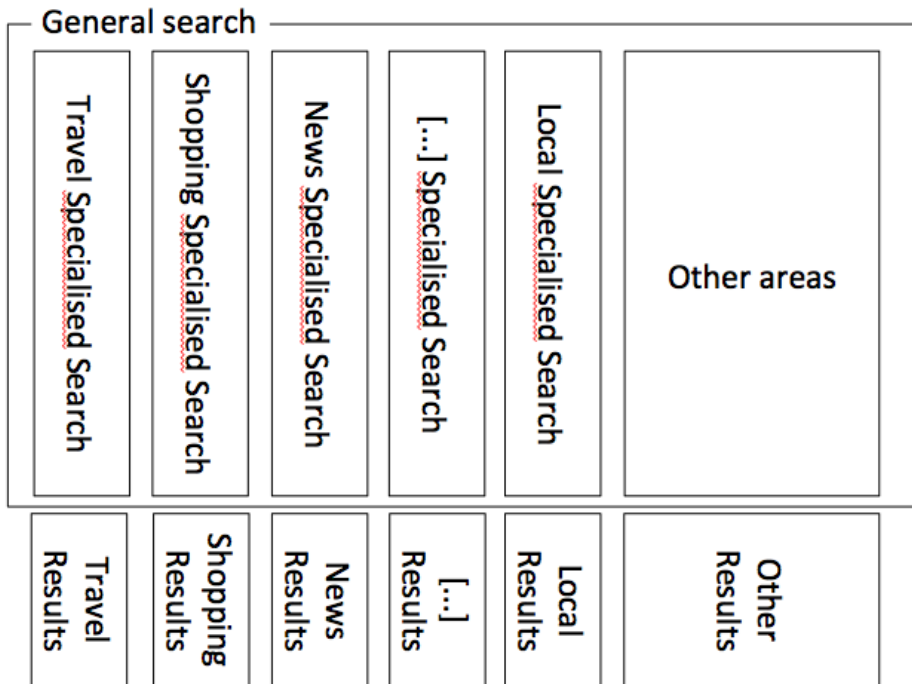
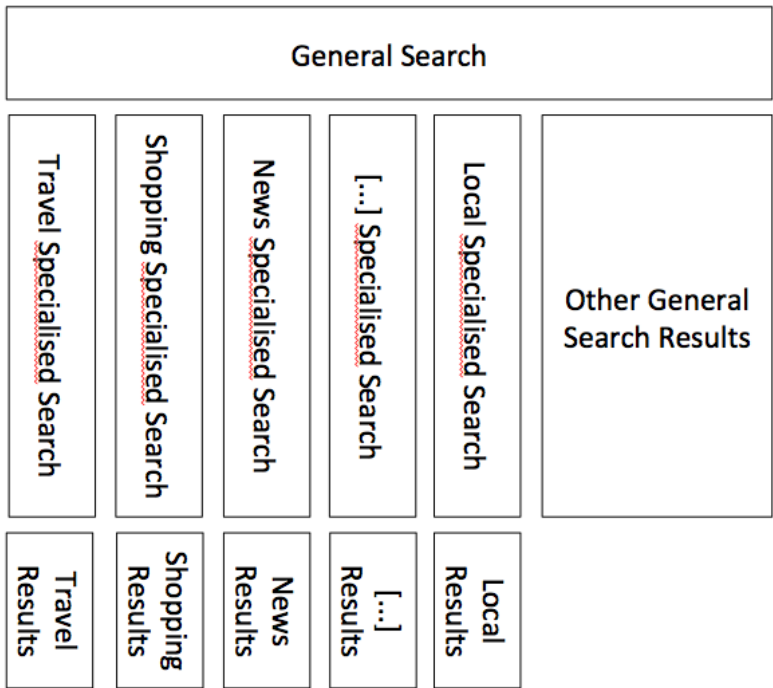




E.CA Competition Law and Economics Expert Forum: Digital Dominance?

Brussels, 8 May 2015
Julia Holtz
Director, Competition

Market definition?



Dominance?

- “Dominance is in essence the **power to fix prices**” (United Brands; AKZO)
- 2009 Guidelines confirm focus on “power over price”: “an undertaking which is capable of **profitably increasing prices above the competitive level** for a significant period of time does not face sufficiently effective competitive constraints and can thus generally be regarded as dominant.” (Art 82 Guidance, note 1 para 11)
- If a rational supplier of free product were truly dominant, would it not introduce a price?

Dominance?

- Old Akzo presumption (50% share = dominance) cannot apply to “usage shares” which are not sales shares:
 - they do not reflect power over price, because the service is free
 - they do not reflect investment or commitment by user
 - they do not reflect supply constraints – many rivals attract user attention
- *Microsoft/Skype*: no EC concerns despite 80%-90% share in video calls

*“[m]arket shares” of free product “not the best proxy to evaluate the market power of providers”. “If a provider starts charging for a service which was used for a long time free of charge and there exist alternative services offered for free, **it can be expected that consumers would immediately switch**” (see also Facebook/WhatsApp)*

- Almost all new PCs are set to IE/Bing as default - but many users switch to Google

Dominance?

