

Knowledge Exchange Multinational Licensing Tender: an evaluation

The Knowledge Exchange initiative was founded in 2005 by four European organizations active in promoting and funding developments in information and communication technology (ICT) in the higher education and research sector of their respective countries: Denmark's Electronic Research Library (DEFF), the German Research Foundation (Deutsche Forschungsgemeinschaft: DFG) in Germany, the Joint Information Systems Committee (JISC) in the United Kingdom, and the Dutch SURFfoundation. The partner organizations share a common goal to make a layer of scholarly and scientific content openly available on the Internet. Within the Knowledge Exchange, the partners recently embarked on a collaborative project procuring digital content in a multi-national framework. This article sketches the process and weighs the advantages and disadvantages of the chosen procedure. It also presents a discussion on whether this joint effort is worth repeating.



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History and context of the Knowledge Exchange and the tender

Within the stated vision of making a layer of scholarly and scientific content openly available on the Internet, the Knowledge Exchange has focused on a number of themes, one of which concerns 'the future of publishing'. This is, by definition, a broad theme, one that includes policy initiatives on behalf of open access issues, access and preservation to primary research data, and digital content procurement. Indeed, in order to create a layer of openly available content within a system that is currently undergoing enormous changes, funding agencies and national organizations must co-operate with other stakeholders in the system, such as publishers and researchers, to create such a layer.

The idea for a joint project first arose at the Joint Information Systems Committee (JISC) annual meeting in March 2006. By exploring the possibilities of multinational negotiation in a pilot framework, the partners hoped to build up bargaining powers and

trust in this process. The initial goal of the pilot framework was to negotiate a multinational, multi-year deal for five objects. The focus was to be on current content, i.e. not archival materials, and the objects would have to consist of mainstream resources, such as journals, reference materials or basic scientific databases, and be of relevance to the research communities in the four countries. The deal(s) to be worked out would have to be substantial in character and provide better value for the money than existing deals in the national context. The target date for deal completion was 1 September 2007. This time-frame turned out to be too ambitious. To start the project a preparatory working group was formed: two persons from each country were asked to take part, one with a policy perspective and the other with negotiating skills. This group looked at how to frame the joint activity, the legal issues, time-frame issues regarding the deals,

and transparency issues (confidentiality clauses). In order to reach the goal of a multinational, multi-year deal for different sorts of content the working group decided to use a tender procedure.

Reasons for tendering

A tender minimized many of the perceived risks of a joint multinational licensing while permitting the most flexibility in how to construct a multinational activity. It also enabled the partners to 'try something new' – instead of negotiating directly with publishers, it turned the procedure around and required that publishers approached us with offers. A second reason was the observed lack of innovation among publishers in creating new business models for electronic resources and new access strategies for content; here it was hoped that a tender might spur new ideas. Furthermore, a tender could create a 'virtual marketplace,' engaging the publishing community and creating a route to market for bidders that otherwise were too small or too marginal to compete successfully for national deals or agreements with consortia. A fourth purpose of the tender was to determine whether, by working together, the Knowledge Exchange partners could leverage greater economies of scale and generate a form for transparency for benchmarking national licences and licence agreements. Finally, it was thought that a joint tender approach and multinational licences might help the Knowledge Exchange partners discover whether there might be better business models available that distributed risk in a more balanced fashion – for example, 'base price + pay-per-view + price cap'. The Knowledge Exchange wanted publishers to come up with creative ideas about building national and international frameworks for licensing.

To implement the tender, the Knowledge Exchange opted for the 'competitive dialogue' procedure according to article 29 of the EC Procurement Directive¹. This procedure is suitable for particularly complex contracts, in which a dialogue between the tenderer and the potential bidder(s) is desirable. A characteristic of the competitive dialogue is that the tenderer establishes the specifications of the work or contract in dialogue with the bidders rather than upfront. It is based on an initial request for information which states the results needed/wanted but not the ways

in which to achieve them. During the dialogue, tenderer and bidders can work out a framework based on the dialogue. This framework then forms the foundation of a descriptive document, on the basis of which the bidders submit their detailed proposals. In order for this procedure to work, the bidders have to be willing to disclose and share their information to the tenderer and to some extent also to the other bidders. Such a procedure fits the innovative concept of procuring digital content in a multinational partnership.

