



COMPETITION COMMISSION OF INDIA

Case No. 07 of 2016

In Re

Prime Mag. Subscription Services Pvt. Ltd.

Informant

And

Wiley India Pvt. Ltd.

Opposite Party No. 1

John Wiley & Sons Ltd.

Opposite Party No. 2

CORAM:

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. U. C. Nahta
Member

Dr. M. S. Sahoo
Member



Appearances:

For the Opposite Parties : Mr. Dushyant K. Mahant, Advocate
Mr. Ankur Mittal, Advocate

Order under Section 26(2) of the Competition Act, 2002

1. The present information has been filed under Section 19(1) (a) of the Competition Act, 2002 (hereinafter, the 'Act') by Prime Mag. Subscription Services Pvt. Ltd. (hereinafter, the 'Informant') against Wiley India Pvt. Ltd. (hereinafter, 'OP 1') and John Wiley & Sons Ltd. (hereinafter, 'OP 2') alleging, *inter alia*, contravention of the provisions of Sections 3 & 4 of the Act.
2. The Informant, a subscription agent, is engaged in the business of procurement of various foreign and Indian journals from national and international publishers and sells them to its clients across India. OP 1 is the Indian subsidiary of OP 2, a global publishing company. The Opposite Parties (OPs) specialize in publishing scientific, technical and medical (STM) journals.
3. The Informant has stated that since 2003 till 2010, OPs used to directly deal with the subscription agents. However, in 2010, OPs unilaterally changed this system and appointed some of their subscription agents as authorized agents and remaining subscription agents were required to place their orders through such authorized agents.
4. The Informant has alleged that initially for a period of one year, the Informant was also appointed as an authorized agent, but thereafter the Informant was removed from the list of authorized agents, without any justification and was asked to place its order through the authorized agents.



5. The Informant has averred that the subscription agents were also required to provide complete list of the end-user with whom they deal with. This enabled OPs and its authorized agents to make a database of the end-users and directly deal with them. Further, OPs allegedly started ousting the Informant by directing the authorized agents not to deal with the Informant which has resulted in denial of market access to the Informant. In light of this, the Informant is stated to have suffered financial, reputational and opportunity losses. The said conduct of OPs has been alleged to have caused appreciable adverse effect on competition in the market, in contravention of the provisions of Section 3(4)(d) of the Act.
6. Further, it has been alleged by the Informant that OP 2 issued a directive to all the agents that they can offer a maximum discount of 3% to customers. In case of non-compliance, authorized agents would not accept order from unauthorized agents.
7. The Informant has also stated that journals of OPs are “Must Have” journals due to their reputation and in-depth focus on the subject. Further, established academic and research institutes such as IIT, ICAR, NIT, AIIMS, DRDO *etc.* not only subscribe and rely on the journals of OPs but individuals also rely upon them. OPs are stated to be one among the top five academic publishing companies along with Reed Elsevier, Wolters Kluwer, Thompson and Springer. It has thus been averred that OPs enjoy immense market power, which enables them to dictate terms and conditions as per their whims and fancy.
8. Based on above, the Informant has alleged that OPs have violated the provisions of Sections 3(4) and 4 of the Act.
9. The Informant has prayed that the Commission, *inter alia*, direct OPs to restore the supply of their journals and initiate enquiry under Section 26(1) of the Act.



10. On 2nd March, 2016, the Commission considered the information in its Ordinary Meeting and decided to have preliminary conference with the parties on 11th May, 2016. Subsequently, the Informant filed an application (hereinafter referred as “**Case Withdrawal Application**”) on 16th March, 2016 to withdraw the information in view of a settlement between the parties. The Commission heard OPs on 11th May, 2016 but none appeared for the Informant during preliminary conference.
11. The Commission has perused the available information on record along with the submission made by OPs.
12. At the outset, with regard to the Case Withdrawal Application, the Commission observes that neither any of the provisions of the Act, nor the Regulations made thereunder provide for withdrawal of information filed before the Commission. Therefore, the Commission rejects the aforesaid application. Accordingly, the matter is proceeded with in the terms of the provisions of the Act.
13. The Commission notes that the allegations in the present matter relate to violation of Section 3(4) of the Act and abuse of dominant position by OPs in contravention of Section 4 of the Act.
14. To examine the allegations of abuse of dominance as per the provisions of Section 4 of the Act, it is essential to first determine the relevant market and then examine the dominance of OPs in that relevant market.
15. The Commission observes that the relevant market in context of scientific journal was examined in Case No. 16/2010 *vis-à-vis M/s Prints India Vs. Springer India Private Limited & Ors.* In the said case, the Commission defined the relevant market as “*Publishing STM academic journals in English language*”. Relevant



extracts of the order dated 3rd July, 2012 in said case of the Commission is reproduced below:

“There are evidences that science, technology and medicine are closely related fields for publication industry and some of the leading publishers have built expertise in this area. Further, the existence of International Association of Scientific, Technical and Medical Publishers, founded in 1968 and representing STM publishers worldwide, make us presume that the industry perceives STM to be a distinct segment. Also, various industry reports have treated STM segment as a group as these have been clubbed together for reporting purposes.”

