

**Public interest test on the completed  
acquisitions by International Media  
Company of shares in Lebedev Holdings  
Limited and by Scalable Inc of shares in  
Independent Digital News and Media  
Limited**

Ofcom's advice to the Secretary of State

Confidential redactions are indicated by [REDACTED]

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Submitted on: 21 August 2019

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# 1. Overview

**This report comprises our advice to the Secretary of State for Digital, Culture, Media and Sport as to whether the acquisition of shares in Lebedev Holdings Ltd (“LHL”) and the acquisition of shares in International Digital News and Media (“IDNM”) would operate against the public interest.**

On 27 June 2019 the then Secretary of State issued a Public Interest Intervention Notice (“PIIN”) in relation to the acquisition by International Media Company (“IMC”) in LHL which is the majority shareholder in Evening Standard Limited, and of the acquisition by Scalable Inc in IDNM which is responsible for running the Independent news websites.

He asked Ofcom to look at the effect of the transactions on the following public interest considerations:

- the need for accurate presentation of news in newspapers; and
- the need for free expression of opinion in newspapers.

Ofcom is required to report to the Secretary of State by 23 August 2019.

## What we have found

**The transactions should be considered in the context of the challenges faced by newspapers.** As Ofcom’s previous public interest tests have stressed, newspapers play a vital role in UK society and help ensure media plurality. Newspapers are adapting to the challenges brought by the growth of online news by diversifying revenue streams, cost cutting and consolidating. Ofcom’s view remains that investment to support the long-term viability of newspapers should generally be welcomed.

**They should also be considered in the context of the regulatory framework for newspapers.** Newspapers and online news websites are self-regulated or subject to one of the voluntary industry regulatory schemes in existence - IPSO or IMPRESS. Industry norms have developed in the press for accuracy. However, unlike broadcasters, newspapers are allowed to be partisan and can take particular editorial positions. Newspapers are not generally required to be transparent about their ownership and there is no licensing regime for persons seeking to own newspapers. Prior to the transaction, the publications were controlled by an active proprietor with some editorial views and overseas links.

**The Evening Standard reaches significant numbers of people.** The printed edition, which is circulated throughout Greater London, is read by millions of people each day. Its online news content also has a high monthly reach. However, its readers also tend to get their news from a large range of other sources, which may mean its strength of voice is diluted.

**The buyers might have some incentives and ability to influence the publications, but there are also some restrictions on their abilities to do so.** The buyers have links to Saudi Arabia. We cannot rule out that there may be incentives and ability for the buyers to alter the accuracy or editorial stances of the publications. However, the corporate structures include other strong shareholders, and the parties have put in place measures to preserve editorial freedom.

**The transactions do not appear to have had an editorial impact to date.** We have carried out a detailed analysis of a sample of the content of both publications before and after the transactions, and there has been no evidence or substantial claims of any influence in practice to date. We cannot, of course, rule out any suggestion that the buyers might in future, perhaps with the other shareholders' consent, seek to present more positive coverage of Saudi matters. However, this is a possibility in relation to other newspapers as well, for example, to any newspaper potentially seeking to expand overseas.

**Concerns about the transparency of the transactions do not on their own justify a reference.** The Department for Digital, Media, Culture and Sport's 'minded to' letter suggested that the lack of clarity around the beneficial ownership of IMC and Scalable was one of the then Secretary of State's reasons for considering that the accurate presentation of news and free expression of opinion may be relevant to the transactions.<sup>1</sup> However, as mentioned above, there is no general requirement for the public to know about all investors in newspapers in the UK. In this case, press coverage and the merger control process have made public the possible influence of Saudi interests over the editorial coverage of the publications.

**Overall, we do not consider that a reference to the CMA is warranted on either the accuracy of presentation of news ground or on the free expression of opinion ground.**

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<sup>1</sup> [DCMS 'minded to' letter to Lebedev Holdings Limited](#), 13 June 2019.

## 2. Introduction

### The transactions

- 2.1 In 2017, Scalable Inc acquired a 30% stake in Independent Digital News and Media Limited (“IDNM”), which is responsible for running the Independent. The Independent is an online-only publisher of news, operating a series of websites including [www.theindependent.co.uk](http://www.theindependent.co.uk) and [www.indy100.com](http://www.indy100.com).
- 2.2 More recently, in December 2018 and February 2019, International Media Company (“IMC”) acquired, through a series of transactions, a 30% stake in Lebedev Holdings Limited (“LHL”). LHL is the majority shareholder in Evening Standard Limited, which runs The Evening Standard printed newspaper, as well as The Evening Standard’s online news services.