In short, the procedure consists of a request for information, a dialogue phase and a descriptive document. The contract is awarded after assessment of the available bids based on the award criteria laid down in a descriptive document, including the weight that will be attributed to the 'value for money' factor.

What did Knowledge Exchange ask of the publishers?

The Knowledge Exchange specifically invited smaller publishers to respond to the tender. It was looking for publishers that were willing to develop and try out new, innovative business models jointly with the consortia and libraries. The Knowledge Exchange wanted to attract products that have not yet established a substantial degree of market penetration.

The tender aimed to produce innovative business models, so the Knowledge Exchange expected to receive new ideas and concepts as a reaction to the initial *Request for Information*. However, the lack of creativity from the publishers in this respect was felt to be disappointing. The Knowledge Exchange partners therefore decided to formulate a much more rigorous and detailed contractual framework as part of the descriptive document than originally planned.

This framework had several parts. First, the working group compiled two types of lists: a 'basic list' representing the research universities in the four Knowledge Exchange countries (plus some large teaching universities in the United Kingdom), and an 'extended list' defining other affiliated institutions that may participate in the agreement. Together, these are the sum of publicly funded higher education and research institutions in the four partner countries. Each publisher was asked to state a single fee for each partner country (in the

form of a national licence), which would provide access for all institutions on the basic and extended lists in that country. In addition, publishers were asked to sketch out an-opt in framework containing a discount structure based on the amount of participation through subscription by institutions included in the basic list. This discount structure had to be multinational rather than national in its structure and if any partner organization took up the 'national' fee, all basic-list institutions from that country should be considered opted-in. Publishers were required to offer this same discount level to subscribing institutions in the extended list. Elements for the-opt in framework were derived from the interviews held with the bidders during the dialogue phase.

The bids were reviewed by expert markers from the four countries on the basis of three overarching criteria: 1) innovation and value for money offered by the proposal (40 %), 2) level of compliance with the access strategy (10 %) and 3) fit of the content to the academic strategy of the country (50 %). The Knowledge Exchange working group then made a final decision on each bid based on these evaluations.

In the case of a successful bid, the four partners of the Knowledge Exchange would provide a route to market to the 190 institutions on the basic list and a further 1,500 institutions on the extended list, thus largely covering the academic community in the four Knowledge Exchange countries. Each partner agreed to endorse and promote the bids to the libraries and to provide a single contact point for bidders, resulting in better efficiency and reduced administrative costs for bidders.

Results of the tender procedure

After the initial *Request for Information*, the Knowledge Exchange received bids from 22 publishers; some of these contained more than one product. After a first evaluation by the markers, the Knowledge Exchange selected ten publishers to enter into the dialogue phase. The Knowledge Exchange partners conducted interviews with each of the bidders in order to gain a better understanding of the type of deal and content that might be offered. After the dialogue phase ended, the ten publishers were sent the *Descriptive Document*. Of these, nine sent a final offer. In the end, the working group decided to conclude an agreement with five

of these publishers and these were invited to a 'town hall meeting' as well as individual meetings to talk through the process in general and also to clarify certain aspects of the individual bids.

The bids were quite interesting and the opt-in arrangements were often motivating. The Knowledge Exchange had asked the publishers to develop separate but related proposals for the basic and extended lists, to recognize the scope and size of institutions in order to facilitate broad participation, to give a reward scheme for increased participation and to reflect the larger market and economies of scale offered by a multinational framework. Most publishers scored pleasingly on these criteria. In most cases the prices offered were very reasonable and sometimes even low compared with what is usual in this market. The discounts were occasionally huge if a substantial number of participating institutions would opt into the deal. Some publishers made ingenious use of the basic and extended lists.

