



Position Paper | November 2023

How the DMA can re-establish a neutral and fair general online search

Executive summary

Over the past decade, we, the Internet Economy Foundation, iconomy, the German Startups Association, France Digitale, and the Italian Tech Alliance, have observed the critical gateway to the Internet, general online search, become an incontestable market with severely weakened competition, which has had a ripple effect into many other EU markets, and resulted in less consumer choice, with worsened consumer experiences. This paper outlines the two systemic problems that led to our current general search market and offers two policy recommendations for European enforcers based on the newly-passed Digital Markets Act (DMA):

1. Focus DMA enforcement on provisions to restore general search's purpose by **making general search a neutral gateway** for business and consumers to find the most relevant results and third parties on both desktop and mobile.
2. In line with Art.6(5) of the DMA, **ensure that Gatekeepers of general search permanently remove all boxes** from their general search results page on both desktop and mobile and refrain from creating future boxes or toggles.

As signatories, we hope to start a deeper conversation about general search, and how the DMA can be applied to restructure general search to ensure a contestable, fair market that will benefit Europeans in the long run.

Table of contents

1. Introduction.....	3
2. Why general search.....	3
3. Key unfair practices in general search.....	5
Problem #1: Gatekeepers strategically use general search as a vehicle to enter and dominate new markets, and because of that, general search is far from a neutral gateway to the internet.....	5
Problem #2: Gatekeepers are actively entering new markets and have already created boxes on their general search results page for each new service or product.....	6
4. Examples of unfair practices from six EU digital markets.....	11
Market #1: the online travel experiences market.....	11
Market #2: the online flights market.....	12
Market #3: the online hotels market.....	13
Market #4: the online translation market.....	13
Market #5: the online job search market.....	14
Market #6: the online shopping market.....	15
5. Conclusion.....	16

1. Introduction

We, the Internet Economy Foundation, the German Startups Association, France Digitale, and the Italian Tech Alliance, **welcome the European Union's Digital Markets Act (DMA) as an unprecedented opportunity for reasserting fair competition and consumer protection.**

Over the past decade, we have observed the critical gateway to the Internet, general online search, equally important for end consumers and businesses, become an incontestable market with severely weakened competition and less consumer choice that ultimately worsened the overall consumer experience. This has affected thousands of European consumers and thousands of European startups and scaleups, including many of our organisations' members and continues to be one of the biggest stumbling blocks for a thriving European innovation ecosystem. We believe that the DMA is a pivotal opportunity to restructure and reimagine the role of general search, both as a market and key service for European consumers and businesses.

If the DMA is applied, it could ensure that European startups and scaleups have fair access to consumers, and in return, that European consumers have greater access to and more information about companies, ultimately providing them greater control over their own lives. For this reason, ahead of the DMA's upcoming enforcement phase, **we call on the European Commission to apply the DMA's principles and requirements to general online search engines on the first day the designated Gatekeepers have to comply with the obligations laid out in the DMA.**

2. Why general search

Today, almost all Europeans start their online journey by typing a query into the bar of a general search engine. It is arguably the most frequently used core platform service, and, at the same time, arguably the least contestable market. Google Search has had a market share of over 90% in the European Economic Area since 2011, with 93% of EU users¹ using Google

¹ There are five other alternative general search providers: Microsoft's Bing (3.5% market share), the Russian company Yandex (1.7% market share), Yahoo! (1.05% market share), the US privacy-centric provider, DuckDuckGo (0.52% market share) and Ecosia, the largest European search engine (0.26% market share). However, none of these have more than 5 percent of the market - Google Search's market share is well above the European Court of Justice's threshold for defining a monopoly power. In Hoffmann La-Roche the European Court of Justice ruled that a 75 per cent market share was clear proof of a dominant position. Hoffmann-La Roche & Co. AG v. Commission, 85/76 (ECJ. 1979).

Search² for general online search today—twelve years of extreme market dominance.³ It is the exact type of market the DMA was created to address.⁴

Because of Google’s dominance over general search, a critical gateway, the majority of European digital products, services, businesses, and entrepreneurs depend on Google for their make-it-or-break-it opportunity to show consumers their products and services since most online user and customer journeys begin here. It should be noted that this paper focuses on Google, specifically as a company, because the systemic problems in general search started while Google Search dominated the European market. However, this paper is not about one company (Alphabet), it is about the Gatekeeper(s) operating general online search engines.⁵

General online search engines currently feature all of the characteristics of a core platform service that the DMA is designed to address (e.g. extreme scale economics, very strong network effects, significant degree of dependence of both business users and end users, lock-in effects, a lack of multi-homing, vertical integration, data driven advantages).⁶ This position paper will outline how gatekeepers use those characteristics to their own, unjustified advantage and how they are affecting European startups, competition, and consumers.