### The Public Interest Intervention Notice

- 2.3 On 27 June 2019, the then Secretary of State made a statement to Parliament concerning these acquisitions. He issued a Public Interest Intervention Notice (“PIIN”)<sup>2</sup> in relation to the transactions under section 42(2) of the Enterprise Act 2002 (the “Act”) specifying the following public interest considerations as potentially relevant to the acquisition:
- a) the need for accurate presentation of news in newspapers (“accurate presentation ground”); and
  - b) the need for free expression of opinion in newspapers (“free expression of opinion ground”).<sup>3</sup>
- 2.4 Ofcom’s statutory role in relation to the transactions was triggered by the PIIN. We are required to report to the Secretary of State under Section 44A of the Act by 23 August 2019.
- 2.5 On 5 July 2019, IDNM and LHL made an application to the Competition Appeal Tribunal (“the CAT”) seeking annulment of the PIIN and the public interest intervention process. The CAT gave its judgment on 16 August 2019. The CAT decided not to quash the PIIN, but it gave a declaration that the time limit for the Secretary of State to make a reference, under section 45 of the Act, to the Competition and Markets Authority (“the CMA”) expired on 1 July 2019.<sup>4</sup>

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<sup>2</sup> Department for Digital, Culture, Media and Sport, [Public Interest Intervention Notice issued by Secretary of State Jeremy Wright](#), 27 June 2019.

<sup>3</sup> Section 58 (2A) of the Act.

<sup>4</sup> Competition Appeal Tribunal judgment, [https://www.catribunal.org.uk/sites/default/files/2019-08/1328\\_Lebedev\\_Judgment\\_160819.pdf](https://www.catribunal.org.uk/sites/default/files/2019-08/1328_Lebedev_Judgment_160819.pdf)

## Ofcom's role

- 2.6 Ofcom's role is to conduct a first stage investigation of the effect of the transactions on the two public interest considerations. We are required to consider whether it is or may be the case that the merger may be expected to operate against the public interest, having regard only to the public interest considerations specified by the Secretary of State. We must also summarise any representations about the case which we have received, and which relate to the public interest considerations. Our summary is in Annex 1.
- 2.7 The CMA is separately required to report to the Secretary of State on the impact of the transaction on competition under section 44 of the Act by the same deadline of 23 August 2019.<sup>5</sup> The CMA has shared with us representations that it has received as part of its investigation that are relevant to the public interest considerations.

## Ofcom's approach

- 2.8 When considering the two public interest test grounds, the scope of our assessment has been limited to the impact the transactions may have on news in newspapers in the UK. Our assessment does not consider the possible impact on any other operations carried out by IDNM or LHL, for example IDNM's news websites which operate outside of the UK or ESTV which is also owned by LHL and operates the local television channel London Live.
- 2.9 The PIIN specifies public interest considerations in relation to "newspapers". "Newspaper" is a defined term in the Enterprise Act 2002 and only covers print newspapers.<sup>6</sup> The merger includes IDNM, but the specified public interest considerations do not apply to IDNM since The Independent is an online-only publication. Therefore, we only consider the merger in terms of what may happen to The Evening Standard print newspaper. However, we consider that the parties' conduct in relation to The Independent news websites is relevant as evidence of how the parties are likely to behave generally, including in relation to The Evening Standard print newspaper.
- 2.10 We have taken account of the 2004 statutory guidance from the Department of Trade and Industry ('DTI Guidance')<sup>7</sup>, together with previous relevant regulatory decisions by Ofcom or other regulatory bodies.
- 2.11 We have considered each of the grounds within the regulatory context for newspapers within the UK (see Section 5 below). There is no general requirement for a newspaper owner to satisfy standards of fitness or professional conduct. Newspapers are self-regulated or subject to voluntary industry regulation schemes. They are allowed to take

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<sup>5</sup> It reported on 28 June 2019.

<sup>6</sup> Section 44(10) of the Act states that newspaper "means a daily, Sunday or local (other than daily or Sunday) newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom".

<sup>7</sup> DTI Guidance, May 2004. *Enterprise Act 2002: Public Interest intervention in Media Mergers*.

