Designing Antitrust for the Digital Era
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Anticompetitive effects and the digital economy

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(speaking in a personal capacity - the views expressed are not necessarily those of the European Commission)

What are “digital markets”?

- Firms supply digital goods or digital services to their customers, for example:
  - Operating systems
  - Applications for smart mobile devices and the stores for their distribution
  - Search engines
  - Social networks
  - Provision of digital content through websites or software

Possible features of digital markets

- Innovation
- Multi-sided nature
- High fixed costs, marginal costs close to zero
- Network effects (both direct and indirect)
- Winner-takes-all effects

Which analysis of effects in digital markets?

- Important not to generalise – each market is different
- But as rule of thumb, enforcers in digital markets can look at same sources of evidence as in other areas:
  - Qualitative factors (e.g. internal documents, market surveys)
  - Quantitative analysis (e.g. AEC-like test)

European Commission

Example 1:

Google Shopping

Google gas grill

Web Shopping Maps Images Videos More Search tools

About 8,240,000 results (0.20 seconds)

Google Shopping

Shop for **gas grills** on Google — Sponsored

GP-Grill **Gas** Grill - black/ ...
£141.96
www.Ambient...

Falcon Dominator ...
£888.00
Catering Appl...

Outback Omega 250 ...
£129.00
Outback Direct

Blue Seal Cobra CS9 ...
£897.60
Carlton Sales

Burco 444449459 ...
£850.50
e-tradecounter

No other comparison shopping service

Buy a **Gas Grill** 2014 - **Gas Grill** Ratings - **Gas Grill** Reviews
bbq.about.com/cs/**grills**/bb/aabyb042503.htm
Before you run to the hardware store to buy a new **gas grill** you should know that there are a lot more grills out there than you'll find in one store. I've broken ...
Top 10 Gas Grills between ... - Top 10 Gas Grills under $250 - Gas Grills under $250
More by Derrick Riches - in 1,156 Google+ circles

Top **Gas grill** Reviews | Best **Gas grill** – Consumer Reports
www.consumerreports.org › Home › Home & garden
Looking for the Best **gas grill**? Consumer Reports has honest Ratings and Reviews on **gas grills** from the unbiased experts you can trust.

Weber.com - Weber® **Grills** - **Gas**
www.weber.com/**grills**/category/**gas**
Manufacturer of **gas** and charcoal **grills**, parts and accessories. Features recipes, service and dealer locations.
Grills - Gas - Parts & Support - Charcoal

Ads

Gasbarbecue nodig?
www.vanhattemhoreca.nl/
Diverse BBQ's in de aanbieding
Bestel veilig en snel online

Catering **Gas Grills**
www.nisbets.co.uk/Cooking-Machines
★★★★½ 10,305 seller reviews
Top Quality Cooking Machines
At low Prices. Free P&P Available!

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Ontdek nu de barbecook **Gas Grills**.

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Gasbarbecues nu al vanaf €39.95!
Keuze uit ruim 113 gasbarbecues

Gas Barbecues 70% off RRP
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At Great Prices - Buy Online & Save