² <https://gs.statcounter.com/search-engine-market-share/all/europe>

³ https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1770

⁴ Recital 13 of the DMA states: “it is necessary [within the DMA] to focus only on those digital services that are most broadly used by business users and end users and where concerns about weak contestability and unfair practices by gatekeepers are more apparent and pressing from an internal market perspective.”

⁵ In fact, we are convinced that Microsoft’s Bing, the second biggest search engine in the EU with a growing market share due to recent innovations, has also engaged in unfair practices, must also be accountable, and should also be heavily considered while imagining the future of general search.

⁶ The DMA’s second recital lists these market characteristics and states that they “have the effect of substantially undermining the contestability of the core platform services [...]. In practice, this leads to rapid and potentially far-reaching decreases in business users’ and end users’ choice.”

3. Key unfair practices in general search

Problem #1: Gatekeepers strategically use general search as a vehicle to enter and dominate new markets, and because of that, general search is far from a neutral gateway to the internet.

Recommendation #1

Focus DMA enforcement on provisions to restore general search's purpose by making general search a neutral gateway for business and consumers to find the most relevant results and third parties on both desktop and mobile.

Today, Google Search's two decade-long dominance of general search has led to a critical and pressing threat: many years of hidden, overlooked and unaddressed vertical integration, combined with unfair practices and data-driven advantages have turned general search into a consumer product that prioritises monetisation over being the neutral, general access point to the Internet it was promised to and should be.

To date, the European Commission has already fined Google three times for an abuse of dominance on general search markets:

1. in June 2017, for giving an unjustified advantage to Google's own comparison shopping service in general results pages (referred to as "the [Google Shopping case](#)");
2. in July 2018, for illegal practices regarding Android mobile devices to strengthen the dominance of Google's search engine (referred to as "the [Google Android case](#)");
3. in March 2019, for imposing a number of restrictive clauses in contracts with third-party websites which prevented Google's rivals from placing their search adverts on these websites (referred to as "[the Google AdSense case](#)").

Although the [2017 Google Shopping case](#) is the most relevant case for this paper, all three cases demonstrate abuse of market dominance and unfair practices. Yet, there have been numerous more examples across markets.

Problem #2: Gatekeepers are actively entering new markets and have already created boxes on their general search results page for each new service or product.

Recommendation #2

To implement the DMA's Art. 6(5) ban on self-preferencing, DMA enforcers must ensure that Gatekeepers operating general search services permanently remove all boxes or widgets from their general search results page on both desktop and mobile that contain results or information specialised in a certain topic and refrain from creating any equivalent groupings of specialised content in the future.

This includes but is not limited to:

- Google Shopping box
- Google Things to do box
- Google Flights box
- Google Hotel box
- Google Translate box
- Google for Jobs box
- Bing's Shopping box

Today, Google is strategically using general search to enter new markets by boosting their new products and services under the guise of "helping consumers". In practice, there are serious consequences for European startups and consumers in the short-term and long-term.

Google uses roughly the same leveraging strategy for entering almost every market:

1. it creates a new product or service for a specific market,
2. integrates the new product or service into general search by placing a new box, which presents the new service or product, at the top of its general search results page and/or a toggle, which links directly to the product, prominently right under the search bar to make it seem as user-friendly as possible and to nudge users to click on it
3. gains market share through the box and/or toggle, driving out competitors or preventing potential competitors from joining,
4. dominates the new market.

Google performs this strategy subtly and skilfully. It alters the makeup of the general search results page by changing the design and function of the top of the page, the part that attracts most clicks and engagement. Therefore, most consumers and policymakers, unfortunately,

do not even realise that vertical integration and unfair practices just occurred. They miss the fact that there is a new market or function on their general search. It should be noted that Google also uses Google Maps within its leveraging strategy, another frequently overlooked practice of vertical integration. Google not only integrates a new product or service box at the top of its general search results (e.g. a Shopping Box), but it also integrates a new Google Maps box at the top of the page that prominently presents users with the new specialised search or service results within this box as well. Therefore, users are nudged to perform their searches via Google’s new product or service, or via Google Maps.

This strategy is the pattern the European Commission and the General Court found in the Google Shopping case: Google had a new product, “Froogle”, renamed it to “Google Product Search” and then “Google Shopping”; Google “systematically gave prominent placement to” this product; Google quickly gained market share in the online shopping comparison market.

