

False choice

Why the default choice of a harmful surveillance model is no choice at all

Submission to the ACCC Digital Platform Services Inquiry third interim report

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Summary

Google understands the power of the default choice. It is why they pay \$12 billion to be the default search engine on iPhones.¹ It is why Google Chrome is preinstalled on Android phones and Google Search is set as the default.

The Australia Institute's Centre for Responsible Technology thanks the Australian Competition and Consumer Commission (ACCC) for conducting an inquiry into the default product options that have contributed to Google's anti-competitive market dominance.

The Centre for Responsible Technology would like to highlight that Google's surveillance model is powered by Chrome and Google Search and greatly assisted by its default status across devices.

Consumers should not have to accept this model as the default choice for their online experience.

The issue of Google's default choice has already resulted in a significant fine in Europe under antitrust law and the choice screen has been presented as a solution.

Over a year since its development, the European choice screen has proven to be inadequate, with Google's design continuing to preference its own products, and many 'alternative' products actually remaining part of Google's ecosystem.

The Centre for Responsible Technology recommends that the ACCC:

- 1) Following the €4 billion fine for anti-trust violations in Europe, consider whether Google is in breach of similar competition laws in Australia.
- 2) Define the parameters and specifications of the choice screen solution upfront as part of this inquiry rather than allowing vested interests to develop the choice screen themselves.
- 3) Monitor the effect of the choice screen on a quarterly basis to determine its effectiveness and performance, and adjust the design accordingly.
- 4) Recommend that the government develop incentives for competitors like DuckDuckGo to establish a more developed local presence and regional strategy in the Australian market.

¹ Duffy (2020), *Google paid Apple up to \$12 billion for a search engine deal that disadvantaged competitors, landmark antitrust suit claims*, <https://www.businessinsider.com.au/google-apple-search-deal-doj-antitrust-suit-2020-10?r=US&IR=T>

Introduction

The Australia Institute's Centre for Responsible Technology welcomes the opportunity to make a submission to the ACCC Digital platform services inquiry.

In particular, this submission addresses two sets of questions asked by the interim report on whether 'choice screens' would solve the competition problems posed by Google's 'default choice' of Google Search and Google Chrome.

The relevant ACCC questions this submission addresses are:

23) Would choice screens facilitate greater competition and/or improved consumer choice in Australia? If so:

- a) How should the choice screen be designed to best achieve this objective?*
- b) What suppliers should the choice screen apply to?*

24) Please provide feedback on the roll out of the Android choice screen in Europe. In particular:

- a) What impact has the Android choice screen had on competition in search services and/or consumer choice? If you are referring to the impact of competition in a particular country, please specify that country. To the extent possible, please provide quantitative data.*
- b) To what extent, if any, could the Android choice screen be improved?*
- c) Are the auction arrangements determined by Google appropriate? Are the auction arrangements less favourable to some types of search services than others? If there were more options on a choice screen, and so the auction were not a fourth-price auction, how might that affect the price paid to Google by the winning bidders?*
- d) How have consumers, suppliers of search services, device manufacturers and other market participants reacted to the Android choice screen in Europe?*

The power of defaults

Online platforms often argue that their technology is neutral and that they are merely facilitators for further interaction. Research studies have called this out as a “false neutrality”.²

Every design choice and every distribution choice is a carefully considered decision by these platforms. The strength of being in a default position is a well-known and well-studied phenomenon.

A regularly cited study by Johnson and Goldstein reveal that countries where organ donor status was a default choice saw a majority of the population agreeing to become donors versus countries where there was an explicit opt-in question in donor forms, regardless of high public support for donor status in those same countries.³ Further studies reveal that groups think differently of people who choose non-default options.⁴

Mandl and Felfernig found that there is a strong ‘status quo bias’ placed on default choices.⁵ They built on work by Bostrom and Ord who state that people incorrectly judge a status quo choice to be better than the alternative. They even revealed that the default choice can be exploited to make consumers spend more money, with ethical implications for companies who can mislead consumers by setting up defaults that are not necessarily what the consumer wants or needs to fulfill their requirements.

“Choice architecture”,⁶ the study of how consumers make different choices depending on how those choices are presented to them, is particularly easy to apply to software interfaces because they have a multitude of design options and the ability for rapid testing and iteration of interface choices. The 2008 book *Nudge* by economist Richard H. Thaler is a notable Silicon Valley mainstay.

