It should be noted that AIOs were not the subject of analysis in the Technical Notes issued by the DEE/Cade and the SG/Cade, which were prepared prior to the commercial roll-out of the functionality in Brazil. Consequently, the evidence regarding their effects was gathered, to a large extent, during the supplementary investigation conducted by this Office between 2025 and 2026.

569. As part of the development of this practice, Google would utilise third-party journalistic content to feed, train and compose summarised responses displayed in AIOs and related generative AI features, which are presented directly on the search interface and would also tend to reduce the need to access the original sources. Strictly speaking, this constitutes a **technological and functional evolution of the logic of appropriation underlying snippets, with an increased degree of incorporation of third-party content into the platform's own product.**

570. Regarding the initial stage of the conduct, Technical Note No. 70/2024 of the SG/Cade (SEI 1481800 and 1481804) examined three theories of harm in the context of exclusionary conduct – predatory innovation and blocking of essential inputs, self-preferencing with traffic retention and retention to increase advertising revenue – and concluded that there was insufficient evidence of an infringement, recommending that the case be closed.

571. Technical Note No. 24/2023 issued by the DEE/Cade (SEI 1325516), meanwhile, broke down the analysis of abuse of a dominant position in relation to exclusionary abuse on the basis of three concurrent elements: scraping content from third-party websites, displaying it on its own results page, and creating incentives for users to stop accessing the original website. It should be noted that, preliminarily, with regard to the analysis of AIOs, these same elements remain, and it could be argued that the only

significant change is the expansion of incentives for users to stop accessing the original website given the new product architecture.

572. In light of this context, although it is acknowledged that the Administrative Inquiry concerning scraping conduct in relation to the product architecture of Google's SERP was initiated in 2019, AIO constitutes a subsequent development that is nonetheless functionally related to the investigated practice, which justifies its analysis within the Tribunal's remit, thereby providing greater depth and completeness to the assessment of the case.

573. **Along these lines, I emphasise that, in my view, AIOs do not constitute conduct entirely distinct from that originally investigated in the case file. The technology underpinning them preserves the same functional basis of scraping third-party content, with the main change being in the way the data obtained is processed and presented to the end user.**

574. **Whereas, in the initial stage, the use of this content took the form mainly of snippets and other summary display modules, in the most recent stage a generative layer has been added to this same technical basis, capable of reorganising, synthesising and recombining the captured content. From this perspective, I consider this to be less a new conduct in its own right than a new, more sophisticated stage of the same conduct originally investigated in the present proceedings.**

575. **In this regard, the case is particularly illustrative of the difficulties involved in applying traditional competition law to platform markets, digital markets and competitive environments characterised by dynamic technological architectures. The lengthy proceedings of the case highlighted a process of technological evolution that took place during the course of the investigation itself, whereby the conduct initially observed gained a new capacity for application on a larger scale, without losing its essential characteristics.**

576. **Thus, the same affected parties remain, as do the same protocol for accessing and obtaining data and, above all, the same underlying economic rationale of appropriating and utilising content produced by third parties for the benefit of the platform. What has changed most significantly is the manner in which this content is processed and the architecture through which it is delivered to the user.**

577. **The difference, therefore, lies in scale and product design, rather than a technical or economic break with previous practice. Instead of merely presenting isolated excerpts linked to a single article or a single publisher, the generative layer**

now structures responses composed of multiple references, amalgamating content from different sources into a unified textual whole, with its own character and distinct added value – which will be explored in greater depth throughout this opinion with regard to the exclusionary theory of harm under consideration – from that observed in the initial stage of snippets.

578. Notwithstanding this qualitative difference in the form of presentation, the same functional basis of scraping and the same mechanism for capturing informational input remain. **It is precisely for this reason that AIOs must be understood, for analytical purposes, as an evolutionary development of the original conduct, and not as a phenomenon entirely separate from it.**

579. This qualitative shift in conduct is confirmed by the international experience described above. Whilst snippets had already been the subject of controversy in various jurisdictions, AIOs only began to be treated as a competition issue from 2024–2025 onwards, with the launch of specific proceedings by the European Commission, the CMA in the UK and the Competition Commission of South Africa.

580. In this regard, I reiterate that the economic mechanism is analogous, since Google would make use of content produced by third parties to enhance its own service, retain attention and possibly increase revenue. The difference lies in the intensity, format and scope of the reuse given technological developments and, consequently, in the transformation of product design and its presentation to the user.

581. **I also consider it pertinent to note a feature that appears to me to be especially significant in exploitative conduct, although it also applies more generally to the analysis of abuse of economic power in digital or increasingly digitised contexts. In environments where technology evolves rapidly, markets become more dynamic and decision-making processes, by definition, follow a slower timeline; it seems unrealistic to me to assume that such conduct will remain static.**

582. **On the contrary, they tend to evolve in parallel with the technology itself, adapting to new product architectures, new forms of intermediation and new patterns of choice among users and affected agents. In this context, although the effort to build categories, theories of harm and rules of analysis remains essential – as I have sought to develop throughout this opinion – capturing these practices within excessively rigid frameworks becomes progressively more complex.**

583. **It is precisely for this reason that, in my view, competition categories should be constructed less and less by rigid formal boundaries and increasingly by the**

combination of, on the one hand, the dynamic characteristics of business strategy and, on the other hand, its concrete effects on markets and economic agents. It is precisely for this reason, as also explored throughout this opinion, that I understand that conduct and cases of this nature require an effects-based analysis rather than an object-based approach, whose scope has become increasingly broad and now encompasses practices that tend to involve some form of fixing of productive input already addressed by competition policy – as I have sought to explore in a series of opinions concerning restrictive vertical conduct such as price fixing, exchange of sensitive information, and the setting of maximum resale prices or minimum advertised prices.

584. **To some extent, this is the same logic that also makes it difficult to define fixed and perfectly delimited relevant markets in digital ecosystems, which is why various jurisdictions have been progressively relaxing excessively static approaches in favour of perspectives that are more attentive to the dynamics of how the market operates. In this context, the open-ended typology of Article 36 of Law No. 12,529/2011 proves particularly valuable, allowing the competition authority to keep pace with the transformations of forms of exercise of economic power without becoming constrained by closed categories, whilst reinforcing the central importance of a flexible analytical capacity that is technically rigorous and responsive to market developments.**

585. Having said that, I would like to make it clear, however, that although the characteristics of AIO may, in theory, give rise to competitive effects and potentially justify the imposition of sanctions, its assessment in this opinion is of an instrumental and subsidiary nature. Should elements be identified that justify further investigation, given that this is a development of the conduct from 2019, it will be necessary to assess whether the case file should be returned to the SG/Cade for further investigation, or, alternatively, whether this Inquiry should be converted into an Administrative Proceeding, with a specific focus on the aspect of the conduct relating to AIO, without prejudice to its connection with the original context, notably with regard to competitive conditions and the potential characterisation of abuse of dominant position in the relevant markets.

586. Furthermore, the possible continuation of the Inquiry, or its conversion into an Administrative Proceeding, is also justified by the need to ensure the full exercise of adversarial proceedings and the right to a full defence by Google and the other potentially affected economic agents.

587. From this procedural perspective, such caution is particularly relevant given the high volume and diversity of contributions gathered during the supplementary

investigation, which broaden the factual and competitive scope to be considered. In this context, the continuation of the proceedings or the initiation of a separate case – to be assessed on the basis of the legal test outlined throughout this opinion – allows not only for the proper definition of the subject matter under analysis, but also for the effective participation of interested parties on an equal footing in the formation of the Authority’s decision.

588. In conclusion, it should be noted that the SG/Cade has the legal authority to conduct investigations and proceedings aimed at preventing, investigating and prosecuting breaches of the economic order, in accordance with Article 13 of Law No. 12,529/2011.

589. Having provided this introduction to the methodological aspects, theoretical foundations and approach underpinning this opinion, I shall now proceed, in the following sections, to examine:

- i. The existence of structural dependence of publishers on Google, particularly with a view to assessing whether there is any abuse of exploitative power, including an analysis of related issues concerning whether or not a formally exhaustive definition of the relevant market is required;
- ii. The ecosystemic logic and pricing mechanisms underlying the conduct, with a view to understanding the relevance of product integration and the manner in which any cross-subsidies that structure Google’s business model operate – in particular, whether such dynamics manifest themselves directly in the search service or within the broader scope of ecosystem integration and platform architecture – in order to appropriately calibrate the theory of harm;
- iii. The identification and definition of the theory of harm applicable to the case, namely exploitative abuse, albeit linked to elements of an exclusionary nature; and
- iv. The delineation and application of legal-logical tests (rules of analysis) corresponding to the aforementioned theory of harm, with an examination of the different phases of the conduct over time.

5.5. Market power, publishers’ structural dependence, and the absence of a need for an exhaustive formal definition of the relevant market

590. I also consider it necessary to clarify another methodological point that guides the following analysis.

591. In my view, the core of the case does not lie in precisely and exhaustively determining whether the relevant market should be defined, with mathematical precision, as general search, thematic news search, digital content distribution, or any other intermediate formulation. The core issue is to determine whether, regardless of the formal market definition adopted, publishers operate in a position of structural dependence on Google for purposes of discovery, distribution, monetization, and the management of their own economic risk¹¹⁵.

592. This emphasis on dependence, rather than definitional formalism, is consistent with Padilla's (2024) approach. If the test for exploitative abuse is to focus on the harm caused by dominance, it would make no sense to require, as an absolute prerequisite, an exhaustive mapping of all digital attention channels. **The legally relevant point is another: whether the dominant firm is capable of imposing terms that the trading partner would not accept in a minimally competitive environment.**

593. As I have already explained in Consultation No. 08700.003612/2025-35 (Consultant: Pirelli Comercial de Pneus Brasil Ltda.), the definition of the relevant market and the calculation of market shares are of an instrumental nature, and do not serve as a formalistic filter capable, on their own, of concluding the analysis of the economic power actually exercised in the specific case.

594. Furthermore, in markets characterised by significant asymmetries, network effects and structural dependencies, the competition authority must adopt an approach that more closely reflects the reality of economic interactions and competitive dynamics, paying close attention to the specific circumstances in which the conduct is imposed, and not merely to the abstract mapping of the market.

595. Once again, as I have already explored in my opinion on the same Consultation, the assessment of market power is not limited to its strictly structural dimension. **As suggested by Krattenmaker, Lande & Salop (1987), alongside the neoclassical notion centred on the ability to raise prices, there is a more dynamic understanding, in which market power is revealed through the ability to exclude, discipline or condition the behaviour of third parties.**

¹¹⁵ PADILLA, Jorge. **What Is an Exploitative Abuse?** Working Paper. Washington: GW Innovation and Competition Lab / Compass Lexecon, 15 Nov. 2024.

596. For this reason, too, the controversy surrounding the most appropriate definition of the relevant market does not, in itself, eliminate the competitive relevance of this dependency, even though, from a comparative perspective, Google has been expressly recognised, in a landmark US court ruling, as holding monopoly power in the general search services market¹¹⁶.

597. That said, I do not consider it necessary here to define the competitive nexus on the basis of distinctions such as general search or specific searches, given that, as Lianos, Korah & Siciliani (2019)¹¹⁷ point out, the economic definition of the market and its legal definition do not always fulfil exactly the same function, particularly when the protection of rivalry and the competitive process is at stake.

598. In a line of reasoning similar to that already adopted by this Tribunal in Voluntary Appeal No. 08700.009572/2024-54 (Eldorado/Paper) in the opinion of former Commissioner Victor Oliveira Fernandes, it does not seem methodologically correct to me to treat the absence of a definitive classificatory framework as sufficient reason to obscure concrete relationships of power and economic subordination.

599. Once again, in the present case, publishers' dependence exists regardless of the classification disputes regarding the relevant market, because it stems from a factual situation of unavoidable intermediation. The central point is not merely to define, in the abstract, whether the activity in question is general search, news search, referencing or monetisation, but to recognise that the platform holds the effective power to shape access to the audience, visibility, traffic and economic conversion. It is this concrete reality, rather than the rigidity of prior structural filters, that should guide the analysis of the competitive asymmetry examined here.

600. The evidence gathered from the supplementary investigation points precisely in this direction. **[RESTRICTED ACCESS TO CADE]**.

601. These figures are not isolated. Macedo & Moreira (2025), examining public-interest journalism in the context of digital transformation, note that 30.7% of the outlets analysed derive more than 50% of their total traffic from search engines. The data speaks for itself, particularly when read in conjunction with the case file, indicating that search engine dependency is not a peculiarity of one or another major group, but a

¹¹⁶ UNITED STATES. **District Court for the District of Columbia. United States v. Google LLC. 747 F. Supp. 3d 1 (D.D.C. 2025)**. Available at: <https://www.justice.gov/atr/media/1421546/dl?inline>.

¹¹⁷ LIANOS, Ioannis; KORAH, Valentine; SICILIANI, Paolo. **Competition Law: Analysis, Cases, & Materials**. Oxford: Oxford University Press, 2019. Disponível em: <https://academic.oup.com/oxford-law-pro/book/57698>. Acesso em: 03 abr. 2026.

widespread characteristic of how journalistic content circulates in the digital environment¹¹⁸.

602. Nor does the heterogeneity among media outlets invalidate this diagnosis. In digital markets, dependence does not need to be homogeneous to be relevant. It is sufficient that, for a portion of the affected players, the loss of the dominant discovery channel compromises the continuity or scale of economic activity. Structural dependence is, by definition, an asymmetrical relationship, not a uniform arithmetic mean.

603. Google states (SEI 1654679), on the other hand, that the Comscore data used throughout the proceedings before Cade would suggest more modest traffic figures, generally below 30%, and that news consumption has shifted in recent years towards social media and other forms of access. I do not dismiss this argument. I understand, however, that it does not invalidate the conclusion regarding dependence, for at least three reasons.

604. The first is methodological. Comparative experience itself shows that aggregated traffic metrics may underestimate the economic weight of search when they exclude, for example, brand searches, combinations with direct traffic, or related forms of intentional access. In the French *Google News* decision (Decisions 20-MC-01 and 21-D-17), the authority examined a similar argument by Google, which estimated the share of total traffic it redirected at 31.5%, and noted that, even so, this was already a significant percentage; more than that, it highlighted methodological biases and demonstrated that, for several publishers, Google's effective share was substantially higher¹¹⁹, in line with the findings of the supplementary investigation conducted by this Office.

¹¹⁸ MACEDO, Bernardo Gouthier; MOREIRA, Miguel Silveira. **Digital transformation and the economic sustainability of public interest journalism: considerations based on cases from Argentina, Brazil and Colombia.** *Internet & Society Journal*, vol. 6, no. 1-2, pp. 166–197, Dec. 2025. Available at: <https://revista.internetlab.org.br/transformacao-digital-e-sustentabilidade-economica-do-jornalismo-de-interesse-publico-consideracoes-a-partir-de-casos-da-argentina-brasil-e-colombia/>. Accessed on: 16 Mar. 2026; BALASINGHAM, Baskaran; D'AMICO, Alessia S. **Beyond exclusion: revisiting exploitative abuses in digital platform markets.** *Journal of Competition Law & Economics*, Oxford, Oxford University Press, 2025.