<http://webarchive.nationalarchives.gov.uk/20100512170615/http://www.bis.gov.uk/files/file14331.pdf>. The public interest grounds contained in the statute may no longer reflect the reality of news consumption and we have therefore considered the Guidance carefully in the light of the time which has passed since its introduction.

particular editorial stances on public policy and political issues. By contrast, UK broadcasters must be fit and proper to hold a licence, and news that is broadcast on television and radio must be reported with due accuracy and presented with due impartiality.<sup>8</sup> Although there have been some cases in the past in which the public interest considerations specified in relation to the current case have led to transactions being restricted or stopped (see paragraphs 2.15 and 2.19 below), it is not necessarily contrary to the public interest for newspaper proprietors to take an interest in and influence the content of their newspapers, which may lead to newspapers expressing strong or controversial views, or for newspapers to get things wrong sometimes. We also note that it is not necessarily contrary to the public interest for newspapers to be owned or controlled by foreign nationals. Our assessment of the identified public interest considerations is made in this context.

- 2.12 Much of the analysis we have undertaken is relevant to our considerations for both of the grounds. As such, we have presented this together within this report. However, we have reached separate conclusions on each ground, which we present in Section 8.

### **Accurate presentation of news**

- 2.13 Ofcom has not previously been asked to consider a merger in which the Secretary of State has intervened in relation to the accurate presentation of news in newspapers.
- 2.14 Statutory guidance on this ground notes that the impact of a relevant merger situation on accurate presentation of the news is likely to be assessed by reference to evidence of past behaviour by the enterprises in question, or by the persons with control of such enterprises, in relation to that or other enterprises, including but not limited to newspapers. The Secretary of State expects that behaviour in sectors more closely related to newspapers, such as magazines, is likely to be more relevant than behaviour in sectors with a less direct connection.<sup>9</sup>
- 2.15 The Monopolies and Merger Commission (“MMC”)<sup>10</sup> considered the possible impact on the accurate presentation of news, alongside free expression of opinion, in 1990 when David Sullivan sought to take a controlling interest in the Bristol Evening Post.<sup>11</sup> In that case the MMC concluded that the acquisition could be expected to operate against the public interest in relation to these grounds. In coming to this conclusion, a key consideration for the MMC was Sullivan’s 50% share in Sport Newspapers Ltd which published the Sunday Sport and The Sport. It considered that the stories published in the Sunday Sport were often ‘fantasy’ and made no attempt at the accurate presentation of news, and as such, David Sullivan’s influence in the Bristol Evening Post could be expected to operate against the public interest in relation to the accurate presentation of news.

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<sup>8</sup> Section 319 (c) and (d) Communications Act 2003.

<sup>9</sup> Paragraph 5.5 of the [DTI Guidance](#).

<sup>10</sup> The MCC was the precursor to the Competition Commission, which was the precursor to the CMA.

<sup>11</sup> The Monopolies and Mergers Commission, [Mr David Sullivan and the Bristol Evening Post plc: A report on the proposed transfer of a controlling interest](#), May 1990.

- 2.16 With this in mind, in assessing the accurate presentation of news ground in relation to these transactions, we have taken into consideration whether we believe there are any incentives for the buyers to influence the accuracy of the publications, along with their ability to do so by considering the extent and nature of their control, and any measures the parties have put in place to preserve accuracy. We have also considered whether the buyers have shares in any other media businesses, which could provide evidence of their likely behaviour. In addition, since the transactions have already taken place, we have assessed the conduct of the publications concerned since then.

## Free expression of opinion

- 2.17 The statutory guidance on this ground describes how free expression of opinion in newspapers concerns “the extent to which the transaction would affect the freedom of editors to operate without interference from the proprietor”.<sup>12</sup>
- 2.18 In considering this ground historically in relation to regional or local newspapers, the statutory guidance notes that the Competition Commission (“CC”) and the MMC had generally been of the view that, in order to maintain or increase circulation, the newspapers would need to reflect the views and concerns of readers in the relevant areas, and that local editors would be best placed to judge this. As such, this would tend to ensure a significant degree of independence for the local editors whether the owner is a national or local publisher.<sup>13</sup> However, this is not always the case, and was not true of the Sullivan case, whereby the MMC still felt that the newspaper proprietor might seek to influence the editorial policy of the Bristol Evening Post.
- 2.19 When looking at cases involving national publications<sup>14</sup>, in 1981 the MMC recommended that conditions should be attached to any consent given to allow George Outram & Company Ltd to increase its stake in The Observer to 25% in order to safeguard editorial independence.<sup>15</sup> In reaching this view, the MMC considered: the commercial interests of the proprietor both in the UK and in other parts of the world and whether these may lead it to put editors under pressure to include certain stories and exclude others; the assurances made by the proprietor that it would maintain the editorial tradition and journalistic standards of The Observer; and the extent to which the proprietor had ever tried to exert pressure or interfere with the editors or the editorial staff at the newspapers it had previously owned in Africa and Scotland.<sup>16</sup> The MMC recommended that conditions

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<sup>12</sup> Paragraph 5.7 of the [DTI Guidance](#).

