COMPETITION COMMISSION OF INDIA

Case no. 16 of 2010

Date of Order 3rd July 2012

Prints India - Informant

1. Springer (India) Private Limited - Opposite
   Parties
2. India Academy of Sciences
3. Indian Association for the cultivation of Science
4. Indian National Science Academy
5. Operational Research Society of India
6. Department of Psychology, University of Delhi
7. Indian Statistical Institute
8. Association of Food Scientists & Technologists (India)
9. IGCAR, Kalpakkam

Date: ............

Order under Section 27 of the Competition Act, 2002

As per R. Prasad (Dissenting)

1. The allegations
   Information under section 19(1) of the Competition Act, 2002 (Act) was filed on
   12.04.2010 by Prints India (hereinafter referred to as Informant) against Springer
   (India) Private Limited and others (hereinafter referred to as Opposite Parties or OPs)
   and following allegations were made:-
   i) That Springer India has abused its dominant position in the market for STM journals
      published in English language in India.
   ii) That it is imposing unfair and excessive price on the consumers in the sale of
   iii) That it is imposing unfair conditions in the sale of goods requiring the purchaser to
   iv) That it is completely squeezing the margin of the distributors by imposing unfair

   The informant has also alleged that Springer India and all other OPs have entered
   into anti-competitive agreements (co-publishing agreements), thereby violating
   Section 3(3) of the Act which permits OP-1 to

   i) Directly determine sales price violating thereby the provisions of Section 3(3) (a) of
       the Act.
ii) Control the supply of the journals by imposing unfair conditions of furnishing commercially sensitive information violating thereby the provisions of Section 3(3) (b) of the Act.

iii) Share the market by way of allocation of types of goods, i.e. print version and e-journal violating thereby the provisions of Section 3(3) (c) of the Act.

2. Relief Sought
The informant has sought following reliefs from the Commission:

i) To find out whether Springer has infringed Section 4 of the Competition Act, 2002?

ii) To find out whether Springer has infringed Section 3 of the Competition Act, 2002 by entering into anti-competitive agreements with other OPs?

iii) To find out whether the revised prices being charged by the Springer India to be unfair and accordingly direct Springer and other Institutes to reduce the prices to a reasonable level with sufficient margins to the subscription agents to survive in the market?

iv) To find out whether the conditions imposed by the Springer India on the distributors were unfair and accordingly direct OPs to supply the journals without asking for end-user details?

v) To impose the highest penalties on Springer in accordance with the Competition Act, 2002 so as to have deterrent effect and ensure fair competition in the STM publishing market in India.

vi) To Require Springer India to pay the costs to the complainant, and

vii) Pass such other orders as the Commission may deem fit to ensure fair competition in the STM publishing market in India.

The Commission in its meeting held on 08/06/2010, considered the case and on basis of the facts and circumstances of the case, it held that there exists a prima facie case for making a reference to the DG for investigation. Accordingly, the matter was sent to the DG for investigation on 13/07/2010.

3. Background
Academic publication is a small specialised part of the bigger market of book and magazine publication. Its users are only academicians and professional bodies. Articles and papers are contributed into such journals only by professionals in the field to put forward new research and findings. A journal's reputation is built over time with its association with some knowledge body or association of professionals, and also with the excellence of its reports. Therefore, any researcher would want to get his paper published in a reputed journal. However, journals take reviews of experts in the field before publishing a paper. Also, unlike common books and magazines, journals are typically not sold in book shops, but have to be sourced from the publisher through subscription. Due to these factors, academic journals particularly in the field of science, technology and medicine have such common characteristics, and are therefore clubbed together as STM journals by the publishing industry.

3.1 Profile of Springer (India) Private Limited, OP-1
Springer (India) Private Limited is a wholly owned subsidiary of Springer Science+Business Media which is formed by two main companies named Springer Verlag and Kluwer Academic Publishers (KAP). Springer is a US based global major in academic publishing. It is the world’s largest publisher of STM books and second largest publisher of STM journals. The group publishes around 2000 journals and 6500 books a year. It offers the largest STM e-book collection worldwide. The group’s sales in the year 2008 were Euro 892m.

3.2 Profile of other Opposite Parties
The remaining OPs are institutes or associations of professionals. These associations/ institutes/ societies are reputed in their fields and publish journals in their respective fields through Springer India.

3.3 Profile of Prints India, the informant
The Informant, Prints India, a sole proprietorship firm established in 1966, is engaged in the business of distribution and exports of Indian Journals for domestic and foreign clients. It is also a major supplier of block volumes of Indian journals. Prior to the entry of Springer, Prints India has been distributing most of the reputed Indian scientific journals published by several institutes of national repute in their respective fields.

4. Finding of the DG
DG conducted investigation into the alleged conduct of Springer India and others and submitted its first report on 19.10.2010 and supplementary report on 16.05.2011. In the overview, DG has noted that STM publication could either be formal (e.g. journal articles, books) or informal (conference presentations, pre-prints). In the group of formal publication, books and journals are distinct on the basis of time-sensitive content and content itself, historical perspective and coverage. Publishing cycle comprises of submission of research articles to the journal editorial office, peer review for a methodological check on the soundness of the arguments and strength of originality of the conclusions. Once the journals are published, they are made available to the subscribing institutional libraries, often through a subscription agent. Authors publish to disseminate their results and also to establish personal reputation and priority of ideas. Citations, an important part of scientific articles, help the author build their arguments by referencing to earlier work without having to restate that work in detail. The number of citations a paper receives is often used as a measure of its impact and of its quality. Journals are marketed to the library and individuals. Subscription agents are an important part of the sales channel. Agents act on behalf of libraries, allowing the library to deal with one or two agents to manage relationship with large number of journal publishers, each with different order processes, terms & conditions. Agents also provided a valuable service to publishers by aggregating library orders and converting them to machine-readable data, handling routine renewals, and so on.

4.1 The number of agents, as observed by DG, has been declining in recent years, primarily due to mergers and acquisitions in the industry, and the lack of new entrants. Further, the move to electronic publishing and consortia sales has also brought about increasing disintermediation of the function of the subscription agents.
With the rise in electronic publishing, sales of individual journal subscriptions have fallen as a proportion of total sales in favour of bundled subscription. The library is offered electronic access to all titles in the bundle at a price reflecting the libraries' existing print subscriptions plus a top-up fee for electronic only access to the non-subscribe titles. It is estimated that about 96% of STM journals were accessible electronically in 2008 (Cox & Cox 2008).

4.2 The annual revenues generated from English language STM journal publishing are estimated at $8 billion in 2008. As per the report of UK's Research Information Network, RIN 2008, Library subscriptions account for 68-75% of the total revenue, followed by corporate subscriptions which accounts for 15-17%, advertising 4%, membership fee and personal subscription 3% and various author side payments 3%. By geographical market, about 55% of the global STM revenues come from the USA, 30% from Europe, 10% Asia/Pacific and 5% from the rest of the world. India with compound annual growth of 4.5% has failed to grow as fast as other Asian countries like, China, Singapore, South Korea and Taiwan. The distribution of journals by publisher is highly skewed. It is dominated by a small number of commercial publishers (Elsevier, Wolters Kluwer, Thomson, Springer combined represent almost 50% of the market). Elsevier leads the market with around 28% market share whereas, Springer has approximately 10% market share. Apart from the commercial publishers, there are many societies who publish a few journals. The third type is the university press, notably Oxford University Press (OUP) and Cambridge University Press (CUP). Analysis done by Elsevier reveals that proportions of article output by type of publisher are: Commercial publishers - 64%; society publishers - 30%; University Presses - 4%; other publishers - 2%.

