

VBO vs. NVM/Funda

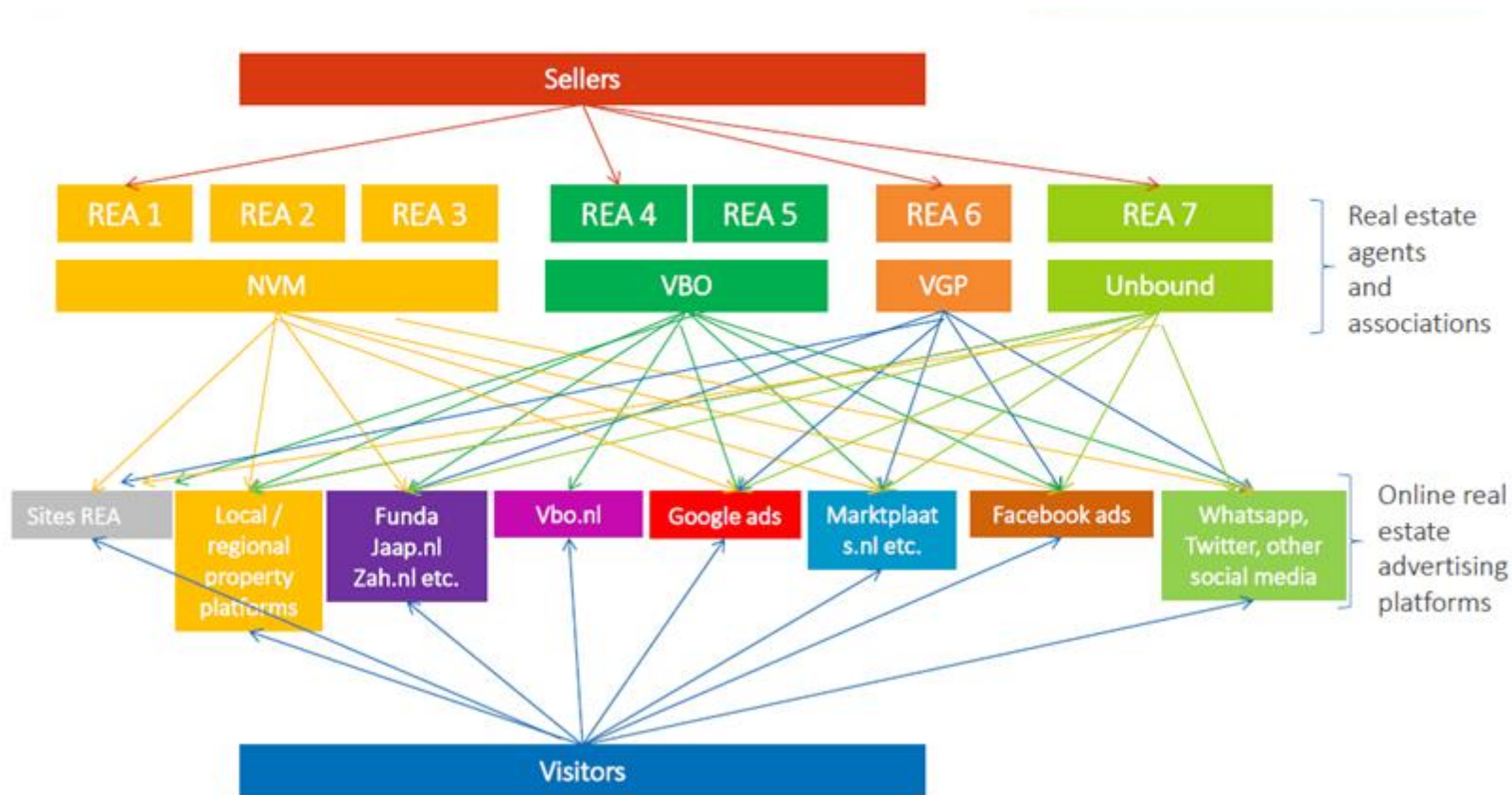
a court-expert testimony

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it's a complex world...



