

EU: academic publishers are monopolists

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Published April 1, 2022

Citation

Brembs, B. (2022, April 1). EU: academic publishers are monopolists. *Bjoern.brembs.blog*. <https://doi.org/10.59350/gfr5v-b2t56>

Keywords

Science Politics, Markets, Monopoly, Publishers

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The market power of academic publishers has been a concern for all those academic fields where publication in scholarly journals is the norm. For most non-economist researchers, the anti-trust aspects of academic publishing are likely confusing and opaque.

For instance, libraries and consortia are exempted from organizing tenders for their publication needs as each article exists only in one journal with one publisher. This is called the single or sole source exemption from procurement law and essentially means that academic publishers have monopolies on each of their articles and hence each of their journals.

At the same time, this conglomerate of monopolies is often referred to as the “[publishing market](#)”, where there is market consolidation or concentration, leading up to an “[oligopoly](#)”.

So which is it now, a market with competing providers or a conglomerate of monopolists?

The distinction lies in the perspective taken. From the perspective of libraries and readers (the demand side), neither publishers nor journals can be substituted and so the publishers appear, effectively, as monopolists. From the perspective of publishers (the supply side), they offer content across disciplines and effectively compete for the money available in the sector. However, as the libraries and readers do not have any choice but strive to achieve maximal coverage of the literature, this competition does not depend on the quality of the products. Instead, publishers devise pricing strategies trying to obtain the largest piece of the pie. The notorious “Big Deal” bundles, where publishers aim to sell increasingly large journal packages, irrespective of the use of the journals for the institution, are an example of such a pricing strategy.

In a sports analogy, one could see a sector with demand-side substitutability as a gymnastics competition, where gymnasts (companies) aim to present sets that are more difficult and contain less mistakes (high quality products) than their competitors, in order to gain points (market share) from the judges (customers). An academic publishing sector with only supply side competition is more like a hot dog eating competition, where libraries and readers would be the hot dogs.

Any analogy fails at some point, so probably more fitting are statements from experts in the field. The European Union has, of course, been very active in this area. For instance, a crucial aspect of market regulation is merger control. In a document from 2001, Dr. Atilano Jorge Padilla reports to the European Commission on “[The role of supply-side substitution in the definition of the relevant market in merger control](#)” and writes:

There is a wide consensus among competition authorities, legal experts and economists about the need to refer to demand-side substitutability for defining relevant markets. The same unanimity, however, does not exist in connection with supply-side substitutability. On the contrary, there seems to be substantial controversy as to the relevance of supply-side constraints for market definition

This is consistent with subjective experience for any customer: the lack of choice is a defining aspect of planned economies as opposed to market-based economies where consumers always

choose among competing products. It thus makes no sense to call a sector where there is no supply-side substitutability a 'market'.

Since the EU common market aims to protect consumer choice, EC market reports are an excellent source for professional analyses of the academic publishing sector. Over a number of years now, various documents have been produced that corroborate the lack of demand-side substitutability and hence the characterization of the academic publishing sector as a conglomerate of monopolies, rather than a proper market.

Already when analyzing a [merger case before the EC in 2003](#), the verdict was clear:

From a demand-side point of view, it is rare that two different publications be viewed as perfect substitutes. There usually are differences in the coverage, comprehensiveness and content provided by two different publications. From the point of view of functional interchangeability, two different publications could hardly be regarded as substitutable by the end-users, the readers.

or

Consumers will rarely substitute one publication for another in reaction to their relative prices. In this case, a strict demand approach would lead to the definition of a multitude of relevant markets of imprecise boundaries and small dimensions.

In a document entitled "[Study on the economic and technical evolution of the scientific publication markets \[sic\] in Europe](#)" the authors come to similar conclusions:

substitution possibilities across journals are limited, so that publishers do have significant market power.

or

Since researchers do not see the various publishers as good substitutes and need access to all good journals, consortia only introduce a relatively weak 'buyer-power' counterpart to the rising concentration in the publishing market.

Also in 2015, again on the occasion of a [planned merger](#), the EC confirmed their earlier findings that

from a demand-side point of view, it is rare that two different publications can be viewed as perfect substitutes, as there are differences in the coverage, comprehensiveness and content provided. Therefore, in terms of functional interchangeability, two different publications could hardly be regarded as substitutable by the end-users, the readers. On that basis, the Commission found that consumers will rarely substitute one publication for another following a change in their relative prices and concluded that a strict demand approach would lead to the definition of a multitude of relevant markets of imprecise boundaries and small dimensions.

or

Publications in different academic subjects are indeed not substitutable from the readers' perspective.

Taken together, over almost 20 years now, the EU has consistently come to the conclusion that academic publishing is not a market in the sense that it does not provide for customer choice (i.e., demand-side substitutability). All of these consistent documents and the fact that publishers obviously enjoy the single/sole source exemption, serve to fully justify the term 'monopolists' when speaking of academic publishers.

It is therefore not surprising, if now, after so many decades of established fact, scholarly organizations such as the German Council for the Sciences and Humanities also come to the [conclusion](#) that

academic publications are a unique, non-substitutable commodity. [...] a journal title can give a publisher a non-competitive market position [...] Functioning, competition-driven market structures do not exist

Inasmuch as current developments may serve to, one day, establish demand-side substitutability, e.g., by transforming academic publishing from a content-based to a service-based sector in the future, it is paramount to emphasize that this must entail that the single source exemption must be dropped and be [replaced by proper tender processes](#), as is standard operating procedure required by law for all other, digital or non-digital products and services where demand-side substitutability exists.