5. Analysis of relevant market:
DG has submitted that relevant product market in the present case has to be determined with reference to 'Journals published in India in English language in the field of Science, Technology and Medicine' that are published / marketed commercially by the publishers as a distinct category. It has also argued that STM journals, comprising of narrow range of journals which are purely academic and are of highly advanced and sophisticated standards meant for scientific researchers and academics, constitute a separate and distinct category of product. Further, DG has limited the market to 'STM journals printed in English' on the grounds that advanced level academic work and research in the field of Science, Technology and Medicine is carried out in India almost exclusively in English. On defining the relevant geographic market, it is been submitted that the market conditions and terms of procurement of STM journals are same for all distributors in India and there are no regulatory barriers within the boundaries of the country. Further, citing the provisions of the Act that limit its applicability to market in India, DG has concluded the relevant geographic market to be whole of India.

6. Dominance of Springer India in the relevant market
The DG has analyzed conditions given in section 19(4) of the Act to ascertain dominance of Springer India in the relevant market.
6.1 Market Share / Power: DG has stated that for assessing the market share / power, revenue figures may not be relevant, especially in the present case. Rather, the appropriate criteria would be the portfolio of ‘must have’ journals possessing ‘must have’ characteristic. Therefore, a look at Springer’s portfolio of STM journals published in India is necessary to examine its market power. As submitted, Springer India co-publishes 43 STM journals in association with prominent scientific societies / institutes in India. Most of these journals are being published for decades and they enjoy high reputation in academic reference circles. Accepting the data provided by the Informant, DG has concluded that Springer has 31% share in terms of number of STM journals (47 out of 150) and 64% in terms of circulation numbers (35000 out of 55000) pertaining to these journals. Further, DG has submitted that the 47 journals for which Springer India has acquired rights are the ‘must have’ titles for subscribers and this standard makes their position dominant in the STM segment. Any library or institution or even an individual interested in research work being done in India in the field of science, technology and medicine, cannot afford to ignore Springer’s portfolio. On the basis of above, DG has concluded that the market power of Springer India is unassailable and fortifies its dominant position.

6.2 Size and resources of Springer: In order to evaluate the size and resource of Springer India, DG has cited the Annual Report 2008 of Springer Science + Business Media, according to which it is second largest publisher of STM journals, largest publisher of STM books and a significant publisher of information for professionals, especially in Germany and Netherlands. The group publishes around 2000 journals and more than 6500 new books a year, and offers the largest STM e-book collection worldwide. Springer has operations in about 20 countries in Europe, the USA and Asia, and has around 5000 employees. In 2008, it generated annual sales of around 892 million Euros. Thus, DG has concluded that size and resource of Springer India is immense giving it unparalleled market power in the STM Journal sector in India.

6.3 Size and Importance of the Competitors: DG has submitted that Springer India does not face any significant competition in the relevant market and goes on to say that anyone having access to copyright material acquires a unique position.

6.4 Entry Barrier: DG has submitted that publishing STM journals is a highly specialized field and involves several high-cost activities like recruiting writers, judging, reviewing, editing, copy editing and typesetting articles. Most importantly, the journals’ reputation is built through rigorous academic quality. All of these act as entry barrier for new entrants. Other barriers are network effects, coordination, the existing stock of journals held by incumbents, and the high switching costs for libraries. To support the view, it has cited Annual Report 2008 of Springer that mentions about high entry barrier in the relevant market.

6.5 Dependence of consumers: From the perspective of academician and researchers, the STM journals of a particular discipline are indispensable to scholars/academics of that discipline. Based on the reputation and reliability of journals libraries / institutions can also not afford to substitute a particular portfolio of journals. As Springer India is having co-publishing rights of most of the leading
STM Indian journals, the scientific research scholars and institutions, involved in the activities of knowledge sharing in this field in India or interested in the field of STM research in India, are hugely dependent on it.

6.6 **Vertical integration of the Enterprise:** DG has submitted that Springer India has a wide sales network and is spread over several countries and has huge financial and marketing capabilities. It also provides electronic platform "Springerlink" which gives the company a cutting edge. Thus, the exclusive co-publishing rights of Springer India coupled with its presence in the distribution network of 'STM journals published in English in India' makes it a vertically integrated enterprise and gives immense power to dominate the relevant market.

6.7 **Countervailing buying power:** DG has submitted that on account of exclusive rights of Springer India to publish and distribute 'STM Journals published in English in India' and their 'must have' characteristics, neither the distributors nor the consumers of STM journals have any significant countervailing buying power. Further, in a short span of time, prices of the journals published by Springer India has increased manifold.

6.8 On the basis of aforesaid, DG has concluded that Springer India enjoys dominant position which enables it to operate independently of the competitive forces prevailing in the relevant market and/or to affect its consumers in its favour.

7 **Abuse of the dominant position:**
Having defined the relevant market as 'market for STM journals published in English language in India' the DG concluded that Springer India is a dominant player in this market and then proceeded to analyze whether OPs have abused their dominant position in the relevant market.

8. **Imposing unfair (excessive) prices**
The Informant had submitted that price of the journals published by Springer India have increased substantially over a very short period of time, and even the prices for 2011 are substantially higher than that of 2010. On this DG has observed that the magnitude of the increase in prices of journals and its continuing trend cannot be said to be commensurate with the value of addition of services which the company is claiming. The DG has also submitted that a consumer has not been given any choice to avail or not to avail the value added services and are compelled to avail these services by reason of their dependence on Springer India and to make payment for the services which they may not require. Further, if Springer India had delinked the price of its value added services from the basic price of the product, the consumers would not have been subjected to unfair prices. DG has, thus, concluded that Springer India is found to have abused its dominant position by imposing unfair price in sale of its goods in violation of Section 4 (1) read with Sub section (2) (a) (ii) of Section 4 of the Act.

9. **Imposing unfair condition in sale**
Perusing the co-publishing agreements signed between Springer India and societies publishing the journals, DG has found that the format requires subscription list from
the societies and has right to use such data to send information regarding its services and products. Also, furnishing of end user details like name, postal address, e-mail, IP address etc. by the informant has been kept as an obligatory clause in the agreement signed between Prints India and Springer India.

9.1 Citing a clause in the proposed ‘Service Level Agreement’, DG has submitted that standard commission on subscription has been stated to be 5% with respect to print/electronic journal subscriptions with end user address information while 4% commission has been offered for subscription without end user address and concluded that that end user information is very crucial to Springer India.

9.2 DG has also relied on the statement of the informant that other STM publishers like ICFAI University press, Serial Publications, Taylor & Francis, Medknow Publications, Research India Publications, Taru Publications and Pushpa Publishing House do not seek such end-user details.

9.3 Giving credence to informant’s statement that its order for subscription has decreased considerably after supplying end user data (a commercially sensitive information) of its customer to Springer India, DG has concluded that requirement of end user data in the capacity of co-publisher from the distributors is patently wrong & an unfair condition and a misuse of its dominant position in violation of section 4(1) read with 4(2) (a)(i) of the Act. Further, the stoppage of supplies of journals to the distributors for want of end user data from them would also violate section 4(2)(c) as it will be a practice resulting in denial of market access to the distributors. The imposition of the obligation by Springer India to furnish the end user data upon a party with whom it is dealing on a principal to principal basis would also be in violation of Section 4 (2) (d) of the Act.

10. Margin Squeeze
DG has observed that margin available to the distributors/subscription agents before acquiring co-publishing rights by the Springer India were in the range of 10% to 30%, which subsequently was reduced to 5% by Springer India. It has been submitted that a subscription agent has some major responsibilities towards the customer like making of advance payment to the publisher, bearing of cost if order for journal is cancelled and loss to be borne out if material is damaged or is lost in transport. In view of this, reduction of margin to such a low level of 5% would make business unviable for the distributors resulting in their being driven out of the market. DG has thus concluded that margin squeeze is a part of design of Springer India to drive distributors out of the market and amounts to unfair condition in sale and hence violation of Section 4(2)(a)(i) of the Act.