context—independent experts to the Court

- Court of Amsterdam
 - asked parties to suggest “independent experts”
 - overruled some suggestions
 - contacted suggested, potential experts
 - appointed:
 - Gunnar Niels (Oxera)
 - Eric van Damme (Tilburg University)
 - Jan Bouckaert (University of Antwerp)

context—our mandate

- What questions did the Court ask us?
 - What relevant market(s) is *Funda* in?
 - What about *Funda*'s market share(s)?
 - Where does *Funda* have a dominant position?
 - Are there any other elements you would like to mention that might be of relevance for the Court in making its judgment?

Thus, *no* explicit question was raised on experts to assess “abuse” of dominance.

context—our approach

- economics
 - market delineation
 - dominance analysis
- set-up
 - good understanding of parties' viewpoints
 - intensive interaction with the parties' legal and economic advisors
 - data provisions following several data requests
 - comments from the parties on the draft version of the expert report
 - dialogue approach: “hot tub” with experts and parties' economic advisors

market delineation

- *VBO's* advisers

- no need to delineate the market
- *Funda*-dominance is directly visible: capable to independently behave from its competitor by disadvantaging the position of its advertisements
- sometimes delineate it as “the websites market for real estate”

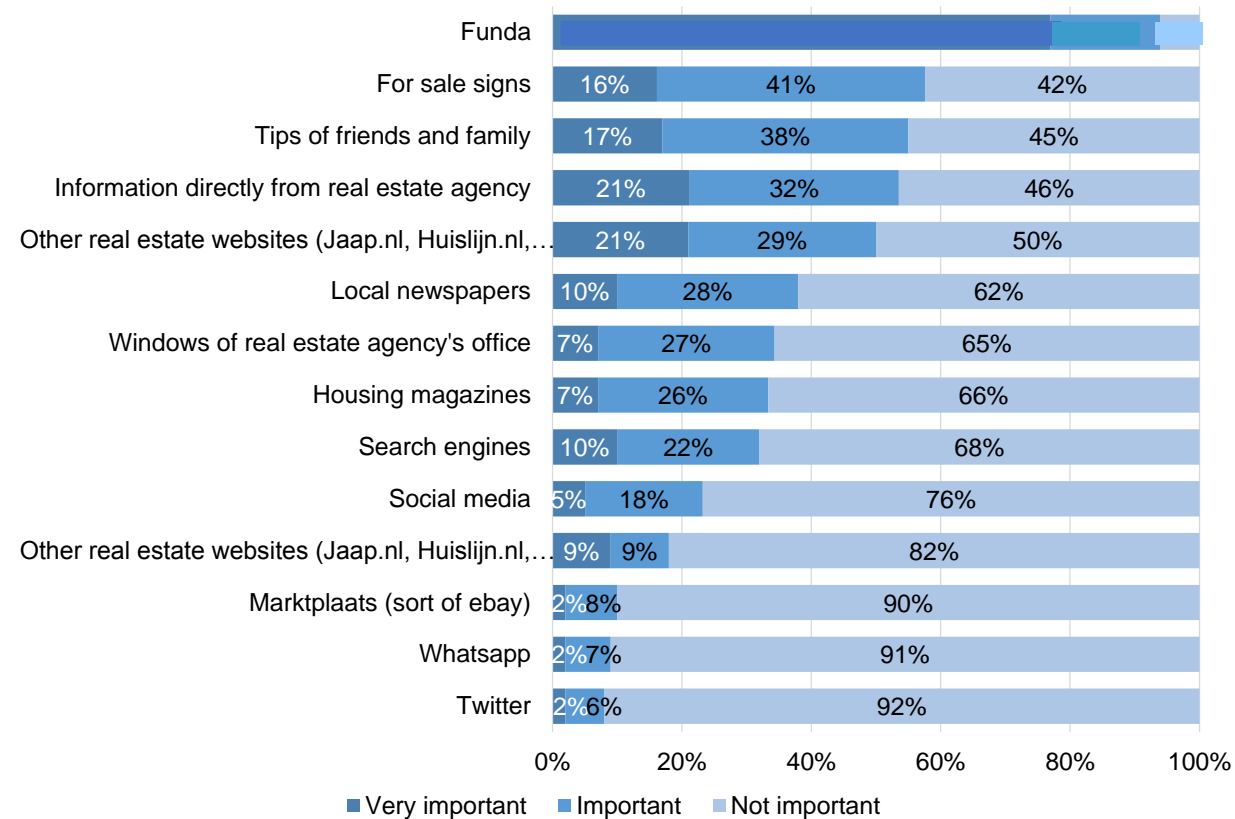
- *Funda-advisers*

- no market delineation since no market distortion has taken place
- if need for market delineation: regional, broader than websites, and including offline channels, and certainly not *#Funda*-visitors

