

Re: RELX Group in Industry 58.14/1

Dear Sir/Madam,

We write to complain about what we believe to be the anti-competitive practices of RELX Group in industry 58.14/1 (“Publishing of learned journals”) on the following grounds:

- Abuse of a dominant market position
- Problems in a market sector

The grounds on which we believe these statements to be true (and on which we believe any “reasonable person” under English law would reach the same conclusions) are set out below with reference to 1.) the secondary academic literature that has studied the scholarly publishing landscape; 2.) previous competition inquiries; and 3.) financial statements from RELX Group.

Further, we write following the advice of Ann McKechin, previously MP for Glasgow North, who recommended, in a BIS sub-committee inquiry hearing in 2013, that RELX Group (at that time known as Reed Elsevier) be referred to the competition commission if it continued to use non-disclosure agreements. She called this a “profoundly anti-competitive practice” and said that if this was happening with public funds “there should be a referral to the Office of Fair Trading” (HC 1086-i, 2013).

Background

UK Higher Education is funded through a variety of public and private streams. While much revenue is derived from student tuition fees as an apparently private source, quality-related research funding from government is also awarded to almost every institution through the Higher Education Funding Council for England (HEFCE). Furthermore, most tuition-fee income is underwritten by a government guarantee on the loan (the “RAB charge”), making the majority of “private” revenue also contingent on public funds.

Part of the purchasing from UK universities, funded from this pool of public money, is devoted to buying subscription access to learned journals and books in order to further research progress. In the case of access to Elsevier’s portfolio (Elsevier is the trading name of RELX Group’s academic journal division), a national negotiating team was convened by Jisc, the UK’s digital infrastructure body for higher education, and has been consulting over the last 18 months.

The results of the negotiations that took place with Elsevier are currently being considered by UK universities. However, *the details of the agreement are under a non-disclosure agreement*. In our view, this represents a serious breach of competitive market practices since it is impossible for other parties to benefit from price competition. Furthermore, that this is used in the expenditure of public or publicly-underwritten funds goes, to the best of our knowledge, against HM Treasury principles for the commissioning and expenditure of public funds. We believe that this is a result of Elsevier’s abuse of a dominant market position and more systemic problems of competition in the field of scholarly publishing. As above, a sitting MP

recommended that were this to be continued, RELX Group should be referred for anti-competitive practices.

Abuse of a Dominant Market Position

Elsevier is the single largest publisher of scholarly and scientific articles. The UK university community spends around £40m per year on access to the ScienceDirect platform run by the publisher, the Scientific, Technical and Medical division of which made a £760m adjusted operating profit on £2070m revenue in 2015 (Earney, 2016; RELX Group, 2015, p. 9).

Although it is difficult to provide precise figures due to the disaggregation of the market, as previous investigations have also noted (see OFT 396, 2002), we believe that Elsevier exhibits market dominance by meeting the following criteria:

1. Elsevier's dominance in this space is indicated in a range of positions that we believe exceed or come close to 40% of total supply. A 2002 OFT report noted that the group had a "a forty one per cent share of the supply of science and technology journals" (OFT, OFT396, 2002, p. 6).
2. Another realistic and reasonable estimate in our view is that a grouping of Taylor & Francis, Wiley-Blackwell and Elsevier account for over 50% of all published science papers in 2013 and 71% for all psychology papers (Larivière, Haustein, and Mongeon, 2015).
3. We believe that Elsevier is not affected by normal competitive restraints. The goods it sells are unique and non-comparable. If a researcher requires a specific article, then no substitute good can be found, which works against competitive market price pressure (Eve, 2014, p. 14).

It is our view that Elsevier unfairly exploits the above dominant market position to avoid price competition in several ways:

1. We believe that Elsevier uses non-disclosure agreements extensively in order to ensure that its prices are unaffected by competition. David Tempest, Director of Access Relations at Elsevier, for example, argued that were other libraries/institutions of higher education worldwide to know the amount Elsevier charges for access, "everybody would drive down, down and down" on prices, leading to users paying less for accessing these materials (the goal of market competition). This is captured on video (Taylor, 2013). This represents, in our view, a substantial discrimination between customers based on little to no material difference in the circumstances of supply, as a result of a dominant market position and a desire to avoid price competition. We see this as consequently unfair to its customers who do not see the benefits of price competition.

2. Because it holds such a dominant market position, we believe that Elsevier knows that institutions of higher education (its primary customers) will suffer if they do not subscribe to its packages. Because it controls such a large portion of scholarly and scientific materials (as above) it is able to leverage an operating profit margin of approximately above 40% in the STM division since 2011 (Larivière, Haustein, and Mongeon, 2015, figure 7), demonstrating, in our view, substantial market dysfunction. We believe that this leads to a situation in which it is difficult for competitors to emerge based solely on Elsevier's dominance. Because library budgets are finite, but Elsevier controls so much of the supply chain, we feel that smaller publishers are unable to compete due to the threat of Elsevier withdrawing its supply to the same customer base.

Problems in a Market Sector

The market space of 58.14/1 is deeply problematic in our opinion for the following reasons:

1. As above, in our view a small number of publishers, and especially Elsevier, dominate the majority of the landscape.
2. We also believe that there is a problem of a lack of price sensitivity among customers. This is fuelled by non-disclosure agreements but also the fact that researchers are encouraged to publish in “respected” journals for hiring and promotion panels, thereby giving the content to organizations such as Elsevier for free (often with no remuneration from organizations such as Elsevier), with little awareness of the strains that this places on institutional library budgets.
3. Because goods are non-substitutable (a journal article cannot be substituted for another since each is unique and novel), little to no downwards price pressure is exerted, which we believe has contributed to a 300% rise in journal prices above inflation since 1986 (see Eve, p. 13).
4. Elsevier also control data and analytics services that are used by universities to assess the reputation of journals, researchers, and institutions. These services for both citation metrics (used to evaluate researchers) and for university rankings are in part based on Elsevier's own journals, so it is our belief that institutions feel that to be competitive they must have access to the journals that are used to assess their research quality.
5. We think that further evidence of market dysfunction can be seen in Elsevier's extreme levels of profit: up to 42% (RELX Group, 2015), more than double those commonly found in the oil industry (approximately 16%), and far outstripping pharmaceutical companies (around 6.5%).
6. This problem was noted in a House of Commons Select Committee Inquiry in 2013 (as above) and an MP recommended referral to the competition authority were such

practices to continue. We believe that these practices are continuing, and indeed worsening, and we would urge the immediate investigation and intervention in this deeply anti-competitive and unregulated space (HC 1086-i, 2013).

Yours sincerely,

Professor Martin Paul Eve
Birkbeck, University of London (but writing in a personal capacity)

Co-signed
Dr. Jonathan Tennant, Imperial College London (but writing in a personal capacity)
Stuart Lawson, Birkbeck, University of London (but writing in a personal capacity)

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