



MINISTRY OF JUSTICE AND PUBLIC SECURITY
Administrative Council for Economic Defense - CADE
Office of Commissioner Camila Cabral Pires Alves

Administrative Inquiry N° 08700.003498/2019-03

Complainant: Cade *ex officio*

Respondents: Google Inc., Google Brasil Internet Ltda.

Counsel: Ricardo Mota, Leonor Cordovil, and others.

Reporting Commissioner: Gustavo Augusto Freitas de Lima

OPINION OF COMMISSIONER CAMILA CABRAL PIRES ALVES

SINGLE VERSION

Chapter 1 – On the scope of this opinion

1. I would like to begin by congratulating the esteemed Commissioner Diogo Thomson for the opinion presented, whose analytical depth and seriousness in addressing the matter greatly contribute to institutional development. I find it appropriate, in this opinion, to set out some additional considerations regarding the scope of the decision now adopted, as well as aspects which, in my view, still warrant further evidentiary development.

2. I also record my appreciation to the staff for their concentrated effort in analyzing the various issues raised in the opinion, as well as for their dedication in organizing them in a careful and constructive manner, contributing meaningfully to the debate, even in spite of the holiday. Today, I extend special thanks to Vitor Jardim and Rafaela Benites. As I noted in the avocation order (SEI N° 1539003), this case has always seemed to call for collegiate review, not only due to its immediate outcome, but also because of the competition issues it raises, the high informational complexity that characterizes it, and the potential implications it projects for CADE's role in digital markets. The avocation thus served a precise institutional function: to create space for collegiate deliberation, for a clearer delineation of the scope of the decision, and for the objective identification of aspects that still require further evidentiary development.

3. It is in this same vein that the present opinion should be read. Its purpose is not to reopen, in the abstract, all theoretical possibilities of the debate, nor to establish a broader

opposition to the opinions already submitted in the record. Rather, it seeks to contribute to a more precise and dialogical collegiate decision, with institutional guidance on what is being decided at this stage and what still requires investigation. It is therefore important to clarify from the outset what is not being decided: at this moment, there is no finding of liability, no formulation of a general regulatory solution for the sector, and no definition of a broad regime for the remuneration of journalistic content. The aim is thus to avoid that the closure of this specific case be accompanied by overly broad formulations capable, in the abstract, of weakening competition concerns that are not yet sufficiently developed.

4. The issue addressed in these proceedings calls for caution precisely because it involves an environment of rapid technological change, strong informational asymmetry, and low external observability regarding the mechanisms through which the platform organizes search, distributes attention, collects data, monetizes traffic, and reuses content produced by third parties. **In cases of this nature, the difficulty lies not only in measuring effects that have already materialized.** It also lies in understanding, with sufficient precision, the **economic mechanism** through which certain functionalities may alter the distribution of value within the informational ecosystem and the conditions of rivalry among the agents participating in it.

5. From this perspective, it seems important to note that the return of some volume of traffic to publishers is not, in itself, sufficient to dispel competition concerns. Such a return may coexist with mechanisms of value appropriation, reductions in economic autonomy, and a gradual weakening of competitive conditions. The issue, therefore, also concerns the way in which the dominant platform manages the architecture of informational intermediation and transforms third-party content into an input for retaining attention, collecting data, and reinforcing its own coordination power.

6. This point is particularly relevant because not all the functionalities discussed here appear to share the same economic logic. It seems advisable to avoid treating indistinctly snippets and more recent tools based on generative artificial intelligence. As rightly noted in the dissenting opinion, AI Overviews raise potentially more intense concerns, insofar as they may more profoundly alter the economic function of the interface and expand the

platform's capacity to retain attention within its own environment. This does not mean, however, that snippets become irrelevant. Rather, it means that snippets and generative responses should not be understood as interchangeable categories, nor reduced to a single analytical framework.

7. For this reason as well, the available tests should be treated with balance. They provide relevant inputs and should not be disregarded. At the same time, it may not be prudent to attribute to them a broader conclusive capacity than they actually possess. Their explanatory usefulness depends on how the conduct was defined, segmented, and aggregated, as well as on the type of effect one seeks to examine. In the same vein, it seems important to preserve a methodological approach that does not prematurely narrow the investigation of a potential exploitative abuse, nor transpose, without proper adaptation, logical testing frameworks typical of price-based cases.