¹¹⁹ AUTORITÉ DE LA CONCURRENCE (France). **Decision 20-MC-01 of 9 April 2020** on applications for interim measures by the Syndicat des éditeurs de la presse magazine, the Alliance de la presse d'information générale and others, and Agence France-Presse. Paris, 9 April 2020, paras. 140–143 and 222–230. Available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-demandes-de-mesures-conservatoires-presentees-par-le-syndicat-des-editeurs-de>; AUTORITÉ DE LA CONCURRENCE (France). **Decision 21-D-17 of 12 July 2021** on compliance with the injunctions issued against Google in Decision 20-MC-01 of 9 April 2020. Paris, 12 July 2021. Available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-au-respect-des-injonctions-prononcees-lencontre-de-google-dans-la-decision-ndeg>. Accessed on: 13 Apr 2026

605. The second reason is economic. The growth in news consumption on social media should not be confused with a replacement of qualified search traffic. The literature and empirical data clearly distinguish the logic of use of these channels. In searches, the user formulates a query with the active intention of finding information. On social media, news consumption is often incidental, mediated by feeds, recommendations, algorithms and social interaction, serving more to expand brand awareness and relevance than, necessarily, to generate qualified clicks and monetisable conversions¹²⁰.

606. The French authority, once again in a passage particularly relevant to the present case, noted that search engines and social media “*differ in terms of their uses*”¹²¹ and that, from the user’s perspective and in terms of how they work technologically, their specific characteristics in terms of supply and demand are not interchangeable. The conclusion was that traffic originating from Google Search is predominant in nature and difficult to replace by social media, aggregators or direct access.

607. This distinction is also important because the economic value of traffic depends not only on its gross volume, but on its intent and conversion. Traffic from search tends to reflect a deliberate search for information, context or deeper understanding. Consequently, it typically shows greater relevance for full-text reading, time spent on the site, user retention and advertising revenue.

608. Traffic derived from social media, on the other hand, is often more sporadic, incidental and subject to significant algorithmic volatility. Even when it expands the reach of the news brand, this does not always translate into repeat visits, subscriptions or equivalent revenue. It is therefore not economically neutral to substitute search traffic for diffuse attention in social environments¹²².

609. In other words, Google’s defence argument confuses two distinct metrics. One thing is participation in general news consumption. Another, quite different, is the ability

¹²⁰ NEWMAN, Nic et al. **Reuters Institute Digital News Report 2025**. Oxford: Reuters Institute for the Study of Journalism / University of Oxford, 2025. Available at: <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2025> ; PEW RESEARCH CENTER. **News consumption on social media**. Survey of U.S. adults conducted 18–24 August 2025.

¹²¹ AUTORITÉ DE LA CONCURRENCE (France). **Decision 20-MC-01 of 9 April 2020** on applications for interim measures by the Syndicat des éditeurs de la presse magazine, the Alliance de la presse d’information générale and others, and Agence France-Presse. Paris, 9 April 2020, para. 140. Available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-demandes-de-mesures-conservatoires-presentees-par-le-syndicat-des-editeurs-de>. Accessed on: 13 Apr 2026

AUTORITÉ DE LA CONCURRENCE (França). **Decision 20-MC-01 of 9 April 2020** on requests for interim measures by the Syndicat des éditeurs de la presse magazine, the Alliance de la presse d’information générale and others and Agence France-Presse. Paris, 9 abr. 2020, para. 140. Available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-demandes-de-mesures-conservatoires-presentees-par-le-syndicat-des-editeurs-de>.

¹²² *Ibid.*

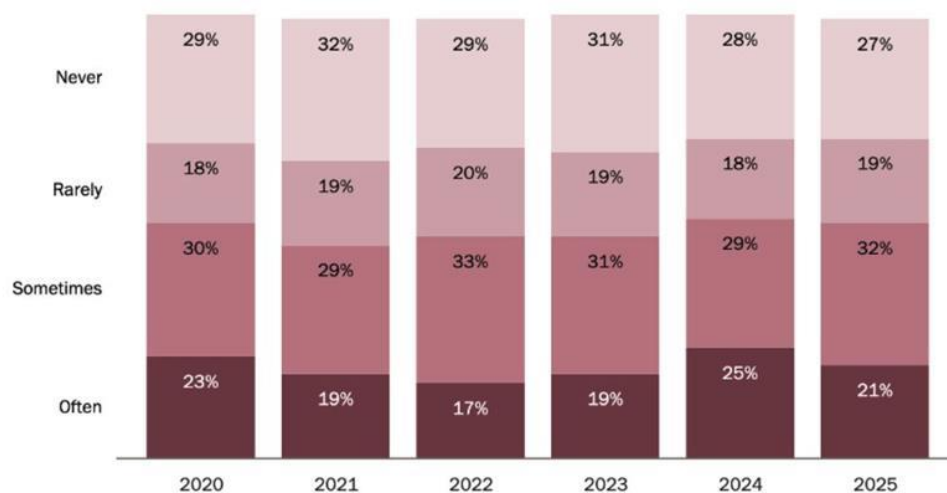
to generate intentional and monetisable traffic for the publisher. The case files and the literature indicate that Google remains central, above all, in this second dimension.

610. The elements of the supplementary investigation support this interpretation. **[RESTRICTED ACCESS TO CADE]**. And ANER stated (SEI 1656193), expressly, that social media platforms are limited and imperfect competitors, as they generate lower-quality traffic with lower conversion rates.

611. Finally, the third reason is a dynamic one. Even as news consumption via social media increases as a source of exposure, this does not mean that social media platforms will come to play the same economic role as search engines in the intentional discovery of content and in monetisation through audience reach.

612. This finding, however, coexists with the persistence of websites, apps and search engines as central tools for actively accessing news brands and converting interest into actual visits. **Figure 15**, based on a survey by the Pew Research Center, reinforces this dynamic, showing how more adults report obtaining news on social media in 2025 than in previous years (in line with material presented by Google and produced by Reuters in its Digital News Report 2025, cited earlier in this report).

Figure 15 – News consumption by adults on social media in the US (% of US adults who report getting their news from social media)



Source: Pew Research Center. Note: non-respondents are not shown. Respondents who do not use the internet were not asked this question; they have been included alongside those who answered 'Never', as well as those who do not report getting news via digital devices.

613. Although this trend is relevant to understanding the contemporary information landscape, it does not, however, resolve the central competitive question, which is different: who controls, in economically decisive terms, the channel of intentional

discovery that generates traffic convertible into revenue for publishers? The evidence repeatedly points to Google¹²³.

614. Furthermore, there is a mismatch between general data on changing consumption patterns and specific data on economic dependence. The first set describes how people obtain information at an aggregate level. The second, in turn, reveals through which channels media outlets actually obtain visits, impressions, clicks and advertising conversions. It is this second set that is most directly relevant to the examination of exploitative abuse.

615. In this regard, the factual summary provided in the supplementary information is particularly telling, given that, for the publishers surveyed, social media acts as an additional channel for reach and brand awareness, but not as a functional substitute for Google in terms of recurring, predictable and monetisable traffic. In other words, as already stated, they can expand presence and *awareness*; they do not, as a rule, replace the channel that organises active discovery and audience-dependent remuneration.

616. That is why I do not consider it necessary, for the purposes of this opinion, to definitively resolve whether or not social media form part of the same relevant market for news search. Even assuming a scenario of greater fragmentation of consumption, the publishers' dependence on Google remains sufficiently demonstrated by the case file. And it is this dependence that renders the conditions imposed by the platform coercive, rather than merely contractual.

617. In summary, the shift in consumption patterns invoked by Google may be true to some extent without this altering the central conclusion. The increased prominence of social media in capturing user attention does not eliminate Google's position as an indispensable commercial partner in the intentional discovery, targeted distribution and monetisation of journalistic content.

618. Finally, it is worth highlighting an additional point, closely related to the concrete manifestation of structural dependence and the potentially coercive dynamics associated with it, which will be examined in greater detail below in relation to the logic of opt-out. The mere acceptance of the conditions imposed by Google does not, in itself, render them fair, reasonable and non-discriminatory ('FRAND')¹²⁴.

¹²³ Ibid.

¹²⁴ FRAND (fair, reasonable and non-discriminatory) is the concept that characterises the conditions under which holders of essential patents undertake to licence them to any interested party on fair, reasonable and non-discriminatory terms, so as to ensure access to standardised technology without the patent holder abusing their position.

619. In the tradition of bargaining theory, dating back to Nash (1950)¹²⁵, the observed outcome of a negotiation depends, to a large extent, on the point of disagreement and the quality of each party's external options, rather than on any autonomous presumption of fairness. Thus, when refusal entails, for the publisher, a significant loss of traffic, audience, revenue and discoverability, remaining in the arrangement may be economically rational without this implying substantial agreement with its terms. In such a scenario, acceptance reveals, rather, the opportunity cost of exit.

620. This conclusion is reinforced when specific investments and sunk costs are considered. As Klein, Crawford & Alchian (1978)¹²⁶ demonstrate, relationships characterised by specific assets tend to generate a risk of opportunistic appropriation of the quasi-rents created following the investment. In the case of publishers, once expenditure on journalistic production, technological adaptation, indexing strategies, SEO, audience building and search-ecosystem-dependent monetisation has been incurred, withdrawal ceases to be a neutral option.

621. The implicit cost of exit now includes not only the loss of current traffic, but also the destruction of a significant portion of the value already invested. In this context, the continuation of the relationship does not necessarily reflect contractual balance; it may merely reflect rational submission to a structure in which the alternative has become excessively costly.

622. In this sense, the widespread application and stability of the conditions imposed do not, in themselves, rule out the possibility of unfairness or disproportionality. On the contrary, they may be precisely a symptom of structural dependence. In this vein, to reiterate the point made by Lee (2026)¹²⁷, bargaining power intensifies when one party has robust functional alternatives, whilst the other faces inferior or economically unviable options.

623. The inference drawn from these references, applied to the present context, is simple: the fact that publishers accept Google's terms may merely demonstrate that being excluded from the search engine is even worse than remaining subject to unfavourable terms, and does not, in itself, demonstrate that such terms are FRAND.

¹²⁵ NASH, John F. **The bargaining problem**. *Econometrica*, vol. 18, no. 2, pp. 155–162, 1950.

¹²⁶ KLEIN, Benjamin; CRAWFORD, Robert G.; ALCHIAN, Armen A. **Vertical integration, appropriable rents, and the competitive contracting process**. *Journal of Law and Economics*, vol. 21, no. 2, pp. 297–326, 1978.

¹²⁷ LEE, Sangyun. **Abuse of economic dependence (superior bargaining position) in competition law: concerns, benefits, and safeguards**. *Journal of Antitrust Enforcement*, 2026. DOI: 10.1093/jaenfo/jnag005.

624. **That said, I consider that the dependency is therefore already sufficiently established to warrant an examination of exploitative abuse.**

5.6. Ecosystemic logic, incentives, cross-subsidy structure and pricing mechanisms

625. Having recognised the dependency, we must take a step further. The case cannot be viewed as a mere bilateral relationship between a search engine that ‘sends clicks’ and platforms that ‘receive traffic’. I therefore believe that the potential real-world economic impact of the conduct is ecosystemic¹²⁸.

626. In this regard, it is worth emphasising that Google does not merely operate a search engine, but rather an integrated set of services encompassing distribution, advertising, measurement, operating systems, a browser, discovery platforms and, now, mutually reinforcing generative tools¹²⁹¹³⁰.

627. In this vein, it is worth revisiting the opinion of former Commissioner Victor Oliveira Fernandes in the context of the Motion for Clarification in TCC Application No. 08700.006953/2025-62 (TCC Apple Inc. and Apple Services LATAM LLC.), digital ecosystems function as multi-layered private governance arrangements, in which the controller of the central platform defines, through design choices and operational rules, the conditions of collaboration, access and rivalry amongst the other agents.

628. This observation is particularly useful here because it highlights that, in digital ecosystems, economic power is manifested not only through market share, but also through the ability to coordinate, influence and reorganise the relationships between agents offering complementary goods and end users.

¹²⁸ GAWER, Annabelle; BONINA, Carla. Digital platforms and development: risks to competition and their regulatory implications in developing countries. *Information and Organization*, v. 34, n. 3, 2024, art. 100525. Available at: <https://www.sciencedirect.com/science/article/pii/S1471772724000253>. Accessed on: 04 apr. 2026.

¹²⁹ OECD – ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. **Abuse of Dominance in Digital Markets**: Background note by the Secretariat. DAF/COMP/GF(2020)4. Paris: OECD, 2020. Available at: [https://one.oecd.org/document/DAF/COMP/GF\(2020\)4/En/pdf](https://one.oecd.org/document/DAF/COMP/GF(2020)4/En/pdf); BALASINGHAM, Baskaran; D'AMICO, Alessia S. **Beyond exclusion: revisiting exploitative abuses in digital platform markets**. *Journal of Competition Law & Economics*, Oxford, Oxford University Press, 2025; BOSTOEN, Friso. **Abuse of platform power: leveraging conduct in digital markets under EU Competition Law and beyond**. New York: Concurrences, 2023.

¹³⁰ ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENCE (CADE). **CADE's Contributions to the Ministry of Finance**. Brasília: CADE. Available at: <https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/contribuicoes-do-cade/contribuicoes-cade-ministerio%20fazenda-ingl%C3%AAs.pdf>. Accessed on: 16 Mar. 2026; FERNANDES, Victor Oliveira. **Towards data portability and interoperability under Brazilian competition law: crafting appropriate legal standards for abuse of dominance**. *Competition Policy International Antitrust Chronicle*, 2023.

629. This means that journalistic content does not serve a single function. It improves SERPs, enhances the appeal of search, enriches the user experience, generates advertising inventory, provides behavioural data, can feed feeds such as Discover, underpins search reputation mechanisms and, most recently, serves as input for training, grounding and generative responses. **A narrow reading of redirected traffic is therefore economically incomplete.**

630. In other words, within the context of the Google ecosystem, the monetisation of journalistic content is not limited to its mere immediate display to the user. The economic value appropriated by the platform stems not only from any ad associated with the page on which the content appears, but from the fact that the presence of quality journalistic material acts as a gateway for the user's navigation across multiple environments, features and products within the group itself.

631. **In this dynamic, news content acts as a catalyst for attracting, retaining and redirecting attention, enabling Google to convert informational interest into continued engagement within the ecosystem and, thereby, into additional monetisation opportunities.**

632. In the background, this ecosystemic logic runs even deeper because users' entry into and continued presence within these environments generate behavioural data of significant economic value. Every interaction, search, session, click, related browsing activity or migration between services feeds back into the platform's ability to refine profiling, segmentation and personalisation. Journalistic content, therefore, does not merely attract attention; it helps to embed the user within a data collection and processing architecture that enhances the commercial value of the ecosystem as a whole, whether for the purposes of targeted advertising or for the customisation and refinement of other products.

633. There is also a third level of value capture, particularly relevant here, related to the use of this content in training generative AI systems. As explored in the analysis of the theory of harm to be developed below, the material produced by publishers offers informational density, timeliness, thematic diversity, editorial reliability and textual structure that are not easily replicated by other forms of indiscriminate web scraping. Its use, therefore, not only improves the response presented to the user in search or summary environments, but also trains models and functionalities capable of generating economic value across various fronts of the Investigated digital ecosystem.

634. Thus, the economic logic under examination cannot be reduced to the idea of remuneration linked solely to the specific act of displaying a given excerpt, headline, or

summary. What is observed, in reality, is the incorporation of journalistic content into a broader chain of value generation, capture and reuse, in which the input provided by publishers reinforces user engagement, data collection, advertising monetisation, product improvement and the development of AI tools. It is precisely this ecosystemic dimension of appropriation which, in my view, should guide the analysis of the possible economic disproportion of the conduct.

635. Returning to the precedent set by former Commissioner Victor Oliveira Fernandes in the aforementioned Voluntary Appeal/Motion for Clarification, such ecosystems tend to strengthen economic dependencies between complementary players and the orchestrator of the central platform, the latter being capable of unilaterally altering the conditions of competition in adjacent markets.