² Martin (2021), *Can public service broadcasting survive Silicon Valley?*

³ Johnson & Goldstein (2003), *Do defaults save lives?*,
<http://www.dangoldstein.com/papers/DefaultsScience.pdf>

⁴ Davidai, Gilovich, Ross (2012), *The meaning of default options for potential organ donors*,
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3458339/>

⁵ Mandl, Felfernig, Tiihonen, Isak (2011), *Status quo bias in configuration systems*,
https://www.researchgate.net/publication/221047754_Status_Quo_Bias_in_Configuration_Systems

⁶ Thaler, Sunstein, Balz (2010), *Choice Architecture*,
<https://www.sas.upenn.edu/~baron/475/choice.architecture.pdf>

Google as default is problematic

Google's business model of surveilling users, capturing their data and monetising it makes it a problematic default option for browsers and search engines. Users should make an informed choice before being subject to surveillance. While Google's business model is not the focus of this inquiry, it is notable that Chrome and Search provides key gateways to Google's surveillance model.

The ACCC have acknowledged the issues with Google's model and its breach of user privacy, with a lawsuit in July 2020,⁷ on Google misleading consumers on tracking for targeted advertising and further inquiries into Google's outsized dominance and monopoly status, including this one.

The United Kingdom, United States and European Union governments have also launched antitrust cases, privacy lawsuits and significant fines and initiatives against Google and its surveillance model.⁸

Alternative browsers like Mozilla's Firefox have shown that products with consumer privacy and consumer protections at heart can be successful.⁹ Similarly search engines like DuckDuckGo present a more privacy focused and consumer protection focused alternative.¹⁰

Google's default position as the browser and search engine of choice is part of the mechanism which drives its outsized dominance and anti-competitive position, and facilitates its problematic business model.

⁷ ACCC (2020), Correction: *ACCC alleges Google misled consumers about expanded use of personal data*, <https://www.accc.gov.au/media-release/correction-acc-alleges-google-misled-consumers-about-expanded-use-of-personal-data>

⁸ The Independent (2020), *US antitrust crackdown on Google echoes Europe's moves*, <https://www.independent.co.uk/news/us-antitrust-crackdown-on-google-echoes-europes-moves-google-margrethe-vestager-european-union-justice-department-us-b1203354.html>

⁹ Schwab (2018), *Bye, Chrome: Why I'm switching to Firefox and you should too*, <https://www.fastcompany.com/90174010/bye-chrome-why-im-switching-to-firefox-and-you-should-too>

¹⁰ Schofield (2019), *Can DuckDuckGo replace Google search while offering better privacy?*, <https://www.theguardian.com/technology/askjack/2019/dec/12/duckduckgo-google-search-engine-privacy>

The EU choice screen is ineffective

The choice screen mandated on Android devices sold in Europe have not been effective in providing alternative choices for browsers and search engines, and continue to favour Google's products.

The choice screen solution was developed by Google following the European Commission's antitrust ruling on July 2018 and its subsequent fine of €4.3 billion.¹¹ The choice screen presents different search engines and browsers to the consumer during initial setup of the user's Android phone.

There were originally two choice screens available – one for the preferred search engine, and one for the browser, with four options to choose from alongside Google's products. Following an update on August 2019, Google discontinued the browser choice screen, and dropped the available slots for preferred search engines from four to three.¹²

To appear in the European Android choice screen, interested search providers participate in an auction every three months for a chance to win a slot on the choice screen. In each country's auction, search providers state the price they are willing to pay each time a user selects them from the choice screen. The three highest bidders will then appear for that country.¹³ Google then charges the search provider the amount it bid each time a user selects that provider in the choice screen.