8. Finally, there is an additional caution that I consider important. In contexts of accelerated technological transformation, it does not seem advisable to treat certain functionalities as already settled issues, nor to regard others as too premature for examination merely because they remain in development. Reasoning of this kind may hinder institutional monitoring of evolving digital markets and reduce the authority's capacity to build responses proportionate to the pace of observed changes. In the same line, it seems preferable to avoid categorical assertions regarding a simple substitution between traditional search and AI tools, and instead to work with the notion of complementarity and functional overlap, which is more consistent with the current stage of these interfaces. For these reasons, I understand that following the proposed outcome does not amount to a definitive resolution of the competition concerns raised in these proceedings. On the contrary, it reflects the recognition that, at the current stage of the investigation, there remain sufficient elements to justify further inquiry in administrative proceedings, particularly in light of the need for greater analytical and empirical depth regarding relevant aspects of the competition issues under examination.

Chapter 2 – On the competition law assessment of the conduct

9. The analysis of the conduct, in my view, does not lend itself to simplifications. It is not appropriate to presume illegality in the abstract merely because the platform uses

third-party content in composing its interface. Nor does it seem adequate to conclude, at the outset, that the practice raises no competition concerns whatsoever. The case calls for a more precise reading. In digital markets, the same conduct may take on a predominantly exploitative character while still projecting effects on conditions of rivalry. It is at this juncture that the articulation between appropriation, exploitation, and exclusion, as proposed by Bostoen (2021), proves useful.

10. I concur with Commissioner Diogo: it seems more appropriate to frame the theory of harm, at the forefront, as exploitative. The central issue does not lie, at least for now, in demonstrating competitive foreclosure in a strong sense. Rather, it lies in examining whether the platform, in a dominant position, unilaterally expands the economic uses of content produced by third parties, single-handedly manages the consideration returned to them, and captures a disproportionate share of the value generated in this interaction. Such exploitation may occur in a non-price environment, through variables such as traffic, visibility, attribution, data, and access to audiences.

11. This reading finds support in Brazilian competition law itself. As noted in the national literature, the trajectory of exploitative abuses in the country has been marked more by institutional caution than by conceptual rejection (Barbosa and Kastrup, 2021). It would therefore be inappropriate to assume, at the outset, that more sophisticated exploitative practices, typical of digital platforms, fall outside the scope of Article 36 of Law Nº 12,529/2011. The provision's open-ended typology allows for the examination of unilateral impositions of unfair conditions on dependent partners, including where value extraction does not take the form of direct monetary pricing.

12. In the case at hand, the exploitative dimension can be observed where the platform unilaterally expands the economic uses of journalistic content, internalizes part of its informational and advertising value within its own interface, controls how consideration is returned to publishers, and converts dependence on access to audiences into an asymmetric commercial relationship. Within this framework, the absence of direct monetary payment does not, in itself, dispel competition concerns.

13. This does not mean discarding, at the analytical level, possible exclusionary interfaces. As suggested by Bostoen (2021), appropriation, exploitation, and exclusion do

not operate as watertight compartments. In digital platforms, value extraction under asymmetric conditions may also progressively weaken the economic autonomy of dependent partners and their conditions of rivalry.

14. For this reason, it does not seem appropriate to require, at this stage, robust evidence of exclusionary foreclosure in order to recognize the plausibility of the competition concern. The current absence of a stronger showing of exclusion does not neutralize the exploitative theory of harm. It is preferable to acknowledge that the issue admits a primarily exploitative reading, without ruling out possible exclusionary effects, and that the current state of the investigation does not yet point to a definitive conclusion in this regard.

Chapter 3 – On the analytical distinction between snippets and AI Overviews

15. In my view, the issue examined in these proceedings calls for two complementary analytical moves. The first is to avoid treating snippets and AI Overviews indistinctly, even though both are part of a broader trajectory of incorporation and reuse of third-party content by the platform. The second is to recognize that, precisely because these are distinct functionalities, the tests produced thus far cannot be assigned a conclusive or exhaustive role.