Figure 1. The European Commission’s visualisation of the Google Shopping case.



The leveraging strategy’s key component, the integration of the boxes with the gatekeeper’s own services on the general search results page, is what the DMA addresses under Article 6(5).

Article 6(5) DMA

“The gatekeeper shall not treat **more favourably**, in **ranking** and related indexing and crawling, services and products offered by the gatekeeper itself than **similar services** or products of a third party. The gatekeeper shall apply transparent, fair and non-discriminatory conditions to such ranking.”

Article 6(5) applies to the boxes on Google’s general search results page: Google prominently positions (i.e. ranks) **its own services** on the general search results page. Those services are **distinct from Google Search** because they are used by users in addition to general search services and **similar** to the specialised search and intermediation services provided by third parties (i.e. other EU startups and scaleups).

Even before the DMA, the European Commission highlighted in its reasoning behind the 2017 Google Shopping Case ruling that the prominent position of product boxes at the top of the general search results page represents unfair business practices: Google used the “Google Shopping” boxes to give its own shopping comparison product an illegal advantage and demote rival comparison-shopping services. Additionally, it also prominently positioned the Google Shopping product in a toggle named “Shopping” right under the search bar.

Further, as the letter signed by over 40 comparison shopping services in October 2022 argues⁷, merely inviting other specialised search and intermediation service providers to join the boxes as an advertisement is an insufficient remedy to ensure fair competition, because it requires competing intermediation or search services to change their business model to fit Google’s everchanging monetization framework. As the letter states: “the Commission needs to re-open space on general search results pages for the most relevant providers, by removing Google’s Shopping Units that allow no competition but lead to higher prices and less choice for consumers and an unfair transfer of profit margins.”⁸ The market realities underline the necessity to fully remove the boxes from the general search results page, and to safeguard against future boxes or equivalent groupings of specialised content on the general search results page to prevent the strategy of vertical integration⁹, and ultimately, leveraging, described in recital 51 DMA.

Recital 51 DMA (*emphasis is ours*)

“Gatekeepers are often vertically integrated and offer certain products or services to end users through their own core platform services, or through a business user over which they exercise control which frequently leads to conflicts of interest. This can include the **situation whereby a gatekeeper provides its own online intermediation services through an online search engine**. When offering

⁷<https://www.reuters.com/technology/exclusive-scores-google-rivals-want-eu-tech-law-used-antitrust-case-letter-2022-10-17/>

⁸ Ibid

⁹ It should be noted that for the rest of DMA compliance that any future grouping of specialised content on general search results - whether it appears via a box, toggle or a newly packaged “preview box” qualifies as a distinct service within the DMA’s definition and must be prohibited.

those products or services on the core platform service, gatekeepers can **reserve a better position, in terms of ranking, and related indexing and crawling, for their own offering** than that of the products or services of third parties also operating on that core platform service. This can occur **for instance with products or services**, including other core platform services, which are ranked in the results communicated by online search engines, or **which are partly or entirely embedded in online search engines results, groups of results specialised in a certain topic**, displayed along with the results of an online search engine, which are considered or used by certain end users as a service distinct or additional to the online search engine.”

Recital 51 thus clarifies that Gatekeepers may not “partly or entirely” embed any product or service that is distinct from an online search engine. The DMA defines an “*online search engine*” as a “*digital service that allows users to input queries in order to perform searches of, in principle, all websites, or all websites in a particular language, on the basis of a query on any subject [...] and returns results in any format in which information related to the requested content can be found*” (Article 2(6) DMA in connection with Article 2(5) P2B-Regulation 2019/1150). It follows from this definition that, in turn, any service by a Gatekeeper that does not allow a search across “all websites [...] on any subject” or that does not return corresponding results from all websites on any subject, does not constitute an “online search engine” but a distinct service, which, pursuant to Article 6(5) DMA may not be favoured, in particular not be embedded as a box or with a similar grouping in general results pages.

Given that, by definition, such boxes relate to separate (specialised) intermediation markets and to separate (specialised) online mapping services, including such boxes in general results pages does not constitute an improvement of general online search but the anti-competitive entry into separate markets,¹⁰ which Article 6(5) DMA now rightly prohibits.