<sup>13</sup> Paragraph 5.8 of the [DTI Guidance](#).

<sup>14</sup> The CC also considered the issue of editorial interference in relation to its report on whether the transfer to Johnston Press plc of eight free weekly newspapers from Trinity Mirror plc would operate against the public interest in 2002. Its final view was that the transfers would not have adverse effects with regard to either the accurate presentation of news or free expression of opinion. The full report can be found on [The National Archives](#).

<sup>15</sup> Paragraph 5.9 of the [DTI Guidance](#).

<sup>16</sup> The Monopolies and Mergers Commission, A report on the proposed transfer of The Observer, a newspaper of which Atlantic Richfield Company is a proprietor, to George Outram & Company Limited, a subsidiary of Scottish and Universal Investments Limited, whose parent company is Lonrho Limited, June 1981.

should be attached to the Secretary of State's consent. One of its key reasons for this recommendation was that the buyer's parent company, Lonrho Limited, had extensive commercial interests in the UK and overseas which meant that the MMC could not exclude the possibility that "the strains arising from conflicts of interest may result in attempts at interference with the accurate presentation of news and free expression of opinion".

- 2.20 Ofcom has also previously considered one merger in which the Secretary of State has intervened in relation to the free expression of opinion ground. This was in the case of the acquisition by Reach plc of publishing assets of Northern & Shell Media Group Limited.<sup>17</sup> In our consideration of that merger, we looked at the measures Reach plc had put in place to promote and maintain editorial independence. We also considered whether there were any commercial or political incentives for shareholders and Board members to attempt to influence the editorial decision making of the publications, and whether they had the ability to act on such incentives. We came to the view that Reach plc's commitments to ensure the titles retained their unique and editorial positioning, the lack of political or commercial incentives for the shareholders of Reach plc to limit free expression of opinion, and the limited ability for the Board to influence the editorial position of the papers, meant that the transaction would not reduce free expression of opinion.
- 2.21 As such, in assessing the free expression of opinion ground in relation to these transactions, we have taken into account whether there appear to be any incentives for the buyers to influence or alter the editorial stance of the publications or interfere with the editors' running of the publications, along with their ability to do so by considering the extent and nature of their control and any measures the parties have put in place to preserve editorial freedom. We have also considered whether the buyers have shares in any other media businesses, which could provide evidence of their likely behaviour. In addition, since the transactions have already taken place, we have also considered whether there has been a change in the editorial stance or tone of either publication since the dates of the transactions.

## Our process

- 2.22 We published a Guidance note on 28 June 2019 which set out the process and timetable for preparing our report for the Secretary of State.<sup>18</sup>
- 2.23 Alongside this, we also published an Invitation to Comment and invited written submissions by 12 July 2019.<sup>19</sup> We received five submissions, which we have considered as

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[https://webarchive.nationalarchives.gov.uk/20111202170636/http://www.competition-commission.org.uk/rep\\_pub/reports/1981/index.htm](https://webarchive.nationalarchives.gov.uk/20111202170636/http://www.competition-commission.org.uk/rep_pub/reports/1981/index.htm)

<sup>17</sup> Ofcom, [Public Interest Test for the acquisition by Trinity Mirror plc of publishing assets of Northern & Shell Media Group Limited](#), 31 May 2018

<sup>18</sup> Ofcom, [Guidance note on public interest test on the completed acquisitions by International Media Company of shares in Lebedev Holdings Limited and by Scalable Inc of shares in Independent Digital News and Media Limited](#), 28 June 2019

<sup>19</sup> Ofcom, [Invitation to comment on public interest test on the completed acquisitions by International Media Company of shares in Lebedev Holdings Limited and by Scalable Inc of shares in Independent Digital News and Media Limited](#), 28 June 2019

part of our analysis. The responses are summarised in Annex 1. The CMA also provided us with copies of responses to their consultation that were relevant to the public interest considerations, which are also summarised in Annex 1 and we note where we refer to these.