16. There is, between snippets and AI Overviews, an element of economic continuity. Both are embedded in a dynamic whereby the search engine ceases to operate merely as a bridge between the user and the source website and instead begins to reorganize, retain, and re-present information produced by third parties within the platform itself. This continuity, however, does not eliminate relevant differences between the functionalities. Scraping, snippets, and generative responses are not the same, nor can they be treated as equivalent expressions of a single practice. The framework proposed by Bostoen (2021) is useful precisely because it allows this trajectory to be understood without collapsing distinct phenomena into a single analytical category.

17. With respect to snippets, the analysis cannot be reduced to the question of whether there is a net increase, decrease, or stability in traffic. In platform-mediated informational markets, the relevant economic consideration is not limited to the raw click. It is also

necessary to examine attention retention within the search environment, the capture of data and behavioral signals, the redistribution of monetization in favor of the platform's ecosystem, and the compression of the click as economic consideration for the use of third-party content. The usefulness of the snippet to the user, in itself, does not resolve the competition issue.

18. As for AI Overviews, competition concerns may arise in a more acute manner, without disregarding the risks already associated with snippets. The point, however, does not lie solely in a difference of degree. While snippets still operate, at least in principle, within a logic of displaying and organizing excerpts of third-party content, AI Overviews introduce a deeper functional shift by converting such content into a synthetic response presented as an informational solution directly capable of satisfying the user's query. In this sense, it is important to clarify that an AI Overview is not merely a longer snippet. It is a functionality with increased potential for attention retention, internalization of informational value, and opacity regarding the effective consideration returned to publishers.

19. This distinction entails an immediate methodological consequence: conclusions drawn for snippets cannot be automatically transposed to generative AI functionalities. Nor does it seem appropriate to assess distinct mechanisms through overly aggregated instruments. Empirical tests are useful and should be taken into account. However, they should not be treated as self-sufficient filters. Their explanatory power depends on how the conduct was defined, segmented, and aggregated, as well as on the type of effect under examination.

20. This point is particularly important because aggregated traffic metrics, in isolation, are insufficient to resolve the controversy. In cases such as this, the competition issue may involve not only the volume of clicks, but also navigation abandonment, query reformulation, attention retention, changes in click depth, compression of attribution, and the shifting of monetization into the dominant interface. When heterogeneous functionalities are observed as a whole, there is a risk of producing an appearance of statistical clarity at the expense of competitive precision.

21. It also seems important to avoid a methodological approach that requires a strong showing of exclusion in order to recognize the plausibility of exploitation. Likewise, caution is warranted in importing price-test logics into a dispute that is not fundamentally organized around monetary pricing. Consider, for instance, a news publisher that depends on search intermediation to convert editorial relevance into audience, data, and revenue. If the platform begins to present, within its own interface, a sufficiently complete response to immediately satisfy the user's query, the absence of a click to the source site may represent an economically significant shift of value—even in the absence of direct monetary charges. This is because the platform retains user attention, internalizes informational utility extracted from third-party content, and reduces the possibility that this value will be captured, at least in part, by the publisher that produced it.

22. Finally, there is an additional analytical caution. In environments of rapid technological change, it does not seem prudent to treat certain functionalities as already settled, nor to indefinitely postpone the examination of others on the grounds that they are still evolving. Reasoning of this kind may hinder institutional monitoring of changing digital markets. In the same vein, it seems advisable to avoid categorical assertions about a simple substitution between search and AI, and instead to work with notions of complementarity and functional overlap. In a context of strong informational asymmetry—particularly where the platform itself invokes internal data to dismiss competition concerns—the authority must have real conditions for scrutiny. What this scenario calls for is not the abandonment of empirical analysis, but rather greater functional disaggregation, greater empirical depth, and broader investigative openness.

Chapter 4 – Tests

23. In light of the distinctions already noted, it seems appropriate to examine, with due caution, the analytical framework proposed in the opinion, which offers a relevant effort to systematize the competition issue from an exploitative perspective. The point, however, is not to reject the usefulness of such frameworks, but to avoid treating them as closed, necessary, or self-applying methodological structures at this early stage of the investigation.

