

Abuse of Dominance in Digital Markets: The Case Against Google

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Fundamentals of Search

Favouring of Own Services

The EU Competition Investigation

Market Dominance

Abuse of Dominance

Remedies

„Black Box“ Google

„For something that is used so often by so many people, surprisingly little is known about ranking at Google. This is entirely our fault, and it is by design. We are, to be honest, quite secretive about what we do”.

(Udi Manber, Google Vice President of Engineering, Official Google Blog)

Google: 1# Lobbyist

*„Over the first quarters of 2014, **Google ranked first amongst all corporations in lobbying spending in the United States**”.*

*“**Google`s influence may be most profound** – and least quantifiable – **in its use of its vast resource to accrue ´soft power, such as funding who might otherwise raise alarms about its practices.** [...] These funding practices [...] run the risk of silencing the watchdogs who might otherwise bark if Google goes too far`”.*

(Public Citizen`s Congress Watch “Mission Creep-y”, 2014, S. 6f.)

Typical Search Engine Results Page (SERP)

The screenshot shows a Google search results page for the query "holidays in Spain". The search bar at the top contains the text "holidays in Spain" and a "Search" button. To the right of the search bar are links for "Advanced Search" and "Preferences". Below the search bar, the text "Web" is visible, followed by "Results 1 - 10 of about 682,000 for **holidays in Spain**. (0.20 seconds)".

The results are divided into two main sections: "Sponsored Links" (Google Adwords) and "Organic Results".

Sponsored Links (Google Adwords):

- Homeworking Travel Jobs**
www.voyagertraveldirect.co.uk
Vacancies for Home Based Travel Advisors. Up to 50% commission.
- Holidays In Spain**
www.ThomasCook.com
This month Thomas Cook are beating down prices on millions of **holidays**
- Costa del Sol holidays**
www.onthebeachholidays.com
Book Costa del Sol deals now Cheap Costa del Sol **holidays** online
- Holidays in Spain**
Save 30% Try the UK
www.Travel
- easyJet Holidays**
Create your perfect Costa Del Sol holiday with deals from easyJet!
Holidays.easyJet.com
- Working holidays**
Working **holidays** abroad are a rewarding and exciting experience.
Gapandcareerbreaks.com
- Home In Spain**
Luxury homes on the Costa Blanca, Costa del Sol and Mallorca
www.taylorwoodrow.es
- Holidays In Spain**
Superb Spanish holiday deals Call free or book online now!
Holidays-Direct.co.uk/Spain
- Costa Del Sol Holidays**
Top holiday deals to Costa del Sol. Tailor-make your trip & save money!
www.expedia.co.uk
- Luxury Holidays In Spain**
Luxury 5* **Holidays** At Amazing Prices, We Will Do You A Good Deal
www.AspireHolidays.co.uk/Spain

Organic Results:

- Spain holidays for all budgets, from cheap to luxury ...**
All you need to plan your **Spain** holiday. Read travel guides, compare holiday deals and book online...
www.travelsupermarket.com/c/holidays/spain/9/ - 36k - [Cached](#) - [Similar pages](#)
- Spain Holidays - Cheap late deals, bargain all inclusive holidays ...**
Spain holiday offers from every major UK tour operator. Essential information & reviews on **Spain holidays** including last minute, all inclusive & cheap ...
www.directline-holidays.co.uk/Spain - 64k - [Cached](#) - [Similar pages](#)
- Spain Holidays: Cheap Holidays in Spain, Europe - lastminute.com**
Lastminute.com offers fantastic savings on **Spain holidays**. Lastminute.com, the first place to look for cheap **Spain** Holiday deals at the last minute.
www.lastminute.com/site/find/World/Europe/Spain/Spain-Holiday.html - 66k - [Cached](#) - [Similar pages](#)
- Spain Holidays – Cheap Flights and Bargain Holidays in Spain and ...**
Spain holidays in the Costas or Spanish Islands provide the perfect mix of sun, sea and sand. Enjoy exciting nightlife in friendly resorts.
www.holidayhypermarket.co.uk/Spain - 72k - [Cached](#) - [Similar pages](#)

organic results
= horizontal=general

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Self-Promotion: *Incentives to Distort Competition*

*"to the degree that we host content, **we ultimately have a monetary incentive to drive people to those pages**"*

(Former Google Manager, Marissa Mayer 2007)



*"It is very difficult even for experts to evaluate search engines [...] this type of **bias is very difficult to detect** but could still have a significant effect on the market"*

(Google Founder Page & Brin 1998)

*"We rolled out Google Finance and **we did put the Google link first.** [...] That has actually been our policy then [...] that we have implemented in other places. So **for Google Maps again, it's the first link and so on and so forth** and after that it is ranked usually by popularity"*

(Former Google Manager, Marissa Mayer, 2007)

Favouring of Own Services: *Example 1*



[Web](#) [News](#) [Books](#) [Images](#) [Apps](#) [More ▾](#) [Search tools](#)


About 143,000,000 results (0.40 seconds)

Google Finance: Stock market quotes, news, currency ...
www.google.com/finance ▾ Google ▾
Get real-time stock quotes & charts, **financial** news, currency conversions, or track your portfolio with Google **Finance**.

Google Finance: Stock mark...
Get real-time stock quotes & charts,
financial news, currency ...

[More results from google.com »](#)

In the news





Finance Committee approves Emanuel's \$62.4 million tax package
[Chicago Sun-Times](#) - 19 hours ago
In fact, **Finance** Chairman Edward Burke (14th) asked if there were even more tax ...

Rajiv Mehrishi appointed Finance Secretary
[Economic Times](#) - 2 hours ago

It's changed my life: Finance manager's incredible transformation after losing 23 stone
[Mirror.co.uk](#) - 21 hours ago

[More news for finance](#)

Favouring of Own Services: *Example II*



[Web](#) [Shopping](#) [Images](#) [News](#) [Maps](#) [More](#) [Search tools](#)

About 57,800,000 results (0.47 seconds)

Cookies help us deliver our services. By using our services, you agree to our use of cookies.

[OK](#) [Learn more](#)

Ads related to **Winter jackets**

[Berghaus® Winter Jacket - Berghaus.com](#)
[www.berghaus.com/Winter_Jacket](#)
Buy from a great selection of high quality Berghaus **Winter jackets!**
Berghaus has 384 followers on Google+
[Ilam Hydrodown Jackets](#) [Fleece Jackets](#)
[Keep Warm With Gore-Tex](#) [Winter Jackets](#)









[Winter Jackets bei OTTO - winterjacken.otto.de](#)
[winterjacken.otto.de/](#)
Stylish und praktisch - Warme Winterjacken bei OTTO.
OTTO has 30,184 followers on Google+
[Mäntel](#) - [Übergangsjacken](#) - [Blazer](#) - [Lederjacken](#)

[Up to 75% off Jackets - MandMDirect.com](#)
[www.mandmdirect.com/Jackets](#)
★★★★★ 37,972 reviews for mandmdirect.com
Great Deals on **Winter Jackets**. Biggest Brands - Lowest Prices
MandMDirect has 365 followers on Google+

[Women's coats & jackets | Denim jackets, winter coats & blazers ...](#)
[www.asos.com/Women/Coats-Jackets/Cat/pgcategory.aspx?cid=2641](#)
Discover the range of women's coats and jackets from ASOS. Shop from a variety of designers, as well as Blazers, **winter coats** and denim jackets.
[Coats - Jackets - Women's coats & jackets - Parka](#)

[Women's Jackets | Women's Coats | Ladies Coats | TK Maxx](#)
[www.tkmaxx.com > Women](#)

[Shop for Winter jackets on Google](#) Sponsored

 Barbour Girls' Winter Force ... £169.95 Country Attire	 Barbour Ladies' Winter £279.95 Country Attire	 The North Face Men's ... £179.99 Allweathers	 Jack Wolfskin Women's ... £149.99 Outdoor Kit
 The North Face Women's £136.95 Outback Tradi...	 Jacket Women's Alph £168.15 eBay	 Jack Wolfskin Crystal Bay ... £119.99 Rutland Cycli...	 Result Mens Premium City £58.49 Universal Tex...

Ads

[Ladies Winter Jackets](#)
[www.marisota.co.uk/Coats_New_Season](#)
Shop New In - New Arrivals Everyday
Shape a New Style - Size 12-32.

[Winter Jackets](#)
[www.simplybe.co.uk/Winter_Jackets](#)
Plus Size Catwalk Inspired Looks!
10% off 1st Order. In Sizes 12-32.