636. The supplementary investigation illustrates this integration well. Media outlets and associations reported dependence not only on Search, News and Discover for distribution, but also on AdSense, Ad Manager and Ad Exchange for monetisation, and on Google Analytics for measurement. ANER reported (SEI 1656193) that over 90% of the display and video advertising revenue of certain members is intermediated by Google tools. **[RESTRICTED ACCESS TO CADE].**

637. In structures of this kind, the ‘price’ is not merely monetary. As the literature on exploitative abuse on platforms notes, remuneration may take the form of traffic, attention, data, visibility, access to users, or any combination of these factors. **The decisive competitive issue is whether the dominant platform unilaterally defines this consideration and whether it is proportionate to the value extracted from the dependent partner**¹³¹.

638. It is precisely here that Google’s defence, according to which there is sufficient implicit remuneration via clicks, reveals its weakness. Referral traffic is not a negotiated price. It is a return managed by the dominant platform itself, calibrated by unilateral decisions on ranking, SERP design, the presence of featured snippets, panels, instant answers, AI Overviews and other features that may increase or reduce the propensity to click externally.

¹³¹ BOTTA, Marco. Exploitative abuses: recent trends and In: AKMAN, Pinar; BROOK, Or; STYLIANOU, Konstantinos (org.). Research Handbook on Abuse of Dominance and Monopolization. Cheltenham: Edward Elgar Publishing, 2023.; BOSTOEN, Friso. **Abuse of platform power: leveraging conduct in digital markets under EU Competition Law and beyond**. New York: Concurrences, 2023; BOSTOEN, Friso. **Online platforms and pricing: Adapting abuse of dominance assessments to the economic reality of free products**. Computer Law & Security Review, vol. 35, pp. 263–280, 2019; OECD – ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. **Abuse of Dominance in Digital Markets**: Background note by the Secretariat. DAF/COMP/GF(2020)4. Paris: OECD, 2020. Available at: [https://one.oecd.org/document/DAF/COMP/GF\(2020\)4/En/pdf](https://one.oecd.org/document/DAF/COMP/GF(2020)4/En/pdf).

639. When the same company determines (i) how much third-party content it will use, (ii) in what format it will display it, (iii) how much of the click it will retain for itself, and (iv) what the residual consideration paid to the publisher will be, the supposed ‘implicit remuneration’ ceases to function as a market price. It instead functions as a return managed by the dominant player for its own benefit.

640. From this perspective, snippets and, to a greater extent, AIOs alter the effective price paid by Google to the content provider. Historically, Google could argue that the consideration for indexing lay in the click. As the platform expands its use of content and reduces outbound traffic, it derives greater value from the same input whilst paying less for it, even if this payment does not take the form of traditional monetary remuneration. The analogy with the compression of the effective input price, in a context of monopsony power, is evident¹³².

641. Viewed from this angle, the case appears to be closer to the suppression of the price paid to the supplier than to a mere absence of additional remuneration. Google continues to receive the input, expands the uses it makes of it and, simultaneously, compresses the main economic consideration historically delivered to the content producer. The practical result is a unilateral deterioration of the terms of trade.

642. Thus, the unilateral nature of this situation is decisive. In a counterfactual scenario, an increase in the economic exploitation of the input would tend to lead to a renegotiation of the price or conditions. Here, by contrast, the same firm that expands the scope of use of the content also controls the mechanism that determines how much residual return will reach the publisher. This confirms that we are not dealing with a competitive price, but with remuneration administered by the dominant firm.

643. This is precisely why the defensive reference to some volume of referred traffic is insufficient. **The point is not whether Google gives anything back. The point is whether it returns value proportional to what it extracts and whether the supplier had genuine bargaining freedom to accept this exchange relationship.**

644. Google’s argument (SEI 1654679) that news searches account for less than 0.3% of its advertising revenue in Brazil does not alter this logic. Such a metric, even if taken at face value, captures only a narrow and directly attributable portion of monetisation. It does not capture the indirect gains from engagement, retention, data, training, reputation, product quality and ecosystemic advertising resulting from the incorporation of journalistic content across multiple Google platforms.

¹³² SINGH, Madhavi; SCOTT MORTON, Fiona M. **A Roadmap for a Monopolisation Case Against Google: Monopsony Power and AI Overviews**. University of Pennsylvania Law Review, vol. 175, 2025 (forthcoming).

645. Nor should it be forgotten that search is not merely a referral channel; it is also – and above all - an infrastructure for demand generation. By organising user attention and defining consumption formats at the first point of contact with the query, Google shapes the space in which publishers’ remuneration will, or will not, be possible. To this extent, the platform simultaneously manages the capture and return of value.

646. Once again, citing the opinion of former Commissioner Victor Oliveira Fernandes in Voluntary Appeal No. 08700.009932/2024-18 (TCC Apple Inc. and Apple Services LATAM LLC), I emphasise that information costs can create lock-in within technological ecosystems, preventing users from correctly attributing costs to the platform and reducing their capacity for informed choice. This observation is relevant to the present case because it shows that, in ecosystemic environments, opacity regarding rules, commissions, ranking and methods of value capture does not merely affect price; it affects the very intelligibility of the economic relationship between the platform, complementary providers and users.

647. This is what makes an ecosystem analysis indispensable. **The issue is not whether, in any isolated instance, Google provides any benefit to publishers, but rather whether, across the ecosystem as a whole, the platform extracts total economic value that exceeds what it returns, in a context where the other party has no real alternative. Once again, it is precisely this potential asymmetry between extraction and return that characterises the exploitative dimension of the case.**

5.7. Identification of the theory of harm

648. Based on the premises established so far, it is possible to define more precisely the theory of harm that guides the analysis of this specific case.

649. As mentioned above, Google operates simultaneously as the infrastructure for content discovery, as the rule-setter for indexing, as an advertising intermediary, and, increasingly, as an aggregator and synthesiser of journalistic content.

650. In this capacity, Google is not a mere technical agent devoid of decision-making power. It occupies the position of an indispensable intermediary that decides who appears, in what format they appear, what volume of traffic they receive, and on what terms content produced by third parties will be utilised within its ecosystem.

651. In this context, the concept of ‘forced free-riding’ proves particularly relevant for framing the potential harm in the case under consideration.

652. Shelanski (2013), in a formulation later reproduced by the OECD (2019) in its report on the implications of e-commerce for competition policy, describes ‘forced free-

riding’ as a situation in which a platform appropriates the innovation of agents who depend on it to access consumers.

653. Bostoen (2023), in turn, in developing this insight, distinguishes mere market copying – which is common and, in principle, resolvable through intellectual property law – from the appropriation carried out by a dominant platform over dependent firms. In such cases, the platform not only ‘copies’ but also uses its position of control over the infrastructure to impose on the supplier a ‘free ride’ extracted in a context of dependency and structural asymmetry¹³³.

654. Thus, the distinctive element is not the reproduction of the content itself, but the context in which it occurs, since the platform uses its control over the access infrastructure to make the supplier’s presence conditional upon acceptance of this appropriation, converting a potentially voluntary interaction into an economically coercive relationship.

655. In light of this framework, and considering the journalistic ecosystem, the potential competition issue does not lie in Google’s action of, in abstract terms, displaying a snippet of information, but in doing so using content produced by publishers who depend on Google itself to be found, monetised and recognised. **The central point, therefore, is not the existence of content use, but the absence of an economically viable alternative to refusing it without a substantial loss of visibility and access to the public.**

656. What would, in theory, be a relationship of economic cooperation can become a mechanism for the unilateral capture of value. The logic of complementarity – where the search engine directs traffic and the publisher monetises its audience – can be progressively replaced by a dynamic of value internalisation by the platform, in which third-party content comes to be used to retain the user within Google’s own environment. In this scenario, the free ride is neither accidental nor residual, but comes to be understood as forced precisely because the supplier finds itself compelled to participate in the arrangement to preserve its own economic viability.

657. Drawing a certain biological analogy, I believe that the evolution of the relationship between Google and publishers can be described as a transition between

¹³³ SHELANSKI, Howard A. **Information, Innovation, and Competition Policy for the Internet**. University of Pennsylvania Law Review, vol. 161, no. 6, pp. 1663–1705, 2013, esp. pp. 1699–1700; OECD – ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. **Implications of E-Commerce for Competition Policy**. Paris: OECD, 2018, section 3.7, pp. 46–47. Available at: https://www.oecd.org/en/publications/implications-of-e-commerce-for-competition-policy_b7978bd0-en.html; BOSTOEN, Friso. **Abuse of platform power: leveraging conduct in digital markets under EU Competition Law and beyond**. New York: Concurrences, 2023. .

distinct forms of interdependence. Initially, as already explored, the search engine's operations exhibited traits of mutualism. By disintermediating the traditional bundle of major media outlets, fragmenting the news access experience and reorganising discovery mechanisms, Google began to generate economic value by reducing search costs, expanding content circulation and making room for smaller players, who lacked the scale, capital or brand recognition to build, on their own, complex structures for distribution and audience retention. At this stage, the platform and content producers appeared to benefit each other, given that the media outlets provided informational content and the platform offered visibility, traffic and expanded access to the public.

658. Over time, however, this theoretically symbiotic dynamic changes. As it consolidates its superior bargaining position and control over discovery channels, Google gradually begins to capture an increasing share of user attention, effectively reducing the traffic redirected to media outlets and, in practical terms, weakening the competitive standing of many of these players, particularly the smaller ones.

659. The relationship thus ceases to resemble mutualism and begins to display features closer to a progressively asymmetrical commensalism (with ever-increasing losses for publishers, to the extent of even suggesting the need to review this category), insofar as the platform continues to capitalise on the value produced by third parties, whilst reducing the compensation previously offered in terms of visibility, clicks and conversions. It is precisely in this shift that lies, in my view, the core of the competitive concern examined here.

660. **Put another way, the economic logic of the case is not, in essence, that of the pure and simple elimination of publishers. The platform depends on the journalistic content they produce to qualify results, attract users, feed its systems and reinforce its monetisation ecosystem. Precisely for this reason, the central hypothesis that best frames the present case is that of exploitation, rather than that of exclusion in the classical sense, although, as will be explored below, the introduction of AIOs may introduce additional elements capable of justifying an investigation into a potential exclusionary nexus.**

661. The key point, for now, is that the platform has no economic interest in suppressing the existence of content producers, but rather in preserving a structurally unequal relationship from which it can continue to extract value. It is this classically exploitative aspect that, in my view, should be at the centre of the analysis.

662. That said, at first glance, snippets could be described as a mere by-product of indexing. However, this description is incomplete. As Bostoen (2023) demonstrates,

when the dominant platform appropriates content from agents who depend on it to reach the public and uses it to enhance its own service, attract attention and boost its revenues, the appropriation ceases to be technically neutral and begins to raise competition concerns¹³⁴.

663. In this vein, the claim that the snippet generates traffic for the publisher is not, in itself, sufficient to allay any competition concerns. Firstly, because this ‘remuneration’ is unilaterally determined by Google itself. Secondly, because the platform can reduce, expand or reconfigure this consideration through design and algorithmic decisions that are beyond the publishers’ control. Thirdly, because the very possibility of withdrawing from the arrangement is, in practical terms, precarious; in other words, not being indexed is, to a large extent, equivalent to losing access to the main channel for content discovery in the digital environment.

664. In AIOs, this logic reaches a qualitatively distinct level, since the content ceases to serve merely for indexing and begins, additionally, to feed training, grounding and synthetic responses that functionally compete with visiting the source, thereby establishing a potentially exclusionary dimension.

665. Consequently, as Singh & Scott Morton (2025) observe¹³⁵, the former exchange between crawling and traffic – which could previously be understood as largely symbiotic – takes on an increasingly extractive character, as the platform expands the economic uses of the input without an equivalent expansion of the consideration delivered to publishers.

666. The potential logic behind this abuse becomes clearer here. To remain economically visible on Google Search, publishers must accept that their content is not only indexed but also repurposed into a product that captures attention, reduces the need to click, and reinforces the platform’s own ecosystem. In this context, dependence on the search index effectively becomes a mechanism for the conditional acquisition of content, in which refusal becomes economically implausible and opting out loses practical substance, as already discussed.

¹³⁴BOSTOEN, Friso. Abuse of platform power: leveraging conduct in digital markets under EU Competition Law and beyond. New York: Concurrences, 2023. ; BOTTA, Marco. Exploitative abuses: recent trends and In: AKMAN, Pinar; BROOK, Or; STYLIANOU, Konstantinos (org.). Research Handbook on Abuse of Dominance and Monopolization. Cheltenham: Edward Elgar Publishing, 2023.

¹³⁵ SINGH, Madhavi; SCOTT MORTON, Fiona M. **A roadmap for a monopolisation case against Google: monopsony power and AI overviews**. University of Pennsylvania Law Review, vol. 175, 2025, forthcoming.

667. It is precisely for this reason that the formulation by Singh & Scott Morton (2025) also sheds light on a monopsonistic dimension of the conduct. The point is not merely that Google distributes third-party content whilst competing with it, but that, by leveraging its dominant position in general search, it begins to acquire critical content from fragmented publishers under conditions that it itself unilaterally structures.

668. The economic outcome can be described as a compression of the effective price paid for the content, given that the economically relevant uses of the input are expanded, whilst the traffic returned is reduced and, with that, the implicit remuneration formerly associated with indexing.

669. The above description essentially coincides with the concerns already expressed by the European Commission, the CMA and the South African authority regarding the practical impossibility of separating indexation from additional uses in AI when the business partner depends on the dominant search engine to be found. It is precisely this combination of structural dependence, unilateral expansion of uses and reduction of effective consideration which, in my view, forms the basis of the theory of harm under examination, without prejudice to any exclusionary dimension associated, in particular, with the effects of AIOs on traffic, attribution and the economic conversion capacity of journalistic content.

670. The issue here, therefore, is not to ascertain whether Google charges publishers an excessive monetary price in the classical sense. What is being investigated is whether, by virtue of its dominant position in search, **Google appropriates journalistic content under a regime of forced free-riding, imposing structurally unfair commercial conditions on content producers: use of the input without proportional remuneration, unilateral retention of the value generated by it, functional impossibility of refusal, and progressive reduction of the consideration previously provided in the form of referred traffic.**

671. Therefore, I consider that the appropriate theory of harm combines an analysis of dynamics that are both exploitative and ecosystemic, not depending on a demonstration that each individual publisher will necessarily be excluded from the market, but rather requiring only a demonstration that Google's dominant position transforms the use of third-party content into a coercive mechanism of extraction, shifting revenue, attention, attribution and investment capacity from publishers into the platform's ecosystem.

672. This formulation allows for a preliminary organisation of the facts in the case file. When associations and media outlets report a decline in CTR, qualified impressions, traffic and revenue following successive changes to the SERP, these factors may, in

theory, be interpreted not merely as normal fluctuations in audience figures, but as possible indications of a loss of economic conversion power of the content produced, precisely at the point where the dominant platform may begin to internalise a more significant portion of the informational utility generated by it, which is consistent, albeit hypothetically, with the theory of harm currently under examination.

673. In this regard, and in a summarised manner, reference is made to some of the submissions received during the supplementary investigation conducted by my Office, notably focusing on those aspects not subject to information restrictions:

National Federation of Journalists – FENAJ (SEI 1642526)

"In our assessment, there is indeed a 'lock-in' effect. This effect is real and multifaceted: economic, technological, informational and regulatory. Media outlets are trapped within an infrastructure over which they have no control [...]". (Page 2, paragraphs 4 and 5)

"The publisher 'can choose' not to participate – but if they do so, they are punished with a loss of traffic and relevance. The system reinforces the media outlets' dependence if they wish to survive digitally." (Page 5, paragraphs 4 and 5.)