- 2.24 We have also considered information provided to us by the relevant parties in response to requests for information from us. Ofcom has no formal information gathering powers when undertaking a Public Interest Test, and so this information was provided on a voluntary basis. It is an offence knowingly to provide information in this context that is false or misleading in a material respect.<sup>20</sup> We also met the Editor of The Independent and the Editor of The Evening Standard.

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<sup>20</sup> Section 117 of the Act.

## 3. The transactions

3.1 In this section we provide an overview of the relevant transactions.

### The Evening Standard

3.2 The Evening Standard printed newspaper, which is circulated throughout Greater London, is run by a UK-incorporated company, Evening Standard Limited, which also runs the Evening Standard news website, [www.standard.co.uk](http://www.standard.co.uk), and [www.homesandproperty.co.uk](http://www.homesandproperty.co.uk). Evening Standard Limited also owns the majority of shares (70%) in ES London Limited, a company engaged in the provision of advertising services through digital sites and related domain names.

3.3 The majority shareholder (around 95%) in Evening Standard Limited is LHL, another UK-incorporated company. LHL is the sole shareholder in another UK incorporated company, ESTV Limited, which runs the local television service London Live.

3.4 Prior to the transactions, LHL was 100% held by Evgeny Lebedev, an Anglo Russian who, the Editor of The Evening Standard told us, takes an interest in the Evening Standard's Christmas campaigns.<sup>21</sup> Evgeny Lebedev occasionally writes for the paper, for example, he has written articles in support of charitable causes.<sup>22</sup>

3.5 Over a series of transactions between 7 December 2018 and 20 February 2019, LHL issued new shares, some of which were acquired by a newly created Cayman Islands incorporated company, IMC, and some of which were acquired by Justin Byam Shaw, who is also the Chairman of the ES businesses. IMC ultimately acquired a 30% shareholding in LHL. Following the transaction, the shares in LHL were held as follows:<sup>23</sup>

| Evgeny Lebedev | IMC            | Justin Byam-Shaw |
|----------------|----------------|------------------|
| 60% (A shares) | 30% (B shares) | 10% (C shares)   |

3.6 LHL issued new shares and debt and consequently received the purchase price of £25 million from the buyer.<sup>24</sup>

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<sup>21</sup> Ofcom meetings with Editors of The Evening Standard and Independent, 1 August 2019

<sup>22</sup> See, for example, [Prince William hails 'incredible' support of Standard readers as our Christmas Appeal smashes £1m barrier](#), Evening Standard, 12 December 2016; [We ask the children to draw a picture of their life. It's a man beating them: Special report on modern slavery](#), Evening Standard, 24 November 2017; Evgeny Lebedev's articles page on the Evening Standard: <https://www.standard.co.uk/author/evgeny-lebedev>

<sup>23</sup> Letter from LHL to the Secretary of State 24 April 2019.

<sup>24</sup> LHL response to Ofcom information request

## The Independent websites

- 3.7 The Independent news websites are run by a UK-incorporated company, IDNM. Its websites targeting the UK are independent.co.uk and indy100.com, together with a digital mobile application, The Independent Digital Edition. It does not publish a printed newspaper. IDNM also has a US subsidiary.
- 3.8 Prior to 7 June 2017, IDNM was 67.66% held by Evgeny Lebedev. Almost 30% was held by Justin Byam Shaw. The remaining few per cent was held by two other individuals, Zachary Leonard and Manish Malhotra.
- 3.9 On 7 June 2017, a newly created Cayman Islands incorporated company, Scalable Inc, acquired a 30% shareholding in IDNM by purchasing shares from the existing shareholders (i.e. the transaction did not make any new capital available to IDNM). Following the transaction, the shares in IDNM were held as follows<sup>25</sup>:

| Evgeny Lebedev                 | Scalable       | Justin Byam Shaw               | Zachary Leonard | Manish Malhotra  |
|--------------------------------|----------------|--------------------------------|-----------------|------------------|
| 40.69% (A shares and C shares) | 30% (D shares) | 26.97% (A shares and B shares) | 2% (A shares)   | 0.33% (A shares) |

## The buyers

- 3.10 Each of the two Cayman Islands companies, Scalable and IMC, is held 50% by Sultan Abuljadayel, and 50% by another Cayman Islands-incorporated entity, a limited partnership called Wondrous Investment Holdings L.P. which the parties describe as an investment fund.<sup>26</sup>
- 3.11 Under the articles of association of IMC, the shareholders of IMC may set a minimum and maximum number of directors, however, if they do not set limits, the minimum number of directors will be one.<sup>27</sup> Directors' decisions are taken by a majority of votes and in the case of a tie, the chairman has the casting vote.<sup>28</sup> A director can be appointed by ordinary resolution (requiring a majority of the shareholders) or by the existing director(s).<sup>29</sup> Sultan Abuljadayel is IMC's director.<sup>30</sup> The articles of association of Scalable adopt the same

<sup>25</sup> Letter from LHL to the Secretary of State 24 April 2019.