Favouring of Own Services: *Example III*

Google holiday flat Barcelona

Web Maps Shopping Images Videos More Search tools

About 1,490,000 results (0.28 seconds)

Cookies help us deliver our services. By using our services, you agree to our use of cookies.
OK Learn more

Ads related to holiday flat Barcelona

Flats in Barcelona - Holiday Flats buchen ab 19€/Nacht - wimdu.de
www.wimdu.de/Barcelona_Flats
★★★★★ 575 reviews for wimdu.de
Wimdu - 50% günstiger als Hotel.
Wimdu - Ferienwohnungen und Apartments has 243 followers on Google+
Unterkunft Vermieten - Wimdu - Bekannt aus dem TV - Das Wimdu™-Konzept

Holiday Flat Barcelona - Home Away From Home - Housetrip.com
www.housetrip.com/Barcelona
★★★★★ 4,376 reviews for housetrip.com
Book Online Private Accommodation From £29/n!
HouseTrip.com has 475,963 followers on Google+
Barcelona Rentals - 95% Guest Satisfaction - List Your Property Free

Barcelona Apartments - Fully Equipped in City Centre
www.friendlyrentals.com/Barcelona
Special Offers Online. Book Today!
Friendly Rentals (English) has 306 followers on Google+
Pasaje Sert 1-3, barcelona - 932 68 80 51

Holiday Apartments, Villas, and Flats to Rent in Barcelona - Serviced ...
www.tripadvisor.co.uk/VacationRentals-g187497-Reviews-Barcelona_Ca...
5601 apartments, villas, and houses in Barcelona from £349 per week. Find the perfect apartment with 4425 unbiased TripAdvisor reviews.

Apartments in Barcelona - Self-Catering Rentals in ... - Holiday Rentals
www.homeaway.co.uk/barcelona/s/991/fa/find.squery
Holidaymakers searching for holiday rentals in Barcelona also enquired about apartments in Sitges Town, villas in Javea and apartments in Nerja area.
Eixample - Sants-Montjuïc - Sant Martí - Horta Guinardo

Barcelona Apartments | Rent Holiday Apartments in Barcelona, Spain
www.holidaylettings.co.uk/barcelona/
3597+ holiday apartments & self catering villas to rent in Barcelona from only £ 241 a week. Book your next Barcelona apartment Direct, you could save up to ...
Central Barcelona - Barcelona Beach - Apartment - Costa Brava / Catalonia

Old Barcelona Flats Barcelona Holiday Apartments
<https://plus.google.com/.../about?gl=uk&hl=en> - Translate this page
Google+ page · Be the first to review
Carrer d'Ataülí, 10, 08002 Barcelona, Spain
+34 676 43 30 37

Old Barcelona Flats Barcelona Holiday Apartments
Directions Be the first to review
Address: Carrer d'Ataülí, 10, 08002 Barcelona, Spain
Phone: +34 676 43 30 37
Reviews
Be the first to review
More reviews: 11870.com
People also search for
Semproni... La Carassa Restaurant Bar Mut Bel-Luna Jazz Club Restaurant Mercado de la Libertad

Are you the business owner? Feedback

Ads
Barcelona Holiday Flat
www.airbnb.com/Barcelona
★★★★★ 161 reviews for airbnb.com
The Unique Alternative To Hotels.
Find Holiday Flats From \$49/Night!

Holiday Flat Barcelona
www.rent4days.com/Barcelona
250 Holiday Apartments Barcelona
Discounts available! - Instant Book

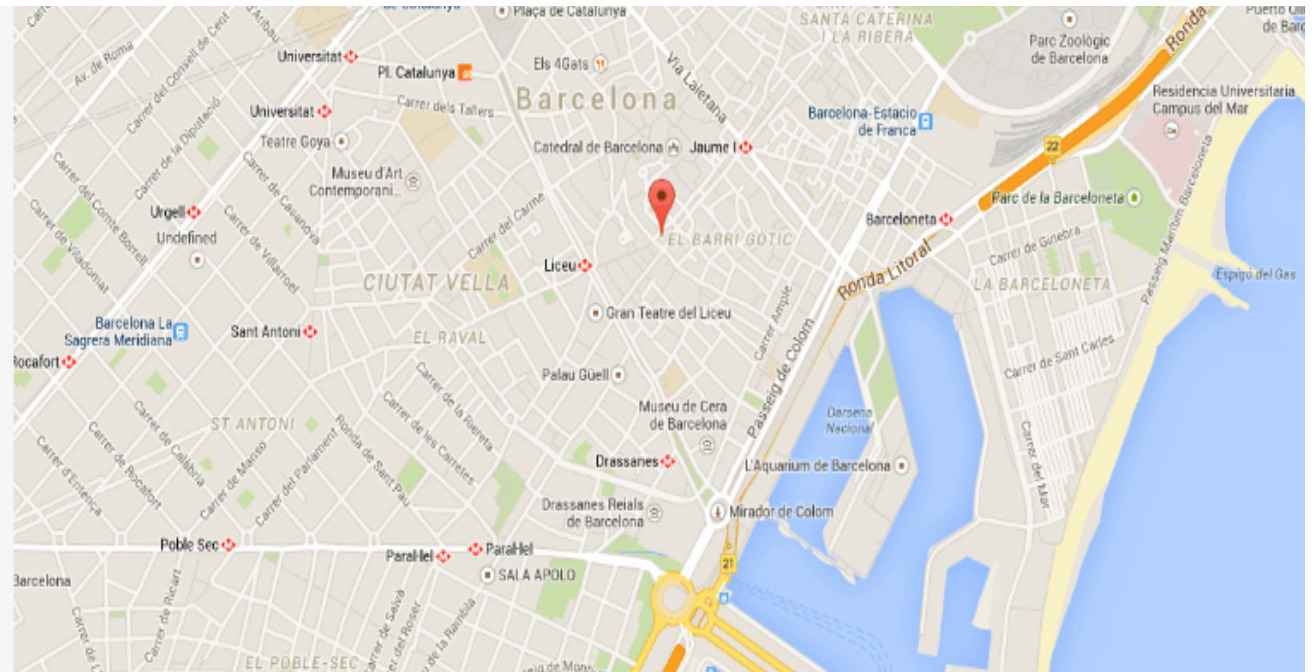
Google+ Page is highlighted



Old Barcelona Flats Barcelona Holiday Apartments

Carrer d'Ataül, 10 08002 Barcelona
+34 676 43 30 37

Hotel



About Photos

Contact Information

Carrer d'Ataül, 10 08002 Barcelona Spain
+34 676 43 30 37

[Hotel](#)

[Edit details](#)

Review Summary

[Write a review](#)

[Be the first to review](#)

Photos



[Upload first public photo](#)

Is this your business?



