

Complaint to the European Ombudsman about Elsevier and the Open Science Monitor

Introduction

We, the [below signed](#), wish to raise a formal complaint to the European Ombudsman about the recent announcement that Elsevier, a scholarly publisher and data analytics provider, has been subcontracted to monitor the future progress of Open Science in Europe. We became aware of Elsevier's involvement in this on [March 12, 2018](#), when information about the Open Science Monitor was first publicised, and then again on May 30, 2018 when further details were released, including the [first version of the monitor](#) and the [underlying methodologies](#). The original tender award notification can be found [here \(PDF\)](#).

The reason we are pursuing this route is due to the fact that the opportunity to raise a formal appeal was denied to us. In the tender award statement, it states that "*Within 2 months of the notification of the award decision you may lodge an appeal to the body referred to in VI.4.1.*", which is the General Court in Luxembourg. The notification of the award was on January 11, 2018, and it was exactly 2 months and 1 day later when the role of Elsevier as subcontracted was first publicly disclosed. Due to this timing, we were unable to lodge an appeal.

Elsevier is the single subcontractor for a consortium consisting of the [Centre for Science and Technology Studies \(CWTS\)](#), [The Lisbon Council for Economic Competitiveness and Social Renewal](#), and the [ESADE Business & Law School](#). The contract was awarded to this consortium, with the consortium in charge of subcontracting part of the work and deciding who it should be awarded to. The proportion of the work to be subcontracted is estimated at 10% in the tender award notification. However, it also remains unclear whether the identity of the subcontractor played a role in the tender process, or whether the subcontractor was chosen after the contract was awarded.

The core aspects of this complaint

As such, we see a number of critical administrative issues with the process of the subcontract award that will have a detrimental impact on the future of Open Science and innovation in Europe, the livelihoods of European citizens, and the legitimacy of the European Commission (EC) as an institute.

These can be broadly separated into two main issues. First, there appears to have been a lack of sufficient care and transparency with the process of the contracting procedure. Second, and as a consequence of this, Elsevier are now in a position where they will be monitoring and evaluating the very same science communication (e.g., products, licenses, database access) that they, and their competitors, sell as their primary products, which amounts to a clear conflict of interest (COI). Furthermore, the [metrics and data sources](#) identified to be used in the evaluation are overwhelmingly biased towards those owned and operated by Elsevier, which creates an inherent bias and additional COI, to the exclusivity of their competitors and other primary data sources (e.g., Web of Science, Dimensions, Crossref, DataCite, BASE, SHARE, PubMed, and other publishing-based services).

Transparency in the awarding process

There is a general lack of transparency in many elements of the decision process leading to the award. This includes specific points regarding the award of the tender to the consortium, which remain relevant in this context:

- How did the 3 bids received for the tender score on the specific criteria that were used to select the contractor? Why is this information not required to be made public?
- Who evaluated the suitability of each candidate? Were independent external experts involved in the evaluation process?
- Was there a consultation process involved?
- Why are tenderers only required to identify subcontractors whose share of the contract is above 15%?
- Was the identity of this subcontractor made known to the EU during the tender process?
- Was a risk analysis performed as to the ramifications of the choice of subcontractor?
- CWTS worked for many years on the development of [journal indicators](#) based on Scopus. What was the nature of putative collaboration and/or business, and how did this historical relationship (as well as with, for example, [The Leiden Manifesto](#)) factor into the decision process for the Monitor?

And specific points focussing on the subcontractor itself:

- What was the selection method for the different tools and services to be used for the Monitor? This is essential for reliability, robustness, and reproducibility of the methods, and part of standard Data Management best practices.
 - Ironically, The Leiden Manifesto specifically recommends against such non-transparent processes and exclusive data source usage.
- How do the consortium and the EU resolve the incredibly high profit margins (~37%) of Elsevier with the intrinsic motivations behind open science, including financing and governance?
- How is the proportion of work in this project that is allocated to the subcontractor (10%) calculated?

- Who is accountable for the monitoring process itself, including resolution of internal disputes during the monitoring (not just the performance of the contract as a whole)?
- It is not clear what exactly Elsevier's role is. Who is setting the goals, deciding on the metrics and variables, on the indicators, on data sources, on data cleaning protocols, on computation/analysis methods, on presentation, and on outreach and dissemination? The consortium should make clear exactly what the role of Elsevier as subcontractor is.
- Given the EU's emphasis on Open Science, including Open Data, why is there (apparently) no requirement to insist that the Open Science Monitor must be based upon open data, open standards, and open source tools (with appropriate licenses for re-use accessibility) as a matter of principle? For example, elements of this could follow the EC's own [Open Source Software Strategy](#).
- How will the [comments on the indicators](#) (including my own and a number of the undersigned), many of which specifically also mention the bias towards Elsevier services, be handled as part of the consultation?
- Did all persons and partners within the consortium declare their potential conflicts of interest (CWTS, Lisbon Council for Economic Competitiveness and Social Renewal, and the ESADE Business & Law School)? If so, are these public?

