

INFORMATION ACCESS ALLIANCE

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May 23, 2006

Yves Dumont
European Commission, Research DG
Scientific Advice and Governance
SDME 6/72
B-1049 Bruxelles

Dear Mr. Dumont:

The members of the Information Access Alliance (IAA) are grateful to have the opportunity to offer our comments in response to the recently published, "Study on the Economic and Technical Evolution of the Scientific Publication Markets in Europe." The IAA is a coalition of seven leading library organizations in North America focused on antitrust issues in the journal publishing industry. Our member organizations serve institutions engaged in research, education, law, and health care. While we recognize that we represent libraries and institutions not within your jurisdiction, we also acknowledge the global nature of both the production of and the use of scientific, technical, and medical (STM) journals and value the European Commission's efforts to contribute to public debate on issues of access to scientific works.

Because the scholarly communication system is now global in scope, dysfunctions in the marketplace for STM journals have serious consequences well beyond the European Community. Because of this the IAA believes it is important for us to communicate our understanding of the issues under consideration and the policy recommendations proposed. Since the IAA exists to advocate for change in antitrust enforcement, our comments are focused on those analyses and recommendations relating most directly to antitrust issues.

Study Findings

Nearly every finding in the Study's analysis accords with data IAA members have collected or monitored, conclusions we have drawn from those data, and with the experiences of the membership of our organizations. It is with pleasure we note that members of the study team used data drawn from important initiatives of the IAA: the Invitational Symposium on Antitrust Issues in Scholarly and Legal Publishing organized by the IAA and the American Antitrust Institute in 2005 and the white paper commissioned by the IAA, "Publisher Mergers: A Consumer-Based Approach to Antitrust Analysis."

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We particularly want to express our agreement with the study's findings regarding "the broad facts about the market for journal publications" (Section Two). The IAA was organized in recognition of these facts to work within the United States to seek adoption of a new standard of antitrust review by state and federal antitrust enforcement agencies. One of the IAA members, SPARC, was created in 1997 specifically to be a constructive response to market dysfunctions in the scholarly communication system.

The members of the IAA share the concern expressed in the Study's analysis that the market for scholarly journals, particularly as regards STM publishing, is increasingly dysfunctional. This accords with the IAA's conclusion that a small number of for-profit publishers regularly exercise market power and are increasingly able to erect strategic barriers to entry in that marketplace. The analysis reported in Section Three of the study provides very solid data on journal prices and pricing trends. Numerous studies over many years have repeatedly drawn the same conclusions both about publishers' pricing behavior and the market power they reflect.

The Study notes in Section Five a range of concerns centered around the emerging practice of journal bundling. The IAA has grown increasingly concerned about several anticompetitive practices developing within the marketplace. We too have noted the anticompetitive effect of common journal bundling practices and are actively communicating with state and federal antitrust enforcement agencies on the issues and possible remedies.

Recommendation B1

The policy recommendation B1, in many respects, closely models arguments that the IAA has been promoting regarding journal bundling practices.

- We agree that tying prices for electronic publications to historic library spending on print journals locks in the benefits many for-profit publishers have already extracted by exercising their market power while fortifying barriers to entry into the market. The market would be more competitive if these types of practices were eliminated.
- Similarly, transparency of pricing is a strategy we believe can increase competition within the market. We too have arrived at the conclusion that transparency requires publicly available pricing for individual journals and public access to negotiated prices for journal bundles.

Recommendation B2

The IAA has focused a great deal of effort encouraging antitrust reviews of merger transactions in the journal publishing industry and has offered comments regarding a number of mergers in the STM market proposed over the years. Most recently, the IAA offered comments to the European Commission and the U.S. Department of Justice regarding the Cinven and Candoover acquisition of BertelsmannSpringer for merger

with Kluwer Academic Publishers. The IAA continues to be troubled by the ongoing trend toward consolidation within the journal marketplace.

Therefore, we enthusiastically support Recommendation B2 to reconsider historic approaches to merger review and increase scrutiny of future mergers. We too believe that evidence suggests that past mergers have substantially increased journal prices and that further mergers of large publishers will have similar effects. The work by Mark McCabe, cited in section 4 of the Study's analysis, provides a convincing mechanism for explaining the effects of mergers libraries have experienced. Greater scrutiny of publisher mergers, while far from correcting all of the STM market's problems, would at least reduce further erosion of competitive forces.

Conclusion

We commend the consortium that authored the study for their thorough research and insightful analysis. The recommendations presented deserve the European Commission's fullest attention. Their adoption would substantially improve the scientific publications markets, not only of Europe, but in the U.S. as well.

The Information Access Alliance would welcome an opportunity to provide the Commission with further comments as needed. If possible, we would like to obtain your permission to post this document on our organizations' web sites. Please contact Karla Hahn at +202 296 2296 or karla@arl.org. Thank you for your consideration of our views.

Sincerely,



Susan Fox
Executive Director
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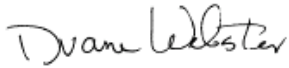


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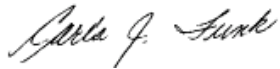


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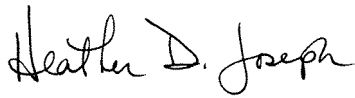
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