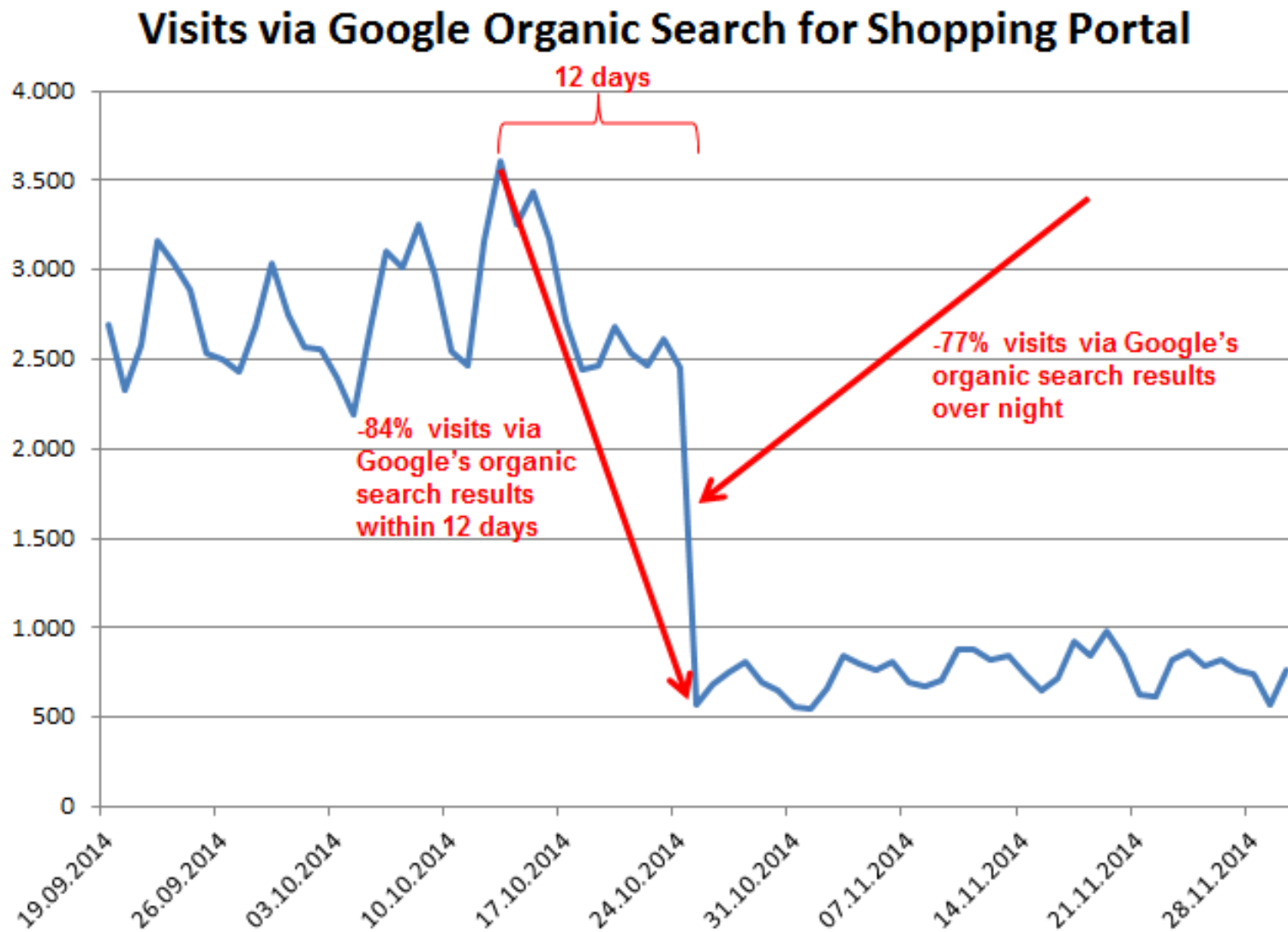
[Manage this page](#)