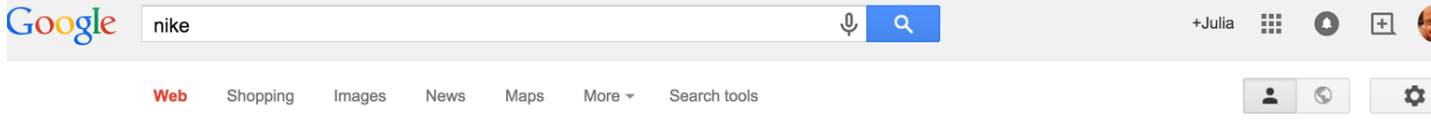
Fortune, March 1999

“This much is clear: Yahoo! has won the search-engine wars and is poised for much bigger things.”

Pete Cashmore, *Feeding the MySpace Beast*, April 2006:

“Believe me: you can’t build the next MySpace. You may think you can, but you can’t. And don’t go thinking you can win by having more features: social software doesn’t work like that.”

Abuse?



About 344,000,000 results (0.59 seconds)

[nike.com - Nike® Official Store](#)

Ad [www.nike.com/](#)
4.4 ★★★★★ rating for nike.com
Shop the Official Nike Online Store for Nike Trainers, Gear and More.
Nike has 3,699,277 followers on Google+

[Nike Online - Ontdek Nike nu - Zalando.be](#)

Ad [www.zalando.be/Nike](#)
Gratis Verzending & Retour!
Eenvoudig betalen · meer dan 1500 merken · Fashion Webshop Award '14
[Nike Collectie](#) · [Nike Kinder Collectie](#) · [Schoenen](#) · [Damesschoenen](#)

[NIKE, Inc. — Just Do It](#)

[www.nike.com/](#) Nike, Inc.
Inspiration and innovation for every athlete in the world. Experience sports, training, shopping and everything else that is new at Nike.

[Nike.com](#)

Men's Shoes - Women's Shoes -
Women's - Men - Nike Store - ...

[Women's](#)

Shop Nike Store for women's shoes,
clothing and gear ...

[Nike.com \(UK\)](#)

Visit Nike.com in the UK and

[Nike.com \(AU\)](#)

Visit Nike.com in Australia and
experience what's new at Nike ...

[Nike Shoes, Clothing & Gear...](#)

Shop All Men's - Men's Shoes - Shop
All Women's - Shoes - ...

[NIKE, Inc.](#)

European sports, training, shopping

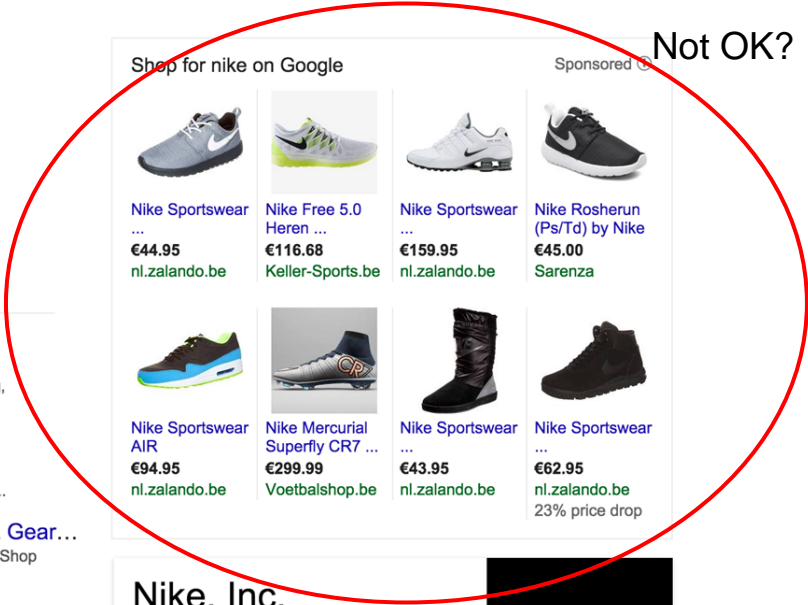
OK ✓



Shop for nike on Google

 Nike Sportswear ... €44.95 nl.zalando.be	 Nike Free 5.0 Heren ... €116.68 Keller-Sports.be	 Nike Sportswear ... €159.95 nl.zalando.be	 Nike Rosherun (Ps/Td) by Nike €45.00 Sarenza
 Nike Sportswear AIR €94.95 nl.zalando.be	 Nike Mercurial Superfly CR7 ... €299.99 Voetbalshop.be	 Nike Sportswear ... €43.95 nl.zalando.be	 Nike Sportswear ... €62.95 nl.zalando.be 23% price drop

Not OK?