11. Allegation of Anti-competitive Agreements
Regarding the allegation of anti-competitive agreement (co-publishing agreement) between Springer and the named Indian institutes, DG has stated that these are more appropriately covered under Section 4 instead of Section 3 of the Act and that it would not be appropriate to charge a party in terms of Section 3(3) and Section 4 at the same time. Also, such agreements are usual norms in the field of STM Journal publishing all over the world.
11.1 Further, DG has submitted that the Societies / Institutes are engaged in serious academic research work and are not business entities and that most of them appear to be fully funded by the government. Their co-publishing agreement with one of the leading publisher of the world can be seen as an attempt to become free from the responsibility of marketing the journals which they are publishing. In the process, they are also gaining wider reach of their journals. Thus, the co-publishing agreements between Springer India and the Societies/Institutes cannot be said to be anti-competitive in nature.

12. Conclusion of DG Report
In view of the investigation conducted in the case, DG has finally concluded that Springer India is found to have abused its dominant position and the same is prejudicial to the interest of consumers at large and competition in the relevant market.

13. Response of the Springer India (OP-1) on DG Report
When DG report was sent to the Ops to invite objections, the Springer India, the OP-1 stated that the investigation report and the supplementary report prepared in the instant case by the DG is flawed and erroneous and is based on assumptions. The objections raised by the Springer India are given below:

(i) **Business Model** - Springer India has submitted that there is no comparison in the business models of Springer India and Prints India; the latter is a subscription agent whose main motive is profit earning. Moreover, 65% of Springer India's STM journals in India are procured through subscription agents and 35% of the business is directly handled by Springer India itself. There is no exclusive agreement between Springer India and the subscription agents and transactions are on a principal to principal basis.

(ii) **Malafide intention of the Informant** - Springer India has pointed out that Prints India has engaged itself in the malpractice of purchasing Indian journals at Indian subscription prices and selling them to foreign subscribers at higher rates, thus earning supra normal profits. Further, it has attempted to sell the journals outside India, when it does not have the overseas distribution rights.

(iii) **Presumptuous Approach of DG** - The DG has predetermined the relevant product market and then tried to justify the same without conducting any independent exercise. Further, it has not done any survey from the libraries / institutions to determine what constitutes a 'must have' journal and that it has relied on the submissions of the informant that journals of Springer India belong to the 'must have' category.

(iv) **Relevant market** - DG has made erroneous reference to the Candover case, a merger case as opposed to abuse of dominance investigation, to arrive at the conclusion that STM journals published in India in English language constitutes the relevant market. It has submitted that the European Commission had concluded that "strong indications have been found that a distinct market for STM publications may be considered to exist, however, market definition may be left open since the competitive assessment, even on..."
the basis of a narrower market that an overall market for academic publishing, is not changed'. Similar approach has been adopted by the office of Fair Trading, United Kingdom in its guidelines on market definition.

The European Commission had recognized the difficulty in defining the relevant market in publication industry strictly from a demand side perspective and, therefore, suggested supply-side substitutability. It has also been submitted that suppliers are able to switch production processes, thus having considerable effect on the competitive behaviour of the companies producing products which are demand substitutes. In view of this, relevant product market may be broadened to include all academic journals published in English in India.

Although journals, books and magazines have some different characteristics, they also share many similar characteristics, which suggest that they all should be part of the same relevant market. Further, Springer India has argued that two products do not have to be identical to include them in the same market; if consumers view them as sufficiently close substitutes, then they belong to the same market.

(v) Dominance: The DG has concluded that since price of the journals published by the opposite party has increased, it is dominant. Springer India has pointed that such a methodology has a circular fallacy in that a firm could be found dominant due to its conduct and the dominance would lead to the conduct itself being categorized as anti-competitive.

Springer India has submitted that DG has relied on the fabricated data of the informant to arrive at the conclusion that it is a dominant player in the relevant market; in the process, it has also ignored the reality of the market dynamics of the industry. Following submissions have been made in this regard:

DG has failed to show that Springer India has been holding persistently high market share over a period of time, thus enabling it to acquire the status of a dominant player.

There are market intelligence agencies which show that Springer India holds less than 10% of the market. Further, response of Elsevier India suggests that they hold about 23% of the market share, which makes them leading player.

Contesting the data of DG that there are 150 STM journals, out of which Springer India publishes 47 that are 'must have' journals and that market share of Springer India is 31% in terms of number of journal and 64% in terms of circulation of these journals, Springer India has submitted that one of the publishers i.e. Medknow publishes nearly 151 journals in medicine. It has further submitted that there are easily more than 300 STM journals in India, on the basis of which market share worked by the DG is not correct.
DG has not considered the fact that Springer India has two types of co-publishing agreement with Institutes in India – full service journal (Springer India has the world-wide distribution right) and hybrid journal (Springer India has overseas distribution rights). Springer India has argued that if relevant geographic market is taken as India, DG ought to have considered only the hybrid journals (only 26 out of 47 publications) for determining the market share. Springer India has argued that in such a scenario, it would have a market share of about 17% only.

Springer India has also submitted that value figures provide a more appropriate picture of market share in case of differentiated products, like in the present case. While submitting that it does not have the leading market share in terms of sales revenue, Springer India has also submitted that DG has ignored the sales revenue in determining the market power in India but has relied on the global sales data of Springer India’s parent company to establish that it has unparallel market power in the STM journal sector in India.

(vi)  
Abuse of dominant position:

(a) Imposing excessive prices

Springer India has submitted that abuse of excessive pricing occurs when a dominant firm charges a price that has no reasonable relation to the economic value of the product supplied. In the present case, the DG has failed to show that prices charged by Springer India are excessive when compared to cost of publishing the journal. Moreover, no price comparison has been done between Springer India’s price and that of competing journals published by other competing publishers. It has also submitted that DG did not make any attempt to consult the customers while determining and conducting that the rise in prices did not reflect the value addition to the consumer. Finally, Springer India has averred that it is not appropriate to compare the prices of two different time periods since the journals were distributed by a different firm which had totally different processes.

(b) Imposing unfair conditions in sale

On this particular issue, Springer India has submitted that it is an industry practice to call for user details to facilitate access of online format, which not only helps in protecting the copyright and intellectual property rights but also reduces chances of piracy.

(c) Margin squeeze

Springer India has submitted that DG has failed to establish either that a margin squeeze has occurred or that there has been an adverse effect on competition. Further, a reduction in commission cannot be regarded as margin squeeze unless the DG is able to demonstrate that an equally efficient competitor would not be able to survive with current level of discounts. Springer India has further submitted that despite a decline in the commission rate, the actual discount available to a distributor in money
terms has actually increased, suggesting increased revenues for the distributor. Finally, it has said that the discount rate of 5% is in line with international trade practice.