Street View

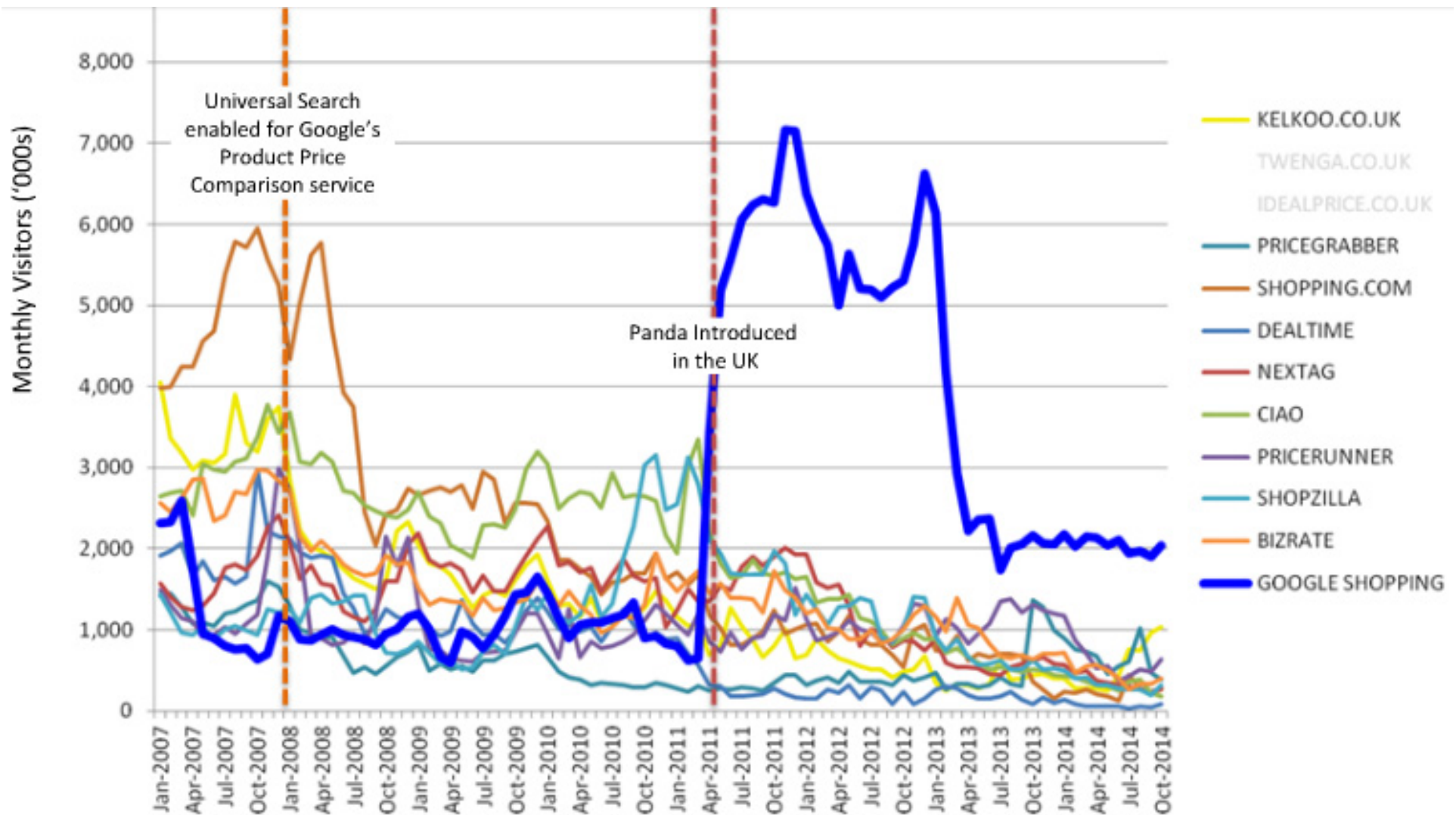


Demotion of Rivals

Example

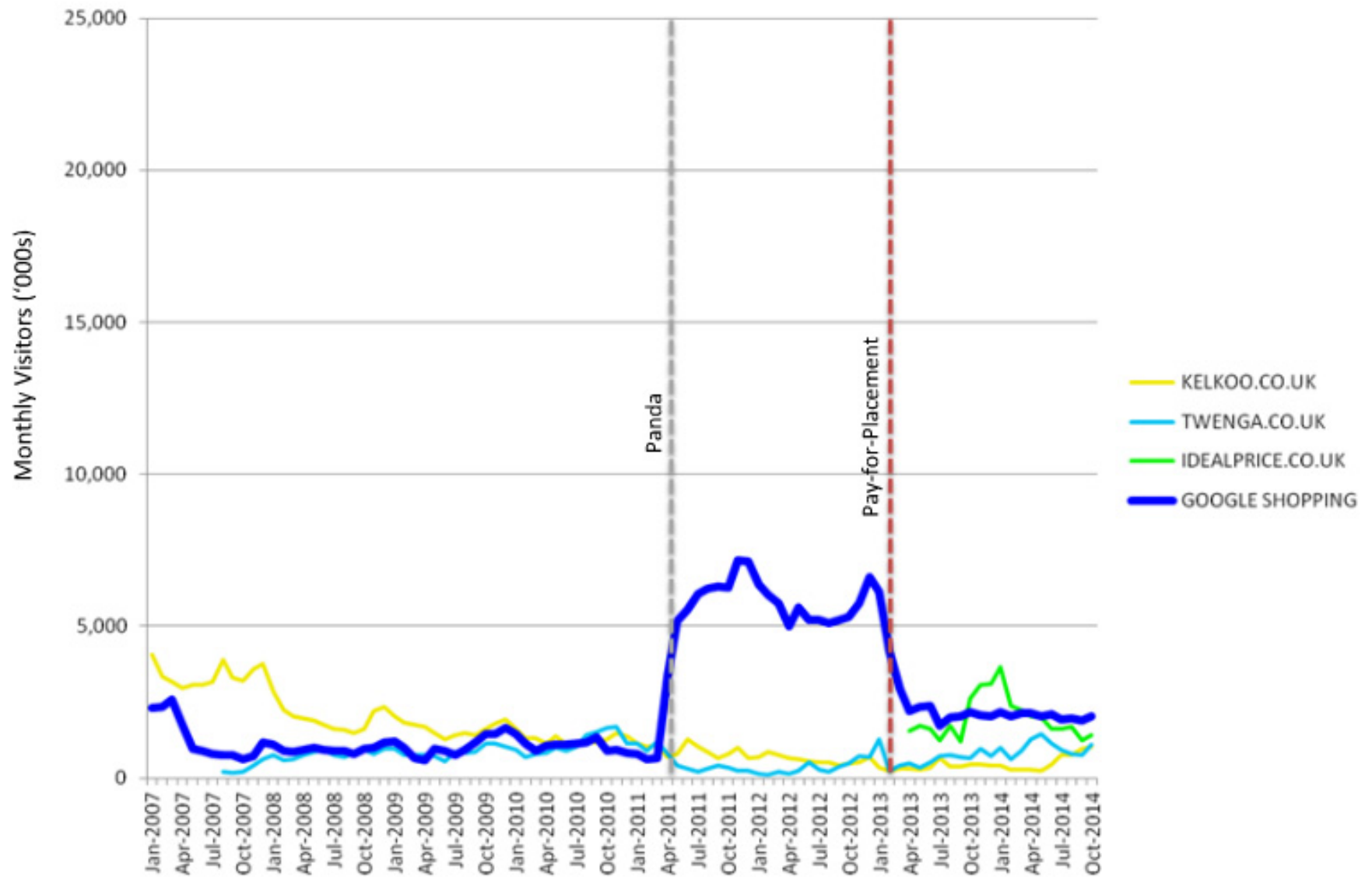


Effects on the Market for Product Price Comparison Services (UK)



Source: ComScore

Effects on Google Shopping



Source: ComScore

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Abuse of Dominance

Remedies

European Commission's Preliminary View

“Google is abusing a dominant position [..] by systematically favouring its own comparison shopping product in its general search results pages in the (EEA). The Commission is concerned that users do not necessarily see the most relevant results in response to queries – to the detriment of consumers and rival comparison shopping services, as well as stifling innovation.”

(Commission, Press Release 15. April 2015, MEMO/15/4/4781)

Milestones in the EU investigation

- **Nov. 2009: First complaints** submitted by Foundem and BDZV&VDZ
- Jan. 2010: Commission opens formal proceedings
- **May 2012: Commission offers Google to submit commitment proposals**
- Aug. 2013: Market Tests for **1. set of proposals**: „*very negative feedback*“
- Nov. 2013: Commission finds **2. set of proposals** „*unacceptable*“
- Jan. 2014: VP J.Almunia announces to settle on basis of **3. set of proposals**
- Sep. 2014: VP J.Almunia announces that in light of „*fresh evidence and solid arguments*“ 3. set of commitments is insufficient – requests improvements
- **Apr. 2015: Commission issues Statement of Objections: Google Shopping**

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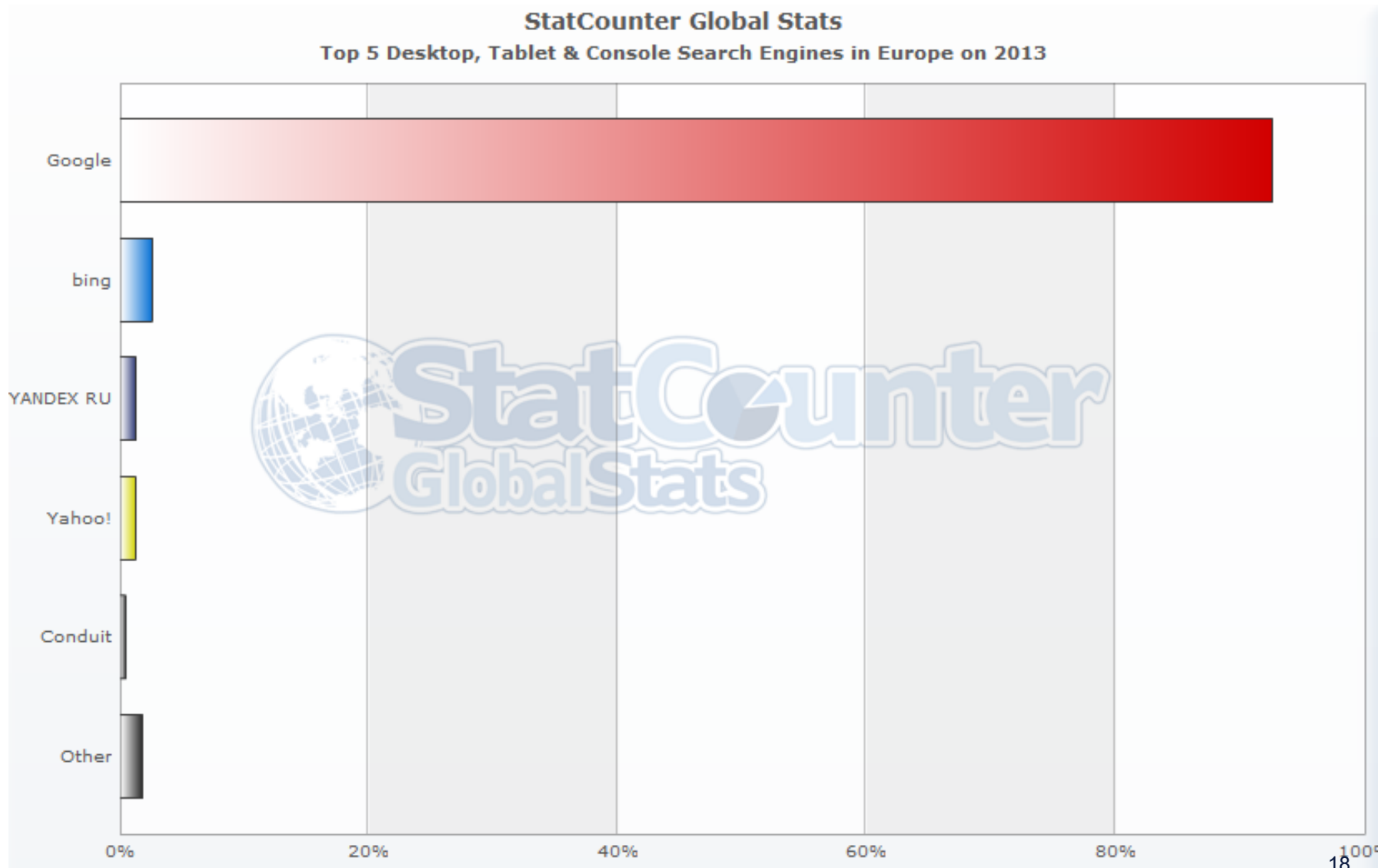
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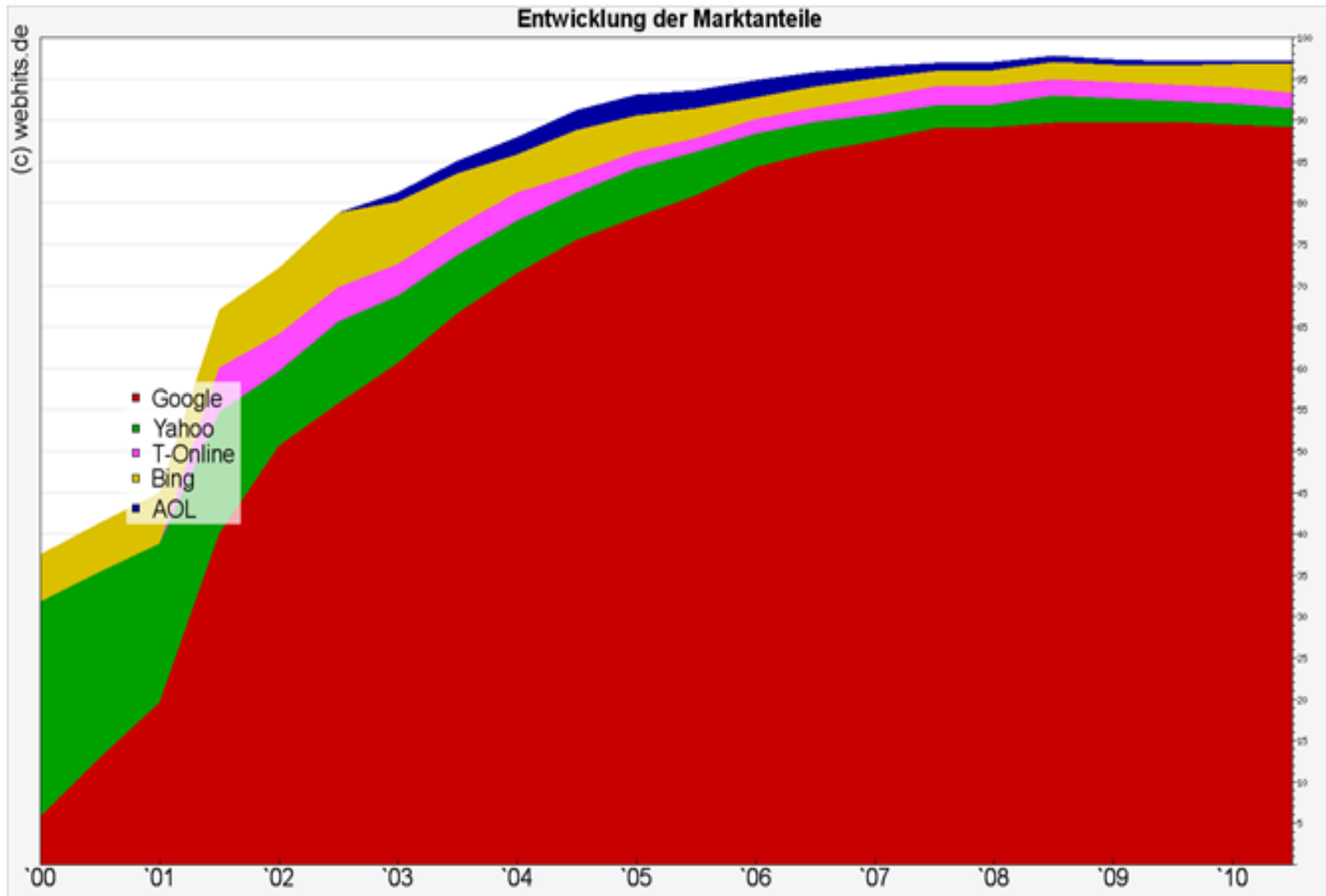
Remedies