<sup>26</sup> Letter from LHL to the Secretary of State 19 February 2019, transcript of hearing in *LHL v Secretary of State for Digital, Culture, Media and Sport*, Case No.: 1328/4/10/19, p.7 lines 16-20, p.8 line 1, and p.11 lines 5-8.

<sup>27</sup> Sultan Abuljadayel response to Ofcom information request - article 83 of the articles of association of IMC.

<sup>28</sup> Sultan Abuljadayel response to Ofcom information request - article 103 of the articles of association of IMC.

<sup>29</sup> Sultan Abuljadayel response to Ofcom information request - articles 80 to 86 of the articles of association of IMC.

<sup>30</sup> Agreement for the subscription for, and allotment and issue of, 30% of the entire issued share capital of Lebedev Holdings Limited, 7 December 2018, provided by Evgeny Lebedev in response to Ofcom request for information.

position regarding the number of directors, appointment of directors and directors' decisions.<sup>31</sup>

- 3.12 A website, Diligencia<sup>32</sup>, which specialises in “sourcing and compiling company information on the Arab world” describes Sultan Abuljadayel as “remarkable largely for his lack of public profile – he has no corporate interests under his own name in Saudi Arabia (directorships or shareholdings), has not been mentioned in the Arabic- or English-speaking media before this acquisition, and despite having a well-known family name is unheard of amongst the Saudi sources we spoke to”.<sup>33</sup>
- 3.13 We are not aware that he has ever had any active media role in the past, or that he has any particular expertise in relation to UK newspaper markets. We asked him to describe any current or previous direct or indirect investments of stakes of 10% or more in any media businesses. He stated that no such investments exist in relation to the United Kingdom. In terms of investments outside of the United Kingdom, he stated that he did not consider the question relevant to Ofcom’s functions but indicated that “if there are any other media investment internationally it isn’t related to news”.<sup>34</sup>
- 3.14 Sultan Abuljadayel told us that he comes from a well-known wealthy family in Saudi Arabia. He is currently Head of the ‘Special Account Unit’ in Wealth Management at NCB Capital and his background for 20 years has been in financial services, securities and wealth management. He confirmed that none of the funds used for the transactions came from the Saudi royal family. He also stated that he has no social, family, business association or employment links with the Saudi royal family.<sup>35</sup>
- 3.15 Wondrous Investment Holdings L.P. has two partners. One, the general partner, is a Cayman Islands-incorporated entity called Wondrous GP Limited, which is ultimately owned by National Commercial Bank, a Saudi Arabian bank whose shares are publicly listed.<sup>36</sup> We understand from the Secretary of State that a majority of the shares in the bank are held by the Saudi state.<sup>37</sup> Wondrous GP Limited’s role confers voting rights but no rights to dividends. The contact person for that entity is also the Head of Product Development at NCB Capital.<sup>38</sup>
- 3.16 We understand that the other partner, The Multi Opportunities Fund No. 75, has the right to receive dividends but no voting rights.<sup>39</sup> We do not consider that any bank or investment fund could voluntarily disclose information about individual investors in its funds. However, we asked Wondrous GP Limited whether any person whose investment makes

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<sup>31</sup> Sultan Abuljadayel response to Ofcom information request - articles 79 to 85, and article 102 of the articles of association of Scalable.

<sup>32</sup> <http://fav.diligenciagroup.com/site/about-us/>

<sup>33</sup> <http://fav.diligenciagroup.com/site/the-independents-saudi-investor/>

<sup>34</sup> Sultan Abuljadayel response to Ofcom information request

<sup>35</sup> Sultan Abuljadayel’s response to Ofcom information request.

<sup>36</sup> Letter from LHL to the Secretary of State 16 May 2019. The bank is also sometimes referred to as El Ahli Bank.

<sup>37</sup> Letter from the Secretary of State to LHL 13 June 2019, transcript of hearing in LHL v Secretary of State for Digital, Culture, Media and Sport, 23 July 2019, Case No.: 1328/4/10/19 p.107 line 24 to p.108 line 1.