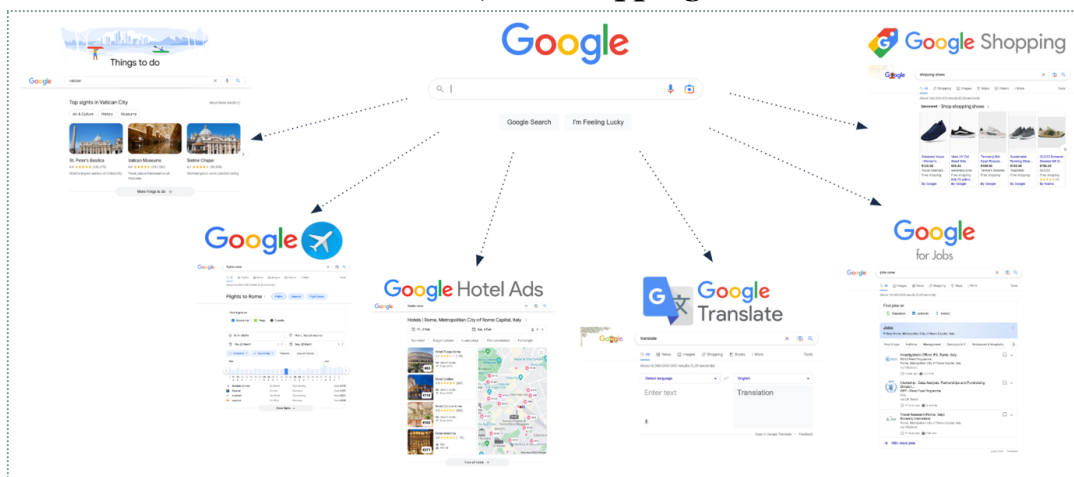
¹⁰ See General Court, Case T-612/17, paras 171 et sub. *Google Shopping*; see also Regional Court of Munich I, Case 37 O 15720/20, *NetDoktor/Google* “*It already appears questionable whether the integration of syndicated content constitutes an improvement of a search engine, since it is ultimately less an improvement of the search engine service than a shift of the activity [...] to another market [...]. Thus, [Google] is going beyond its basic function as a search platform on the Internet to bring together people looking for products or services (for example, information) and their providers, but also beyond directly answering factual search queries (for example, weather, height of the Eiffel Tower). Ultimately, the [Google] has left the market of the pure search engine in the sense of an intermediary of products to users and has become a provider of such product itself. [...] [I]t is making a content-based pre-selection that is detached from the Google algorithm.*”

Despite the Google Shopping case, Google, and also Microsoft Bing, the second Gatekeeper operating an online search engine, have continued with this strategy in multiple industries. To illustrate how this strategy has impacted the entire European startup ecosystem, we have provided six specific use cases from multiple technology markets where Google and Microsoft used this strategy of vertical integration. If this is not stopped, and no safeguards are put in place to preserve the integrity of general search, the markets listed as examples in this paper – and more potential markets that have not been entered by Gatekeepers yet – are at risk of being dominated soon. That in turn, will likely drive more European startups out of business and reinforce the uneven playing field in general search.

4. Examples of unfair practices from six EU digital markets

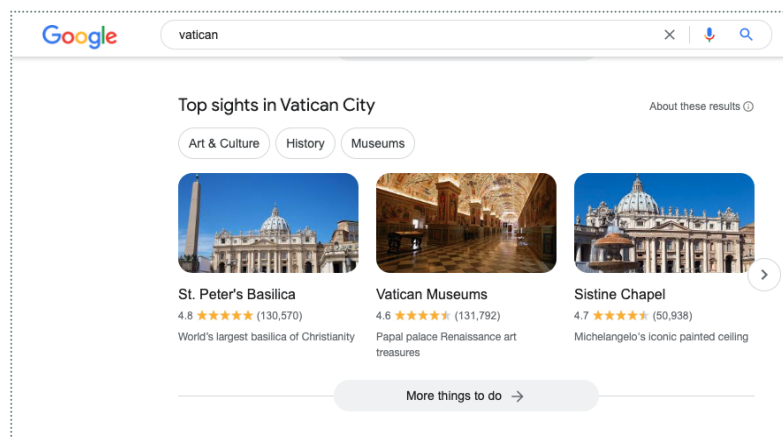
Right now, the Gatekeepers providing general online search engines are actively entering several new specialised search and comparison markets. Alphabet’s practice with dedicated products for travel experiences, flights, hotels, translation, job search, and shopping are amongst the most prominent examples. Additionally, Google has already created and directly embedded a box on its general search results page for each of the separate intermediation markets, as can be seen in Figure 1; although it should be noted that Microsoft Bing, the second Gatekeeper operating online search engines, is increasingly creating boxes on its general search results page, depicted in Figure 9. Each box was given prominent space, size, user-friendly design and features, unique to the specific market. For some markets, Google also prominently positions its products through prominent toggles right under the search bar.