Association of Digital Journalism – Ajour (SEI 1644792)

"Over the last ten years, numerous studies have confirmed that click-through rates – and therefore traffic – are affected by Google's display of content. As early as 2017, research indicated that the use of featured snippets reduced organic clicks and structurally altered the dynamics of search results. The study showed that almost 30% of the 1.4 million queries analysed displayed this type of direct response, reflecting Google's priority in offering immediate solutions without requiring access to external websites. Around 90% of featured snippets corresponded to the standard snippet in organic results, suggesting that the algorithm generating them is derived from the traditional one. It was also found that pages with excerpts of three or more lines were more likely to compete for this position, whilst Google carried out extensive A/B testing to calibrate the content displayed. Finally, the research indicated that 60% of users preferred direct answers, without clicking on links – a trend that foreshadowed the transition to a search ecosystem centred on immediate answers.

(...) All these dynamics were exacerbated by the use of artificial intelligence (AI) technologies, such as Google's AI Overviews (AIO). According to a study by the Pew Research Center, which analysed 68,879 searches by 900 adults in the US in March 2025, 18% of queries displayed AI-generated summaries. In these searches, the click-through rate on traditional links fell by almost half (8% compared to 15% without a summary), and only 1% of visits resulted in a click on links within the summary itself. There was also a greater tendency to end the session (26% compared to 16%). The most frequently cited sources were Wikipedia, YouTube and Reddit, although the summaries featured more links to government websites. AIO appeared more frequently in long-tail searches or those phrased as questions – 60% of those beginning with "who", "what", "when" or "why", compared to 8% of short-tail searches. These

results indicate that the tool substantially alters browsing behaviour, reducing traffic to external sites and focusing attention on Google itself. (Pages 4 to 6)

National Association of Magazine Publishers – ANER (SEI 1656193)

"Google uses content produced by publishers, involving significant investment in research, editing and verification, to train its AI models and generate summaries that compete directly with original content, without authorisation and without adequate remuneration." (Page 7, paragraph 3)

"The opt-out mechanisms offered by Google are inadequate, ineffective and constitute a false choice that exploits publishers' structural dependence. In practice, these mechanisms present publishers with an impossible dilemma: they must choose between allowing the unpaid appropriation of editorial content or losing access to essential traffic from Google." (Page 8, paragraphs 4 and 5)

674. Furthermore, the theory of harm does not require proof that all uses of the content are identical or equally burdensome. It suffices to show that there is a cumulative process of expanding the economic uses of the content without a corresponding expansion of the consideration. This is what allows snippets and AIOs to be interpreted as successive stages of the same exploitative architecture.

675. Consequently, the harm is not limited to the immediate loss of clicks. It may extend to a reduction in the ability to plan editorial investment, hire journalists, fund in-house coverage and sustain product differentiation. The exploitation of the current exchange begins to undermine future competition within the information ecosystem¹³⁶¹³⁷¹³⁸.

676. **In sum, I believe it is necessary to assess whether the conduct under examination may manifest itself, through exploitative means, as the imposition by an unavoidable commercial partner of an unfair commercial condition consisting of unilaterally expanding the economic uses of journalistic content, reducing the effective consideration previously provided through traffic, and converting search dependency into a mechanism of forced free-riding.**

¹³⁶ RÖLLER, Lars-Hendrik. **Exploitative Abuses**. ESMT Business Brief no. BB-107-002. Berlin: ESMT European School of Management and Technology, 2007; BOSTOEN, Friso. Abuse of platform power: leveraging conduct in digital markets under EU Competition Law and beyond. New York: Concurrences, 2023. ; BOUGETTE, Patrice; BUDZINSKI, Oliver; MARTY, Frédéric. Exploitative Abuse and Abuse of Economic Dependence: What Can We Learn From an Industrial Organisation Approach? **Revue d'économie politique**, vol. 129, no. 2, pp. 261–286, 2019; OECD – ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. **Abuse of Dominance in Digital Markets**: Background note by the Secretariat. DAF/COMP/GF(2020)4. Paris: OECD, 2020. Available at: [https://one.oecd.org/document/DAF/COMP/GF\(2020\)4/En/pdf.](https://one.oecd.org/document/DAF/COMP/GF(2020)4/En/pdf.;);

¹³⁷ SINGH, Madhavi; SCOTT MORTON, Fiona M. **A Roadmap for a Monopolisation Case Against Google: Monopsony Power and AI Overviews**. University of Pennsylvania Law Review, vol. 175, 2025 (forthcoming).

¹³⁸ BALASINGHAM, Baskaran; D'AMICO, Alessia S. **Beyond exclusion: revisiting exploitative abuses in digital platform markets**. Journal of Competition Law & Economics, Oxford, Oxford University Press, 2025.

677. **Furthermore, I believe there is a potential exclusionary dimension associated with the creation, following the advent of AIOs, of a mechanism that, qualitatively, intensifies the retention of attention within the dominant interface itself, reduces the distributive function previously performed by the search engine, and weakens publishers' ability to convert visibility into clicks, audience and revenue.**

678. **Although this aspect requires its own careful examination, it may indicate that the expansion of the economic uses of content not only deepens the extraction of value in a context of dependency, but also begins to affect, more directly, the conditions of competition and sustainability within the information ecosystem.**

5.7.1. Structuring analytical rules for the evaluation of the theory of harm described

679. In light of the abovementioned set of theoretical precedents relating to the definition of market power and dependence, incentives and the theory of harm, I believe it is important that the understanding of potential anti-competitive conduct should not be limited to general perceptions or abstract intuitions. To this end, it is essential to adopt objective and verifiable criteria based on the evaluation and application of specific legal-logical tests or rules of analysis.

680. In this context, the models of Balasingham & D'Amico (2025), Padilla (2024) and Botta (2023) prove useful as analytical frameworks for exploratory analysis, fulfilling distinct functions whilst offering complementary dimensions.

681. The first provides a structural filter to determine when intervention in exploitative abuse is justified; the second offers a substantive test to assess the abusive nature of the condition; the third reconstructs, based on recent European practice, an operational framework particularly suited to cases involving digital platforms and unfair trading conditions¹³⁹.

682. Balasingham & D'Amico (2025) start from the observation that the costs of error in cases of exploitative abuse may be higher than in cases of exclusionary abuse. They therefore propose four structural conditions for intervention: (i) high and non-transitory barriers to entry; (ii) a qualified dominant position; (iii) the absence of effective sector-

¹³⁹ BALASINGHAM, Baskaran; D'AMICO, Alessia S. **Beyond exclusion: revisiting exploitative abuses in digital platform markets.** Journal of Competition Law & Economics, Oxford, Oxford University Press, 2025; PADILLA, Jorge. **What Is an Exploitative Abuse?** Working Paper. Washington: GW Innovation and Competition Lab / Compass Lexecon, 15 Nov. 2024; BOTTA, Marco. Exploitative abuses: recent trends and In: AKMAN, Pinar; BROOK, Or; STYLIANOU, Konstantinos (org.). Research Handbook on Abuse of Dominance and Monopolization. Cheltenham: Edward Elgar Publishing, 2023.

specific regulation; and (iv) qualified harm to the consumer or the ecosystem. The rationale behind the model is prudential: the authority should only intervene when market forces and other regulatory regimes prove insufficient to correct the exploitation.

683. The first condition – high and non-transitory barriers to entry – seeks to exclude cases in which competitive dynamics alone would discipline the dominant firm. The second – qualified dominance – seeks to distinguish between merely formal dominance and situations where the firm becomes a rule-setter, protected by network effects, switching costs, technological dependence or a bottleneck position. The third – the absence of effective sector-specific regulation – reflects institutional caution: antitrust law should not unnecessarily replace more specific regulatory regimes. The fourth – qualified harm – requires that the harm transcend the bilateral dispute and take on systemic relevance, including through overlap with exclusionary effects.

684. Padilla (2024), in turn, operates on a different level. His aim is not to decide when the authority should open a case, but what it needs to demonstrate to recognise exploitative abuse on the merits. The author proposes four substantive conditions: (i) proof that dominance caused the ability to impose the terms is not required; (ii) benchmarking with non-dominant agents is not required; (iii) proof is required that the terms are harmful by virtue of the dominance; and (iv) it must be demonstrated that, whilst aimed at a legitimate objective, the terms go beyond what is necessary and are disproportionate.

685. The rationale behind Padilla’s test (2024) is particularly persuasive in cases involving platforms. Firstly, because it avoids requiring an impossible or artificial demonstration that the company only engaged in the conduct because it was dominant; it is sufficient to establish that the conduct causes harm because it is carried out by a dominant firm. Secondly, because it rules out the reductive defence according to which the same practice, if applied by smaller operators, would necessarily be lawful. And thirdly, because it focuses the analysis on appreciable harm to partners or third parties and on the existence, or not, of necessity and proportionality.

686. In this regard, the General Court held, in *Google Shopping* (Case T-612/17), that a ‘dominant undertaking is subject to certain restrictions’ under Article 102 TFEU. This observation is important precisely to rule out the false comparative benchmark with smaller operators: the special liability of the dominant operator alters the legal analysis of the same practice¹⁴⁰.

¹⁴⁰ EUROPEAN UNION. General Court. **Google and Alphabet v Commission** (Case T-612/17), EU:T:2021:763. Luxembourg, 10 Nov. 2021. Available at: <https://op.europa.eu/en/publication-detail/-/publication/50446875-7767-11ec-9136-01aa75ed71a1>. Accessed on: 16 Mar. 2026.

687. Finally, Botta (2023) reconstructs what I refer to here as the operational test for digital platforms. Drawing on *Google Ads Rules* (Decision 19-D-26), *Google News* (Decisions 20-MC-01 and 21-D-17) and *Facebook* (Decision B6-22/16), the author suggests that the analysis of unfair trading conditions in a digital environment tends to address five questions: (i) is the platform an indispensable trading partner? (ii) is the condition non-price-related and was it imposed unilaterally? (iii) is the condition unfair because it creates dependency, uncertainty, forced gratuity or unnecessary use of the input? (iv) did the company provide a valid objective justification? and (v) does the conduct produce significant anti-competitive effects in the downstream market or within the ecosystem?¹⁴¹

688. The usefulness of Botta's model lies in bridging the gap between theory and concrete precedents. In *Google Ads Rules* (Decision 19-D-26), the unfairness stemmed from the opacity, mutability and unilateral nature of the rules imposed by Google on dependent advertisers. In *Google News* (Decisions 20-MC-01 and 21-D-17), the unfairness stemmed from the requirement for a free licence per agent, which publishers could not realistically circumvent without a severe loss of visibility and revenue. In both cases, the notion of an indispensable business partner and of a rule imposed without effective bargaining proved decisive.

5.7.1.1. Summary of the tests

689. In my view, the best way to summarise these three proposals is to treat them as parts of the same analytical framework. Balasingham & D'Amico (2025) address the question '*why should the competition authority intervene here?*'. Botta (2023), on the other hand, seeks to understand '*how to identify the imposition of unfair commercial conditions on platforms?*'. Padilla (2024), for his part, answers the question "*what, legally, must be demonstrated to classify this exploitation as an abuse?*".

690. An appropriate synthesis, therefore, does not eliminate the differences between the models; on the contrary, it preserves their distinct functions and links them in sequence. I therefore propose a five-step test for the purposes of this opinion:

¹⁴¹ BOTTA, Marco. Exploitative abuses: recent trends and In: AKMAN, Pinar; BROOK, Or; STYLIANOU, Konstantinos (org.). *Research Handbook on Abuse of Dominance and Monopolization*. Cheltenham: Edward Elgar Publishing, 2023.; AUTORITÉ DE LA CONCURRENCE (France). **Decision 19-D-26 of 19 December 2019** regarding practices employed in the online search advertising sector. Paris, 19 Dec. 2019. Available at: <https://www.autoritedelaconcurrence.fr/en/decision/regarding-practices-implemented-sector-online-search-advertising-sector>; AUTORITÉ DE LA CONCURRENCE (France). **Decision 20-MC-01 of 9 April 2020** on requests for interim measures by the Syndicat des éditeurs de la presse magazine, the Alliance de la presse d'information générale and others and Agence France-Presse. Paris, 9 Apr. 2020. Available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-demandes-de-mesures-conservatoires-presentees-par-le-syndicat-des-editeurs-de>

- i. Examine the structural conditions of the market, notably barriers to entry, qualified dominance and the absence of effective regulation;
- ii. Determine whether the dominant firm acts as a rule-setter and an indispensable trading partner, unilaterally imposing a condition on the use of the input supplied by third parties;
- iii. Examine whether the condition is materially unfair, as it involves forced free-riding, extraction of value without adequate compensation, undue extension of dependency, or use of the input for purposes exceeding what is necessary;
- iv. Demonstrate appreciable harm resulting from the dominant position, including where there is an overlap with exclusionary effects; and
- v. Determine whether there is sufficient objective justification or, conversely, whether there would be less restrictive and more proportionate alternatives available to the rule-setter.

691. The logic behind the application of the test is equally relevant. The first stage serves as a filter for the market context. The second and third stages reveal the nature of the economic relationship and the condition imposed. The fourth stage rules out the risk of a finding of liability based on mere intuitive unease, requiring proof of actual or appreciable potential harm. The fifth stage, in turn, prevents any advantage gained by a dominant undertaking from being automatically treated as unlawful, preserving scope for genuine innovations and legitimate technical objectives, provided they are pursued by proportionate means.

692. I consider this model to be particularly well-suited to the present case, given that it incorporates the central points of the literature without mechanically importing foreign categories. Instead, it uses them as criteria for rationalising the open-ended provision of Article 36 of Law No. 12.529/2011.

693. It should also be made clear that the test proposed here should not be read as a mechanical checklist. Its usefulness lies in organising questions which, in the specific case, build upon one another. Structural dependence sheds light on the nature of the imposed condition; the nature of the imposed condition clarifies the material unfairness; and the material unfairness helps to reveal why the harm is significant by virtue of the dominance.

5.7.1.2. Applying the test to the present case

694. In light of these premises, we now move from the conceptual definition of the test to its application to the specific case, demonstrating how the criteria set out above materialise in the specific circumstances under examination.

695. In the first stage, a complete demonstration of all the contours of a relevant news market is not required. What is required is sufficient evidence that Google acts as an indispensable commercial partner in an environment of persistent barriers. Such evidence may be established, as here, through traffic data, monetisation dependence, the functional impossibility of opting out, and the absence of substitutes of equivalent quality¹⁴².

696. In the second stage, the focus shifts from the abstract structure of the market to a precise description of the condition imposed. In the snippets, the condition consists of tolerating the extraction and prominent display of content for SERP ranking. In the AI Overviews, it consists of accepting, in addition, further uses of the content for training, grounding and the generation of synthetic responses, under penalty of losing visibility in search results.

697. The third stage, concerning material unfairness, requires us to ask who sets the effective price of the economic relationship. When the dominant firm unilaterally determines how much of the input it will use, in what format it will display it, what share of attention it will retain, and what residual consideration it will return to the supplier, the unfairness of the condition tends to appear not as an isolated contractual anomaly, but as a structural asymmetry of extraction.

698. The fourth stage, in turn, prevents the analysis from being reduced to a merely intuitive judgement. It is not enough to say that the practice appears unfair. It must be demonstrated that it produces a significant deterioration in the partner's position due to the dominant firm's power. In the present case, this is evidenced by data on traffic dependency, a drop-in click, loss of CTR, compression of advertising revenue and a reduction in publishers' economic predictability¹⁴³.

699. The fifth step acts as an additional safeguard against excessive intervention, as functional benefits, innovation and improvements to the user experience may be

¹⁴² PADILLA, Jorge. **What Is an Exploitative Abuse?** Working Paper. Washington: GW Innovation and Competition Lab / Compass Lexecon, 15 Nov. 2024.

¹⁴³ CHAPEKIS, Athena; LIEB, Anna. **Google users are less likely to click on links when an AI summary appears in the results.** Pew Research Center, 22 July 2025; TOBITT, Charlotte. Google told to 'stop the BS' as it claims AI has not harmed website clickthroughs. **Press Gazette**, 7 Aug. 2025.

associated with the potential conduct. What is required, however, is a demonstration that the specific means of achieving these benefits was necessary and proportionate.