16. Considering that the allegations in the instant matter pertain to STM journals, the Commission is of the view that the relevant product market in this case also would be *“market for publishing of STM academic journals in English Language”*. The Commission also observes that conditions of competition are homogeneous across India. Therefore, the relevant geographic market is taken as India. Based on above discussion, the relevant market is defined as *“market for publishing of STM academic journals in English Language in India”*.
17. It is observed that the Informant has not provided any market share data for OPs in the relevant market, nor the same could be gathered from the public domain. Although OPs also could not provide the details regarding their market share in the relevant market, they have furnished global market share data for STM academic journals. During the preliminary conference, OPs have also argued that their market share in the relevant market is similar to their global market share in STM academic journals market.
18. As per Outsell Report 2015, furnished by OPs, globally in STM journals segment in terms of revenue, in 2014, Elsevier was the leading market player with a market share of 12.8 percent (growing at the rate 1.5 percent) followed by Wolters Kluwer



with market share 4.1 percent (growing at 5.4 percent) while OPs were also having a market share of 4.1 percent but with zero growth rate. The following table contains the details of revenue and market share of top 10 STM journal publishers on worldwide basis.

Global Revenue and Market Share of Top 10 STM Publishers in 2014

Sr. No.	Name of Company	Revenue (in Million USD)	Market Share (in %)
1	Elsevier	3376	12.8
2	Wolters Kluwer	1085	4.1
3	John Wiley & Sons	1070	4.1
4	Springer	1053	4.0
5	Thomson Reuters	1011	3.8
6	Informa plc	901	3.4
7	IHS, Inc	795	3.0
8	athenahealth, Inc	753	2.9
9	China Science & Publishing	628	2.4
10	WebMD Health Corp.	580	2.2
11	Other Companies	15025	57.2
	Total	26277	100.0

Source: Outsell Report 2015

19. OPs further confirmed that the top five global companies are also present in India, and that the market share for OPs in India is only around 4 percent.
20. In view of material available on record, the Commission concludes that OPs do not appear to enjoy a dominant position in the relevant market. In the absence of dominance, the question of abuse of a dominant position does not arise. Accordingly, no case of abuse of dominance is made out against OPs.



21. With regards to Section 3 (4) of the Act, the Informant has alleged that after getting hold of end-user list, OPs have directed their authorised agents not to deal with the Informant. This has caused appreciable adverse effect on competition in the market and thereby amounts to contravention of the provisions of Section 3(4) (d) of the Act.
22. In connection with the allegation under Section 3 (4), the Commission notes that as per Section 19(3) of the Act, an agreement is said have appreciable adverse effect on competition, if it, *inter alia*, either creates entry barriers or drives existing competitors out of the market.
23. In respect of the allegation of refusal to deal, the Commission is of the view that normally, it is the prerogative of an enterprise to choose and decide its distribution channel and persons/entities it wants to deal with, unless it has appreciable adverse effect on competition in the market. In the instant case, it is observed that aforesaid denial/refusal to deal does not affect the inter-brand competition in the STM market. Given the miniscule presence of OPs in the market, it does not affect the end-users at large. Further, the Informant can also switch to other publishers. Hence, the restriction imposed by OPs is unlikely to adversely affect the competition landscape in the distribution market of STM journal. Considering these aspect, as discussed above, such refusal to deal does not cause any appreciable adverse effect on competition in the market. Therefore, the Commission is of the view that there is no contravention of the provisions of Section 3(4)(d) of the Act by OPs.
24. The Informant also stated that OP 2 had issued a directive to all its subscription agents that they can offer a maximum discount of 3% to customers. Proviso to Section 3(4)(e) of the Act contains that “*resale price maintenance*” includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly



stated that prices lower than those prices may be charged.” The Commission is of the view that restriction regarding maximum discount to be given appears to be in the nature of resale price maintenance (RPM), as the aforesaid directive fixes the lower limit of the price of journals. However, in view of the negligible market share of the OPs in the market of STM journal, the impact of such RPM would be limited and not likely to have any appreciable adverse effect on competition. Accordingly, no contravention of Section 3(4)(e) of the Act is found.

25. In view of the forgoing analysis, the matter is closed under the provisions of Section 26(2) of the Act.
26. The Secretary is directed to inform all concerned accordingly

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(Dr. M. S. Sahoo)
Member

Delhi
Date: 28.06.2016