(vii) Economic Analysis submitted by the Opposite Party
The economic analysis prepared by Compass Lexicon (commissioned by Springer India) has made the following remarks on the DG investigation report and supplementary report in the instant case:

a) The reports incorrectly rely on a European Commission ('EC') merger decision in the Candover case as a basis for the STM market definition. In the decision, EC does not conclude on the market definition. It suggests there may be a market for STM but does not provide any evidence.

b) The reports incorrectly rely on firms' marketing statements as a basis for market definition for the purposes of a competition law investigation.

c) The reports fail to consider whether supply-side substitution would justify a wider market. If a publisher was already offering STM journals to a library it seems that it would be easy for it to add additional titles to its portfolio in other fields. It would only have to enter into an agreement with an institute in that field to publish its journal.

d) The reports fail to explain why journals are in a separate market to books and magazines. First, two products do not have to be identical to include them in the same market. Second, although journals, books and magazines have some different characteristics, they also share many similar characteristics.

e) The reports fail to provide robust evidence that Springer holds a persistently high market share. The reports offer no robust calculation of market share over time in the relevant market. The only market shares in the main report are those that were supplied by the complaint, which remain unsubstantiated.

f) The market share overstates Springer's position in India because many of the institutes it has agreements with are the "hybrid" agreements, on account of which Springer has the right to distribute only 26 Indian journals within India and this is the relevant number for the purpose of market share given the market definition used in the reports. Consequently, even on a narrowly-defined market that includes only journals published in India, Springer's market share would be only 17%.

g) The reports fail to provide evidence that Springer's journals are "must have". The reports argue that Springer's portfolios of STM journals
give it an “indispensable market power”. These arguments are pure speculation and the only evidence that the reports offer appears to be comments of distributors.

**h)** The main report argues that the exclusive agreements are a barrier but does not explain why. One cannot simply assume that the mere existence of an exclusive contract prevents entry. Further, the reports fail to recognize that Springer itself is a new entrant. If Springer can enter so easily, there is no reason why others cannot enter the same market.

**i)** The reports fail to show that vertical integration is a barrier to entry. First, the reports have not yet established that “distribution” is a separate market to “publishing”. Second, even if Springer was vertically integrated it might only be a barrier if (a) others cannot replicate that position and (b) Springer is not prepared to supply the upstream product (journals) at a price that allows downstream players to compete. The reports fail to show that (a) and (b) apply.

**j)** The main report incorrectly claims that price increases in themselves show dominance. This is an illogical and circular argument.

**k)** The reports have made no attempt to calculate the cost of publishing the journals. Therefore the reports cannot conclude that the prices are excessive based on costs. The reports fail to compare the prices of Springer’s journals against comparable products. A straight comparison of prices does not reflect the difference in value for end user. Since Springer has published the journals, customers are able to access electronic versions of the journals. This additional service may justify a higher price.

**l)** The reports have failed to explain why collecting user details will have an adverse impact on competition. First, obtaining end-user data will have little effect in practice. This is because the main customers are libraries, so Springer could easily obtain customer contacts anyway. Second, if Springer obtains customer information and contacts those customers directly, this means customers will have more suppliers to choose from. Third, the request for details may be objectively justified if it is necessary to protect against misuse of the electronic versions of the journals.

**m)** The reports do not show that the distributors cannot make a profit margin. The main report argues that because the distributor has “major responsibilities towards the customer” a 5% commission makes the business unviable. This is a speculative and unsubstantiated assumption and not sufficient to show a margin squeeze.
n) The reports fail to make a comparison of the distributors' revenues against costs. It is not even clear from the reports that the distributors' commission revenue has fallen. The commission may have fallen from 10-20% to 5%, but the price of the journals (according to the report) have risen by up to 600%. Therefore the distributors may actually be better off than before the agreements.

o) Whether distributors can make a profit from the prices is the wrong test to apply for a margin squeeze case. The international practice for a margin squeeze case is to test whether an “equally efficient” competitor could survive with the existing prices. This is to avoid competition law protecting weak and inefficient firms.

On the basis of the above arguments, the economic review concludes that:

I. The reports do not properly define the relevant market. The reports fail to show that science, technical and medical (‘STM’) journals is a relevant market and fail to show that journals are in a separate market to books and magazines.

II. Even if the reports and correctly defined the relevant market, they do not show that Springer holds a dominant position on that market.

III. Even if the reports had demonstrated that Springer holds a dominant position, they do not show that the conduct of Springer constitutes an abuse. The reports fail to show: that Springer’s prices are excessive; the allegedly unfair contract terms adversely affect competition; or that Springer’s discounts have led to a margin squeeze.

Informant’s response on DG reports and Springer’s objections

14. The response of the Informant is given below:

(i) DG has rightly concluded that the relevant product market would be the market for Scientific, Technical and Medical (STM) publishing in English language, considered a group of similar subjects under the academic publishing industry. While doing so, extensive reference has been made to the celebrated Candover Case.

(ii) Letters issued by few research institutes to buttress the claim that sale and distribution of journals by Springer has been done in transparent and professional manner are actually written at the behest of Springer.

(iii) Contrary to the submission of Springer that 5% discount is the usual commission rate as per industry standards, the actual commission rates are in the range of 15-25%. The informant has denied that it has procured copies of the
journal ‘Sankhya’ from Indian Statistical Institute and sold them abroad though they were meant to be sold in India. With regard to raising invoice to EBSCO, the informant has submitted that the party has standing orders and hence there was no need for renewal of annual subscription.

(v) Springer is influencing the market of hybrid journals (where it does not have the right to sell print version in India) also, as evident from the fact that various research institutes have directed the informant to approach Springer.

(vi) The informant has denied that it is abusing the process of law and using the garb of ethos of competition law to further its own personal interest. On the contrary, the informant has brought to light the wrongful portrayal of the Order of the Ld Senior Civil Judge, Tis Hazari Courts, Delhi and has submitted that by doing so Springer has tried to mislead the Commission and prayed for appropriate proceedings.

(vii) As against the claim of Springer that seeking end-user details is a norm, informant has submitted that Francis Taylor, which has been quoted by Springer as demanding the same, does not ask for the same.

(viii) Finally, the informant has reiterated that the Springer India is a dominant player in the relevant market and has been abusing its dominance citing various conditions under section 19(4), and also the anti-competitive agreements signed by Springer with various institutes contravene the provisions of section 3 of the Act.

Finding on the Merit

15. Before going into the merit of the case it is important to understand this market.

(i) Publication industry
Publication is the act of making content available to the public in various forms like text, images, or other audio-visual content on any medium, including paper (newspapers, magazines, catalogues etc.) or electronic publishing forms such as websites, e-books, compact discs etc. It also refers to any copies made thereafter. It includes a set of activities pertaining to acquiring, selecting, editing, presenting and marketing and selling content.

Publishing industry consists of publication of books, newspaper, magazines, periodicals, journals, information fliers etc. in different categories like fiction, current affairs, literature, academics etc.

The scholar author who contributes an original research paper in a book or journal usually owns the intellectual property to the piece and therefore copyright aspect has to be kept in mind in the present case. However, it is an endeavour by any researcher to get his paper published in an academic journal of prestige and standing.
(ii) Process of publishing
The process of publishing starts with submission of an article by an author. The editorial team of the publisher, then, refers the same for a peer review to ascertain the originality of ideas and authenticity of data. Once this step is through, the article is ready to be published.

In case the journal is to be published in physical form, it is printed and distributed to the libraries/institutions and other users, typically with the help of subscription agents.

In online publishing, certain value added activities have to be performed so that perceived benefits actually accrue to the authors (receiving citations), editors (for peer review purpose) and readers (indexing, cross-referencing and archive-retrieval). Provision of these value added services entails putting in place appropriate software that is capable of performing these activities simultaneously and efficiently. As regards distribution in the online format, a user has flexibility of subscription in as much as he may opt to purchase a particular article or he may subscribe to a journal/bouquet of journals, depending upon the requirement and budget. This diversity of choice may be made available directly by the publisher or indirectly by an online aggregator. In effect, the value is enhanced when publication happens online.

(iii) Characteristics of publication industry
Academic publishers are grouped into one of three categories: commercial publishers, learned societies and university presses. However, majority of contemporary academic publishing job is being done by commercial publishers who are guided by business considerations. According to a report available online (http://versita.com/userfiles/file/STM%20publishing%20industry%20and%20market.pdf), top 3 for-profit publishers account for more than 25% of the journals market.