700. It is precisely on this point that Google’s defences seem to me to fall short, tending to invoke the abstract utility of the product, but failing to demonstrate why it would be essential to extract content unilaterally and without the *publisher* having any real choice.

701. It is also important to emphasise that the argument regarding the growth in news consumption on social media does not, within the test, automatically exclude liability. At most, it forms part of the sectoral backdrop. The relevant question remains whether, despite this backdrop, Google continues to hold sole control over intentional discovery, qualified referral and the implicit remuneration of journalistic content.

702. Similarly, the argument that news generates only a small portion of Google’s directly attributable revenue is not conclusive. From an ecosystem perspective, journalistic content contributes to the quality, retention, trust, data and advertising value of Search and other Google platforms. The proposed test therefore sets aside narrow metrics that consider only the immediately monetisable fraction of journalistic queries.

703. In summary, the logic behind applying the test is as follows: **first, it is demonstrated that the dependency exists and has not been dissolved by general changes in consumer habits; second, the condition specifically imposed is identified; third, the asymmetry between value extracted and return administered is measured; fourth, the appreciable harm caused by this asymmetry is verified; and, finally, it is examined whether the dominant firm had less onerous alternatives and why it did not adopt them.**

704. It is with this analytical framework in mind that I now proceed to the detailed application of the test to the conduct under investigation. The order of the analysis will follow the same logical sequence described above, namely, assessment of dependency, condition, unfairness, harm and lack of sufficient justification.

5.7.2. Application of the summary of the analytical framework to the conduct under investigation

705. For the purposes of applying the summary of the analytical framework to the conduct under investigation, the tests relating to the theory of harm will be examined separately in relation to each identified stage – notably, the display of snippets and, subsequently, the functionalities based on generative artificial intelligence.

706. This approach is eminently methodological in nature and aims to facilitate an understanding of the evolution of the practice and its competitive repercussions, allowing for a clearer assessment of the specificities, continuities and possible intensifications of the effects over time, without prejudice to the recognition of their functional unity.

707. Finally, it should be noted that, at this stage, the test is not being applied in an exhaustive or conclusive manner, as this is a preliminary examination.

5.7.2.1. Application of the test to the display of snippets and other extracts of journalistic content in SERPs

5.7.2.1.1. Contextual aspects of the theory of harm

708. Before going through the stages of the test in detail, it is worth summarising the nuances of the theory of harm specifically in relation to snippets, based on five structural components which, once present, trigger the application of competition law.

709. **The first component of this theory is the appropriation of content to enrich the SERP.** Google uses titles, images, metadata and textual excerpts produced by publishers to enhance its own search product, increase its utility and make it more attractive to users and advertisers.

710. **The second component is the unilateral nature of the consideration.** The publisher's economic return depends on the click, but Google alone determines the format that increases or reduces the likelihood of an external click. This is not a case of contracted remuneration, but of a contingent return managed by the very company that captures the value.

711. **The third component is the structural dependency that prevents effective refusal.** If publishers were free to refuse the display of snippets whilst retaining equivalent access to the public, the competitive analysis would be different. The problem arises because refusal effectively means losing visibility on the primary channel for intentional content discovery.

712. **The fourth component is the overlap between informational value and advertising value.** The snippet does not merely inform the user; it organises attention within an interface that Google monetises directly and indirectly. The better the response on the SERP, the greater the platform's ability to retain queries, data and economic inventory.

713. **Finally, the fifth component is the progressive erosion of the click as an implicit price.** As the results page becomes richer and more self-sufficient, the return delivered to the publisher diminishes, even without any formal change to the indexing rules. Consequently, the effective price of the exchange is reduced without a corresponding negotiation.

714. The theory of harm caused by snippets, therefore, does not depend on asserting that every snippet is unlawful in itself. It depends on demonstrating that, in a context of dominant position, snippets cease to be a mere referral mechanism and begin to function as the first stage of Google’s internalisation of informational value.

715. This is precisely why snippets must be viewed, in this opinion, not as an isolated incident, but as the initial step in the same extraction architecture that reaches its most developed form in the AIOs. The continuity between the two practices forms part of the theory of harm.

5.7.2.1.2. Stage 1: Structural conditions for intervention

716. Applying the first dimension of the test to the period of conduct observed between 2019 and 2024, the general search market is characterised by high and non-transitory barriers to entry, reinforced by network effects, switching costs, data scale and integration with multiple digital services. Google’s dominant position in search has already been demonstrated in the previous sections of this opinion and, in the present context, takes on a qualified form: Google not only leads the market, but sets the rules for indexing, visibility and presentation of journalistic content.

717. In the supplementary submission, RSF (SEI 1658518) demonstrates the need to adapt to meet Google’s metrics, highlighting the role of the platform as an orchestrator of ecosystemic practices that maintain its dominance by defining technical standards, interfaces and rules of participation. FENAJ (SEI 1642526) further highlights the difficulty of moving away from Google’s infrastructure, given that attempts at diversification (such as newsletters and proprietary networks) require significant investment and face behavioural resistance from the public. **[RESTRICTED ACCESS TO CADE].**

718. The absence of effective sector-specific regulation is also evident. Copyright law, on its own, does not resolve the competitive dimension of the problem; nor is there, within the Brazilian legal framework, a sectoral regulator governing the commercial relationship between search engines and news publishers. Finally, the harm under discussion is not limited to bilateral damage to certain media outlets. As already demonstrated in this opinion, it affects the economic sustainability of journalism and, in this way, takes on an unequivocal systemic dimension.

719. The findings of the supplementary investigation confirm that this concern is not merely theoretical. **[RESTRICTED ACCESS TO CADE]**. In such a scenario, unilateral changes to the way content is presented have the potential to have an immediate economic impact.

720. I further understand that the defence argument based on the growth in news consumption on social media does not undermine the structural conditions for intervention. The point is not to deny the contemporary fragmentation of attention. The point is to recognise that, even in this fragmented environment, Google retains a unique bottleneck position for the intentional discovery of news and for the conversion of that discovery into economically relevant traffic.

5.7.2.1.3. Stage 2: Indispensable business partner and the condition imposed

721. With regard to the second dimension of the test, for publishers, Google acts as an indispensable commercial partner in terms of content discovery and the generation of referral traffic. In this capacity, Google imposes the condition that the indexing and prominent display of content depend on the publisher's consent to the extraction of titles, images and text snippets to be displayed on the results page itself.

722. It is important to emphasise that the mere existence of opt-out mechanisms does not invalidate this assessment. When the withdrawal of consent amounts, in practice, to a potentially significant deterioration of the business model, the choice ceases to be an economically free one. In this regard, the logic described by Shelanski (2013) and revisited by Bostoen (2023) as 'forced free riding' proves directly applicable, insofar as the dominant platform freerides on the editorial investment of suppliers who depend on it to access the public¹⁴⁴.

723. The case file is particularly clear on this point. Ajor (SEI 1644792), ABERT (SEI 1656179), ANER (SEI 1656193) and Gazeta do Povo (SEI 1652925) characterised the opt-out as a merely formal alternative. Gazeta do Povo stated, in essence, that opting out of indexing implies the practical disappearance of search results. This formulation is consistent with comparative experience: in the French *Google News* decision (Decisions 20-MC-01 and 21-D-17), the authority treated the formal possibility of refusal as

¹⁴⁴ SHELANSKI, Howard A. **Information, Innovation, and Competition Policy for the Internet**. University of Pennsylvania Law Review, vol. 161, no. 6, pp. 1663–1705, 2013, esp. pp. 1699–1700; OECD – ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. **Implications of E-Commerce for Competition Policy**. Paris: OECD, 2019, section 3.7, pp. 46–47. Available at: https://www.oecd.org/en/publications/implications-of-e-commerce-for-competition-policy_b7978bd0-en.html; BOSTOEN, Friso. Abuse of platform power: leveraging conduct in digital markets under EU Competition Law and beyond. New York: Concurrences, 2023.

economically coercive because the loss of listing meant an irrecoverable loss of traffic and revenue¹⁴⁵.

724. It is also worth noting that the dependency is not limited to the technical indexing channel. The publisher depends on Google to be discovered, to monetise part of its audience, to measure performance, and to adjust its editorial and commercial strategy to changes in traffic. The condition imposed, therefore, does not fall upon an isolated link, but rather upon a broader arrangement of unilateral coordination of market access.

725. This helps explain why social media, although relevant as complementary platforms for attention, do not present themselves as an alternative to the relationship with Google. As already mentioned, the evidence in the case file itself shows that their participation is generally lower and yields fewer conversions. **[RESTRICTED ACCESS TO CADE]**. Thus, in my view, the indispensable commercial partner here is Google, and not the undifferentiated set of all digital channels.

5.7.2.1.4. Stage 3: Material unfairness of the condition

726. I now turn to the third stage: the material unfairness of the condition. The display of snippets may, in theory, serve the legitimate purpose of guiding the user as to the relevance of the result. However, the specific way in which the conduct is structured exceeds this purpose when Google converts third-party content into a permanent input for the enhancement of its own interface and for advertising monetisation, without effective negotiation and without proportionate compensation to publishers.

727. In other words, indexing may be necessary for the search service to function; the appropriation of the additional value generated by enriched snippets displayed in a prominent position, without adequate remuneration and in a context of structural dependency, is not necessarily so. There were – and there are – less onerous alternatives: paid licensing models, opt-in mechanisms or granular control, a clearer separation between indexing and additional uses of the content, or even structured collective bargaining.

¹⁴⁵ AUTORITÉ DE LA CONCURRENCE (France). **Decision 20-MC-01 of 9 April 2020** on requests for interim measures by the Syndicat des éditeurs de la presse magazine, the Alliance de la presse d'information générale and others and Agence France-Presse. Paris, 9 Apr. 2020, paras. 140–143 and 222–230. Available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-demandes-de-mesures-conservatoires-presentees-par-le-syndicat-des-editeurs-de>; AUTORITÉ DE LA CONCURRENCE (France). **Decision 21-D-17 of 12 July 2021** on compliance with the injunctions issued against Google in Decision 20-MC-01 of 9 April 2020. Paris, 12 July 2021. Available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-au-respect-des-injonctions-prononcees-lencontre-de-google-dans-la-decision-ndeg>.

728. The argument that the snippet is merely an auxiliary description of the result needs, in my view, to be treated with greater care. In economic terms, the snippet enhances the Google Search product itself. It increases the perceived utility of the SERP, reduces the user's search costs, increases the likelihood of them remaining on the interface, and enhances the value of the advertising inventory associated with the query. It is, therefore, a use that generates value for Google regardless of whether the user subsequently clicks through to the publisher.

729. The fundamental unfairness of the situation stems precisely from the imbalance between those who bear the costs and those who control the returns. The publisher funds the production, editing, fact-checking and editorial responsibility for the content. Google decides how much of that content to display, in what format to use it, and what residual compensation will be returned in the form of clicks. The distribution of value does not result from negotiation, but from a unilateral decision by the dominant firm.

730. French case law is, once again, instructive. In Google News (Decisions 20-MC-01 and 21-D-17), the French authority demonstrated that the issue was not resolved by the finding of some traffic being redirected to publishers, as previously discussed. The central point was that Google had imposed, by virtue of its dominant position, a free and generalised licence for the reuse of protected content, despite the fact that the publishers' own dependence on Google effectively deprived them of the freedom to refuse¹⁴⁶.

731. In the present case, the logic is analogous. Even if one accepts that snippets may generate some referral value, this does not eliminate the unfair nature of the condition when the implicit price is set unilaterally by a dominant player, without transparency, without predictability and without a verifiable correlation with the total value extracted.

5.7.2.1.5. Steps 4 and 5: Appreciable harm due to dominance and absence of objective justification and a less restrictive alternative

732. The fourth step requires a demonstration of appreciable harm due to dominance. The fifth step, in turn, requires a demonstration of the absence of objective justification and of a less restrictive alternative.

¹⁴⁶ AUTORITÉ DE LA CONCURRENCE (France). **Decision 20-MC-01 of 9 April 2020** on requests for interim measures by the Syndicat des éditeurs de la presse magazine, the Alliance de la presse d'information générale and others, and Agence France-Presse. Paris, 9 April 2020, paras. 140–143 and 222–230. Available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-demandes-de-mesures-conservatoires-presentees-par-le-syndicat-des-editeurs-de>; AUTORITÉ DE LA CONCURRENCE (France). **Decision 21-D-17 of 12 July 2021** on compliance with the injunctions issued against Google in Decision 20-MC-01 of 9 April 2020. Paris, 12 July 2021. Available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-au-respect-des-injonctions-prononcees-lencontre-de-google-dans-la-decision-ndeg>.

733. Although the application of the test has so far been structured in a segmented manner across the different stages of the conduct, for methodological reasons and to ensure clarity of presentation, the analysis of the fourth and fifth stages will be conducted jointly in relation to the snippets and the AIOs – that is, considering the conduct in its entirety – as set out in sections 5.7.2.2.5 and 5.7.2.2.6 below, within the scope of the analysis of AIOs.

734. This approach is justified by the cross-cutting nature of these elements, the proper understanding of which requires an integrated consideration of the evolution of the practice, insofar as both the appreciable harm in a context of dominance and the assessment of any objective justification and less restrictive alternatives are informed by the functional continuity between the different manifestations of the conduct.

735. Indeed, it is the link between the display of snippets and functionalities based on generative artificial intelligence, combined with the persistence of their effects on the journalistic content market, that provides greater analytical depth to the assessment of these stages, avoiding a fragmented reading of a phenomenon that develops progressively.

736. In this context, it should also be noted that this dimension tends to become more readily apparent in the most recent configurations of the practice, notably in AIOs, due to technological developments that bring the platform's product closer to formats that potentially compete more directly with publishers in the provision of informational content to users, without this implying, at this stage, any conclusive judgement regarding the existence of harm.

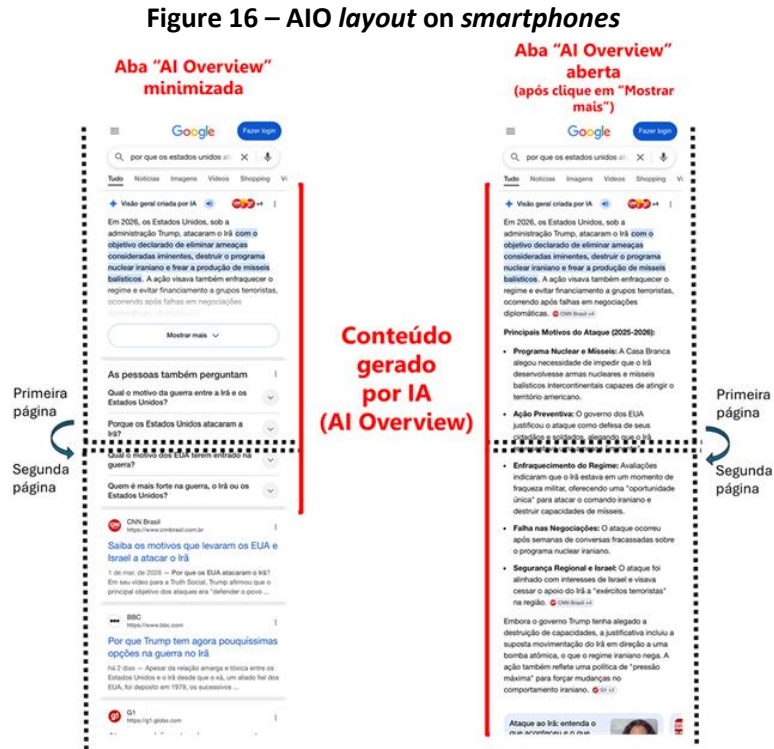
5.7.2.2. Applying the test to the use of journalistic content in *AI Overviews* and related uses of generative AI

5.7.2.2.1. Contextual aspects of the theory of harm

737. As previously discussed, the use of journalistic content in AIOs and related generative AI features is, strictly speaking, a technological and functional extension of the logic already observed in the display of snippets, characterised by the appropriation and reuse of third-party content within the platform itself. What is evident at this stage is an expansion of the extent to which this content is incorporated into Google's product, not only in terms of scale, but above all in terms of how the information is processed and presented to the user.