Figure 2. Selection of current Google boxes in the following specialised search and comparison markets: travel experiences, flights, hotels, translation, job search, and shopping.



Market #1: the online travel experiences market

Figure 3. Google’s things to do box. Google “Things to do” is a new Google product that offers specialised search and comparison services for the online travel experiences market. European consumers use it to



specifically discover and compare travel experiences and are currently forwarded to alternative travel experience platforms for booking. Here is the box pictured on Google Search's general search results page.

In 2021, Google officially entered the online travel experiences market by introducing their “Things to do” product.¹¹ It replaces several core functions of existing online travel experience platforms, like GetYourGuide¹², Viator¹³, Tiqets¹⁴, Civitatis¹⁵, Musement¹⁶ and more.

Market #2: the online flights market

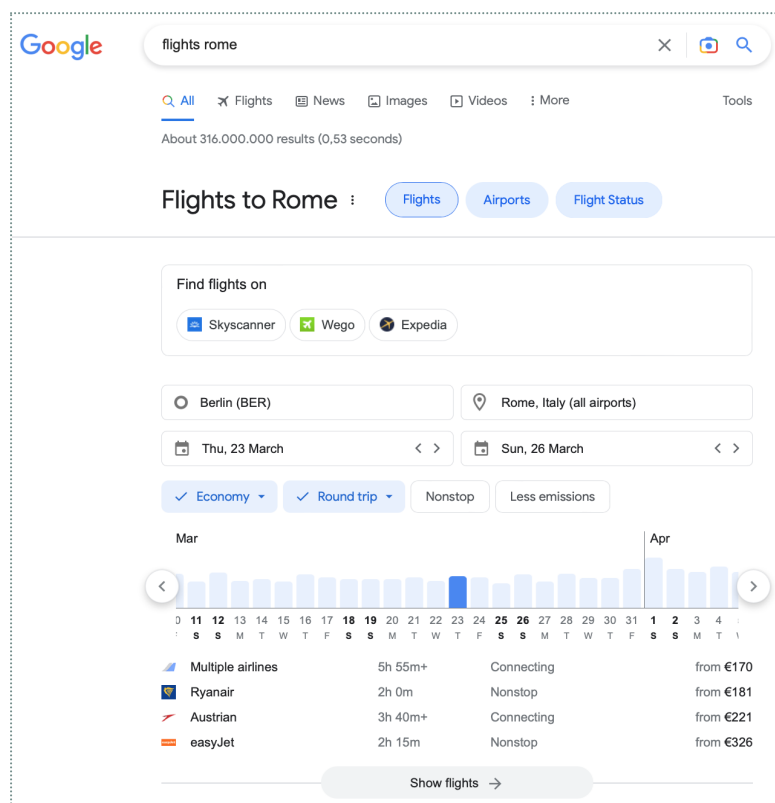


Figure 4. Google's flights box and toggle. “Google Flights” is a Google product that offers specialised search and comparison services for flights. European consumers use it to specifically discover and compare flights and are forwarded directly to other comparison and search platforms/sites at the end of their search. Here is the box and toggle pictured at the top of Google Search's general search results page.

In 2012, Google entered the online flights specialised search market with their product, “Google Flights”.¹⁷ It replaces

¹¹ <https://blog.google/products/ads-commerce/helping-travelers-discover-new-things-do/>

¹² GetYourGuide is a Berlin-based online platform for travel experiences like guided tours, museum tickets, and day trips, founded in 2009 by Johannes Reck, Martin Sieber, Tobias Rein, and Tao Tao. For transparency, Johannes Reck is a member of the German Startups Association's board. <https://www.getyourguide.de>

¹³ Viator is a US-based travel experience provider, founded in 1995. <https://www.viator.com/>

¹⁴ Tiqets is an Amsterdam-based travel experience provider, founded in 2014. <https://www.tiqets.com/en/>

¹⁵ Civitatis is a Madrid-based travel experience provider, founded in 2008. <https://www.civitatis.com/en/>