Taken in context of the EU's antitrust ruling, and the prompt for developing the choice screen, competitors have expressed several issues with this methodology:

- It creates a commercial barrier to entry for alternatives to participate
- It disadvantages new and fledging search engines/browsers with not enough capital to continually bid and pay for the option to appear on the choice screen
- It pits alternative companies against one another, and therefore strengthens Google's overall position¹⁴

The development of the choice screen was intended as a way for consumers to be given more choices in search engines and browsers outside of Google. It is worth noting however, that many alternative products rely on Google – either because their search engine is

¹¹ Google Android blog (2021), *About the choice screen*, <https://www.android.com/choicescreen/>

¹² ACCC (2021), *Digital Platform services inquiry September 2021 report on market dynamics and consumer choice screens in search services and web browsers*

¹³ Google Android blog (2021), *About the choice screen*, <https://www.android.com/choicescreen/>

¹⁴ Lomas (2020), *Google's 'no choice' screen on Android isn't working, says Ecosia – querying the EU's approach to antitrust enforcement*, <https://techcrunch.com/2020/07/30/googles-no-choice-screen-on-android-isnt-working-says-ecasia-querying-the-eus-approach-to-antitrust-enforcement/>

powered by Google or they rely on Google advertising as part of their business – making the idea that they are ‘alternatives’ questionable.¹⁵

This once again reinforces the need to address Google’s dominant surveillance model, which powers the entire advertising and online ecosystem.

If a choice screen solution is adopted for Australia, the designated Google alternatives should be required to be real, independent alternatives, not reliant on Google’s search engine to power their own platforms or on Google’s advertising model.

Five competitors who do not rely on Google Search or Google ads – including Ecosia, DuckDuckGo, Lilo, Qwant and Seznam – signed a joint letter to the EU Commission criticising Google’s choice screen ‘solution’ as ineffective.¹⁶

Over a year since the European choice screen initiative was launched, almost nothing has changed in the search market. Google retains its outsized dominance in search and the alternatives are being priced out of the ‘solution’ Google has developed.¹⁷ In fact, Google’s share *increased* in Europe, up 97.07% from 96.92% when the ruling was made.¹⁸

The choice screen solution was also used by Microsoft between 2010–2014 for European users to select a web browser, following an antitrust suit in which Microsoft was fined €561 million. Smaller alternative browsers did not receive any material benefit from the Microsoft choice screen in the four years it was in operation.¹⁹

The history of choice screens suggests that they have not, to date, achieved the intent of providing material alternatives to the dominant market player. Australia should learn from the EU examples to design a solution which will properly address Google’s anti-competitive dominance.

¹⁵ Grief (2019), *Browser choice screen for Android must offer real alternatives*, <https://cliqz.com/en/magazine/browser-choice-screen-for-android-must-offer-real-alternatives>

¹⁶ Lomas (2020), *Google’s EU Android choice screen isn’t working say search rivals, calling for a joint process to devise a fair remedy*, <https://techcrunch.com/2020/10/27/googles-eu-android-choice-screen-isnt-working-say-search-rivals-calling-for-a-joint-process-to-devise-a-fair-remedy/>

¹⁷ Nguyen (2021), *Google’s search choice screen had virtually no effect on search market share, perhaps by design*, <https://martechtoday.com/googles-search-choice-screen-had-virtually-no-effect-on-search-market-share-perhaps-by-design-246487>

¹⁸ Statcounter (2021), *Mobile Search Engine Market Share Europe*, <https://gs.statcounter.com/search-engine-market-share/mobile/europe/>

¹⁹ Keizer (2014), *Microsoft nixes EU browser ballot screen*, <https://www.computerworld.com/article/2860886/microsoft-nixes-eu-browser-ballot-screen.html>

Recommendations

The Centre for Responsible Technology recommends that the ACCC:

- 1) Following the €4 billion fine for anti-trust violations in Europe, consider whether Google is in breach of similar competition laws in Australia.
- 2) Define the parameters and specifications of the choice screen solution upfront as part of this inquiry rather than allowing vested interests to develop the choice screen themselves.
- 3) Monitor the effect of the choice screen on a quarterly basis to determine its effectiveness and performance, and adjust the design accordingly.
- 4) Recommend that the government develop incentives for competitors like DuckDuckGo to establish a more developed local presence and regional strategy in the Australian market.

Conclusion

The power of the default choice is a well-known consumer and product phenomenon, which underpins Google's strategy of embedding Google Search and Chrome as default choices across devices.

Internationally, jurisdictions including the EU have realised this and adopted the choice screen solution as a way of mitigating Google's dominance.

While the EU solution has pioneered this effort, there are inefficiencies and limitations that have been exposed, primarily the decision to allow Google to design the final solution, compromising the original intent of holding them to account.

Australia's efforts must therefore learn from the European experience, and define the choice screen solution upfront, as well as develop a fine for Google's anti-competitive behaviour and incentivise alternatives to develop in Australia.