738. In this context, AIOs do not merely summarise results, but rather convert third-party editorial content into Google’s own response, displayed at the most prominent point on the screen, reducing the need to click and expanding the economic uses of the same input¹⁴⁷.

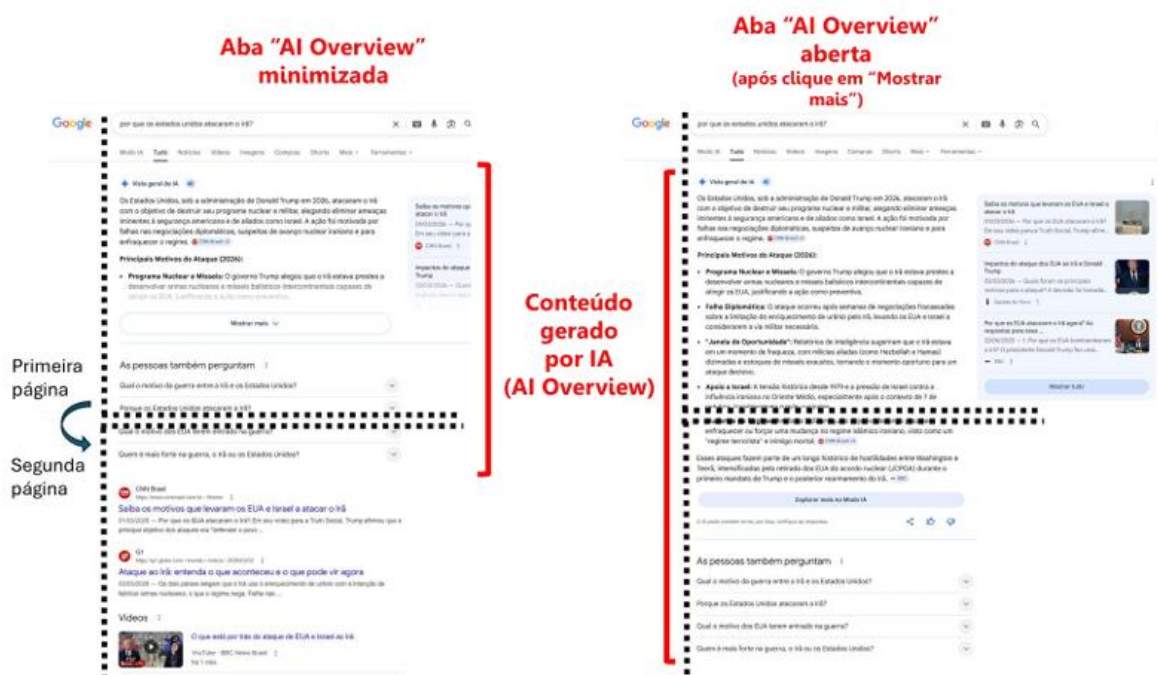
739. **Figures 16 and 17** below, included in a submission by Foxglove (SEI 1729396), illustrate this new dynamic:



Source: screenshots from Google Search for the query “why did the United States attack Iran?”, conducted on 31 March 2026 at 5 pm, cited in Foxglove’s submission (SEI 1729396).

¹⁴⁷ SINGH, Madhavi; SCOTT MORTON, Fiona M. **A Roadmap for a Monopolisation Case Against Google: Monopsony Power and AI Overviews**. University of Pennsylvania Law Review, vol. 175, 2025 (forthcoming).

Figure 17 – AIO layout on desktops



Source: screenshots from Google Search for the query “why did the United States attack Iran?”, conducted on 31 March 2026 at 5.00 pm, cited in Foxglove’s submission (SEI 1729396).

740. Thus, the nuances of the theory of harm specifically in relation to AIOs can be articulated more precisely based on Singh & Scott Morton (2025), who identify a tripartite structure of harm – monopsony, tying and traffic retention – whose effects not only coexist but reinforce one another cumulatively and dynamically. These three vectors constitute the initial core of the theory of harm now proposed, as they describe, in an integrated manner, the mechanisms through which the dominant firm expands its appropriation of value from editorial inputs under conditions of structural dependence.

741. The first aspect of harm is **monopsony**. Google acquires, under conditions imposed by its dominance in search, content from fragmented and dependent publishers. As the visibility of these outlets depends on Google, these suppliers’ bargaining power is substantially curtailed.

742. **The second aspect is tying**. To remain in the index and continue to be discoverable, the publisher must tolerate its content being used not only for indexing, but also for AI purposes that have their own independent economic value. In this sense, the search infrastructure becomes a vehicle for imposing expanded use of the input.

743. **The third aspect is traffic retention**. The generative response internalises the query within Google, displacing the external click, reducing the referral rate and thereby curtailing the main form of implicit remuneration that previously balanced, albeit imperfectly, the relationship between search engine and publisher.

744. Building on this framework, it is possible to develop the analytical structure of the harm further, incorporating additional dimensions that deepen and enrich the proposed theory.

745. **Thus, the fourth aspect is the capture of attribution and reputation.** When the summarised response appears as the main solution to the query, the Google brand begins to mediate, and to some extent absorb, the link between the reader and the original source. Consequently, the publisher loses not only traffic, but also recognition and repeat visits.

746. **The fifth aspect relates to the intensification of forced free-riding.** Whilst Google already benefited from third-party content in snippets to enrich the SERP, in AIOs it now re-presents this content in a more autonomous, more substitutive and more profitable form, without effective consent and without corresponding remuneration.

747. **Finally, the sixth aspect relates to market dynamics.** By reducing publishers' revenue, attribution and predictability, AIOs weaken the future capacity for investment in original content, deepening dependence and reducing the competitive quality of the information ecosystem from which Google itself continues to rely.

748. In summary, the theory of harm caused by AIOs is not, in my view, limited to a reduction in clicks. It describes a structural reconfiguration of the economic relationship between Google and publishers, marked by an expansion in the uses of the input, greater appropriation of value by the platform, a reduction in compensation, and a limitation on the freedom to refuse.

5.7.2.2.2. Stage 1: Structural conditions for intervention

749. Applying this test to AIOs leads, in my view, to an even more compelling conclusion. The structural conditions are the same as those already observed for snippets, but here new layers of dependency and reinforcement of market power are added.

750. This stems from the fact that Google controls not only search, but also a significant portion of the data, computing, distribution and monetisation infrastructure within which generative AI models operate, which intensifies concerns already identified in other jurisdictions, such as the United Kingdom, the European Union and South Africa, which have come to treat the generative layer of search as a separate issue precisely

because it increases dependence and shifts, to a greater extent, the value from publishers to the dominant search engine¹⁴⁸.

751. Furthermore, AIOs exacerbate the systemic harm for two reasons. Firstly, because they reduce outbound traffic more sharply. Secondly, because they use journalistic content for additional, ongoing economic purposes that are potentially more valuable than mere indexing. In countries that have already faced this problem, the remedies considered or imposed have converged on the same diagnosis, namely that it is necessary to ensure effective control by the publisher, opt-out without retaliation, transparency regarding the uses of the content, and mechanisms for negotiation or compensation. The absence of equivalent sectoral regulation in Brazil reinforces, once again, the appropriateness of competition intervention¹⁴⁹.

752. The facts of the case themselves support this interpretation of intensification. The responses to the supplementary inquiry attribute to AIO not only an incremental loss of clicks, but a qualitative change in the relationship with the search engine, whereby the result ceases to redirect and begins to compete with the source page. As already mentioned throughout this opinion, [RESTRICTED ACCESS TO CADE] ANER (SEI 1656193), ABERT (SEI 1656179) and A Gazeta (SEI 1644240) reported worsening losses following the introduction of the generative layer, in a context already marked by opaque algorithmic updates and increasing attention retention on the SERP.

¹⁴⁸ SINGH, Madhavi; SCOTT MORTON, Fiona M. **A Roadmap for a Monopolisation Case Against Google: Monopsony Power and AI Overviews**. University of Pennsylvania Law Review, vol. 175, 2025 (forthcoming); EUROPEAN COMMISSION. **Press release IP/25/2964**. Brussels: European Commission, 9 Dec. 2025. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2964; COMPETITION AND MARKETS AUTHORITY (CMA). **Strategic Market Status Investigation into Google's General Search Services: Final Decision**. London: CMA, 10 Oct. 2025. Available at: https://assets.publishing.service.gov.uk/media/68e8b643cf65bd04bad76724/Final_decision_-_strategic_market_status_investigation_into_google_s_general_search_services.pdf; COMPETITION COMMISSION OF SOUTH AFRICA. **Media and Digital Platforms Market Inquiry (MDPMI): Final Report**. Pretoria, Nov. 2025. Available at: <https://www.compcom.co.za/final-report-launch/>.

¹⁴⁹ COMPETITION AND MARKETS AUTHORITY (CMA). **Introduction to the consultation: Google's general search services: Proposed Conduct Requirements**. London: CMA, 28 January 2026. Available at: https://assets.publishing.service.gov.uk/media/6979d05275d443709655209f/Introduction_to_the_consultation.pdf; EUROPEAN COMMISSION. **Press release IP/25/2964**. Brussels: European Commission, 9 Dec. 2025. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2964; COMPETITION COMMISSION OF SOUTH AFRICA. **Media and Digital Platforms Market Inquiry (MDPMI): Final Report – Annexure 8: Remedial Actions (Non-Confidential)**. Pretoria, Nov. 2025. Available at: <https://www.compcom.co.za/final-report-launch/>; AUTORITÉ DE LA CONCURRENCE (France). **Decision 20-MC-01 of 9 April 2020** on requests for interim measures by the Syndicat des éditeurs de la presse magazine, the Alliance de la presse d'information générale and others and Agence France-Presse. Paris, 9 April 2020. Available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-demandes-de-mesures-conservatoires-presentees-par-le-syndicat-des-editeurs-de>; AUTORITÉ DE LA CONCURRENCE (France). **Decision 21-D-17 of 12 July 2021** on compliance with the injunctions issued against Google in Decision 20-MC-01 of 9 April 2020. Paris, 12 July 2021. Available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-au-respect-des-injonctions-prononcees-lencontre-de-google-dans-la-decision-ndeg>.

753. Google’s argument that part of the traffic reduction predates the implementation of AIOs does not, in itself, settle the competition debate. On the contrary, it suggests that the phenomenon should be examined from a more cautious and multi-causal perspective, distinguishing the broader trajectory of transformation in news consumption from the specific impact associated with the generative layer. **[RESTRICTED ACCESS TO CADE AND GOOGLE].**

754. This result points, at least in principle, to a downward trend attributable to the functionality, albeit of a lesser magnitude than that found in other studies included in the case file. **The apparent contrast between these different orders of magnitude does not diminish the relevance of the issue. Rather, it calls for additional layers of investigation capable of refining the causal attribution and defining the relative weight of each factor with greater precision. Even so, it seems possible to draw, at this stage, the preliminary conclusion that AIOs may contribute to a reduction in referred traffic, although this effect must be understood within a broader and more complex dynamic.**

5.7.2.2.3. Stage 2: An indispensable commercial partner and the imposed condition

755. In the second stage of the test, the picture becomes even clearer. Singh & Scott Morton (2025) describe Google’s conduct as conditioning the inclusion of publishers’ data in the search index on the use of that data for AI-related purposes, such as training and grounding.

756. Although the legal engineering of this link may vary, the economic substance remains: to remain discoverable, the publisher must tolerate its content feeding into an additional Google product, which functionally competes with access to the source website itself. This is precisely the economic core of investigation AT.40983 and of the requirements formulated by the CMA for generative search¹⁵⁰. It should be noted that, under this logic, the conduct also comes to incorporate potential exclusionary dimensions.

¹⁵⁰ SINGH, Madhavi; SCOTT MORTON, Fiona M. **A Roadmap for a Monopolisation Case Against Google: Monopsony Power and AI Overviews.** University of Pennsylvania Law Review, vol. 175, 2025 (forthcoming); EUROPEAN COMMISSION. Press release IP/25/2964. Brussels: European Commission, 9 Dec. 2025. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2964; COMPETITION AND MARKETS AUTHORITY (CMA). **Introduction to the consultation: Google’s general search services: Proposed Conduct Requirements.** London: CMA, 28 Jan. 2026. Available at: https://assets.publishing.service.gov.uk/media/6979d05275d443709655209f/Introduction_to_the_consultation.pdf.

757. The relationship, therefore, ceases to be merely distributive and becomes one of expanded utilisation of third-party content. Google acts simultaneously as a discovery infrastructure and as a competing synthesiser of the distributed content. The notion of a platform playing a ‘dual role’, as developed by Bostoen (2023), reaches its zenith here, given that the intermediary not only organises access to third-party content but also re-presents it in its own form, potentially sufficient to retain the user within its own environment¹⁵¹.

758. It should be noted that the tying does not need to be formalised contractually to produce the same economic effects. It is sufficient for the publisher to face a material dilemma between accepting the expanded use of the content or losing visibility in search results. It is precisely this type of economic coercion that Singh & Scott Morton (2025) describe as tying between indexing and AI uses, and which the CMA has come to treat as a specific competition concern within the scope of Search¹⁵².

759. The situation becomes even more serious when one observes that Google-Extended, presented as a granular solution, does not resolve the problem on its own terms. Furthermore, according to Singh & Scott Morton (2025), the mechanism did not prevent the use of content for AIOs and, even if applied faithfully, would continue to impose significant informational and strategic costs on publishers in their attempts to control uses whose design Google keeps under relative opacity.

760. Furthermore, the lack of transparency regarding the specific operational details of the product – coupled with the limitations of the supplementary investigation – prevents proper verification of its effectiveness, reinforcing the need for further evidential examination, with additional investigation and adversarial proceedings, should the investigation continue.

761. In this regard, Article 19 (SEI 1658332, public version, and 1658336, restricted access) highlights Google’s status as an unavoidable business partner, given that it accounts for around 40% of traffic to news websites. Furthermore, it describes the limited situation in which media outlets find themselves, whose alternatives are

¹⁵¹BOSTOEN, Friso. Abuse of platform power: leveraging conduct in digital markets under EU Competition Law and beyond. New York: Concurrences, 2023.

¹⁵² EUROPEAN COMMISSION. **Press release IP/25/2964**. Brussels: European Commission, 9 Dec. 2025. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2964; COMPETITION AND MARKETS AUTHORITY (CMA). **Strategic Market Status Investigation into Google’s General Search Services: Final Decision**. London: CMA, 10 Oct. 2025. Available at: https://assets.publishing.service.gov.uk/media/68e8b643cf65bd04bad76724/Final_decision_-_strategic_market_status_investigation_into_google_s_general_search_services.pdf; COMPETITION COMMISSION OF SOUTH AFRICA. **Media and Digital Platforms Market Inquiry (MDPMI): Final Report**. Pretoria, Nov. 2025. Available at: <https://www.compcom.co.za/final-report-launch/>.

restricted to (i) accepting the platform's terms, allowing the appropriation of content through indexing and generative AI, without compensation; (ii) opting for Google-Extended and excluding themselves from appropriation by AI, whilst remaining subject to other forms of content reproduction; (iii) excluding themselves from the search index, thereby losing traffic.

762. The CJL (SEI 1658137), in turn, also points to Google's conduct as abusive for modifying its Terms of Use, making publishers' participation in AIO automatic and without a clear opt-out mechanism.