<sup>38</sup> Wondrous GP Limited’s response to Ofcom information request.

<sup>39</sup> Letter from LHL to the Secretary of State 19 February 2019.

up more than 10% of the fund is a member of the Saudi royal family, and how many such persons there are, and were told that there are none.<sup>40</sup> We also asked whether any of the funds used for the transactions came from any member of the Saudi royal family whether by way of gift, loan or remuneration for services rendered, and were told that they were not.<sup>41</sup> LHL stated that it understands that no one investor holds more than 25% of the fund.<sup>42</sup>

3.17 We asked Wondrous GP Limited to describe any current or previous direct or indirect investments of stakes of 10% or more in any media businesses. Wondrous GP Limited confirmed that no such investments exist in relation to the United Kingdom.<sup>43</sup> [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Wondrous GP Limited stated that it did not consider interests outside the UK to be relevant to Ofcom's functions but indicated that "if there are any other media investment internationally it isn't related to news".<sup>46</sup>

3.18 We have not explored the precise nature of the links between the investment fund and National Commercial Bank. For the purposes of our analysis only, we have hypothesised that it is possible the investment fund might contain only four investors (figure 1)], all of whom may still be key members of the Saudi government (even if not of the Saudi royal family), or may be companies controlled by the Saudi royal family, and that it is possible that the bank is effectively under the full control of the Saudi state.

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<sup>40</sup> Wondrous GP Limited's response to Ofcom information request.

<sup>41</sup> Wondrous GP Limited's response to Ofcom information request.

<sup>42</sup> Letter from LHL to the Secretary of State 19 February 2019.

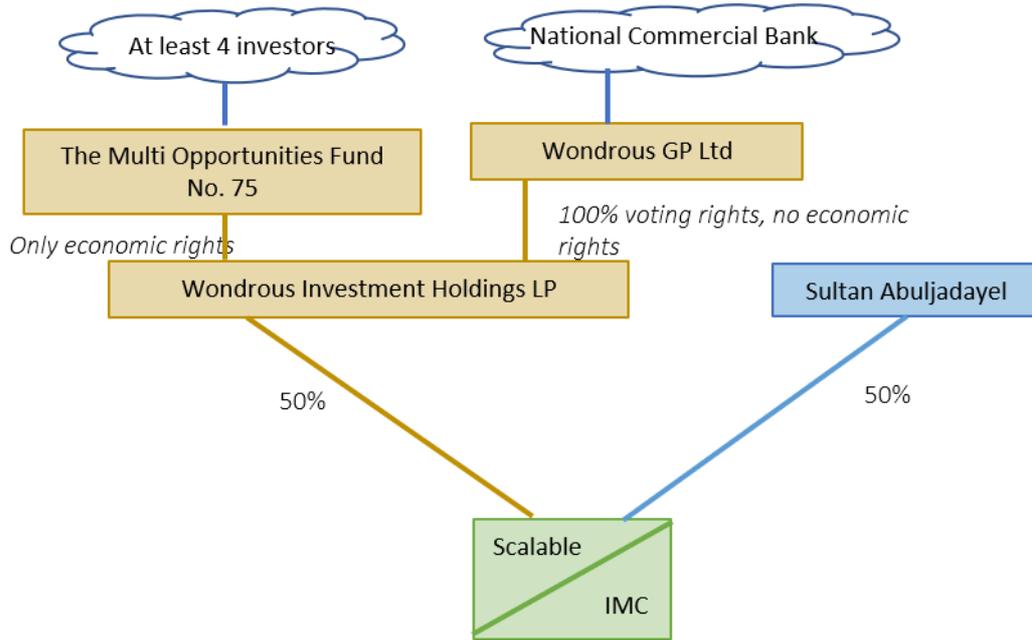
<sup>43</sup> Wondrous GP Limited's response to Ofcom information request.

<sup>44</sup> Letter from LHL to the Secretary of State 19 February 2019.

<sup>45</sup> [REDACTED]

<sup>46</sup> Wondrous GP Limited's response to Ofcom information request.

Figure 1: Holding structure above Scalable/IMC



## 4. Market context

- 4.1 In this section we describe the position of newspapers in UK society and the wider market context for the provision of news in the UK. We consider the audience and market trends affecting the way people access and consume newspaper content and other sources of news.