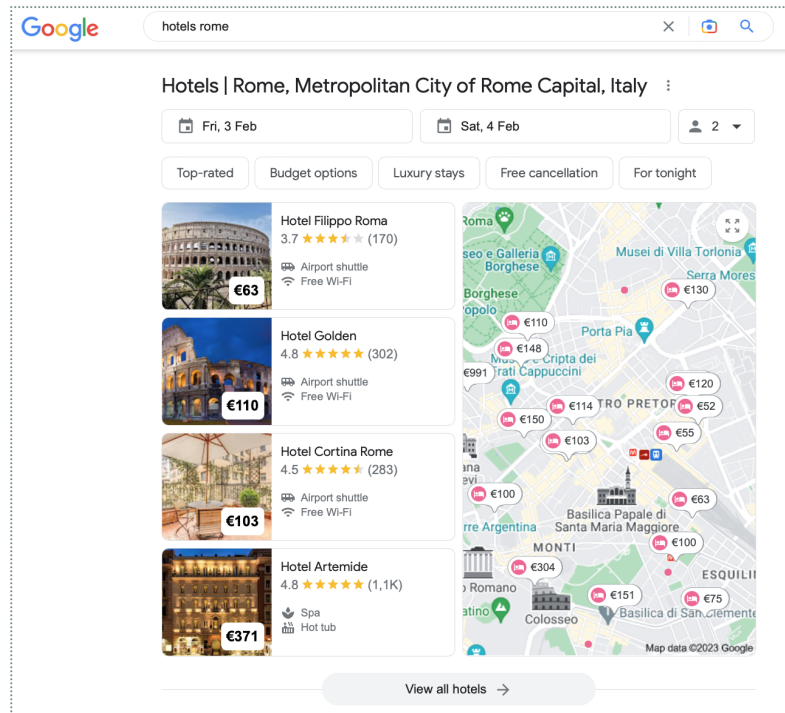
¹⁶ Musement is a Milan-based travel experience provider, founded in 2013. <https://www.musement.com/us/>

¹⁷ <https://blog.google/around-the-globe/google-asia/tools-for-travel-recovery/>

several core offerings from multiple existing flight comparison and booking platforms, like Kayak¹⁸, Skyscanner¹⁹, Momondo²⁰, and Swoodoo²¹.

Market #3: the online hotels market

Figure 5. Google’s hotel box. “Google Hotel” is a Google product that offers specialised search and comparison services for hotels. European consumers use it to specifically discover and compare hotels and are forwarded to hotel and accommodation sites and platforms at the end of their search to book. Here is the box pictured at the top of Google Search’s general search results page.



In 2012, Google entered the online accommodation market with their “Google Hotels” product.²² It replaces several core functions of existing hotel and accommodation platforms, like hotels.com²³ and trivago²⁴.

Market #4: the online translation market

Figure 6. Google’s translation box. “Google Translate” is a Google product that offers direct translation services, including document and website translation. European consumers use it for translation services and spell-checking. Here is the box pictured at the

¹⁸ Kayak is a US-based travel search engine, founded in 2004. <https://www.kayak.com/flights>

¹⁹ Skyscanner is an Edinburgh-based flights and hotel search engine, founded in 2003. <https://www.skyscanner.de/?locale=en-GB>

²⁰ Momondo is a Copenhagen-based travel search engine, founded in 2006. <https://www.momondo.co.uk>

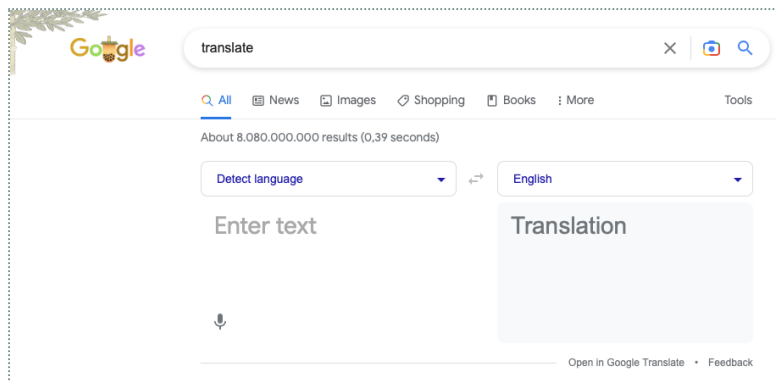
²¹ Swoodoo is a Zürich-based flights and hotel search engine, founded in 2004. <https://www.swoodoo.com>

²² <https://blog.google/products/travel/google-guide-to-summer-vacation/>

²³ hotels.com is a US-based hotels and accommodation online travel agency, founded in 1991. <https://uk.hotels.com/>

²⁴ trivago is a Düsseldorf-based hotel search engine, founded in 2005. <https://www.trivago.com/en-US>