Nike, Inc.

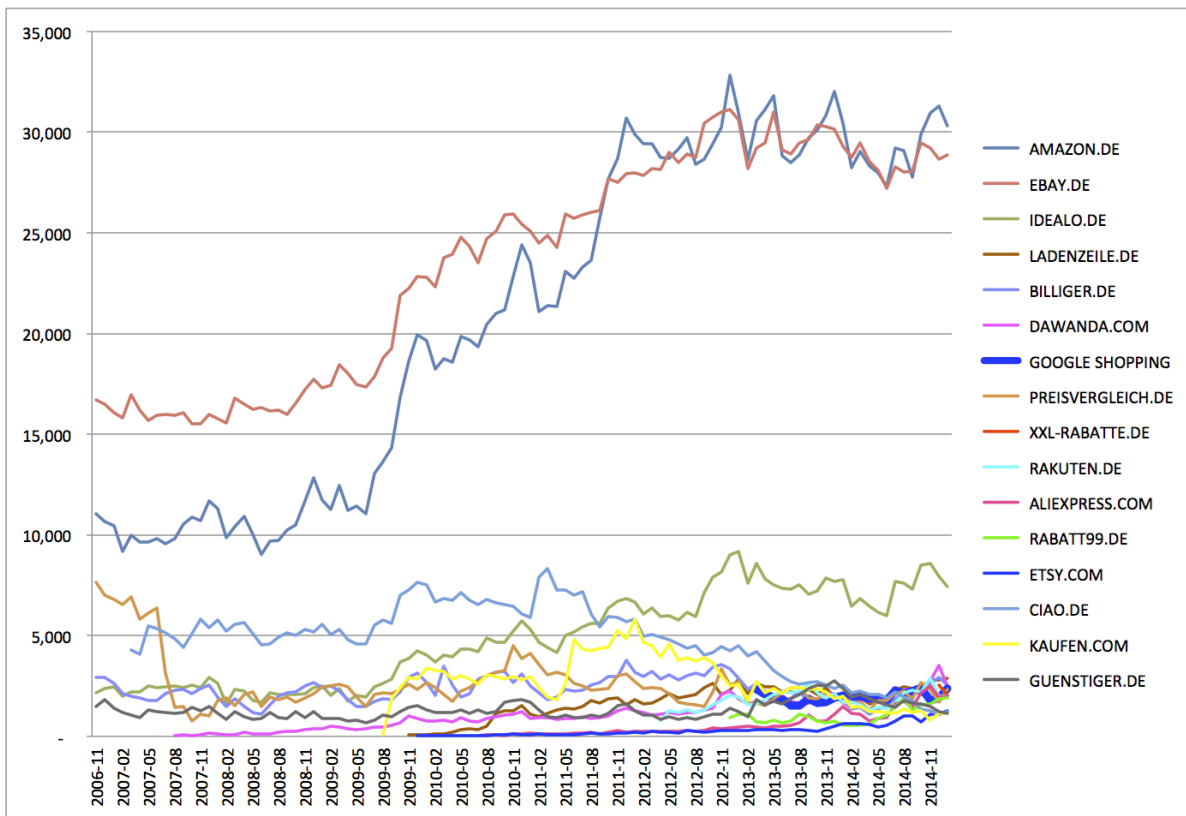
Footwear manufacturing company



Equal treatment obligation?

- What does the complainants' demand for “equal treatment” actually mean?
 - We do apply the same criteria to rank websites: We use the same criteria to rank hospitals; the same criteria to rank restaurants; and the same criteria to rank news articles.
 - Demand suggests we should try to rank search results of different search sites instead of providing our own results. So when a user searches on our service for [nike shoes], instead of identifying what we think are the most relevant merchants that sell Nike shoes, we should list what a rival thinks are relevant results.
- That would conflict with the whole point of a search service – which is to provide users with what it thinks are the most relevant and useful results.
- User has already decided to ask Google

Foreclosure?



Remedies - equal treatment?

- A dominant producer of industrial machines who decides to consolidate the functions of a number of parts and produce them in-house, damaging the business of a number of suppliers in the process?
- A dominant on-line retailer which also operates as a merchant marketplace reserving the most prominent adverts for their own products, such as their own-brand mobile phones and tablets?
- A dominant supplier of a consumer device that uses its homegrown patents in that device?

Remedies - equal treatment?

- To suggest we substitute a rival's results for ours is like saying that a newspaper can't show its own sports articles, but must direct readers to sports magazines; a department store can't sell its own clothes, but has to direct shoppers to fashion boutiques; or a supermarket can't sell its own meat but direct its customers to butchers' shops.
- This would not benefit consumers or increase choice. To the contrary, it would merge all rivals' results on Google's service.