The journal publishing industry displays characteristics of a two-sided market. Authors look to journals primarily as a means of facilitating dissemination of their work to as wide an audience as possible. Publication builds the reputation of both the author and their work within the academic community, with the systems of peer review and impact factors contributing to this. An important function of publication of a paper in a journal for a scholar is date stamping of the research whereby the work is acknowledged as that of the scholar vis-a-vis similar work being done by any other scholar. For readers, journals offer an aggregation of current research in the field of interest, with peer review systems ensuring that articles are reputed, giving some indication of the importance of the work. Dissemination also ensures that readers become aware of current research and methodology in their fields, preventing duplication of experiments and raising awareness of new techniques.

It may be apparent that demand for any reputed journal is hardly affected by price because it is unique in its field and not substitutable with
another journal. As majority subscribers of academic journals are the central library and department libraries of Universities, professional bodies and reputed organizations the increase in price of a journal may not make it dispensable or substitutable.

Journals that have established their reputation in a particular field become indispensable by users. In the event of a price increase, libraries cannot afford to cancel subscriptions which would otherwise result in their researchers losing access to the latest developments in the academic research in this field. Also, the other demand-price characteristics such as standard of the work sought, ease of access to articles and the journals not being close substitutes of each other make the demand for academic journals inelastic.

(iv) Changing industry dynamics
To highlight the transformation in the industry, that assumes importance in the analysis of the present case, we restrict our focus to publication of academic journals (also called scholarly publications), which is a highly specialized activity involving various processes such as submission of articles by scholars/authors, arranging for a peer review, editing, type-setting and finally marketing and distribution.

With the switch-over to electronic publishing, the business model has undergone certain changes, including structural changes, notably in the business processes and delivery mechanism.

The need for a traditional distributor/subscription agent is no more a pre-requisite for sales and distribution of online journals. With the advent of electronic publishing, new types of intermediaries have emerged, and the rules of traditional intermediaries have changed. As long as they deal with electronic material, they all can be better described as aggregators. Increasingly, there are evidences of direct interface between subscriber and publisher like pay per use model. More importantly, under the new paradigm (i.e. online publication), marketing and distribution function could either be taken up by the publisher himself or they may appoint an online aggregator for doing the same.

The paradigm shift is not limited just to the way business is conducted online it is equally important to comprehend the academic content provided by publishing companies. The intrinsic value of a journal or the society/association that publishes it is derived from its ability to attract the best minds in contributing to their journals. In the earlier publication/distribution business model good journals no doubt claimed premium in terms of quality, number of citations, by attracting eminent scholars and scientists. In the new business model all of these activities as noted earlier are done simultaneously and online.
To highlight the changed paradigm, a working paper presented to OECD has stated that market share of online format in the category of scientific, technical and medical journals was about 60% in 2003. Now, it is believed that more than 80% of scientific, technical and medical academic journals are available online.

Although countries in the Europe and USA had successfully implemented the contemporary model decades earlier, notably during the 1970s, India was late to adopt the online format of academic publication due to lack of supporting hardware and internet connectivity at users end.

The benefits of online distribution are numerous, all of which improve the accessibility of published scientific research are summarized below:

- Speed of delivery has been improved. Articles are accessible from the moment of publication.
- Online journals are available on the campus network and accessible from any computer system on the network, thus allowing multiple access at the same time.
- The speed and functionality of the technology has improved the ability to search and locate research papers, to link from citations to the articles cited, and to link from articles to databases and other resources. Further, indexing of online literature has become easier and more effective.

An interesting trend that needs mention is the emergence of alternate online mechanism being adopted to make the journals more affordable. Some of the evolving models being explored are open publication models and adding community-oriented features to increase the reader-base. Effectively, this means that any person can make available his research work to the world at large by putting his work on an internet portal. The only consideration is that of visibility and acceptability of the portal to attract target readers in large number. To overcome this problem, a number of small not-for-profit learned and professional societies are coming together as an alternative to the commercial publishers. However, it will take some time before a working model can be put to use.

(v) Indian Scenario
Historically, in India, publication of academic journals was being done by the institutes themselves, primarily in physical form and the distribution was performed by the appointed distributors / subscription agents. As is evident from the case, academic publishers took the help of the distributors / subscription agents to reach to the end-users of their print journals. In return, these distributors / subscription agents were offered certain discounts on the cover price, the price at which the journals were finally sold to the end-users. Thus, the institutes and their distributors / subscription agents shared cozy relation between them.
Now, academic journal publication in India is witnessing the same paradigm change that the world had witnessed decades earlier. While recognizing that there will be tensions in the existing business model, none the less the transition will take place because of its inherent advantages to both authors and readers.

The present case reflects the prevailing Indian scenario. The informant is a distributor of journals originally published by societies. It is now a distributor of Springer India also.

In the broader market for academic journals, there is a classification called as STM (Science, Technology and Medicine) journals. The vast majority of STM journals are now available online and it has been estimated that about 96% of STM journals were accessible electronically in 2008 (Cox & Cox 2008). Springer launched its e-book program in 2006 with 10,000 titles and has been adding 5000 annually. It has now around 30,000 titles on its e-platform.

**Competition Concerns**

**Defining the relevant market**

16. After understanding the market dynamics of the publication industries it is to be examined whether the relevant market as defined by the DG is correct and whether the OP-1 is a dominant player in that market and if it is so then whether OP-1 has abused its dominant position in that relevant market. The DG has determined the relevant product market in the present case as “Journals Published in India in English Language in the field of Science, Technology and Medicine” on the basis that these Journals are published and marketed commercially by the publishers as a distinct category because the STM Journals, comprising of narrow range of journals which are purely academic and are of highly advanced and sophisticated standards meant for scientific researchers and academics, constitute a separate and distinct category of product. Further, DG has limited the market to ‘STM Journals published in English’ on the grounds that advanced level academic work and research in the field of science, technology, and medicine is carried out in India almost exclusively in English. Regarding the relevant geographic market the DG has submitted that the market conditions and terms of procurement of STM Journals are same for all distributors in India and there are no regulatory barriers within the boundaries of the country and also the provisions of the Competition Act limits its applicability to market in India therefore, there relevant geographic market, according to the DG, is whole of India.

17. On the other hand the OP-1 i.e., Springer India has disputed the determination of relevant market by the DG on the ground that DG has made erroneous reference to the Candover case which is a merger case and cannot be applied in the case of abuse of dominance to arrive at the conclusion that STM journals published in India in English language constitute the relevant market. Secondly, the European Commission had recognized the difficulty in defining the relevant market in publication industry strictly from demand side perspective and therefore it suggested supply side substitutability as the suppliers are able to switch production processes, thus having considerable effect on the competitive behaviour of the companies producing products which are
demands substitutes. The Springer India therefore, wanted to broaden the relevant product market defined by the DG to include all academic journals published in English in India. Further, although journals, books and magazines have some different characteristics, they also share many similar characteristics, which suggest that they all should be part of the same relevant market. It was also argued by the OP-1 that two products do not have to be identical to include them in the same market; if consumers view them as sufficiently close substitutes then they belong to the same market.

I have carefully considered both the view on defining relevant market in the instant case. I am of the view that while the Indian Competition Act gives weights to demand substitutability as perceived by the consumers for determining the relevant market, several jurisdictions across the globe also consider the aspect of supply-substitutability. The European Commission’s Notice on Definition of Relevant Market for the purpose of Community Competition Law (OJ 1997 C 372/03) identifies demand substitutability, supply substitutability and potential competition for defining the relevant market. What is more relevant in the present case is that the business model as well as publication process has undergone a sea change. Prior to the entry of Springer India, the leading institutes, some of them government-funded, used to publish and print the journals in physical form themselves, leaving the subscription function to be taken care of by the subscription agents. However, with the advent of Springer India, these institutes signed co-publishing agreements with the former with a broader objective to free themselves from the time-taking editorial/publishing process and at the same time carving recognition to these journals on a global platform, which has been possible with online format of publishing. Given the fact that new-age publishers possess their own distribution channel, dependence on traditional distributors was marginalized.