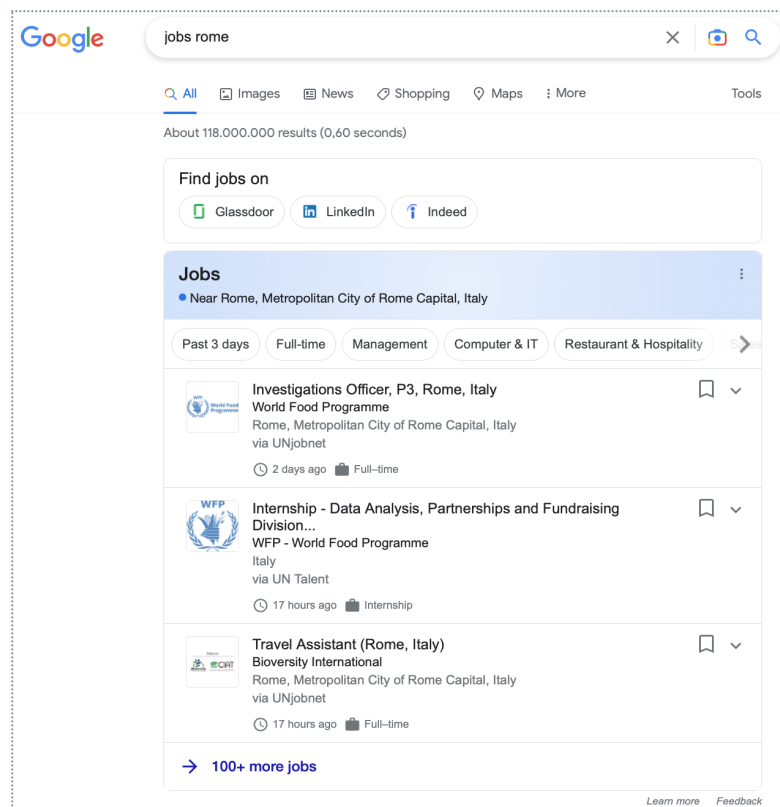
top of Google Search's general search results page.



In 2006, Google officially entered the translation market by introducing their “Google Translate” product.²⁵ It replaces the core functions of existing online translation services like reverso²⁶ and DeepL²⁷.

Market #5: the online job search market

Figure 7. Google’s jobs box. “Google For Jobs” is a new Google product that offers specialised search and comparison services for jobs. European consumers use it to specifically discover and compare individual job advertisements or entire career pages, and are forwarded directly to other comparison and search platforms/sites to submit applications at the end of their search. Here is the box pictured at the top of Google Search’s general search results page.



In 2017, Google officially entered the job search market by introducing their “Google For

²⁵ <https://ai.googleblog.com/2006/04/statistical-machine-translation-live.html>

²⁶ reverso is a France-based online language service, founded in 1998.
<https://www.reverso.net/text-translation>

²⁷ DeepL is a Cologne-based machine translation service, founded in 2017.
<https://www.deepl.com/translator>

Jobs” product.²⁸ It replaces the core functions of existing job search platforms like Stepstone²⁹ and Jobindex³⁰.

Market #6: the online shopping market

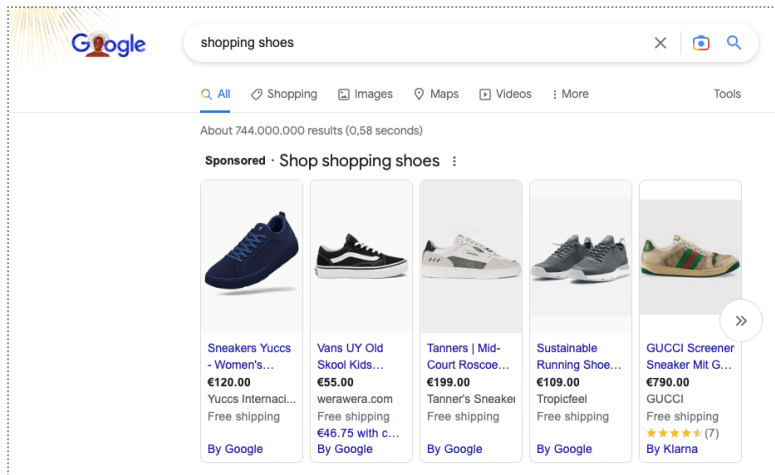


Figure 8. Google’s shopping box and toggle.

“Google Shopping” is a Google product that offers specialised search and comparison services for the online shopping market. European consumers use it to discover and compare products from different vendors and are forwarded

to alternative online shopping platforms and vendors for booking. Here is the box and toggle pictured at the top of Google Search’s general search results page.