24. In the same vein, it is worth clarifying the observation made in the opinion that certain elements typically highlighted in such frameworks – especially those that, in the proposed scheme, appear in stages 1 and 4 – concern, strictly speaking, the existence of structural dependence, the functional centrality of the platform, and the way in which the economic relationship among agents within its ecosystem is organized. These elements are relevant and help shed light on the degree of relational asymmetry present in the case. However, they should not be conflated with the demonstration of dominance in the strict legal sense, which requires its own contextualized assessment based on specific criteria. In other words, structural dependence does not, in itself, equate to dominance, even though it may constitute an important indicator for understanding the economic environment in which the conduct unfolds.

25. Nor does it seem appropriate to assume that each of these elements should yield a binary, conclusive, or uniform answer. The competitive reality of digital markets tends to exhibit gradations, intermediate zones, functional overlaps, and even tensions among indicators pointing in different directions. For this reason, the value of such frameworks lies less in any claim to provide automatic answers and more in their function as tools to structure the authority's reasoning and as a set of guiding questions for the facts of the case. It is for CADE, in light of the specific case, to determine how to use each of these elements as logical support for the analysis, weighing their relative importance, their interaction with other evidence in the record, and their alignment with the theory of harm under examination.

26. For the same reason, it is not appropriate to read this type of framework as consisting of rigidly sequential or phased steps. In controversies of this nature, the different analytical elements illuminate one another and often need to be examined simultaneously, relationally, and iteratively. For example, the understanding of dependence may affect the assessment of the substantive unfairness of imposed conditions; the evaluation of justifications may require revisiting data on effective consideration, value retention, or available economic alternatives; and the assessment of harm or risk of harm may depend on finer functional distinctions among different mechanisms. Rather than a linear sequence, what is involved is a set of interrelated

analytical dimensions, whose value lies in guiding the investigation without prematurely narrowing its scope.

27. It is precisely at this point that the proposed framework reveals its most promising utility: as a tool to help identify elements that still require greater evidentiary development. It is worth noting the risk of labeling these frameworks as “tests,” so as to avoid any overly simplifying expectations. Based on this framework – and also on the contributions brought by studies, institutions, and stakeholders heard throughout the investigation, including those that problematize metrics such as visibility, click displacement, zero-click behavior, attention retention, traffic quality, monetization, and the effectiveness of opt-out mechanisms – it becomes possible to more precisely identify which additional data and clarifications are relevant for the case. In this sense, the value of the framework lies in helping to define what still needs to be investigated, in dialogue with the empirical and institutional elements already present in the record.

Chapter 5 – Additional evidentiary measures directed to CADE’s General Superintendence

28. We are faced with an exemplary opinion. My constructive contribution thus far rests on a simple premise: efforts should not be wasted, nor opportunities missed, to contribute to the development of antitrust analysis, especially in digital environments. The heterogeneity of the functionalities under examination, combined with the informational opacity that characterizes this environment, suggests that it is appropriate to include measures aimed at deepening the technical investigation by CADE’s General Superintendence.

29. Based on the concerns already outlined in the opinion, which offers a relevant effort to organize and systematize the debate around potential exploitative dynamics in digital markets, it is appropriate to recommend that CADE’s General Superintendence deepen data collection with disaggregation by functionality, type of search, content category, and publisher profile. This includes, where possible, data on impressions, clicks, click-through rate (CTR), zero-click behavior, query reformulation, page scrolling, dwell time, and referral traffic, preferably in comparative perspective between scenarios with and without the functionality and, where applicable, before and after its introduction

in Brazil. In this context, it may also be useful to gather information on click quality, audience attribution, monetization capacity of received traffic, and potential functional substitution of access to the source website, in order to better understand the economic effects associated with the functionalities under analysis.