5.7.2.2.4. Stage 3: Material unfairness of the condition

763. With regard to the third stage, there is no doubt that search engines may invoke legitimate objectives linked to improving the user experience. However, AIOs are not limited to merely ordering or summarising results; they make use of third-party content to generate autonomous responses, in a new format, for a new economic purpose and with a new capacity to retain attention.

764. This disproportion stems precisely from the shift from an instrumental use of the content provided by publishers—as a means to an end—to an economically autonomous use of that content. The content is reused not only to facilitate reference to the source, but to feed Google's own products, including in training and continuous inference cycles. In this respect, the conduct goes far beyond what would be strictly necessary for the provision of the search service.

765. The analysis is particularly illuminating regarding this qualitative shift, as it distinguishes between training and grounding, the latter corresponding to a recurring and potentially measurable use in the inference phase, capable of establishing itself as a continuous vector for the monetisation of journalistic content. The competitive issue, therefore, is not limited to an initial instance of reuse, but lies in a permanent flow of value extraction without equivalent compensation.

766. The material unfairness is also evident in the degradation of attribution. When Google's response re-presents the content in its own language, without proportional credit or with flawed attribution, the publisher loses not only clicks, but also reputation and a direct relationship with the reader. The dominant interface comes to capture, at the same time, both attention and recognition. **[RESTRICTED ACCESS TO CADE]**.

767. This is not, it is worth noting, a matter of questioning innovation in the abstract. The issue lies, in my view, in the fact that Google has adopted a product architecture that internalises the profits arising from generative synthesis, whilst shifting the costs of producing the input and the loss of its main historical counterpart onto publishers. In

this respect, the innovation is structured on foundations that may constitute an unfair commercial condition.

5.7.2.2.5. Step 4: Appreciable harm due to dominance

768. The fourth stage of the test, examined here in relation to the conduct as a whole, requires a demonstration of appreciable harm arising from the dominant position.

769. If carried out by a marginal search engine, the display of snippets and AIOs would be unlikely to cause any significant economic impact on publishers. However, when the practice is carried out by one of the main portals for accessing information on the internet, the extraction of content begins to directly affect the main form of implicit remuneration that previously existed – referral traffic – and to shift a significant portion of the value to the platform.

770. The harm is not merely quantitative. It is also qualitative and structural. Publishers find themselves compelled to finance, through their editorial investments, the continuous improvement of Google’s interface, whilst at the same time losing bargaining power, revenue predictability and the ability to invest in their own production. It is precisely this type of deterioration in the position of the dependent partner that transforms the conduct into exploitative abuse and, simultaneously, brings it closer to collateral exclusionary effects¹⁵³.

771. As Singh & Scott Morton (2025) observe, what is occurring is the extraction of greater economic value from the input with less in return. In competition law terms, this amounts to a suppression of the effective price paid to the supplier in a context of monopsony power.

772. This assessment is not isolated: the South African Competition Commission concluded, in its MDPMI, that AI-powered searches tend to increase value extraction at the expense of publishers and distort competition in the distribution and monetisation of news:

“137.1. Google’s monopoly position and the unequal bargaining position of the media means there has not been an equitable share of value (...).”

¹⁵³ BALASINGHAM, Baskaran; D’AMICO, Alessia S. **Beyond exclusion: revisiting exploitative abuses in digital platform markets.** Journal of Competition Law & Economics, Oxford, Oxford University Press, 2025; BOSTOEN, Friso. Abuse of platform power: leveraging conduct in digital markets under EU Competition Law and beyond. New York: Concurrences, 2023.

137.3. AI-powered search is likely to cause an even greater extraction of value by search engines from news publishers.¹⁵⁴

773. As already mentioned, it is also worth noting that the harm is not limited to traffic. AIOs exacerbate attribution problems, shift reputation from the original source to Google’s interface, and tend to weaken, in the long term, the economic incentives for producing original and verifiable content. It is, therefore, harm that simultaneously affects the commercial partner, the information market and, consequently, the end users themselves. It is for this very reason that the CMA has begun to treat attribution, ranking neutrality and transparency regarding the use of content as minimum safeguards for the generative layer of search¹⁵⁵.

774. Empirical evidence makes this theory of harm more concrete. The Pew Research Center¹⁵⁶ showed that, when an AI summary appears, users click on traditional results significantly less frequently. The Autoritas/Foxglove study (SEI 1658751 and 1658752)¹⁵⁷, analysing the Brazilian search market, highlighted the presence of AIOs in 35.3% of the keywords analysed and a significant loss of visitors per query – estimating a loss of 58.3% of traffic relating to searches for the specific keyword and a 20.6% loss of publishers’ total traffic.

¹⁵⁴ COMPETITION COMMISSION OF SOUTH AFRICA. **Media and Digital Platforms Market Inquiry (MDPMI): Final Report**. Pretoria, Nov. 2025, p. 43. Available at: <https://www.compcom.co.za/final-report-launch/>.

¹⁵⁵ SINGH, Madhavi; SCOTT MORTON, Fiona M. **A Roadmap for a Monopolisation Case Against Google: Monopsony Power and AI Overviews**. University of Pennsylvania Law Review, vol. 175, 2025 (forthcoming); COMPETITION AND MARKETS AUTHORITY (CMA). **Introduction to the consultation: Google’s general search services: Proposed Conduct Requirements**. London: CMA, 28 Jan. 2026. Available at: https://assets.publishing.service.gov.uk/media/6979d05275d443709655209f/Introduction_to_the_consultation.pdf; COMPETITION COMMISSION OF SOUTH AFRICA. **Media and Digital Platforms Market Inquiry (MDPMI): Final Report – Annexure 8: Remedial Actions (Non-Confidential)**. Pretoria, Nov. 2025. Available at: <https://www.compcom.co.za/final-report-launch/>; AUTORITÉ DE LA CONCURRENCE (France). **Decision 20-MC-01 of 9 April 2020** on requests for interim measures by the Syndicat des éditeurs de la presse magazine, the Alliance de la presse d’information générale and others and Agence France-Presse. Paris, 9 Apr. 2020. Available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-demandes-de-mesures-conservatoires-presentees-par-le-syndicat-des-editeurs-de>; AUTORITÉ DE LA CONCURRENCE (France). **Decision 21-D-17 of 12 July 2021** on compliance with the injunctions issued against Google in Decision 20-MC-01 of 9 April 2020. Paris, 12 July 2021. Available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-au-respect-des-injonctions-prononcees-lencontre-de-google-dans-la-decision-ndeg>.

¹⁵⁶ The research was drawn upon in the contributions from RSF (SEI 1658518), SGBR (SEI 1658737) and CTS (SEI 1658686). **[RESTRICTED ACCESS TO CADE]**

¹⁵⁷ Momentum (SEI 1655393, public version) also attached to the case file, in Annex 5, the research carried out by Autoritas/Foxglove in the United Kingdom (SEI 1655393, public version), which indicates a potential loss of approximately 79% of publishers’ traffic following the implementation of AIO.

775. **[RESTRICTED ACCESS TO CADE]**. The case file, in turn, records reductions in CTR, impressions and audience attributed by Brazilian media outlets to the introduction of AIO and related changes in design and algorithm¹⁵⁸.

776. There is also an important qualitative element, namely that AIO captures queries with high informational intent precisely at the point where the click would be most valuable to the publisher. It is not just any traffic that is lost. To a large extent, what is lost is traffic associated with explicit questions, contextualisation, comparison and active searches for explanations; that is, precisely the traffic with the greatest potential to generate monetisation, engagement and loyalty.

777. It is also noteworthy that data extracted from the case file indicate that Google itself acknowledged (SEI 1654679) in a control experiment a reduction in clicks in the group exposed to AIO and an increase in searches without clicks. Although the company contests the overall magnitude of the effect, such an acknowledgement reinforces the central economic intuition that more complete and more prominent answers on the SERP itself displace the revenue previously delivered to publishers.

778. In terms of the theory of harm, this allows for a more precise conclusion. The evolution of the conduct toward AIOs not only reduces traffic, but also concomitantly alters the conversion rate of journalistic input into economic return for the supplier.

5.7.2.2.6. Step 5: Lack of objective justification and less restrictive alternatives

779. Google's most immediate defence centres on the claim of improved user experience and legitimate innovation. I do not dismiss this claim; indeed, I recognise that it has merit, insofar as the reorganisation and synthesis of information can reduce search costs, expand access to dispersed content and make navigation more efficient for the end user. Furthermore, the incorporation of generative features may represent a significant technological advance in the presentation and processing of information.

780. However, in light of the proposed test and comparative experience, the identification of benefits does not, in itself, prove sufficient to allay competition concerns. Initiatives in the United Kingdom, the European Union, France and South Africa show that the regulatory debate no longer centres on the abstract legality of innovation, but on the terms under which innovation may make use of third-party journalistic content.

¹⁵⁸ CHAPEKIS, Athena; LIEB, Anna. **Google users are less likely to click on links when an AI summary appears in the results**. Pew Research Center, 22 July 2025; TOBITT, Charlotte. **Google told to 'stop the BS' as it claims AI has not harmed website clickthroughs**. Press Gazette, 7 August 2025.

781. It is therefore necessary to demonstrate that the specific method of obtaining the benefit was indispensable and that there were no less onerous alternatives for publishers. This demonstration, however, is not consistently supported¹⁵⁹.

782. As Singh & Scott Morton (2025) point out, Google had less restrictive alternatives at its disposal: affirmative opt-in for AI uses, granular choice between indexing, training and grounding, paid negotiation for additional uses of the content, and product design that did not equate continued inclusion in the index with the cost of expanded exploitation of the data.

783. Moreover, such alternatives are not merely speculative. They largely correspond to safeguards already proposed or adopted in other jurisdictions, such as effective opt-out without retaliation and the duties of transparency and attribution in the United Kingdom, controls over generative summaries and compensation funds in South Africa, and the obligations of negotiation and neutrality that characterised the French Google News case¹⁶⁰.

784. In conclusion, the application of the integrated test to AIOs reveals an even clearer fulfilment of all its requirements. If snippets already represent an original form of exploitative abuse, AIOs represent its intensification: more uses of the content, greater retention of value, less consideration, less attribution and a greater capacity to economically subordinate the publisher to the dominant infrastructure.

785. Google's argument that the decline in traffic would stem predominantly from exogenous factors – such as a return to post-pandemic norms, a decline in general interest in news, or increased use of social media – does not suffice to demonstrate the

¹⁵⁹ COMPETITION AND MARKETS AUTHORITY (CMA). **Introduction to the consultation: Google's general search services: Proposed Conduct Requirements**. London: CMA, 28 Jan. 2026. Available at: https://assets.publishing.service.gov.uk/media/6979d05275d443709655209f/Introduction_to_the_consultation.pdf; EUROPEAN COMMISSION. Press release IP/25/2964. Brussels: European Commission, 9 Dec. 2025. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2964; COMPETITION COMMISSION OF SOUTH AFRICA. **Media and Digital Platforms Market Inquiry (MDPMI): Final Report – Annexure 8: Remedial Actions (Non-Confidential)**. Pretoria, nov.2025. Available at: <https://www.compcom.co.za/final-report-launch/>, Nov. 2025; AUTORITÉ DE LA CONCURRENCE (France). **Decision 20-MC-01 of 9 April 2020** on requests for interim measures by the Syndicat des éditeurs de la presse magazine, the Alliance de la presse d'information générale and others and Agence France-Presse. Paris, 9 Apr. 2020. Available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-demandes-de-mesures-conservatoires-presentees-par-le-syndicat-des-editeurs-de->; AUTORITÉ DE LA CONCURRENCE (France). **Decision 21-D-17 of 12 July 2021** on compliance with the injunctions issued against Google in Decision 20-MC-01 of 9 April 2020. Paris, 12 July 2021. Available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-au-respect-des-injonctions-prononcees-lencontre-de-google-dans-la-decision-ndeg>.

¹⁶⁰ SINGH, Madhavi; SCOTT MORTON, Fiona M. **A Roadmap for a Monopolisation Case Against Google: Monopsony Power and AI Overviews**. University of Pennsylvania Law Review, vol. 175, 2025 (forthcoming).

necessity of the architecture adopted for the AIO. At best, it suggests that the news industry was already operating in a challenging environment. If this is the case, Google's conduct warrants even closer scrutiny, insofar as it affects actors who are already vulnerable and structurally dependent.

786. Nor is the objection valid that AIO merely reflects users' preference for faster responses. Whilst such preferences may legitimise innovation processes, they do not authorise the imposition on dependent third parties of the costs associated with that innovation without effective consent and without proportionate remuneration. Competition law, in this context, is not limited to safeguarding the immediate convenience of product design, but also to preserving the integrity of the terms of trade in environments characterised by dominance.

787. In short, whilst snippets already reveal forced free-riding imposed by an unavoidable partner, AIO combines this very free-riding with elements of monopsony, tying, click retention and a lack of transparency regarding the subsequent use of the content.

788. In light of the above, in my view, the theory of harm posed by AIOs presents itself not as a mere aggravated repetition, but as a more comprehensive and visible form of the exploitative abuse investigated here.

5.8. Final considerations

789. In light of the above, I consider it possible to draw the following partial conclusions regarding the competition analysis, as shown in **Table 7** below:

Table 7 – Summary of the competition analysis

<i>Stage</i>	<i>Snippets</i>	<i>AIOs</i>	<i>Key elements of the case files and the literature</i>	<i>Analytical result</i>
Structural dependence	Present	Present (reinforces the context of structural dependence)	ANJ, AJOR, ANER, ABERT, Zero Hora, <i>O Popular</i> ; Artigo 19; RSF; traffic and revenue asymmetry	Google acts as an indispensable commercial partner
Nature of the condition	Display and reuse of excerpts in SERPs	Extended use of content for training, grounding and synthetic response	ANJ; IDEC; Article 19; Google Ads Rules (France); Bostoen (2023); Singh & Scott Morton (2025); CMA; investigation AT.40983	Non-price condition unilaterally imposed, reinforced by the evolution of the conduct
Material unfairness	Forced free-riding	Forced free-riding + tying + additional economic uses of the journalistic input	Ajor; Botta (2023); <i>Google News (France)</i>	A clearer unfair condition in the case of the evolution of the conduct toward AIOs.
Harm and risk of harm	Click erosion	Conduct’s evolution, with click compression, loss of attribution, zero-click, risk of reduced editorial investment and weakening of the partner’s position	Declines in CTR, traffic and audience; ANJ; Ajor; ABERT; ANER; Pew; Autoritas/Foxglove; Sinos; Momentum; Article 19; CJL; RSF; CTS reports from publishers’ reduction in clicks recognized by Google	More robust evidential framework and systemic risk in AIOs
Objective justification	Improvement in traffic is not sufficient as a defence	Abstract allegiance of innovation is not sufficient as a defence	Singh & Scott Morton (2025); existence of less restrictive alternatives, negotiation, opt-in, granularity, control over AIOs and neutrality	Lack of sufficient proportional justification, especially with the evolution of the conduct toward AIOs.

Source: own work.

790. **As extensively set out, the theory of harm underpinning this opinion is, in essence, that of exploitative abuse, albeit in conjunction with practices of an exclusionary nature.** What is described here is not merely the exclusion of rivals nor a mere contractual dispute, but the imposition, by a dominant agent and indispensable commercial partner, of unfair trading conditions that allow it to expand the economic uses of journalistic content, unilaterally manage the remuneration paid to publishers, and capture a disproportionate share of the value generated by third parties.

791. This argument is structured, in principle, on the theoretical elements developed throughout the opinion: structural dependence, rule-setting power, forced free-riding, administered remuneration and the absence of genuine economic choice. In platform markets, these elements make it possible to identify exploitation even where there is

no traditional monetary price, because extraction occurs through non-monetary parameters such as traffic, visibility, data, attribution and access to the public.