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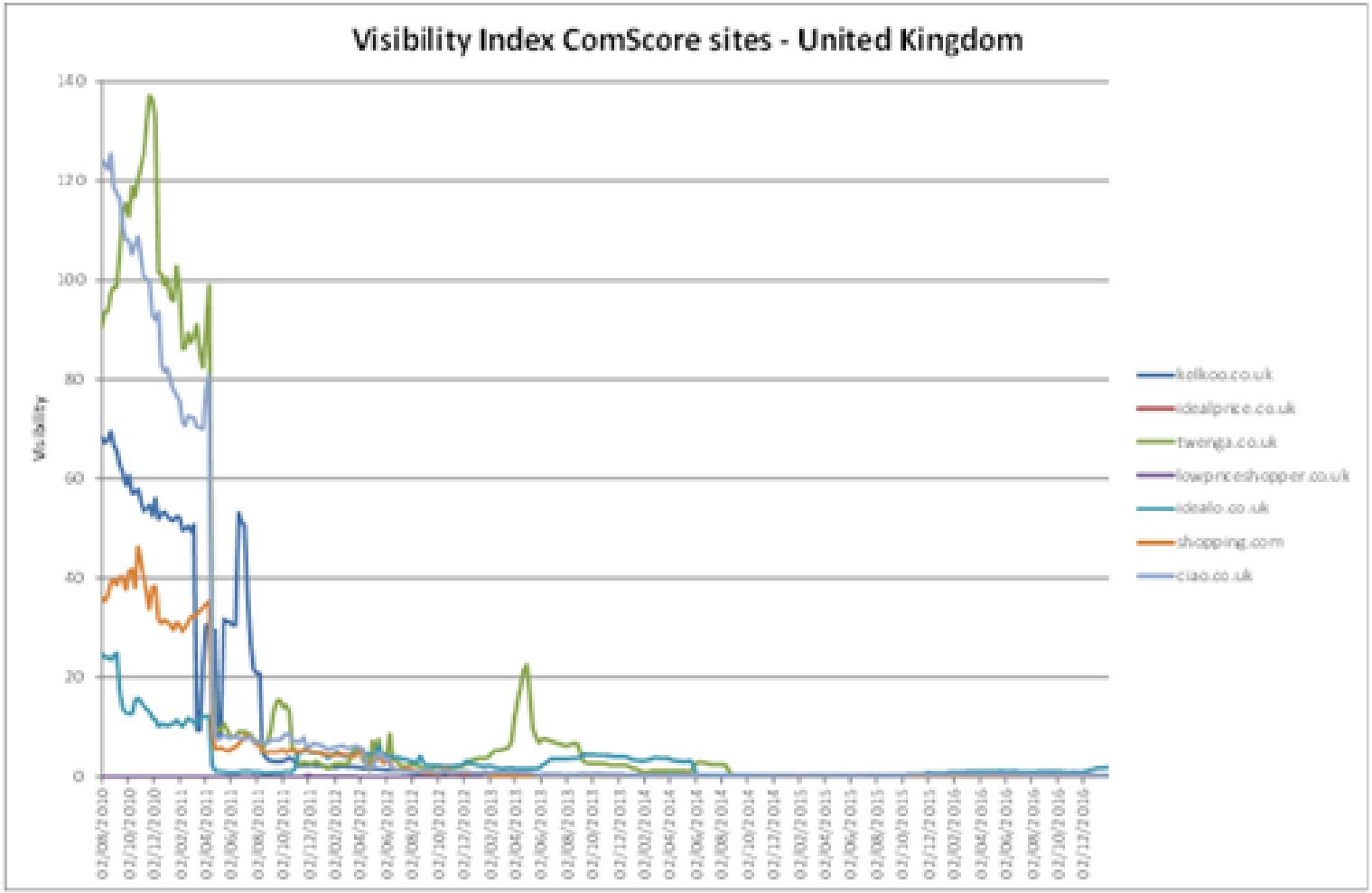
Erstklassige **Gas-Grills** in vielen Varianten: Hier zum Niedrigpreis!

Link between visibility and traffic

- Clear link between visibility and format in Google's general search results and click-through behaviour: shown by a range of empirical data. Link between:
  - Trigger rate of Shopping Unit traffic to Google Shopping
  - Visibility of rivals and traffic to them
- Results that are higher and in a more visible format attract significantly more clicks than those that are lower or beyond the first page
- On average, rivals are on the fourth page - as good as being virtually invisible
- Google was aware of this link