30. It also appears advisable that the investigation seek, where possible, data on the underlying economic structure of value production and appropriation, including editorial costs associated with the production of journalistic content, estimates of revenue attributable to such content, and metrics enabling the assessment of the share of value retained in the digital intermediation chain, including under what is often described as the “Ad Tech Tax.” In this regard, it may also be useful to obtain information to assess the practical effectiveness of opt-out mechanisms, not only their formal existence, but their operational implementation, such as adoption rates, time and complexity of implementation, functional granularity, and any impacts on indexing, ranking, impressions, clicks, and monetization.

31. Given the informational asymmetry characteristic of such markets, it is important that CADE’s General Superintendence seek not only to receive datasets and indicators produced by the platform itself, but also to gather elements that help assess their reliability, consistency, and auditability. In this regard, it may be appropriate to request clarifications on data collection methodologies, measurement criteria, operational definitions of presented metrics, margins of error, known limitations, methodological changes over time, and internal validation tests. It may also be useful to conduct cross-checks, robustness tests, comparisons across datasets, assessments of replicability, and other procedures that help determine the extent to which the data provide a reliable picture of the economic effects at issue.

32. From this same perspective, it would be useful for the investigation to systematically gather information on experiments, tests, and internal evaluations conducted in relation to the functionalities under review. This may include not only identifying the experiments conducted, but also, where available, descriptions of their objectives, methodological design, metrics used, scope, duration, treatment and control groups, geographic segmentation, and main observed results. In markets of this nature,

platforms often possess relevant knowledge not only about the effects already produced by their tools, but also about effects tested and evaluated prior to their implementation or expansion.

33. It is also important that any such requests not be limited to the selective presentation of conclusions favorable to the platform. It may be useful for CADE's General Superintendence to have access, to some extent, to a broader view of the experiments conducted with the functionalities under analysis, as well as to a minimally representative portion of their results, in a format that allows for critical assessment of their assumptions, limitations, and potential heterogeneous effects. The objective is simply to reduce the risk that the understanding of the case becomes excessively conditioned by selections unilaterally made by the company itself.

34. Such measures are particularly useful where the platform operates through continuous A/B testing, gradual rollouts, controlled experiments, and iterative adjustments to interface and ranking. If the company internally tests the effects of certain functionalities on user behavior, attention retention, clicks, query reformulation, engagement, and monetization, it seems reasonable that the competition authority should be able to access, to an extent compatible with the investigation, what those tests were, how they were conducted, and what they indicated. In digital environments, part of the relevant evidence may already have been generated by the platform itself in the ordinary course of its experimentation activities.

35. In this context, the central issue shifts away from adopting closed analytical formulas and toward identifying the evidentiary elements that can contribute to a more robust understanding of the case. In this perspective, it is recommended that the investigation advance, where possible, in greater functional disaggregation among different services and interfaces, segmentation by type of search, content category, and publisher profile, as well as a more critical reading of the metrics used, with caution regarding excessive aggregation and uninformative proxies. Similarly, the collection of internal studies, experimental tests, and other evidence produced by the platform itself may provide additional support for the examination of the case. It is through such evidentiary care that solid foundations for decision-making tend to emerge.

36. It also seems necessary that CADE's General Superintendence deepen its analysis of the structural dependence of publishers on the platform's different interfaces, as well as of opt-out mechanisms, their effective functional granularity, and any indirect effects of their use on indexing, ranking, and visibility. The mere formal existence of opt-out mechanisms is not, in itself, sufficient to dispel competition concerns. It is necessary to verify whether such instruments can be exercised without disproportionate economic costs or indirect effects that, in practice, undermine their usefulness.

37. In contexts of such informational asymmetry, it is not sufficient for the investigated party to invoke internal data to dismiss competition concerns without the authority having real conditions to scrutinize them. The evidentiary deepening proposed here is therefore justified both by the need to better clarify the specific case and by the importance of strengthening CADE's institutional capacity to address similar controversies in digital markets characterized by rapid technological change, informational opacity, and increasing complexity in the intermediation of access to information.

Order

38. In light of the foregoing, I follow the dissenting Commissioner in the operative part of his opinion, while noting, as a complement, the advisability that CADE's General Superintendence consider the evidentiary measures indicated in the previous chapter.

39. This is my vote.

CAMILA CABRAL PIRES ALVES

Commissioner