Considering the arguments put forward by DG that books, periodicals and journals would not be a part of same relevant market, I am of the view that publication of journals, is different from books and other types of periodicals is an altogether distinct category on account of its unique characteristics, target readership, contributing authors and selection of content. The restriction is not merely to journals but to academic scholarly journals. The journal publication industry broadly caters either to the practicing professional or to the members of academia. The two types of journals differ vastly - academic publishing involves publishing of journals, which are aimed at researchers and academics, whereas professional publishing entails the publishing of periodicals, which are intended for professional use and/or provide information to practitioners and professionals. Thus, while the content of the former category could be new ideas / theories, the latter is the practical application of these thoughts. It is thus clear that in the present case, the relevant market should be limited to the publication of academic journals. Within academic journals, the DG has rightly restricted to a category defined as STM based on industry classification.

Academic journals are published subject-wise / discipline-wise in line with the level of specialization and exclusivity results in attracting limited authors and readers on account of differences in the coverage, comprehensiveness and content. It is a well-known fact that every article / contribution of an academic journal is unique. Thus, from the point of view of functional interchangeability, two different journals (dealing on different subjects, often unrelated) could hardly be regarded as substitutable by the
end-users i.e. the readers. As a matter of fact, strictly speaking, even two different issues of the same journal having different content might be regarded as non-substitutable by the readers. In effect, market of each journal can be a relevant market in itself, in an appropriate situation. However, the OP-1 in the present case is a publisher of many such journals and it is practical to examine the aggregate market of all such journals because all of them have similar commercial characteristics. It is not imperative to study each journal as a relevant market as the outcome in the present case would be nearly same.

Alternatively, the other factors which would help in delineating the relevant market should be considered. It was earlier noted that there is a degree of contestability in academic publication as witnessed from the emerging paradigm like self-publishing, community-publishing etc. Further, on account of benefits relatable to economies of scale and scope, from the supply side, the relevant market could be enlarged to include entire academic journal, as proposed by Springer India. However, there are signals that science, technology and medicine are closely related field for publication in that 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, makes us presume that the industry believes 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.

Further, any article in any journal has its own unique features and for the consumer i.e. researcher/academic that article is not substitutable with any other article. It is not substitutable for the simple reason that the knowledge contained in that particular article cannot be found in any article of any other journal. For example, the knowledge contained in Bhagwad Geeta cannot be found in any other publication and therefore cannot be substituted. So far as the consumer is concerned the knowledge in any paper would be different from the knowledge in another paper. Therefore, the knowledge contained in a medical journal would not be relevant to the knowledge in a journal on physics. Therefore, the market consists of dissemination of knowledge either through the print media or the electronic media.

Under the Competition Act, dissemination of knowledge would be a service and therefore section 2(u) of the Act would apply. Section 2(u) is as under:-

"service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising." This section is an inclusive definition of service and therefore has to be given a wide meaning. According to the section one can assume that knowledge and information are two related items. Therefore dissemination of knowledge would be a service for the purposes of the Competition Act.
In Competition Act relevant market is defined as “relevant market” means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets. In this particular case knowledge of science, technology and medical is a service as already discussed above and is not a product. A characteristic of knowledge is that it is neither interchangeable nor substitutable with any other form of knowledge. Therefore, as far as the relevant product market is concerned the provisions would not apply in this case.

According to the Springer website, its India office serves the markets in India, Pakistan, Nepal, Bangladesh and Sri Lanka. Further, it publishes articles in Biomedicine/Life Sciences, Clinical Medicine, Computer Science, Economics, Engineering, Human Sciences, Life Sciences, Mathematics, Physical Sciences/Engineering, Physics and Statistics. But as the Competition Act applies to the whole of India in respect of dissemination of knowledge we have to take the relevant geographic market as the only market for the purpose of defining the relevant market. The relevant geographic market would be entire India. The relevant geographic market in this case has also been examined with reference to section 19(6) of the Act. Because the regulatory trade barriers in India are different from that of other countries and even legal specifications required in India are different from the other countries the entire country has to be taken as the geographic market. Therefore, according to me, the relevant market in the present case should be defined as ‘services for dissemination of STM knowledge in India’.

18. Determining the dominant position

In order to establish that the OP-1 is holding a dominant position in the relevant market the DG has analysed conditions given in Section 19(4) of the Act and finally held that Springer India had enjoys dominant position in the relevant market which enabled it to operate independently of the competitive forces prevailing in the relevant market and/or to affect its consumers in its favour. For this the DG has followed “must have” criteria because there is uniqueness in respect of academic STM journal Publishing Industry in as much as dominant position may be benign and an inescapable consequence of structure of the market, on account of “must have” attribute of a journal. The journals with “must have” contained are considered indispensable by customer due to its reputation or specific focus of the item contained therein and are the once which are most read by researchers active in a certain field. Researchers aim to contribute in the “must have” journals since publications of articles in such journals will enhance their academic reputation among the peer group. The DG, therefore, looked into Springer’s Portfolio of STM journals published in India and found that Springer India co-publishes 43 STM journals in association with prominent scientific societies/ institutes in India.

The DG then examined the Market share of the Springer India and found that Springer has 31% share in terms of number of STM journals (47 out of 150) and 64% in terms of circulation (35,000 out of 55,000) pertaining to these journals. Further, DG also submitted that the 47 journals for which Springer India has acquired rights are the “must have” titles for subscribers and this standard makes their position dominant in
the STM segment. Any library or institution or even an individual interested in research work being done in India in the field of science, technology and medicine, cannot afford to ignore Springer’s portfolio. On the basis of above, DG has concluded that the market power of Springer India is unassailable and fortifies its dominant position.

On the other hand, Springer India has disputed the findings of the DG on the ground that market intelligence agencies show that Springer India holds less than 10% of the market. Further, response of Elsevier India suggests that they hold about 23% of the market share, which makes them leading player.

Contesting the data of DG that there are 150 STM journals, out of which Springer India publishes 47 that are ‘must have’ journals and that market share of Springer India is 31% in terms of number of journal and 64% in terms of circulation of these journals, Springer India has submitted that one of the publishers i.e. Medknow publishes nearly 151 journals in medicine. It has further submitted that there are easily more than 300 STM journals in India, on the basis of which market share worked out by the DG is not correct.

Springer India has further stated that DG has not considered the fact that Springer India has two types of co-publishing agreement with Institutes in India – full service journal (Springer India has the world-wide distribution right) and hybrid journal (Springer India has overseas distribution rights). Springer India has argued that if relevant geographic market is taken as India, DG ought to have considered only the hybrid journals (only 26 out of 47 publications) for determining the market share. Springer India has argued that in such a scenario, it would have a market share of about 17% only.

Springer India has also submitted that value figures provide a more appropriate picture of market share in case of differentiated products, like in the present case. While submitting that it does not have the leading market share in terms of sales revenue, Springer India has also submitted that DG has ignored the sales revenue in determining the market power in India but has relied on the global sales data of Springer India’s parent company to establish that it has unparallel market power in the STM journal sector in India.

OP-1 has further stated that the criteria of ‘must have’ journals has been borrowed by the DG from the data provided by the Informant and response from another Indian distributor to conclude that Springer India is a dominant player and no market study has been done by the DG to make a list of ‘must have’ journals pertaining to the academic journals in the STM segment. In order to assess the dominance (must have characteristic) of a journal, it is important to refer to the impact factor and Indian journals have a low impact factor and hence cannot be considered dominant.