Visibility Index ComScore sites - United Kingdom
Visibility
140
120
100
80
60
40
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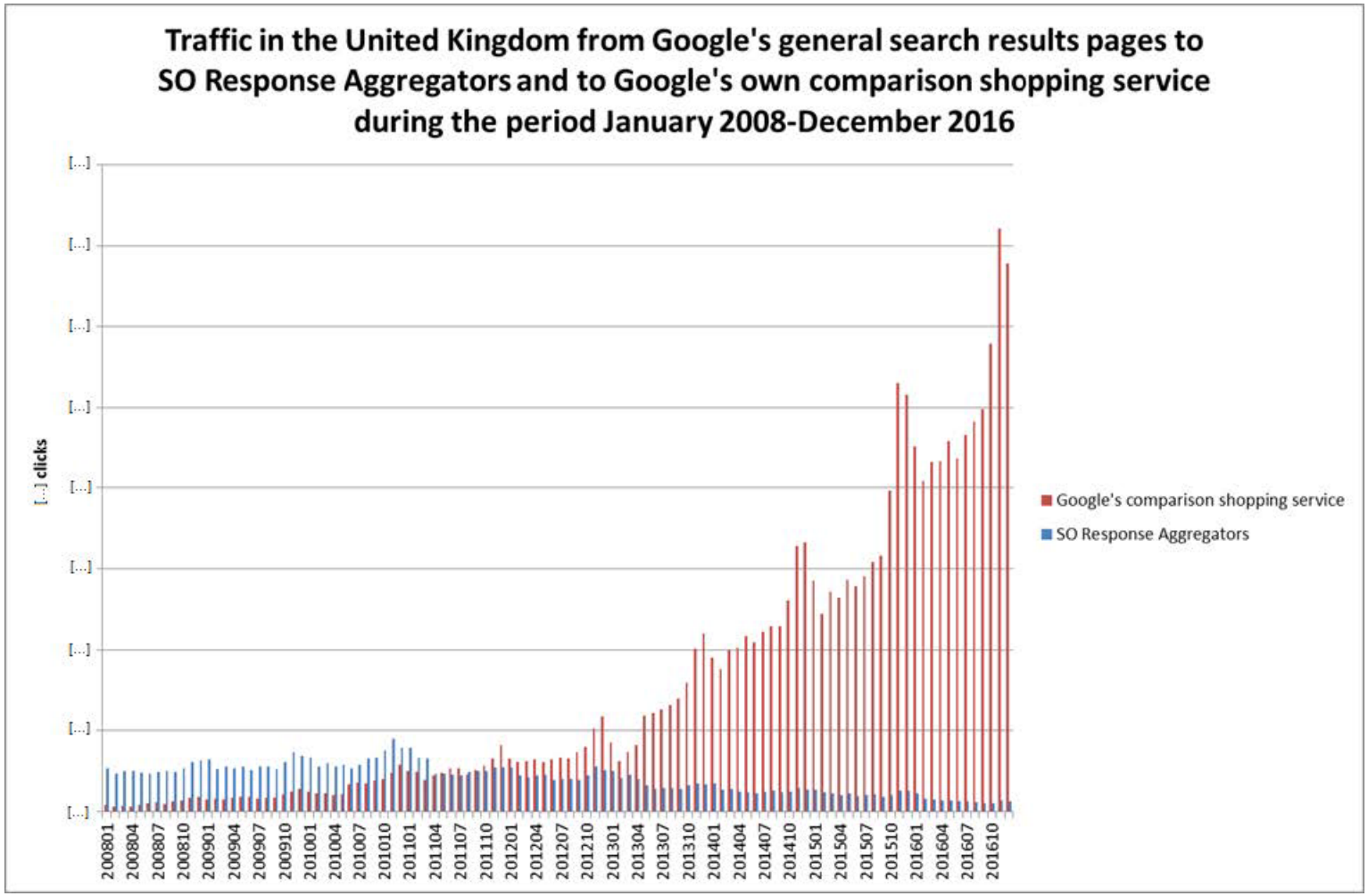
kelkoo.co.uk
idealprice.co.uk
twenga.co.uk
lowpriceshopper.co.uk
ideallo.co.uk
shopping.com
ciao.co.uk


Traffic in the United Kingdom from Google's general search results pages to SO Response Aggregators and to Google's own comparison shopping service during the period January 2008-December 2016
[...] clicks
[...]
[...]
[...]
[...]
[...]
[...]
[...]
[...]
200801
200804
200807
200810
200901
200904
200907
200910
201001
201004
201007
201010
201101
201104
201107
201110
201201
201204
201207
201210
201301
201304
201307
201310
201401
201404
201407
201410
201501
201504
201507
201510
201601
201604
201607
201610
Google's comparison shopping service
SO Response Aggregators

Evidence from internal documents

Froogle "*unlikely to appear high in the search results"*

"*In my opinion, Froogle isn't really a serious contender today*"