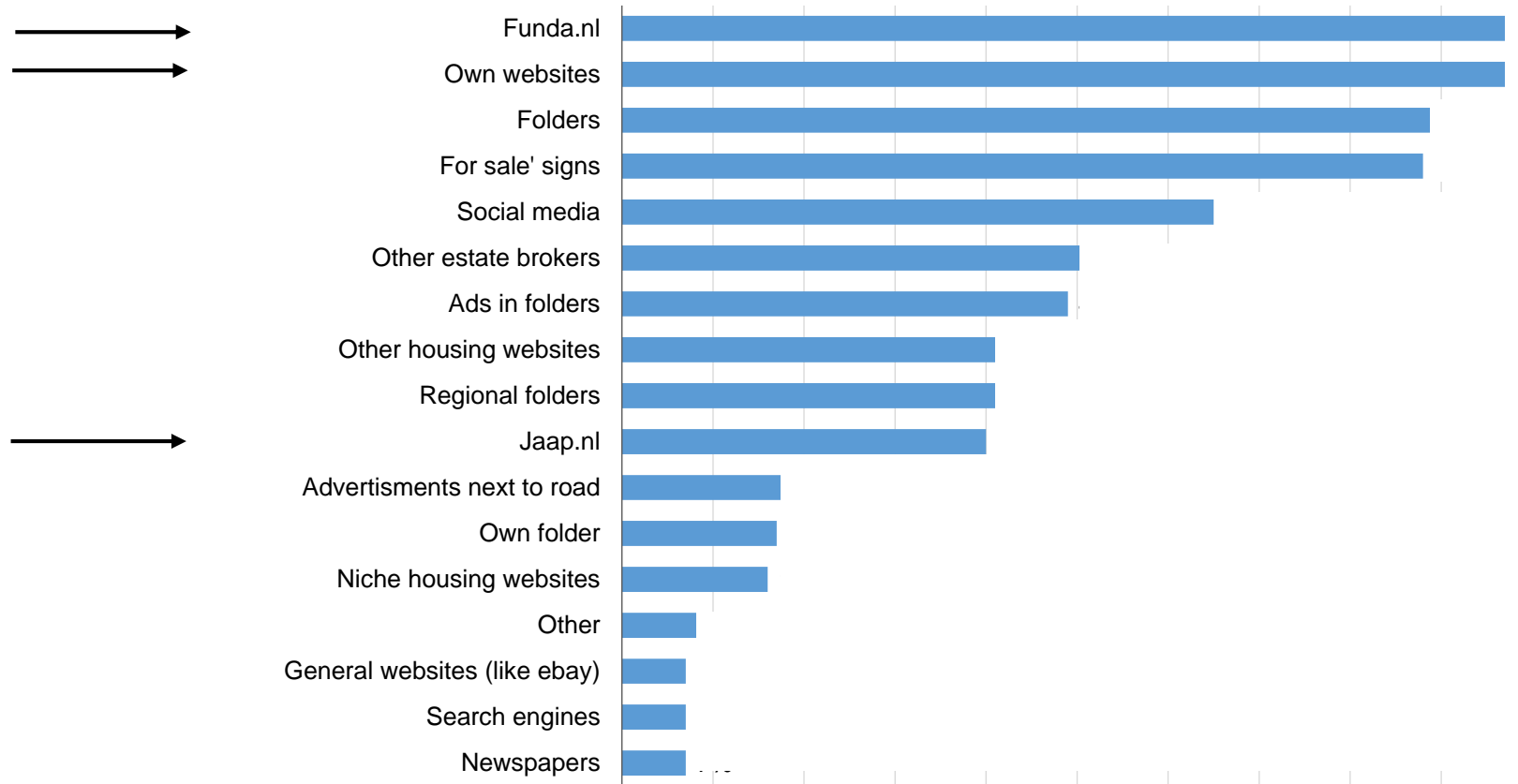
market delineation: experts' approach

- *Funda* as a two-sided platform:
 - bringing together prospective house buyers and house sellers (or their real estate agent)
 - potential substitutes and competitive constraints on either side of the platform
- assessment of:
 - what (geographic, product) market is *Funda* active in?

home buyers *multi-home* and find *Funda* to be the most important



All real estate agents *multi-home* and almost all use *Funda* and own websites



Market delineation: findings

- Real estate websites: *substitutes*
 - *Multihoming*
 - home buyers
 - brokers (house sellers)
 - Funda is *by far* the most important platform
- Other, non-dedicated search engines, social media, offline channels: *complements*

market delineation: assessment

- closeness of competition: 3 groups of websites
 1. three national websites: *Funda*, *Jaap.nl*, *Huislijn.nl*
 2. smaller, independent, niche websites
 3. “click-through” websites
- market share analysis:
 - *Funda* has 4 to 6 times more visitors than the other two national websites
 - multiple indicators and surveys show that buyers’ and sellers’ experience *Funda* as a very important channel

market power: assessment

- conduct towards competing brokers in the downstream market:
 - granting of access to VBO in 2008
 - discrimination with respect to position ranking, pricing, and services
- barriers to “entry”: “Rome wasn’t build in a day” —Morcheeba
- downstream market effects
 - brokers’ market share dynamics: no significant changes
 - “time-to-sale”: mixed
 - “requests”

the Court followed our conclusions on dominance...

“The experts have concluded that *Funda* has a dominant position in the relevant market for property websites in the Netherlands.