I, however, differ on the issue of impact factor of the Indian journals as raised by the OP. Journals published by OP1 are reputed ones and are of ‘must have’ nature, whereby the impact factor is apparent. No library or user can afford to ignore the journals published by the OP.
On the issue of market share, DG has submitted that the opposite party is dominant in the relevant market as it enjoys 31% vis-à-vis number of journals published, which are the 'must have' journals and 64% in respect of circulation figures of these journals. In its supplementary report, DG has also provided worldwide market share based on revenues of the top five academic publishers for the year 2009, which are as follows: Reed Elsevier (15.4%), Wolters Kluver (5.15%), Thompson (5.14%), Springer (4.65%) and John Wiley & Sons (4.44%). In all probability, this market share data would also include the online business, which has not been mentioned categorically. However, market share based on circulation of STM journals in India would be a clear indicator of dominance in this case. It is true that this figure was provided by the IP and is not an independent data, it cannot be said that data is wrong especially when OP-1 has not disputed these data. It is, thus, clear that OP1 is the only global major publisher to operate in India and has no known contender of market power as admitted by OP1 itself. Secondly, the conduct of OP1 in raising prices with impunity and dictating one sided terms to its consumers and distributors shows that it has market power and it does not shy from using it too.

So far the economic power and resources of the OP are concerned, for the year ended March 31, 2011, Springer India reported total income of about Rs 30 crores (inclusive of sales and commission income) with net profit after tax at about Rs 6 crores. While this may not be significant, however, the financials of the parent company i.e. Springer Science + Business Media reports total sales of Euro 866 million and EBITDA of Euro 294 million. Thus, the economic power of the group is certainly vast in absolute terms. Globally OP1 may have less than 10% market share of academic publication business, but in India it is a dominant player.

Regarding size and importance of competitors, people spend a small sum of money to buy magazines and journals to read them in their leisure time to keep abreast of current matters. But if a person is a scientist or a technologist or a medical person, he has to spend large sums of money to update his knowledge. As the scientist etc. has to see various science or technology journals, he has no option but to use some library. About 2 to 3 decades ago, most of the libraries in the West subscribed most of the scientific, technology and medical journals. But with the rise in the price of these journals, the libraries, because of the shortage of funds, are buying very few journals. The price rise has been caused by publishers like Elsevier, Springer and Wiley. In the West, the prices of STM journals increased 10% to 20% between the periods 1990 to 2002. OFT, U.K. has reported that the price of STM journals increased 7.3 times between 1975 to 1995. Between 1998-2002, the prices of STM journals increased from 21% to 46%. Elsevier in 2011 reported a profit of 37% on its turnover whereas in the case of Wiley and Springer there were profits of 30% on the turnover.

In this context financials of Springer India are worth mentioning. For the year 2010-11, its PAT was Rs. 9.85 Cr. (which includes Rs. 4.04 Cr. royalty paid to parent company which is nothing but transfer of profit to foreign company in the garb of royalty) on an income of 30.03 Cr. This translates to a NP margin of 32.8%. For the year 2009-10 the figures are PAT Rs.9.04 Cr, Sales Rs.28.93 Cr, and NP margin at 31.2%. Such high profit is indicative of the stranglehold Springer enjoys in its market
and the absence of effective competition. Though, there are other global majors like Elsevier, Thompson and others who are the competitors of Springer but their presence in India is negligible.

So far the relative advantage of the OP is concerned; the knowledge should be freely available so that scientific progress and economic development can take place. If knowledge is not freely available many scientific discoveries would not take place and human kind would be the sufferer. But by entering into various agreements in India, Springer had got proprietary control over the applications and distribution of the scientific journals both in the print form and the electronic form.

The dominance acquired in the publishing market had been through the agreements which Springer had entered into with various institutions and associations. There is no doubt that Springer is the second largest publishers of STM and journals in the world. Therefore dominance does not arise here from the market share. The dominance in this case is acquired through the medium of the agreements which Springer has entered into with different institutions and associations. Once an institution has entered into an agreement with Springer it allows Springer to operate independent of the competitive forces prevailing in the relevant market and also affects the consumers in its favour. The factors which are required to be seen to examine the dominance are mentioned in Section 19(4) of the Act. In this particular case the resources and the size of Springer are quite large as compared to the other publishers in India and OP1 has an economic power including commercial advantages over competitors. Yet, it is pertinent to note that the dominant position is acquired as a result of the agreements which Springer has entered into with the institutions and associations. Section 19(4)(g) is applicable along with sections 19(4)(b), 19(4)(d) of the Act. The consumers in this case are the scientists and the technologists who would become totally dependent on Springer for getting the relevant scientific or technological articles published in the journals. The agreement also acts as barrier to entry because no other publisher can publish the journals which Springer has agreed to publish. This is because whenever Springer enters into exclusive agreements for distribution it ensures that the other publishers do not get this advantage. There is also a high cost of service for the consumers and therefore the consumers cannot enter the market of knowledge which is available through the medium of journals and the internet. Thus the discrimination of knowledge is contrary to social obligation and social costs, therefore, sections 19(4)(h) and 19(4)(k) are also applicable here to the facts of this case. The dominance of Springer in the publishing market is therefore established.

The DG has rightly pointed out that because of inelastic nature of demand; there is little countervailing power in the hands of the libraries / universities that are the major subscribers of the academic journals. The basic fact in this case is the transfer of knowledge by print media and the electronic media. Prior to the coming of Springer in India some publishing houses had entered into agreements with various institutes for publishing the articles in respect of science and technology and medicine. Springer came to India in 2002. It brought the knowhow and a network on the basis of which the articles published in different journals of different institutes which could be distributed all over the world both through the print or the electronic
media. This gave an exposure to the articles published in the journals all over the world. But Springer increased the subscription rates of these journals and this led to an increase in remuneration for the science associations publishing the journals and also a large profit for Springer itself. But whereas earlier the journals were cheap after Springer came, the price of the journals increased by upto 600%. Thus dissemination of knowledge became very costly. The libraries which had a limited budget could not subscribe to large number of journals and the individual also felt a pinch and they could not subscribe to many journals. Thus in many countries many scientists have started a campaign to boycott the publishers such as Elsevier, Springer etc. for making it prohibitively costly to access knowledge, which is created by the scientists themselves.

On the basis of the above discussion, it is clear that OP1 is holding a dominant position in the relevant market.

19. Abuse of dominance
(a) Imposing unfair (excessive) prices:
It has been alleged that price of the journals published by Springer India have increased substantially over a very short period of time. In some cases the increase is 400% in a span of 5 years. In fact the prices of journals have increased immediately after being published by OP1. An argument has been made that OP1 has raised the prices to bring them in line with international prices and because of value added services being offered. First, prices of journals in developed countries are unjustifiably high and the research community is already up in arms against big publishers like OP1 for charging astronomical prices for journals (Indian Express New Delhi 08.05.2012). Matching the price of Indian journals is per se unfair. It will render the already costly journals beyond the reach of common scholars. Secondly, access to the online platform of e books is perhaps the so called value added service being cited by OP1. One fails to understand how it can lead to an increase of 3-4 times of the price of journal. This argument is not acceptable. In case the value added service is so costly it should be offered separately to those who are willing to pay, and not in the present fashion where the OP1 charges the full price on the printed journal and then appears to offer the online book for ‘free’.

It is not only the cost of the STM journals which has increased, but, another serious issue is the exclusive control enjoyed by the publishers over how the research got distributed and shared. As the behaviour of the publishers leads to the surrender of copyright by the authors, it leads to throttling scholarly communication and progress of science. Scholarly information should be freely available to a larger audience as it would lead to scientific and technological progress and larger economic benefits.