Google's Dominance: *Market Share on Search & Search-Ad Market*

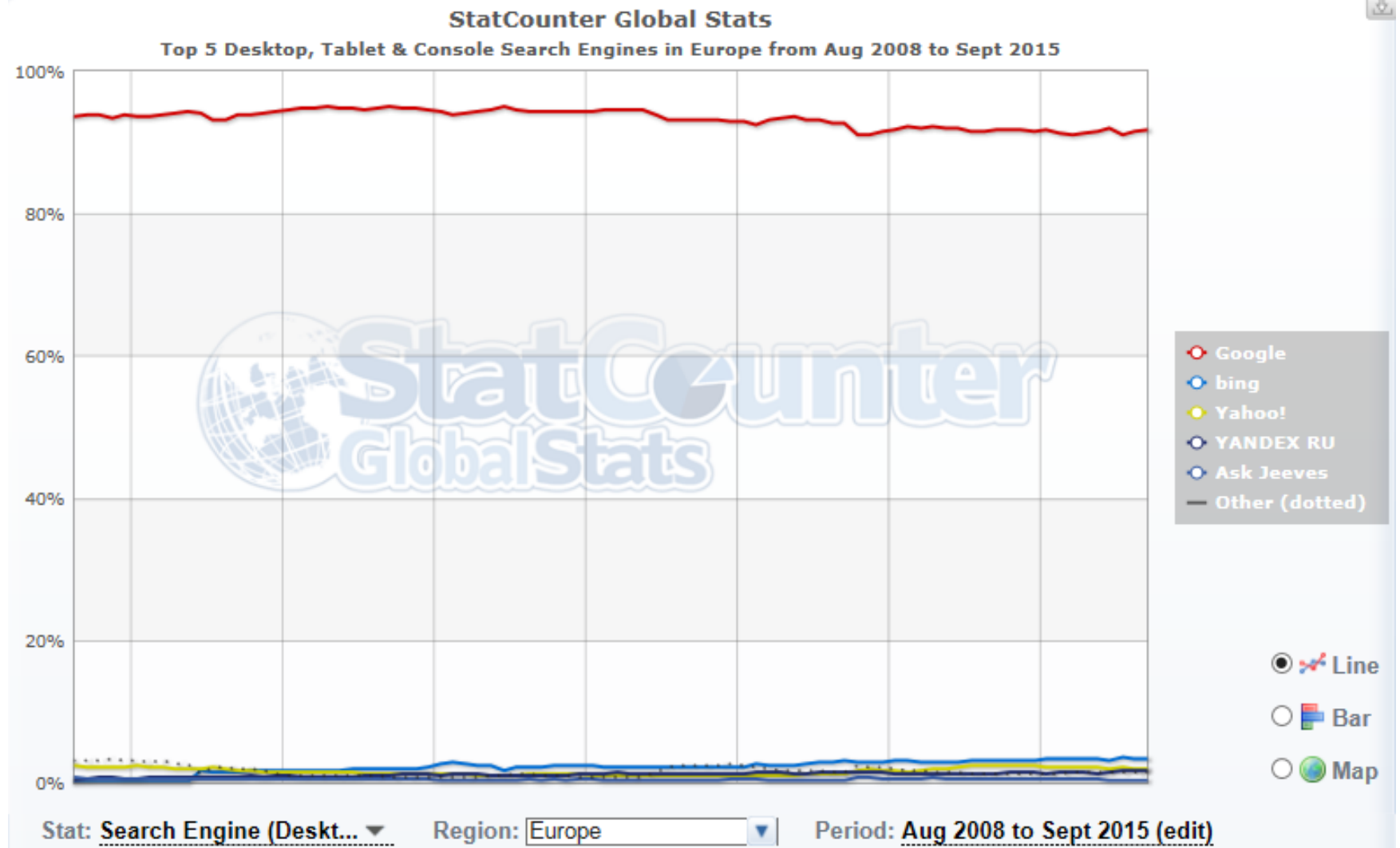


Google's Dominance:

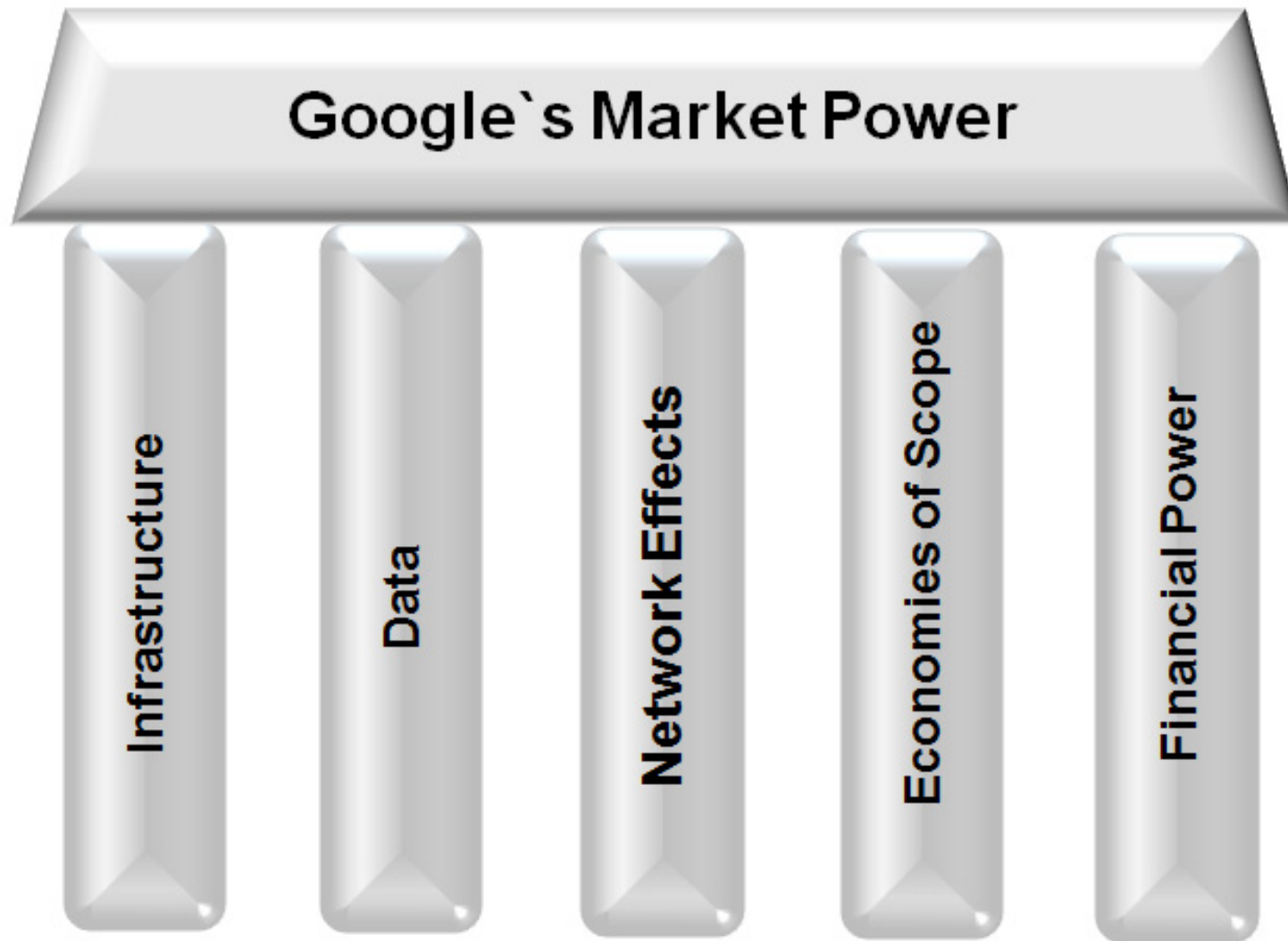
Tipping of the Market in 2001-2002



Google's Dominance: *Market Share >80% since 2005*



Google's Dominance: *Barriers to Entry*



Google's Dominance: *Network Effects*

*“Users go where the information is, so people bring more information to us. Advertisers go where the users are, so we get more advertisers. So **more users more information, more information more users, more advertisers more users, more users more advertisers**”*

(Google Manager, Jonathan Rosenberg 2009)

Lock-in - switching costs on all platform sides

Internet Users (> 90% single-homing) due to

- pre-installment on >1 m (advertising-) partner sites
- pre-installment on Android, Chrome, Safari etc.
- habituation effects and cognitive switching costs
- unportable personalisation

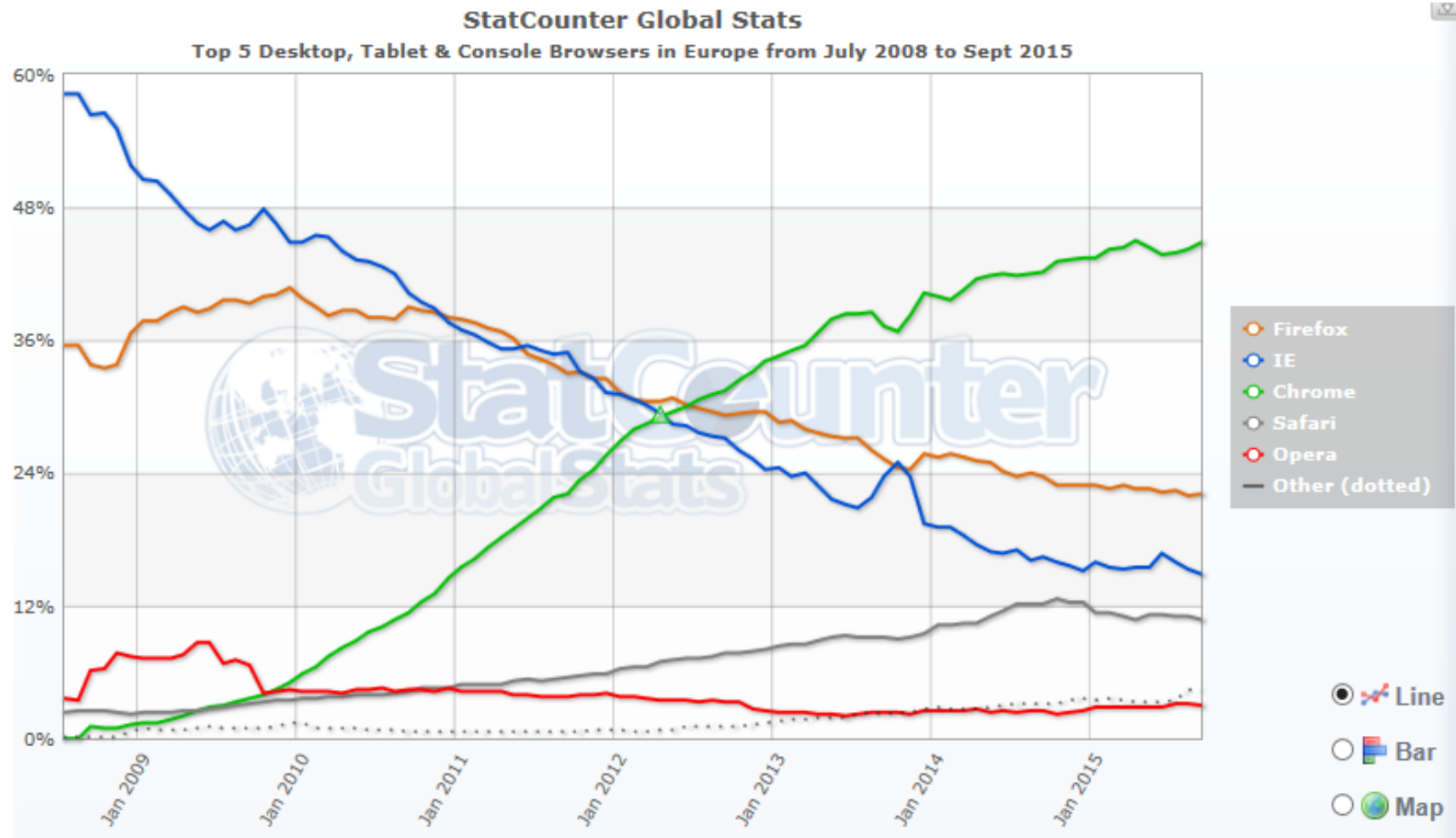
Advertisers (> 80% single-homing) due to

- 20% of costs relate to operation of ad campaign
- campaign data may not be ported to other search engine
- costs multiply despite lower CTR

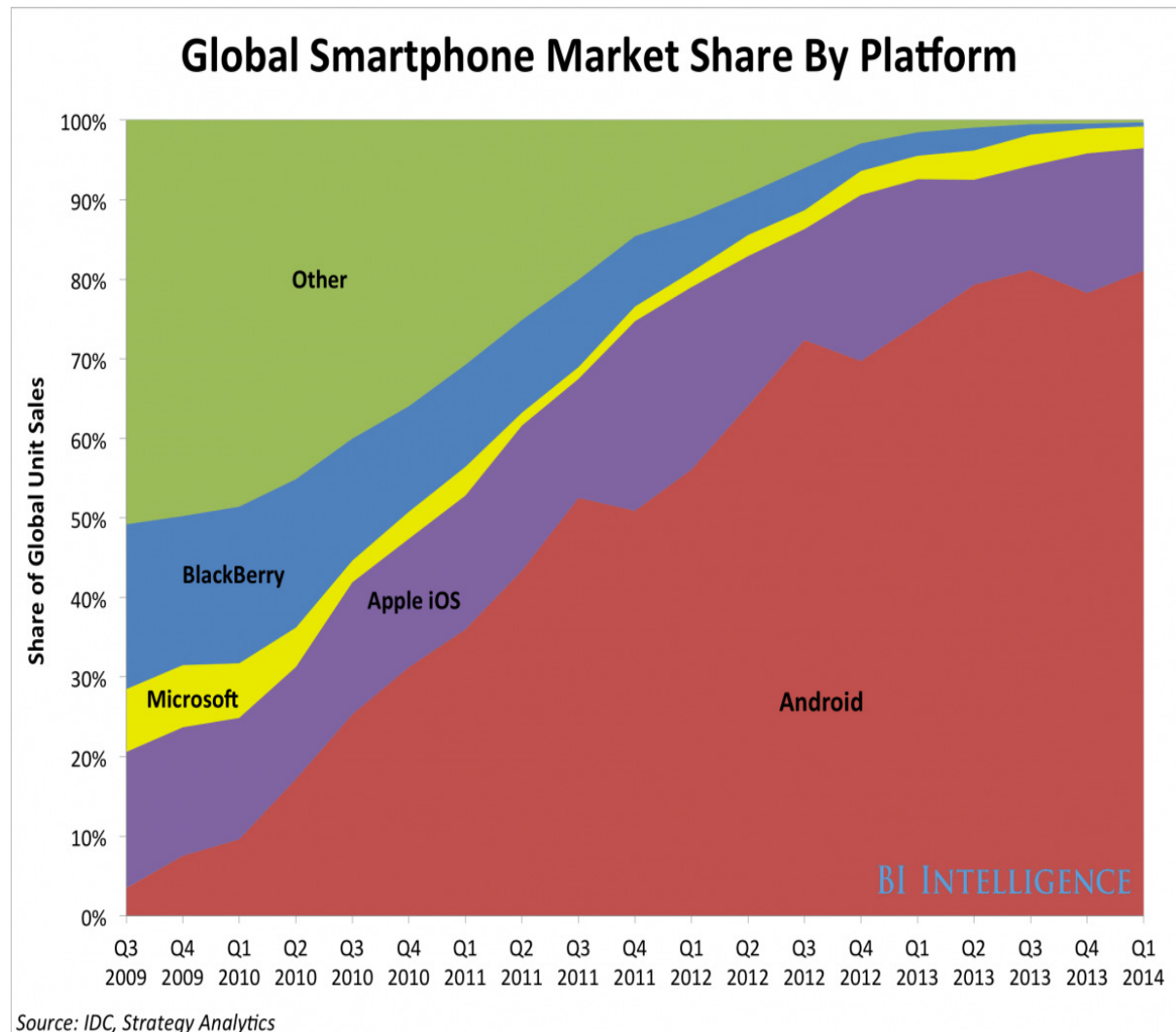
Website-operators (> 90% single-Google SEO)