Consequences of Elsevier as the sole subcontractor

- The position of power for Elsevier will have an impact on the future of a fair scholarly publishing market in the EU. From a scientific perspective, selectively choosing and restricting data sources to the exclusion of others (as clearly indicated in the methods for the Monitor), is generally considered to be bad practice.
- By using predominantly, and for many indicators almost entirely, Elsevier-based services, such as Mendeley, Scopus, and Plum Analytics, subcontracting to Elsevier creates an inherent bias in the primary data sources. The potential direction and size of these biases are unknown at the present time.
 - This is partly a function of the products (metrics) and data themselves being proprietary, and represents an irresponsible approach towards metrics usage for evaluation.
 - The metrics proposed to be used for the monitor are not acquired by an independent body, but based on Elsevier products and services, creating an inherent bias in the data sources.
 - The fact that Elsevier is a publisher offering services that monitor scholarly publishing also presents a serious COI, and does not respect current competition laws.
 - This also actively discriminates against the competitors of Elsevier, creating unfair market conditions around academic publishing in general, and Open Science evaluation and metrics.
- It is as yet unclear whether, as Elsevier services are featured so prominently, these services will become more of a requirement (either formal or implicit) for EU researchers and research institutions to use, since this is becoming a primary assessment tool.

- A potential consequence of this is that researcher careers become more dependent on Elsevier's product workflows, and ultimately are 'locked in'.
 - A further consequence of this is that many other competitive services and workflows will be discriminated against.
 - This creates a further inherent COI in having Elsevier as the sole subcontractor.
- Whether or not Elsevier will benefit by being able to sell more of their metrics and the underlying data sources.
 - This creates another inherent, and virtually inevitable, financial COI in having Elsevier as the sole subcontractor here.
 - They are now in a position to evaluate the very same scientific products that they and their competitors sell.
 - As these data will be used to guide public policy in the EC in the future, Elsevier clearly stand to benefit from being subcontracted.
- Will the data sources be made openly available (including explicitly open licenses) for independent inspection and analysis? Will data gathering protocols be transparent and replicable? Without this, it is unlikely that the wider Open Science community will accept any outputs from the Monitor.
- How will the EC ensure that the closed, profit-driven practices of Elsevier match and align with the expectations of government accountability that makes the EU so successful?
- What 'sanity checks' for the data will be emplaced to compensate for the risk associated with using a single data source?

Many of these questions revolve around whether the responsibility for the Monitor lies with the consortium or the EC. It should be noted that the EC and the consortium deserve some credit in their handling of this, by making the [methods and data sources](#) transparent (in that we can see what is being done), as well as for inviting [feedback](#) to improve the indicators. However, we believe that the almost complete lack of transparency in the administration and functionality of this service, as well as the process that led to Elsevier being awarded the subcontract potentially violates the fundamental rights of European citizens. Furthermore, it is discordant with the Jussieu Call for Open Science and Bibliodiversity signed by many EU institutions. It comes at an intriguing time in Europe when many university consortia are cancelling their licensing contracts with Elsevier and their kin over disputes concerning transparency, pricing, and unfair market conditions.

Related concerns

There is also a concern that Elsevier already is very present at many places where the EC is helping to shape the future of Open Science. We know that RELX, the organisation that owns Elsevier, [has 6 lobbyists within the EC](#), 3 of which have direct access to parliamentary premises, and which have an estimated expenditure in the EC of up to half a million euros each year. RELX also have a [representative](#) for the Horizon 2020 expert group on Future of Scholarly Publishing and Scholarly Communication. RELX is also a member of the International

Association of Scientific, Technical and Medical Publishers (STM) dedicated to the interests of mostly legacy publishers that [have 3 lobbyists within EC](#) and a [representative](#) in the Open Science Policy Platform. These elements indicate that Elsevier has at least some control on the future of scholarly communication in the EC, and raise the possibility that they may have influenced the decision making process behind the Open Science Monitor.

A lack of dialogue between the EC and all relevant stakeholders to the Open Science Monitor will erode trust into and legitimacy of the EC, and does not follow the principles for good administration and governance for this sort of processes.

Further Reading

Elsevier - [Wikipedia](#). Numerous criticisms of their business practices cited here.

Elsevier are corrupting open science in Europe - [The Guardian](#).

Elsevier serves the global research community to deliver open science - [Elsevier](#).

Elsevier serves the global research community to deliver open science? - [Green Tea and Velociraptors](#).