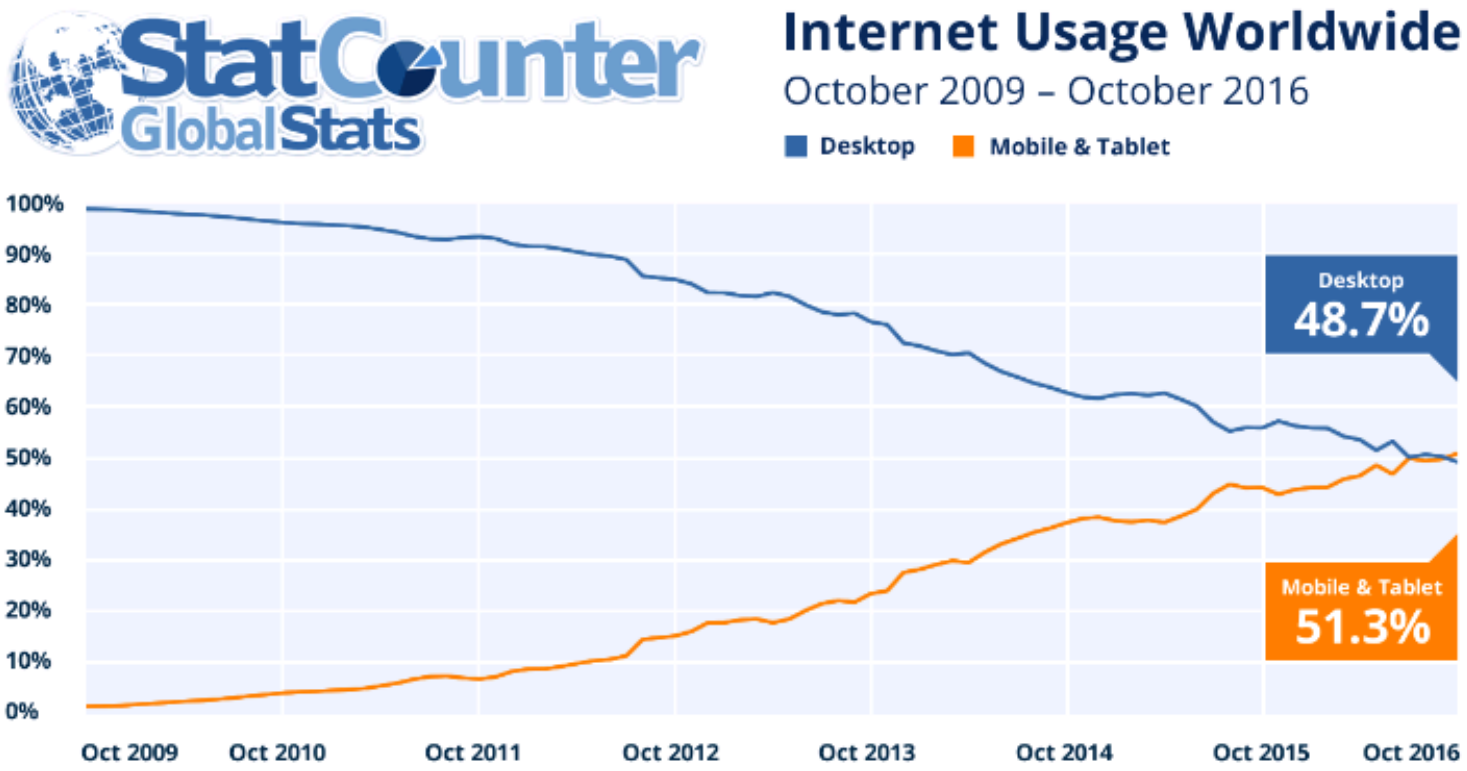
"*Froogle simply doesn't work*"

"it would be good if we could actually just crawl our product pages and then have the[m] rank organically (…) Problem is that today if we crawl it will never rank".

"*(1) [t]he [Froogle] pages may not get crawled without special treatment; without enough pagerank or other quality signals, the content may not get crawled. (2) If it gets crawled, the same reasons are likely to keep it from being indexed; (3) If it gets indexed, the same reasons are likely to keep it from showing up (high) in search results. […] We'd probably have to provide a lot of special treatment to this content in order to have it be crawled, indexed, and rank well*"

Example 2:

Google Android



- Google developed its business model in the **PC** environment, where the **web browser** is core entry point of Internet
- In mid '00, improvements in the Internet industry began to **shift its focus** from PCs **to smart mobile devices**

Google

AFAs prevent forks which could represent distribution channel for other search services

MADAs ensure that Google Search app and Google Chrome are pre-installed on all Android devices

RSAs ensure that for major OEMs/MNOs Google Search is the only pre-installed general search service