The story of Michael Faraday, the famous British inventor is worth remembering here. Faraday had minimal schQ1t. gained most of his knowledge while working for a book binder. He went on to make several discoveries and inventions. Thankfully, the knowledge he gained for free by reading books while assisting a book binder, was not hidden behind pay walls erected by the likes of Elsevier and Springer etc. The benefit to mankind needs no reiteration.
It is thus, concluded that OP1 has abused its dominant position by imposing unfair price in sale of its goods in violation of Section 4 (1) read with Sub section (2) (a) (ii) of Section 4 of the Act.

(b) Imposing unfair condition in sale:
OP1 has admitted to requiring end user details like name, postal address, e-mail, IP address etc. from intermediaries and agents like IP. Many STM publishers like ICFAI University press, Serial Publications, Taylor & Francis, Medknow Publications, Research India Publications, Taru Publications and Pushpa Publishing House do not seek such end-user details.

End user data is commercially sensitive information and it is on record that OP1 has used the data to directly approach the end user, and in the process removing the agent from the business. This practice is anti-competitive condition and a misuse of its dominant position in violation of section 4(1) read with 4(2)(e) of the Act.

(c) Ban on experts to edit or review for any other publication – As per the agreement OP1 has with the societies it requests them not to allow editors of its journals to take up editing in competing publications, as far as legally possible. So any new publisher cannot offer competing proposal to the institute/association, and this is a significant entry barrier. Any expert can still take up editing of a competing publication, but with the association or institute advising against it, it is unlikely to happen. This is a significant entry barrier and violates Sec 4(2)(b)(i) of the Act.

(d) Allegation on anti-competitive agreement - The Informant has alleged that by entering to co-publishing agreement, the opposite parties have violated provisions of section 3 of the Act by directly determining sale price, controlling the supply of the journals by imposing unfair conditions of furnishing commercially sensitive information violating and sharing the market by way of allocation of types of goods, i.e. print version and e-journal. In its report, DG has found that entering into co-publishing agreement signed between Springer India and eight other institutes is not indicative of anti-competitive agreement according to the provisions of the Act. As a matter of fact, when the institutes published their journal themselves, the total distribution rights (India as well as world-wide) vested with Prints India. Now, the distribution rights are demarcated as domestic and world-wide and for domestic subscription, Springer may not be the sole distributor of print version. By virtue of co-publishing agreement, the institutes are able to benefit from the online expertise of Springer India, which helps in improving the impact factor, thus getting better recognition and reputation for their journals. With the online format, Indian authors/researchers are able to connect and get exposure to international sphere, which motivates them to undertake better quality research and in turn opening the possibility of more research/innovation in India. Most importantly, the institutes are well within their right to outsource the entire publishing job in favour of a particular entity. Hence, there is no breach of section 3 of the Act in respect of co-publishing agreement signed between Springer India and the leading institutes/societies of the country engaged in academic research.

R. F.
In order to find out whether Springer India has abused its dominance, it is found that when Springer entered the field, it entered into agreements with various institutes. Earlier many of the printed STM journals were published by the informant and some other publishers. An agreement between Springer and Indian Association for the cultivation of science was examined. According to the agreement, Springer took over publication of the Association's electronic version and the international print edition. It has been mentioned in the agreement that the association shall own the journal, trademark and other proprietary rights. But the Association was not to have a claim of ownership of any intellectual property right provided by Springer or any third party. Springer also took the right to register the Journal articles' digital object identifiers as per the prevailing law and procedure for all versions of the journal. By this agreement the Association allowed the following rights to be transferred to Springer—

i) Exclusive right and licence to electronically publish and distribute/sell the Springlink Edition of the journal.

ii) Exclusive right and licence to distribute/sell the International Edition of the journal outside of India except to the members of the Association.

iii) Exclusive right to translate, publish and sell translated versions of the Journal, both in printed and electronic form and to publish, translate and sell the Journal in all languages throughout the world.

The Association and Springer agreed that the Springlink edition of the journal created by Springer will be posted on the Springer website and will be the only electronic version available for dissemination of the Journal, apart from the current journal website hosted by the Association. The website of the association was to have regulated access to Association members only. The subsidiary rights in the Journal were given as exclusive rights to Springer to license the right to exercise in all forms and formats to third parties without any limitation. By this agreement, the institutional buyers were required to have an annual base rate of $550. The individual buyers were required to have an annual base rate of $150. Springer reserved for itself the fixation of rate when certain conditions arose. A restriction was placed on the Editor of the journal from being the Editor of a similar magazine published by a third party. The Peer review of the journal was required to be carried out in accordance with the guidelines of Springer. The proof reading and other activities remained the work of the Association. Even the working of printing and publishing remained with the Association. The Association was required to distribute the printed material among its members. Copies in the prescribed format for the international edition as well as the electronic copy were required to be supplied by the Association to Springer. The Association was required to supply the names of persons to whom the journal was supplied internationally. The password to the Springer's website was required to be supplied to the Association members by Springer. For all this work Springer agreed to pay 30% of the Journal net receipts for the subscription year. The agreement starting on 1.1.2009 was to be effective for three years and renewable for another five years. Termination of the contract was required to be have a notice period of 12 months. Though, the vertical nature of the enterprise does not emerge clearly as far as publication is concerned, the conditions mentioned in the agreements stated as above are clearly violative of Section 4
(2) (c) of the Act as these exclusive agreements between Springer and the Association create entry barriers to others. After the exclusive agreements between Springer India and the Associations the prices of the STM journals have increased by upto 600%. This is simply an abuse of dominance.

20. A reading of Section 27 would show that an order under this Section can be passed only when there was a contravention of Section 3 or Section 4 of the Competition Act. The question is as to what would happen if the Commission finds that no case is made out after the DG finds a contravention. Such a situation is not provided in the Act. This is due to the fact that once the Commission had formed a prima facie opinion under Section 26(1) of the Competition Act then it cannot revisit its opinion again and drop the case. If the DG’s investigation has confirmed the prima facie view of the Commission by finding contravention of the Act then the Commission cannot close the case in view of its prima facie view. For dropping a case provisions have to be provided in law. If such a provision does not exist then the Commission cannot import the provision in the Act. Therefore after the Commission has formed the prima facie view and the DG has found contravention then only view left to the Commission is to pass an order under Section 27 of the Competition Act. Under Section 27 of the Act, an order can only be passed when a contravention is established. Therefore dropping of case after DG has found a contravention is not authorised under the Competition Act of 2002. This proposition is further strengthened by the fact that appeals are provided against orders under Sections 26(2) and 26(6) of the Act. An order of dropping is an order and such an order cannot be passed in the absence of provisions. Further an order of non admission of a case or closure of case after the DG finds no contravention can be appealed against, it does not appear to be logical to hold that no appeal would be provided against an order of closure where the Commission had formed a prima facie view under Section 26(1) of the Act and the DG had found contravention. The Legislature had not envisaged such a situation as in such a case the logical course would be an order under Section 27 of the Act. Incidentally, no order of closure can be passed under Section 27 of the Act.

21. I am, therefore, of the considered opinion that this is a fit case where following directions under Section 27 of the Act need to be issued:
1) M/s Springer India is directed to immediately cease and desist from imposing unfair (excessive) prices and imposing unfair conditions on sale and lift ban on experts to edit or review for any other publication;
2) The discriminatory conditions mentioned in the agreement with the Associations are changed immediately.
3) A penalty of 5% of the average of the turnover for the last three preceding financial years is imposed upon Springer India for deliberately entering into exclusive agreement which led to the foreclosure of the competition and abuse of its dominance which led to the limiting and restricting the provision of services, technical and scientific development and denial of market access to others.

22. The Secretary is directed to serve this order on the concerned parties.