In 2002, Google officially entered the online shopping market by introducing their “Google Shopping” product.³¹ It replaces several core functions of currently existing online price comparison platforms, like Kelkoo³², PriceRunner³³ and idealo³⁴.

Figure 9. Bing’s shopping box and toggle. “Bing Shopping” is a Bing product that offers specialised search and comparison services for the shopping market. European consumers use it to discover and compare products from different vendors and are forwarded to alternative online shopping platforms and vendors for booking. Here is the box and toggle pictured at the top of Bing’s general search results page.

In 2005, Bing officially entered the online shopping market by introducing their “Bing

²⁸ <https://www.blog.google/products/search/connecting-more-americans-jobs/>

²⁹ Stepstone is a Berlin-based job search platform, founded in 1996. <https://www.stepstone.de/en>

³⁰ Jobindex is a Copenhagen-based job search platform, founded in 1996. <https://www.jobindex.dk/>

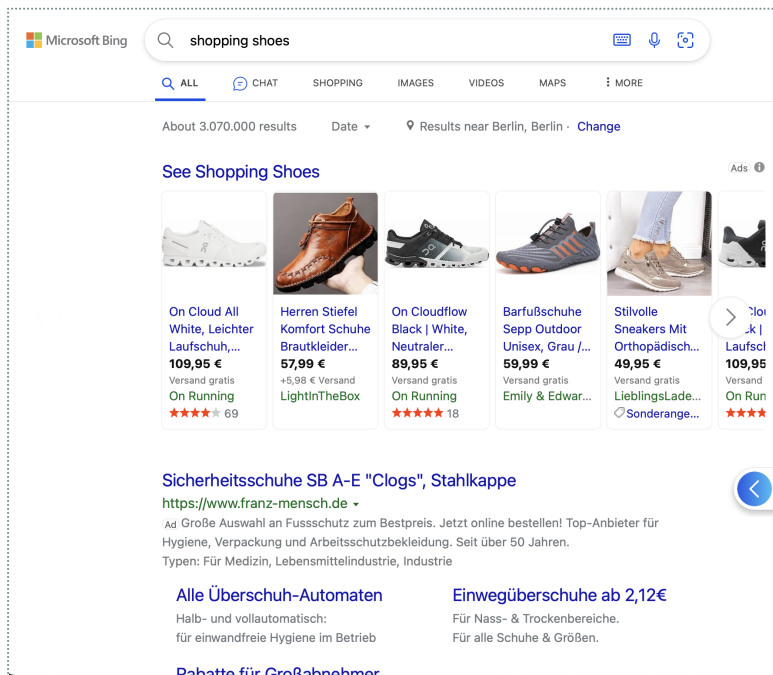
³¹ <https://blog.google/products/ads-commerce/helping-travelers-discover-new-things-do/>

³² Kelkoo is a Paris-based shopping comparison site, founded in 1999. <https://www.kelkoo.co.uk>

³³ PriceRunner is a Stockholm-based shopping comparison site, founded in 1999.

<https://www.pricerunner.com>

³⁴ idealo is a Berlin-based shopping comparison site, founded in 2000. <https://www.ideal.de>



Shopping” product.³⁵ It competes in the same market as Google Shopping and other shopping comparison sites as mentioned under Figure 2. This is just one example of Bing’s boxes and toggles.

5. Conclusion

General online search is a prime example of a market that has been dominated by one company for too long. This position paper sheds light on the resulting unfair practices and severe structural barriers to competition for both businesses and consumers. Between 2002 and 2022, Google Search, **the Gatekeeper of the online general search market (and advertising exchange), engaged in a systematic pattern of unfair practices that has allowed it to enter, dominate, and severely weaken competition in at least six different EU digital markets**, which has directly affected a minimum of 20 different European startups. The systematic behaviour followed the exact same pattern that the European Commission found in its 2017 Google Shopping case. **As signatories of this joint position paper, we urge the European Commission to apply the DMA principles and requirements – specifically Art. 6(5) – to the Gatekeepers in the general search market on the first day of mandatory DMA compliance.** With ambitious and forward-thinking enforcement, we believe the DMA can protect the thousands of European startups and scaleups depending on general search today and more importantly, protect the thousands of emerging markets and ideas. Let’s seize this opportunity and reimagine the digital economy for the better.

35

<https://web.archive.org/web/20150923215540/http://www.dmnews.com/digital-marketing/msn-shopping-adds-comparison-shopping/article/89416/>