- Search Engine Optimisation to Google's requirements exclusively
- incompatible requirements of other search engines

Google's Dominance: *Economies of Scope and Lock-In: Chrome*

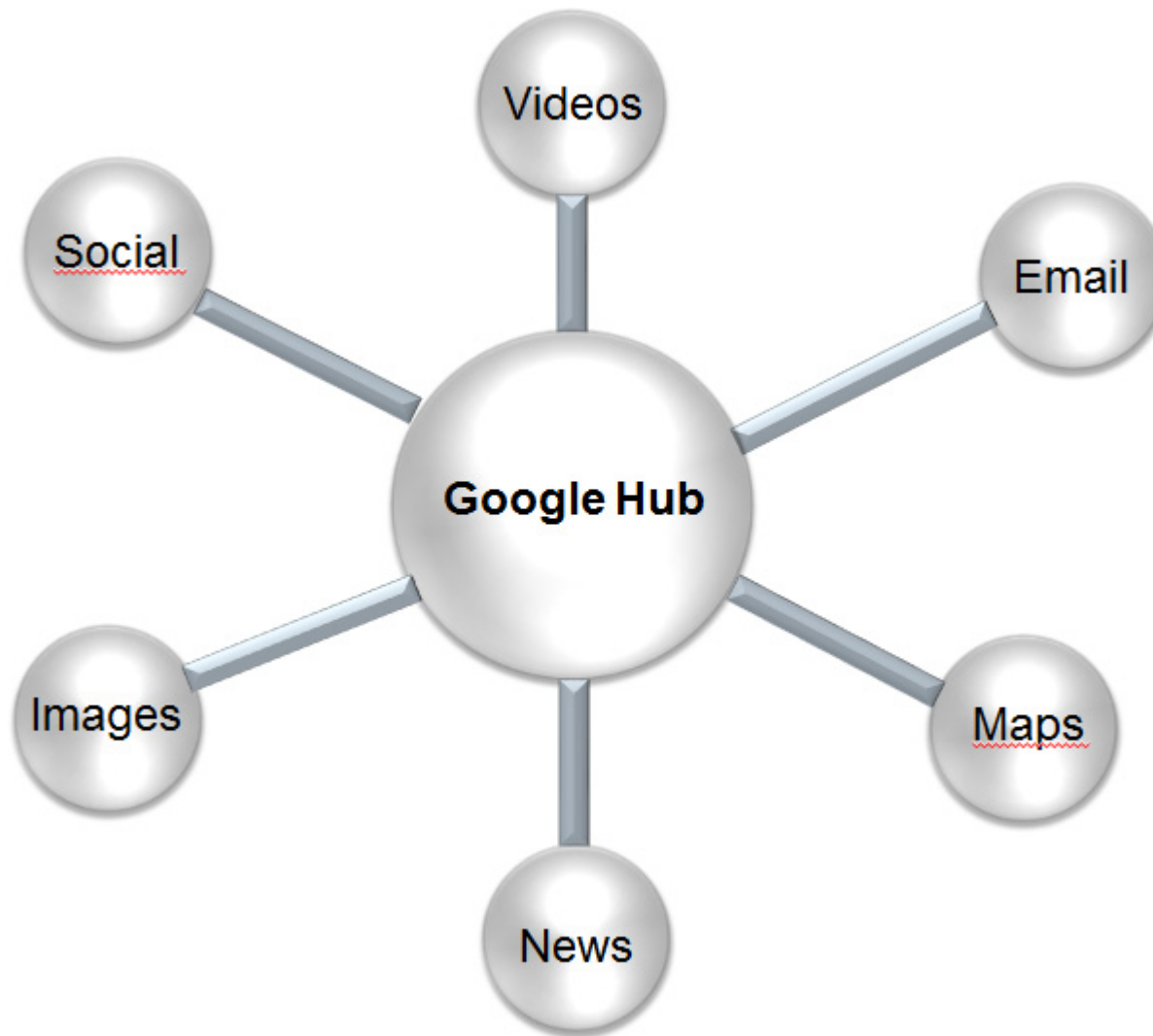


Google's Dominance: *Economies of Scope: Android*



Google's Dominance:

Economies of Scope: $5x \geq 1bn$ users



Google`s Dominance: *The Power of Data*

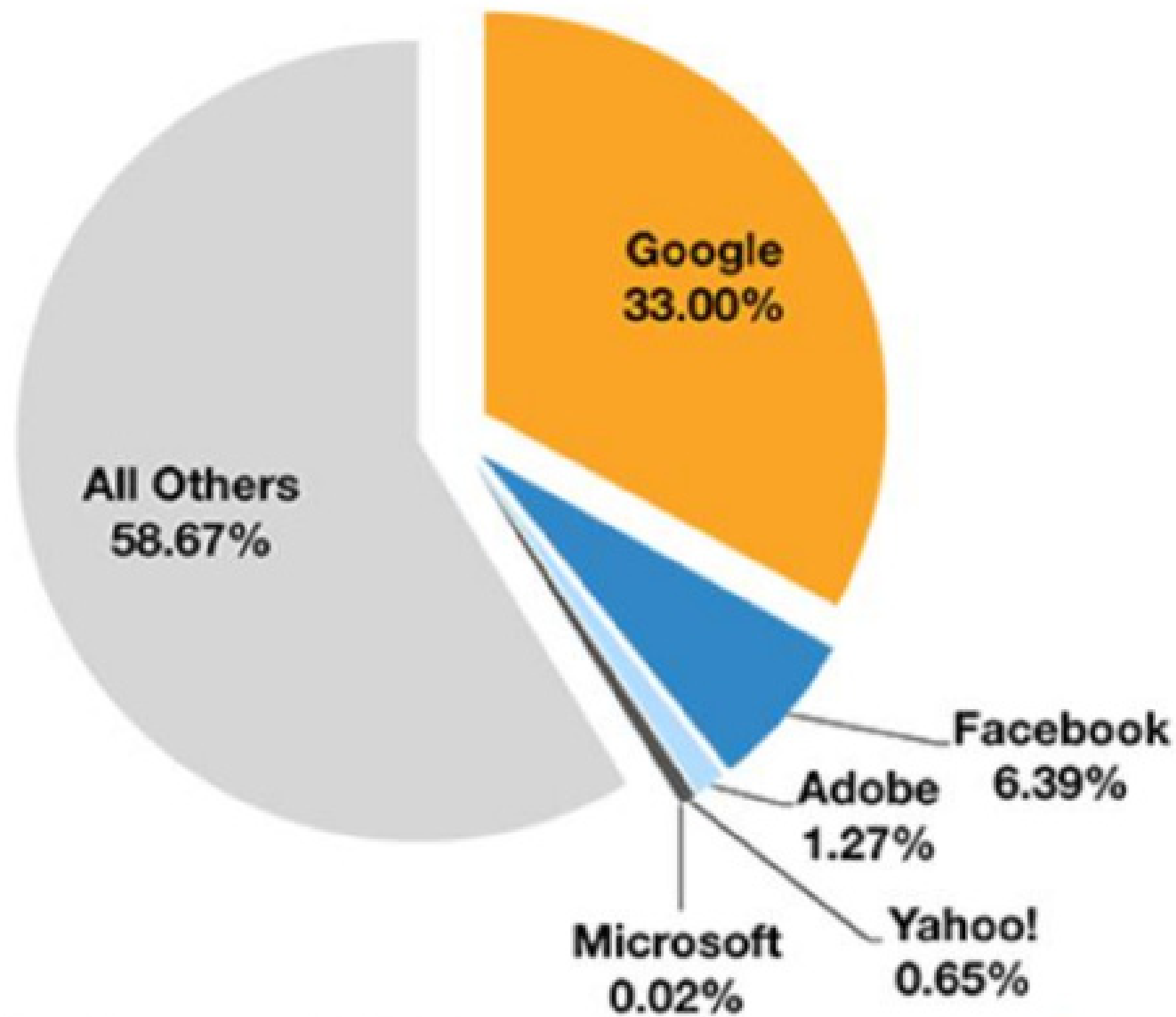
*“Selling ads doesn't generate only profits; it also generates torrents of data about users' tastes and habits, **data that Google then shifts and processes in order to predict future consumer behavior, find ways to improve its products, and sell more ads.** It's a system of constant self-analysis: **a data-fueled feedback loop** that defines not only Google's future but the future of anyone who does business online.”*
(Google Chief Economist Hal Varian, 2007)