Disadvantages of tendering

It should be acknowledged that the tender was very much a pilot project. There was a high risk of failure (lack of interest by publishers, lack of participation by institutions, complexity of a multinational deal), but at the same time there was a low risk involved in the competitive dialogue procedure as such: after all, partners could decide to cancel the tender at any time. This balance justified the investment in time and other resources the partner organizations committed to the tender procedure. The working group, however, was also very conscious that a tender process brings with it very noticeable disadvantages when applied to digital content procurement, which will be discussed here.

A first issue has to do with multinational work in general: there were significant differences in how to procure licences within the countries and their respective consortia, although the latter was more difficult than the former. The consortia differ in structure, in the number and range of participating institutions, and in the type of licences they deal with. For example, Denmark's Electronic Research Library (DEFF) only deals with e-access on top of existing print and electronic subscriptions at the libraries. And Germany's Research Foundation, Deutsche Forschungsgemeinschaft (DFG) has purchased in the past a substantial number of

national licences on archival collections, which the other countries have rarely done. SURF in The Netherlands only deals with e-content apart from very few remaining print subscriptions. German libraries often want to maintain print subscriptions and therefore prefer negotiations and agreements also to cover the delivery of printed copies. The UK has its own JISC banding system. So it took some time, effort and imagination to find a proper solution to bridge these differences.

Secondly, tendering is very time consuming, particularly in a multinational context. The working group first started talking about the process in September 2006 and only a full year later, on 24 September 2007, was it decided which publishers would be offered a route to market.

There are several reasons why the tendering process cost so much time. First, there was the regulated time-frame of the procedure itself. Bidders had 37 days to react after the receipt of the *Request for Proposal*, and another 40 days after receiving the *Descriptive Document*. These are EU regulations. Then there was the time that the markers in the four countries needed to evaluate and select the bids. Between the *Request for Proposal* and the *Descriptive Document* there was the dialogue phase, which took its own time. Finally, it took time to write a *Request for Information* and especially the *Descriptive Document*, and to answer all questions brought up by publishers in between the phases. Each document had to be carefully weighed and discussed, for the precise wording determined the quality of the offers. Many of the discussions between the members of the working group were conducted by e-mail, but before finalizing the documents, the working group called several meetings to talk about the details and to reach a final agreement on the text.

Another disadvantage of tendering is that it is a costly procedure to the organizations involved. The presence of two persons per country at regular meetings of the working group and their involvement in the process does not come without a considerable investment in time commitment and travel expenses.

The decision to tender within the framework of the EU Directive meant that the working group had to write two documents (the *Request for Information* and the *Descriptive Document*), write evaluation criteria twice and get the markers together twice in order to study and evaluate the bids. Between the *Request for Information* and the

Request for Proposal, the working group had meetings with ten publishers. Lastly, the working group had to decide, based on the evaluation in the four participating countries, which bids to take forward and which publishers to meet with.

A further disadvantage was that there was no, or very little, room for direct negotiation. This raises the question of whether tendering is the best way to realize economies of scale. Are we getting the absolutely best deals we could? Also, the process is very rigid: the goals, time-plans and other procedures must be defined very strictly at the beginning. As for the prices, it remains difficult to estimate whether the price is fair. The criterion 'academic fit' is essential when turning down an offer but not for judging whether the price represents the actual costs of producing the content plus a (not more than) reasonable profit for the publisher.

A particular problem in the process for bidders was that there was no clear target to tender for, other than a rather vague concept defined as 'a route to market'. Usually, a tender procedure is used to select a single supplier for a well-defined product or service. In this case it was not clear how many suppliers for how many products would be selected. Actually the procedure was used to select as many bidders as the members of the working group found attractive enough to continue with.