792. In the present case, the theory of harm is also ecosystemic. Journalistic content does not merely feed indexing. It improves the SERP, enhances the attractiveness of Search, feeds discovery surfaces, contributes to advertising inventory, reputation and data, and, in the case of AIOs, also serves as input for training, grounding and synthetic responses. Competitive asymmetry arises precisely because Google controls, simultaneously, access to the public, the use of the input, and the residual return paid to the supplier.

793. The snippets reveal the economic origins of extraction, but in AIOs the theory of harm is much clearer. Consequently, the competitive risk associated with AIOs is more acute. It is not limited to harm to traffic, CTR and attribution. It encompasses the prospective risk of increased dependency, reduced revenue predictability, curtailed editorial investment and a weakening of the future capacity to produce original and verifiable content. The case, therefore, does not merely present potential current harm; it presents a risk of ongoing and cumulative harm to the information ecosystem.

794. Innovation, in itself, is not unlawful. The potential unlawfulness lies in shifting the economic costs of innovation onto dependent partners, whilst the dominant firm internalises its gains, without effective consent, without proportional remuneration and without the option to refuse.

795. These conclusions, however, do not imply any prejudgment, nor are they definitive in nature. They merely indicate that, in light of the criteria outlined throughout this opinion, the conduct, as it currently stands, reveals sufficient factual and legal substance – supported by evidence already contained in the case file and possessing a minimum degree of robustness – to justify the initiation of an Administrative Proceeding for the Imposition of Sanctions due to Violations of the Economic Order, with the consequent initiation of the adversarial proceedings characteristic of this phase, pursuant to Article 66(1), in conjunction with Article 69, of Law No. 12,529/2011.

796. Finally, it must be recognised that the institutional response to the problem is not limited to a punitive approach. The competitive dynamics identified suggest, from the outset, the need to examine ways of rebalancing the terms of exchange between the platform and publishers, especially where the asymmetry stems from the same entity controlling discovery, the exploitation of content, and the residual economic consideration.

797. As I have already highlighted in my opinion on the Motion for Clarification in TCC Application No. 08700.006953/2025-62 (TCC Apple Inc. and Apple Services LATAM LLC.),

competitive interventions in digital markets may take on a functionally restorative and, to some extent, quasi-regulatory character, precisely because they are not limited to putting an end to an isolated practice, but seek to re-establish minimum conditions of contestability in ecosystems characterised by private governance, information asymmetry and complex monitoring.

798. In the same vein, in the Merger Case No. 08700.003437/2023-14 (OTLB/GEQ/COPA), I have already pointed out that, in contexts of uncertainty and high operational complexity, the authority may need to resort to proportionate, verifiable and flexible governance and monitoring tools, rather than excessively rigid or purely abstract responses.

799. It is for this reason that, below, I proceed to examine the scope and limits of the solutions available under Law No. 12.529/2011 in light of the alleged conduct under investigation, as well as the competition law and, where relevant, regulatory tools which, in theory, may contribute to the restoration of trading conditions within the ecosystem under analysis. From this perspective, alternatives such as transparency measures, functional separation between indexation and the use of AI, effective opt-in or opt-out mechanisms without retaliation, attribution obligations, remunerated negotiation, neutrality and monitoring will be considered on a preliminary basis.

800. In light of these considerations, I conclude that **there is a need to initiate an Administrative Proceeding to investigate possible exploitative abuse of a dominant position, given the technological evolution of the conduct, pursuant to Article 36, items I and IV, in conjunction with Article 36, paragraphs 2 and 3, items IV, XII and XVIII, of Law No. 12,529/2011, as well as Article 67, paragraph 2, item II, of the same act.** Subsequently, as already outlined, a preliminary examination is conducted of the restorative remedies and the potentially applicable competition and regulatory tools.

6. SCOPE AND LIMITS OF SOLUTIONS RELATED TO LAW No. 12.529/2011 IN LIGHT OF THE ALLEGED CONDUCT UNDER INVESTIGATION

801. Having concluded the analysis of the theory of harm and its possible manifestations in the concrete case, it is necessary to examine the scope and limits of the institutionally available remedies in light of the alleged conduct under investigation. This step is necessary because, in digital markets, the restoration of exchange conditions between platforms and dependent agents is not, as a rule, exhausted by the classic sanctioning approach, and may involve, to a greater or lesser extent, competition law instruments, private governance arrangements and, in broader scenarios, regulatory or legislative responses.

802. Thus, the purpose of this section is to complement the policy direction outlined throughout this opinion, with a view to contributing to the investigation to be conducted by the SG/Cade and to the proper development of the adversarial proceedings.

803. It should be noted from the outset that the considerations set out here regarding possible solutions to the conduct under investigation are necessarily abstract in nature, formulated both in the light of current law (*de lege lata*) and from a prospective perspective (*de lege ferenda*). These reflections are not binding on the SG/Cade or the parties and remain subject to confirmation of the conduct following due investigation, with due regard for the right to be heard and the right to a full defence.

804. The purpose of their inclusion, even prior to the possible initiation of an Administrative Proceeding, is solely to indicate, in preliminary terms, the instruments which, in our view, fall within the scope of Cade's powers, as well as to distinguish those which, as they depend on specific legislative or regulatory provisions, exceed the limits of the competition authority's powers in the context of the administrative sanctioning proceedings. The aim is thus to bring greater transparency to the possible scope of institutional action, avoiding the incorporation of expectations that are not consistent with the current legal framework.

805. Comparative experience suggests, in this regard, that the restoration of minimally balanced conditions for participation in the information ecosystem can be pursued through different avenues. Some are more interventionist and presuppose a continuous institutional design of remuneration, eligibility criteria and value distribution.

806. Others operate at an intermediate level, through negotiation mechanisms and private coexistence protocols. Finally, there are solutions of a more strictly competitive nature, aimed at removing the economic coercion embedded in the design of the conduct and re-establishing a minimum freedom of choice regarding the uses of the content provided.

807. I shall examine these possibilities in descending order of severity. I do so because, in my view, this ordering makes it clearer that not every solution desirable in the abstract is necessarily the one most consistent with the scope of action conferred on the competition authority by Law No. 12.529/2011. Precisely for this reason, the purpose of this section lies less in selecting, from the outset, a fully developed remedial model and more in determining which type of response is most closely linked to the infringement under examination and to the powers of this authority.

6.1. Regulatory-legislative solutions and negotiated remuneration mechanisms

808. The most intrusive and structural approach consists of creating a negotiated remuneration mechanism, preferably through a collective agreement and on the basis of specific regulatory or legislative provisions. This is a model aimed not only at ceasing a particular practice, but at reorganising, in a stable manner, the rules for the distribution of value between platforms and content producers, defining eligibility criteria, calculation parameters, forms of negotiation, data governance, means of dispute resolution and permanent monitoring mechanisms.

809. In my view, this solution may be consistent with the economic diagnosis of structural asymmetry and dependency discussed here. It also aligns with international experiences that have come to combine collective bargaining, economic compensation, transparency obligations, sectoral funds and safeguards regarding the use of AI.

810. The CTS, for example, proposed collective bargaining arrangements and parameterised licensing to rebalance bargaining power in the sector (SEI 1658686). Similarly, the South African experience and other comparable models point to institutional solutions that seek to regulate, in a more comprehensive manner, the flow of value between platforms and publishers.

811. Nevertheless, I believe that this approach exceeds, at least in its ordinary and ongoing formulation, the institutional capacity of the competition authority for design, parameterisation and day-to-day monitoring. Law No. 12.529/2011 certainly authorises Cade to crack down on breaches of the economic order and to impose remedies capable of bringing their effects to an end, but it does not appear to have been conceived, without additional regulatory intervention, as an instrument for the permanent sectoral regulation of remuneration for journalistic content. In other words, although the competition law dimension may justify recognising the problem, its most comprehensive solution requires a specific legislative response or the delegation of competence to future regulation.

812. This limit is particularly important because the institutionalisation of ongoing payment mechanisms entails distributional and sectoral choices that go beyond the typical scope of antitrust law. It involves deciding who receives payments, for what purposes, according to which metrics, subject to what audit, in favour of which categories of agents, and under what updating criteria. Such definitions, whilst they may be informed by competition analysis, belong to a broader institutional sphere—notably the democratic legislative process—than that normally occupied by the authority’s enforcement activities.

6.2. Self-regulatory mechanisms negotiated between industry players

813. In the background, it is possible to consider an intermediate solution, of a predominantly private nature, based on self-regulatory mechanisms negotiated between platforms, publishers and representative bodies. This approach does not, from the outset, presuppose the creation of a rigid legal remuneration regime, but seeks to establish minimum parameters for the coexistence of technological innovation and the sustainability of the information ecosystem.

814. This approach could encompass protocols on attribution, transparency of general criteria for selecting sources, labelling of sponsored and AI-generated content, minimum standards for link visibility, shared metrics on traffic impact, and mechanisms for monitoring and dispute resolution. Its advantage lies in enabling finer and more adaptable coordination, reducing opacity and information asymmetry in a private governance environment, without presupposing, from the outset, an exhaustive legal solution.

815. Nevertheless, its limitations must be acknowledged. Self-regulatory arrangements tend to work best when the parties negotiate in a minimally balanced environment and when there are credible incentives for compliance. In a context of structural dependence and marked bargaining asymmetry, there is a risk that self-regulation will reproduce, in a new form, the very imbalance it is intended to correct.

816. Thus, whilst this approach may complement competition-based solutions and serve as a space for institutional maturation, its adequacy will depend on the existence of safeguards, including legislative and regulatory ones, that prevent the simple conversion of private governance into an extension of the platform's superior bargaining position.

6.3. Opening up opt-out conditions and functional granularity of content uses

817. Finally, the least intrusive approach, and in my view the one with the most immediate connection to the remit and competence of the competition authority, consists of opening up opt-out conditions and the functional granularity of services and uses of content within the Google ecosystem. This is a behavioural solution aimed precisely at undoing the coercive element identified in the theory of harm, that is, the conversion of economically useful presence in the search index into an entry price for expanded uses of the content.

818. In practical terms, this approach would mean functionally separating indexing, snippets, training, grounding and generative responses, allowing the publisher to

effectively choose which uses it permits and which it rejects, without the refusal itself resulting in a loss of visibility equivalent to economic exclusion. From this perspective, the measure does not, at the outset, impose a complete regime of administered remuneration, but directly addresses the dimension of tying and forced free-riding previously identified, reducing the coercion produced by structural dependence.

819. The competitive utility of this solution lies in the fact that it acts upon the architecture of the conduct, and not merely upon its final effects. If the central concern lies in determining whether the platform transforms economically indispensable indexing into a mechanism for the conditional acquisition of content for additional uses, then it seems particularly appropriate to examine a remedy that undoes this functional tying.

820. In this vein, as developed throughout this opinion, the literature notes that Google had less restrictive alternatives at its disposal, such as affirmative opt-in for AI uses, granular choice between indexing, training and grounding, and product design that would not convert index inclusion into a price for expanded exploitation of the input.

821. This line of reasoning is also echoed in the submissions received during the supplementary inquiry. Momentum, for example, emphasises the uncertainty surrounding the effects of refusing to provide AI summaries and argues that it is precisely this lack of clarity that reinforces lock-in and leads newspapers to accept detrimental conditions (SEI 1655393 and 1655395).

822. Similarly, measures such as minimum transparency regarding design and algorithmic impacts, clear labelling, functional links, and auditable impact metrics are presented as complementary measures; these measures do not, in themselves, eliminate all the imbalance in the arrangement, but they do reduce its opacity and facilitate informed economic choice.

823. It is necessary, however, to incorporate the warning formulated by Cohen & Davies (2026)¹⁶¹, according to which remedies based exclusively on opt-out do not, by themselves, eliminate the potential competitive harm associated with AIOs. According to the authors, the central problem is not limited to the lack of choice regarding the use of content, but also encompasses the structural retention of traffic by the results page itself, which ceases to function merely as a discovery portal and begins to operate as the final destination of users' attention. **The critique is relevant because it shows that opening opt-out mechanisms may mitigate coercion in the acquisition of the input**

¹⁶¹ COHEN, Spencer; DAVIES, Todd. **Opt-out remedies will not fix AI overviews**. *Journal of European Competition Law & Practice*, 2026. DOI: 10.1093/jeclap/lpag025.

without necessarily restoring the flow of visits and revenues already internalized by the platform.

824. The authors also observe that the freedom promised by an opt-out regime may prove merely formal if the system's design preserves asymmetric incentives to consent. If the publisher that refuses the use of its content in generative answers becomes less cited, less clicked, or subject to higher operational and informational costs than those faced by publishers that consent, the refusal option remains economically degraded. In this sense, the mere abstract existence of a technical tool is not enough; refusal must be exercisable without artificial friction, without procedural opacity, and without choice architectures capable of inducing consent.

825. There is, moreover, an additional point worth noting. Cohen & Davies (2026) indicate that regimes of this nature may preserve attribution distortions and indirect forms of free-riding, even when the original content is no longer used directly¹⁶². Indeed, if the platform continues to synthesize information from secondary sources that reproduce reporting originally produced by those who bore the journalistic cost, there remains a risk of dissociation between the production of value, the attribution of credit, and the economic appropriation of returns. **The warning reinforces that the competition remedy, although useful, should not be treated as an exhaustive solution for all distributive and informational effects of the arrangement.**

826. Nevertheless, in my view, these objections do not undermine the appropriateness of the remedy examined here; rather, they delimit its scope with greater precision. The purpose attributed in this section to the opening of opt-out conditions is not to fully resolve the monetization crisis of digital journalism, nor to completely suppress the phenomenon of zero-click searches. **Its objective is more immediate and properly competition-oriented: namely, to undo the functional tying through which economically indispensable indexing is converted into a condition for Google's access to additional uses of the content, notably training, grounding, and generative responses. From this perspective, functional granularity remains capable of addressing the coercive core of the conduct.**

827. **Accordingly, I understand that the opening of effective opt-out conditions, accompanied by minimum safeguards of neutrality, transparency, auditability, and prohibition of algorithmic retaliation, as already noted, remains, at this first stage, the measure most closely aligned with the nexus of competition enforcement in this case. It does not exhaust the problem, nor does it dispense with the consideration, through**

¹⁶² Idem.

proper regulatory or legislative channels, of broader solutions related to remuneration, attribution, the economic sustainability of journalism, and the preservation of informational pluralism. Even so, as an initial, proportional, and restorative response, it appears to me to be the measure that best reconstructs minimum conditions of contractual freedom without requiring, from the outset, the administrative establishment of a complete sectoral regime.

828. In sum, I believe it is possible to identify three possible solutions, with varying degrees of institutional intensity. The first, the most intrusive, involves regulatory and legislative arrangements for negotiated remuneration; the second, an intermediate approach, involves self-regulatory mechanisms negotiated between industry players; and the third, the least intrusive and most directly connected to this authority's remit, involves effectively opening up the publisher's options regarding the uses of their content.

829. It is precisely in this latter direction that, in my view, the greatest point of convergence lies between the theory of harm now under examination and the solutions most legally compatible with Law No. 12.529/2011.

830. Having concluded this lengthy analysis, I shall now turn to the operative part.

7. OPERATIVE PART

831. In view of the foregoing, I recommend that the case file be returned to the SG/Cade for the proper initiation of an Administrative Proceeding for the Imposition of Sanctions due to Violations of the Economic Order, with a focus on investigating alleged exploitative abuse of a dominant position, given the technological evolution of the conduct, pursuant to Article 36, items I and IV, in conjunction with Article 36, paragraphs 2 and 3, items IV, XII and XVIII, of Law No. 12,529/2011, as well as Article 67, paragraph 2, items II, of the same act.

832. This is the opinion.

DIOGO THOMSON DE ANDRADE
Commissioner