Google`s Dominance: *The Power of Data*

„**Scale is key.** We just have so much scale
in terms of the data we can bring to bear.“
(Google CEO Eric Schmidt, 2009)

“**We don't have better algorithms than everyone else;
we just have more data.**“
(Google Chief Scientist, Peter Norvig, 2009)

Share of Data Collection Across the Web



Source: Ghostery panel data, Jan-Mar 2013.
Ordered by frequency of panel user interactions with tracking applications.

EVIDON

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Theory of harm

CJEU:

“The list of abusive practices contained in [Article 102 AEUV] does not exhaust the methods of abusing a dominant position”

(Case C-280/08P, *Deutsche Telekom* [2010] ECR I-9555, para. 173)

Theory of harm

CFI:

*“a system of **undistorted competition** [...] **can be guaranteed only if equality of opportunity is secured as between the various economic operators**”.*

(Case T-271/03, Deutsche Telekom [2008] ECR II-477, para. 198.)

- Bundling / Tying?
- Discrimination?
- Refusal to grant access to an “essential facility”?
 - Refusal to deal?
- New type of abuse?

Theory of harm

CJEU:

It constitutes an abuse if an undertaking holding a dominant position on a particular market “***reserves to itself [..] an ancillary activity which might be carried out by another undertaking as part of its activities on a neighbouring but separate market, with the possibility of eliminating all competition from such undertaking***”
(ECJ, Case C-311/84, Télémarketing [1985] ECR 3261, para. 27)

US Courts:

„*They used a monopoly in one market to foreclose competition in another – a classic violation of the antitrust laws.*“
(*Fishman v. Estate of Wirtz*, 807 F.2d 520, 536 (7th Cir. 1986))

Theory of harm

Requirements for an abuse under the monopoly leveraging concept:

- two separate markets;
- change of business conduct;
- capable of weakening competition on the secondary market by foreclosing equally efficient existing competitors; and
- no objective justification.

Not required:

- indispensability of primary service;
- elimination of any competition on secondary market.

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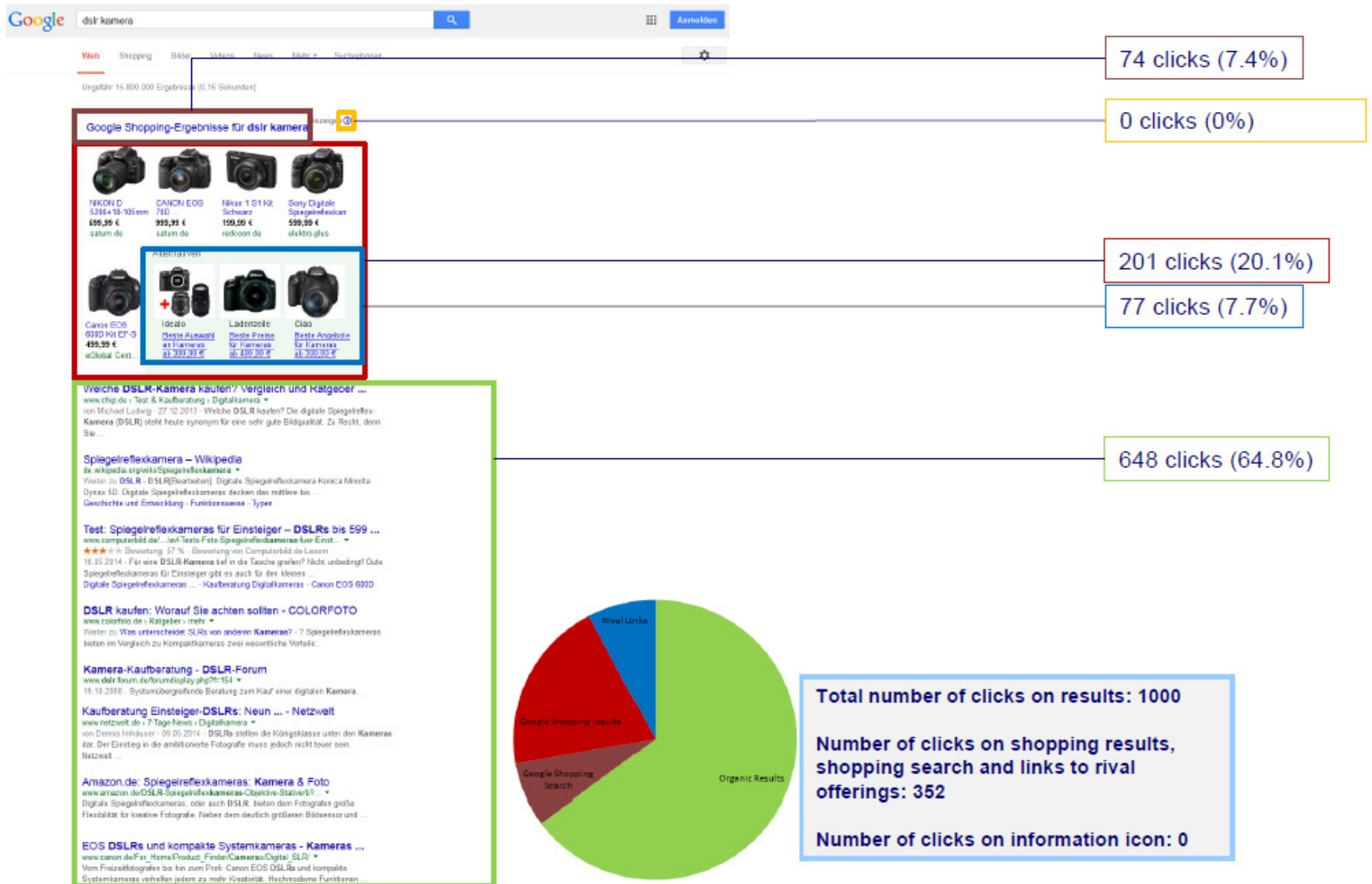
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Google's 3rd Commitments Proposal



Google Shopping-Ergebnisse für dslr kamera

1



47 clicks

NIKON D
5200+18-105mm
699,99 €
saturn.de

2



34 clicks

CANON EOS
70D ...
999,99 €
saturn.de

3



64 clicks

Nikon 1 S1 Kit
Schwarz
199,99 €
redcoon.de

4



30 clicks

Sony Digitale
Spiegelreflexkam
599,99 €
elektro-plus

Alternativen

5



Canon EOS
60D+17-55
26 clicks
499,99 €

eGlobal Cent...

1



Idealo
41 clicks
an Kameras
ab 399,99 €

2



Ladenzeile
15 clicks
für Kameras
ab 499,99 €

3



Ciao
21 clicks
für Kameras
ab 399,99 €

Remedies

European Commission:

*“in order to remedy the conduct, **Google should treat its own comparison shopping service and those of rivals in the same way.** This would not interfere with either the algorithms Google applies or how it designs its search results pages. It would, however, mean that when Google shows comparison shopping services in response to a user's query, **the most relevant service or services would be selected to appear in Google's search results pages**”*

(MEMO/15/4781)

- Classical remedy for an abuse?
- Classical remedy for a monopoly leveraging?
 - Link between abuse and remedy?

Some general conclusions

- Competition between multi-sided digital platforms is determined by network effects
- As data drive network effects „*data is the new currency of the internet*“ (Margrethe Vestager 2014)
- Determining dominance for multi-sided platforms is tricky
- Any hampering of multi-homing and/or artificial increasing of switching costs may constitute an abuse

Thank you for your attention!

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HAUSFELD