A final disadvantage, again of multinational negotiation and an opt-in framework, though not necessarily of the tender process, is that the Knowledge Exchange now offers content that the libraries have not asked for. There is a danger that the bids will not appeal to them and that many will not commit their scarce budget resources to the deals. Notice that the Knowledge Exchange did not renegotiate existing contracts paid for from existing resources. Except for 'National Licence' deals, participation in 'Knowledge Exchange bids' will come on top of those existing expenditures and will demand new money from the libraries.

Advantages of tendering

However challenging tendering is, it has many rewarding sides as well. One of the biggest advantages to the four partner organizations of the Knowledge Exchange was that they were able to benchmark the prices. Because of the national fees for the basic and extended lists it was, for instance,

possible to compare the 'price per citizen' in the participating countries. Another advantage was that the Knowledge Exchange managed to reach and talk to publishers that normally do not have access to such consortia. In this sense, the process helped smaller and medium-sized publishers (or new products) gain entry to a larger market to which they would not normally have access. Also, the tender has resulted in some innovative business models and access strategies. The ideas reflected in the original responses to the *Request for Information* and during the dialogue stage provided much food for thought as the working group prepared the contractual framework and access strategy for the *Descriptive Document*.

Moreover, the prices for a former print collection were (except for one publisher) not reflected in the fees presented. Thus for the most part the deals helped in the shift away from historic spend as an overriding financial criterion in deals. And most importantly perhaps, the discounts offered to the Knowledge Exchange were certainly seen as profiting from the multinational setting. Thus the partners were successfully able to leverage the economies of scale that a multinational licensing process should invoke and get deals that seemed significantly better than what any single consortia might negotiate on its own.

A final aspect is that the four partners are working within a common framework agreement that also contains a licence agreement as an appendix. This licence agreement is a document in which all the most favourable provisions of the four countries are incorporated. Working on the licence forced the working group to be consistent in the framing of access provisions and, it is hoped, shape the market in terms of expectations in the future.

Evaluation

Through the tender, a very ambitious aspect of the Knowledge Exchange vision has been fulfilled. Many of the goals the partners of the Knowledge Exchange set were reached: transparency and benchmarking, piloting new ways to acquire content in a multinational setting, providing smaller and medium-sized publishers with better access to the market, leveraging the economies of scale, and shaping the market in terms of a common licence agreement. The majority of the proposals came from the target group the Knowledge Exchange

had aimed for and some of the proposals were truly innovative. Furthermore, going through the motions of compiling the tender documents has forced each of the participating organizations to rethink aspects of their approach to licensing, and to develop a joint approach to what licensing could look like. Creating building blocks for innovative business and access models made the organizations think about procedures which might be overlooked or ignored in normal library life. This 'lessons learned' aspect is perhaps one of the most valuable for the partner organizations.

Finally, through such a multi-stage tender procedure it is possible to take an active part in shaping the market. Although the four countries could not indicate how much money they could spend on a licence, the route to market the Knowledge Exchange provides is a good incentive for publishers to come up with an appealing bid. During the process, the working group found out that publishers are willing to be flexible and follow the rules and/or guidelines the Knowledge Exchange set for them.

Recommendations

The Knowledge Exchange partners will certainly consider doing more of the same. More tenders in this general sense would further shape the market and help the stakeholders to co-operate as licensees and negotiators. In addition to using general tenders, it might also make sense to branch out, and to select better-directed tenders for more specialized areas (by scientific discipline, by media type, for non-English speaking content, public broadcasters, etc.) thus tailoring the conditions of a tender to better fit a target group of content providers. Also, some thought should be given to how small and medium-sized publishers could be encouraged to participate in the process with greater success.

Furthermore, the Knowledge Exchange should put effort into making the Knowledge Exchange partners work more like a unit: banding, invoicing, electronic resources management, these are all topics that, if dealt with jointly, can make the work of each individual country or organization much more powerful. However, it is clear that to work more collaboratively, the Knowledge Exchange partners required more information and understanding of themselves!

Reference

1. Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the co-ordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

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