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Consolidation in the Legal Publishing Industry Mean Rising Costs for Attorneys

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In *The Legal Information Buyer's Guide and Reference Manual*, Kendall Svengalis describes facts about the American legal publishing industry that should concern its primary consumers – attorneys. Attorneys are estimated to spend \$4000 per year on legal information, and legal research materials annually cost about \$5 billion. Despite these facts, attorneys remain largely unaware of anti-consumer practices within the legal publishing industry that every year increase their costs of doing business.

The 1990s witnessed a level of mergers almost unprecedented in American history, with a record \$1 trillion in mergers for 1997. Three foreign corporations – Thomson, Reed Elsevier, and Wolters Kluwer – acquired a number of American legal publishers. The Thomson Corporation, of Canada, bought West Publishing Company in June 1996 for \$3.4 billion, creating West Group from the merger between Thomson Legal Publishing and West Publishing. According to law librarian Joe Stephens, West Group controls “100% of national legal encyclopedias, 76% of state legal encyclopedias, 80% of national forms sets, 100% of annotated federal codes, the case law of the federal courts, the entire National Reporter System, and 50% of the major American legal treatises.”

Monopolization of the market for analytical or “value-added” legal publications has had predictable consequences. According to Svengalis, the prices of all supplemented legal publications increased by almost 72% between 1996 and 2000, “much of that increase resulting from increased supplementation costs for Thomson-owned publications.” When Thomson acquired the publications of Lawyer’s Co-op in 1989, Stephens found that it increased the Lawyer’s Co-op prices by about twice the rate of legal publications generally. Where West Publishing Company had a history of modest increases in supplementation costs, West Group has embraced the profit-driven imperatives of its parent company. The legal publishing units of the three conglomerates set prices for supplemented legal subscriptions without any regulation and with virtually no competition.

What about the cost-efficiencies claimed for online legal information? West Group and Reed Elsevier’s Lexis Law Publishing own the most comprehensive online systems – Westlaw and Lexis. Because their online contracts are proprietary, they have precluded evidence of price-fixing. But as Svengalis has observed, the non-disclosure provisions of such contracts prevent customers from negotiating better rates and are clearly anti-competitive. Moreover, cross-licensing agreements between Westlaw and Lexis, secretly made in 1988, suggest that West Group and Lexis Law Publishing have the means and the incentive to fix prices, and price increases, on comparable databases for different groups of customers, especially as attorneys are “captive” customers. I invite my readers to compare the prices of Westlaw and Lexis databases with the same content.

Attorneys need not be captive consumers. In 1970, the American Bar Association appointed a Subcommittee on Law Book Publishers to investigate unfair business practices by legal

publishers. The American Association of Law Libraries (AALL) has appointed a Special Committee on Fair Business Practices to draft new standards of practice for legal publishers. The ABA and AALL should jointly examine how legal publishing consolidation has affected prices for legal subscriptions and online services. Because the Federal Trade Commission's 1976 Guidelines on the legal publishing industry have expired, there is an even greater need for renewed study.

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