Device Manufacturers

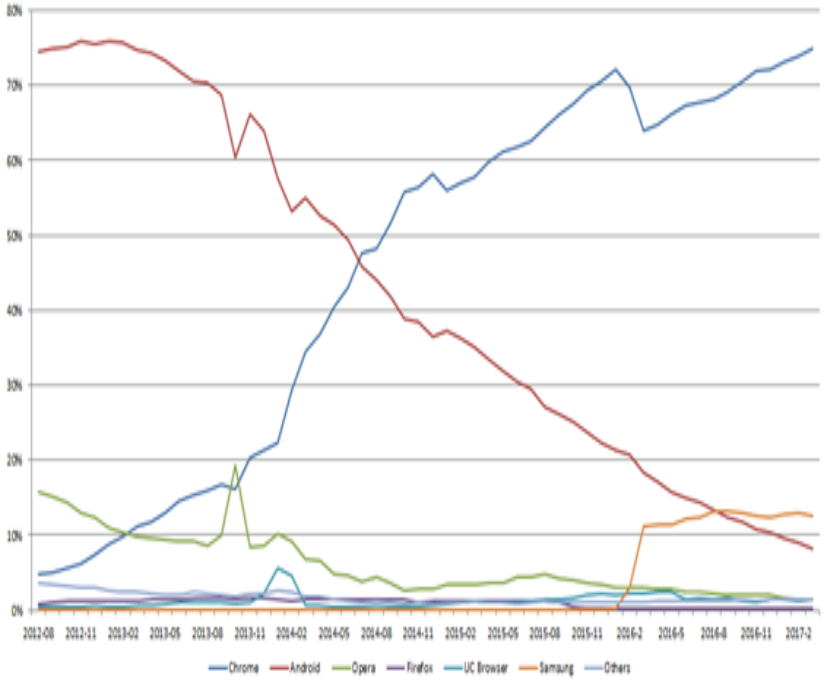
CONSUMERS

Analysis of tying

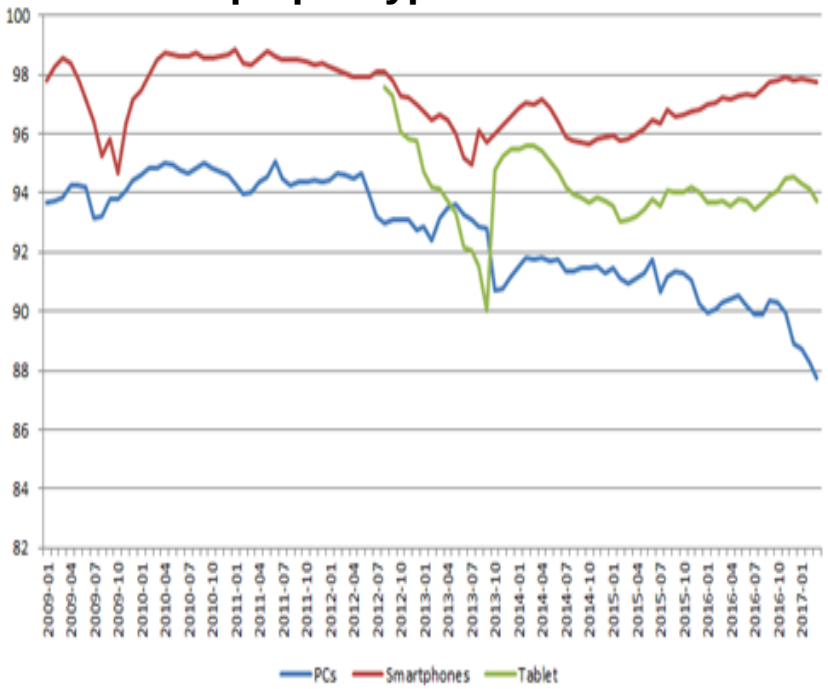
- Evidence on pre-installation:
  - **OEMs**: limited interest in duplicating apps (transaction cost, user experience, exclusivity impossible for competitors)
  - **Users**: downloads of rival search and browser apps do not counteract the pre-installation advantage
  - Google's market shares on devices where Search was not pre-installed are systematically lower than those on devices where Search was pre-installed (e.g. in 2016 95% vs 25% on Android vs MSFT devices)
- Market share developments consistent with incentives:
  - Penetration of Google Search higher on mobile than desktop
  - Chrome grew faster on mobile than desktop

Market shares trends

Usage share of non-OS specific mobile web browsers in Europe



Google share of search queries in Europe per type of device



Analysis of revenue sharing payments

- Assessed as exclusivity payments
- Effects analysis outlines harmful effects
  - Contemporaneous evidence shows that OEMs/MNOs would have wished to pre-install competing search services, but were deterred by RSAs (combination with MADA)
  - Quantitative analysis shows that competitors with the same costs would have been unable to match the Google payments
  - Portfolio effect: meaning that if a customer wanted to launch just one device with a rival pre-installed, it would lose the revenue share across all devices
  - Downloading of rivals by consumers not a realistic constraint

Conclusion

- Anticompetitive effects in digital markets are not *as such* different from anticompetitive effects in other markets
- Sources of evidence to satisfy burden of proof are the same as in other sectors – qualitative tools can be as important as quantitative tools
- Theory of harm guides competitive analysis – e.g. competitors' market shares trends can be highly informative in markets with network effects and tipping
- Focus on price effects can be misleading and unduly limit the analysis – non-price effects do matter!