



Department for
Digital, Culture
Media & Sport

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Date: 13 June 2019
By Email

[REDACTED]
Lebedev Holdings Limited
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2 Derry Street
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Dear [REDACTED]

Lebedev Holdings Limited and Independent Digital News and Media Limited transactions - Notice of a Potential Intervention Notice

I refer to the recent, completed acquisition by International Media Company (Cayman Islands Company - ref 345587) (IMC) of 30% of the share capital of Lebedev Holdings Limited (LHL) and the earlier acquisition, completed in 2017, by Scalable INC (Cayman Islands - ref 320745) of 30% of the share capital of Independent Digital News and Media Limited (IDNM).

The Secretary of State for Digital, Culture, Media and Sport ("the Secretary of State") has considered these transactions and is currently minded to issue an Intervention Notice under section 42(2) of the Enterprise Act 2002 ("the Act"). The Secretary of State is currently minded to issue an Intervention Notice in relation to these transactions as: (i) he considers he has reasonable grounds for suspecting that the acquisitions have resulted in the creation of a relevant merger situation as defined in section 23 of the Enterprise Act; and (ii) he believes it is or may be the case that the following public interest consideration specified in section 58 of the Act, is relevant to a consideration of the merger:

(2A) The need for (a) accurate presentation of news; and (b) free expression of opinion.

The Act provides that, when an Intervention Notice has been issued, the Secretary of State may require the Competition and Markets Authority ("the CMA") and Ofcom to provide reports on certain issues relevant to the merger and the specified public interest considerations, and to summarise any representations received about the case. The Secretary of State notes that the public interest considerations listed above represent

important objectives and that a range of issues may be relevant to determining the effects of the merger that may require the gathering of further factual information, while others may raise technical matters in respect of which the CMA and/or Ofcom have relevant expertise.

At this stage, the Secretary of State considers that the public interest consideration mentioned above may be relevant to a consideration of the merger, and that the appropriate course is for him to receive reports from the CMA and Ofcom before deciding whether to make a reference under section 42 of the Act, i.e. for a more detailed consideration of these matters by the CMA.

Creation of a relevant merger situation

According to the information provided by LHL, it appears that IMC now holds 30% of shares and voting rights in LHL. Similarly, as a result of the 2017 transaction, it appears that Scalable LP now holds 30% of shares and voting rights in IDMN. As IMC and Scalable LP are both registered to the same address and have the same shareholders and the ability to appoint two directors to LHL and IDMN, it appears that a significant level of material influence in the affairs of LHL and IDMN has been obtained by the shareholders of IMC and Scalable LP, and that there have been successive arrangements between the same parties or interests in respect of LHL and IDNM.

In light of these similarities between the IMC and Scalable transactions, which have occurred within two years of each other, the Secretary of State considers it appropriate to treat them as having occurred simultaneously, in accordance with section 29 and section 27(5) Enterprise Act 2002. When considered together in this way, the total turnover exceeds the threshold of £70m set out in section 23 of the Enterprise Act 2002.

As a result, it appears that there are reasonable grounds for suspecting that a relevant merger situation has been created.

Creation of a special merger situation

In addition the Secretary of State has considered whether the LHL-IMC transaction is a special merger within the meaning of section 59 of the Act. The Secretary of State notes that PAMCo data shows the Evening Standard has just over 1 million unique viewers each day which equates to 25.3% of all individuals that read a newspaper in London. The Secretary of State therefore considers that there may be reasonable grounds for suspecting that the acquisition of a 30% shareholding by IMC in LHL may also constitute a special merger situation under the Act. He is therefore also considering whether to issue a special intervention notice under section 59 Enterprise Act 2002.

The Secretary of State - having considered LHL's representations - has concluded that there are reasonable grounds for believing a relevant and a special merger situation has or is likely to have been created as a result of the connected transactions involving IDMN and LHL. He is currently minded to issue an intervention notice in respect of the relevant merger situation.

Newspaper and Media Public Interest Considerations

The Secretary of State notes that both IMC and Scalable LP have the same shareholders, with strong links to the Saudi Arabian state. In particular it appears that Wondrous Investments Holding LP, which holds shares in both IMC and Scalable LP, is part owned by the Al Ahli Bank, which is majority owned by the Saudi Arabian state. The Secretary of State also notes that IDMN has announced a partnership with the Saudi Research and Media Group (SRMG), which may also be part-owned by the Al Ahli Bank.

The Secretary of State has carefully noted LHL's representations that the shareholders in IMC and their appointed directors will have no control over the appointment of the editor or editorial matters at The Evening Standard (and that the editor of The Evening Standard will report to the Managing Director). However, he has also noted the structure of ownership, the lack of clarity around beneficial ownership of IMC, Scalable and Wondrous Investments, and the links between the various shareholders, all of which may have an effect on the Evening Standard and the Independent's news agendas. He therefore considers that the accurate presentation of the news and freedom of expression public interest ground may be relevant to the merger.

Conclusion

At this stage, the Secretary of State makes no final determination on these matters. However, in light of the issues set out above, the Secretary of State is minded to intervene on the basis that he believes that it is or may be the case that the accurate presentation of news and the free expression of opinion public interest grounds are relevant to a consideration of the merger.

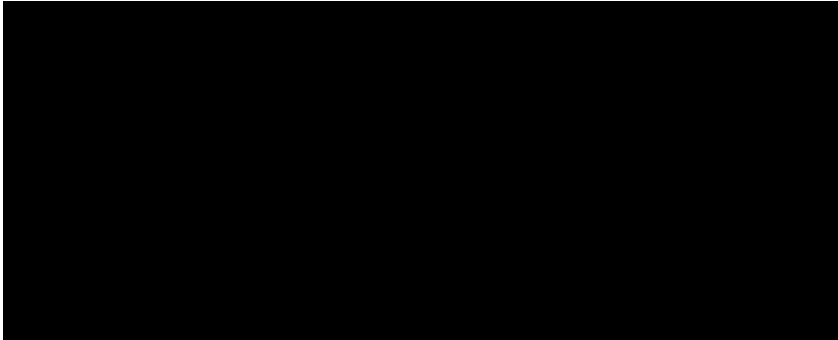
Before taking his final decision, the Secretary of State is giving you the opportunity to provide representations in writing. Any such representations should be sent to myself via email by **5.00pm on Monday 17 June**. The Secretary of State will then consider any relevant representations made before taking his final decision on whether to issue an Intervention Notice in respect of the transaction.


Timing

The Secretary of State notes that under section 24 of the Enterprise Act (as applied by section 42) there is a four month time period for him to decide whether to refer this matter to the CMA under section 45 Enterprise Act. This time period runs from when the CMA became aware of the transaction, and includes not only any decision to issue an Intervention Notice but also the time to obtain reports from the CMA and from Ofcom under sections 44 and 44A of the Act.

Unfortunately, much of this four month limit was spent on correspondence between us, whilst we sought to obtain sufficient information from you to allow the Secretary of State to make a decision whether to issue an Intervention Notice. The time period can be extended by 20 working days by agreement between yourself and the Secretary of State, in accordance with section 25(1) (as modified by section 42(6)(b)), and again by a further 20 working days by agreement between yourself and the CMA (section 25(1) as modified by section 42(6)(g)).

In light of the important public interest concerns at issue in this matter, the fact you previously wrote to us to request an extension of time to respond to our queries and the delays that have occurred in DCMS being provided with full details of the transaction, we trust you will be agreeable to such an extension of time if an Intervention Notice is issued.




Deputy Director, Head of Media Policy
Department for Digital, Culture, Media and Sport