They conclude that the particularly strong position of *Funda* relative to other property sites, and the significant barriers to entry in the market for property sites in the Netherlands, allow *Funda* to behave to a significant extent independently and to distort competition in the related market for estate agent services.

Individual estate agents cannot bypass *Funda*, given the high importance that those looking for a house attach to *Funda*.

Funda therefore has a dominant position, regardless of whether it has actually distorted competition between estate agents.

For the latter, the experts did not find any indications.”

Our conclusions

- Funda has strong market position vis-à-vis other real estate websites
- There are significant barriers to entry for other real estate websites
- Funda has the capability to
 - act more or less independently from other websites
 - distort competition
- There is no profitable “by-passing” of Funda for brokers given the buyers’ preferences for Funda and vice versa: two-sidedness
- Funda has a dominant position

...and assessed our dominance analysis as not indicative of distortive to competition

“Based on data analysis, the experts subsequently found that there is no reason to conclude that the disadvantageous positioning on *Funda* had a negative effect on the estate agents of *VBO* and *VastgoedPRO*.

Their market shares have not decreased since 2009, and in a province such as Zeeland they are strong players.

Finally, the experts conclude that, in relation to (the speed of) house sales, *NVM* estate agents perform better on average at the national level (a statistically significant difference).

However, there are also provinces, and certain time periods, where *VBO* estate agents in fact performed better.

In all, they conclude that the effects analysis does not generate any clear-cut indications that the disadvantageous positioning on *Funda* has had an effect on the competitive position of *NVM* estate agents relative to non-*NVM* estate agents.”