### **Newspapers play in a vital role in UK society yet continue to face uncertainty**

- 4.2 For our Public Interest Test of the acquisition by Reach plc of publishing assets of Northern & Shell Media Group Limited, we considered the transaction in the context of challenges faced by the newspaper industry.<sup>47</sup> We highlighted that newspapers play a key role in the democratic process, providing a range of voices that reflect views across society and encouraging debate.<sup>48</sup> We also noted that the newspaper industry faces significant challenges as online news provision has increased and the ways in which people consume news has changed.
- 4.3 Reviewing the most recent evidence to inform our consideration of this assessment, the challenges facing the newspaper industry continue to grow and the future remains uncertain. According to Ofcom's latest news consumption survey results, while 38% of people use print newspapers as one of their sources of news, 66% now use online news sources. Multi-sourcing is commonplace with regular news readers now getting their news from around seven (6.8) different sources on average including social media and news aggregators.<sup>49</sup>
- 4.4 In February 2019, the Government published an independent report entitled 'a Sustainable Future for Journalism' by Dame Frances Cairncross.<sup>50</sup> This report stressed the vital contribution that newspapers make to the UK news ecology including by holding the powerful to account through their public interest journalism and investing in original journalism. The report also highlighted the significant pressures facing newspaper publishers given the declines in print circulation and readership and, consequently, print advertising revenues. Despite efforts to grow their digital revenues, this growth is so far not offsetting declines in newspapers' print revenues. The latest estimates also suggest

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<sup>47</sup> [Public interest test for the acquisition by Trinity Mirror plc of publishing assets of Northern & Shell Media Group Limited](#)

<sup>48</sup> The UK national newspaper market consists of 14 national daily and 11 Sunday titles. These national titles are owned and published by 10 commercial groups. Across the different newspaper groups, individual titles offer a wide range of editorial positions and views on public policy issues. Some regional or local titles also contain significant amounts of national and international news. There are over 600 regional and local titles, mostly paid weeklies with some daily titles.

<sup>49</sup> [Ofcom news consumption survey 2019](#), Base: Adults aged 16 or over.

<sup>50</sup> The Cairncross Review, '[A Sustainable Future for Journalism](#)', Independent Report to the Department for Digital, Culture, Media and Sport, 12 February 2019.

that online players such as Google and Facebook account for an increasing proportion of the UK's online advertising market.<sup>51</sup>

- 4.5 Newspapers have responded to the increased competition from online providers in a variety of ways. Looking to optimise digital advertising revenue, some titles such as The Times, The Telegraph and The Financial Times have put in place paywalls and The Guardian has introduced voluntary contributions. The online offers of others, such as The Evening Standard, The Sun and The Daily Mail, still rely predominantly on generating revenues from online advertising.
- 4.6 Newspapers are also cutting costs, leading to new business models.<sup>52</sup> The Cairncross Review noted that, to continue to achieve profitability, newspapers have cut back on the breadth and depth of their news reporting.<sup>53</sup> Such cost cutting has had a significant impact on staffing. The Review cited evidence that the number of frontline journalists in the industry has declined from an estimated 23,000 in 2007, to 17,000 in 2017.<sup>54</sup> The economic trends are also spurring consolidation.<sup>55</sup>
- 4.7 While the newspaper industry continues to develop a range of approaches, no clear model of success has emerged. Given the important position which newspapers occupy within the democratic process, investment to support their continued existence is generally to be welcomed.

## **The Evening Standard and The Independent reach significant numbers of people**

- 4.8 The Evening Standard and The Independent have significant footprints in the UK newspaper and news markets.
- 4.9 In June 2019, The Evening Standard had an average daily circulation of around 845,000 copies, which accounted for 15% of all UK national daily newspaper circulation.<sup>56</sup> As a newspaper with a free distribution model, The Evening Standard's performance has bucked the trend of declining circulation experienced by the UK newspaper market more widely, whereby the majority of titles are paid-for (figure 2 below).

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<sup>51</sup> In 2018, Google and Facebook together are estimated to have represented 61% of all online advertising revenue generated in the UK market in 2018. Ofcom, [Online Nation Report 2019](#)

<sup>52</sup> Examples include The Independent moving to online-only in 2016, The Guardian and its sister Sunday newspaper, The Observer, relaunching as tabloids in January 2018 (and outsourcing the printing of these titles to Reach plc), and most recently, in July 2019 The Times and The Sunday Times having the ability to share journalistic resources after DCMS accepted new undertakings to protect the editorial independence of both titles.

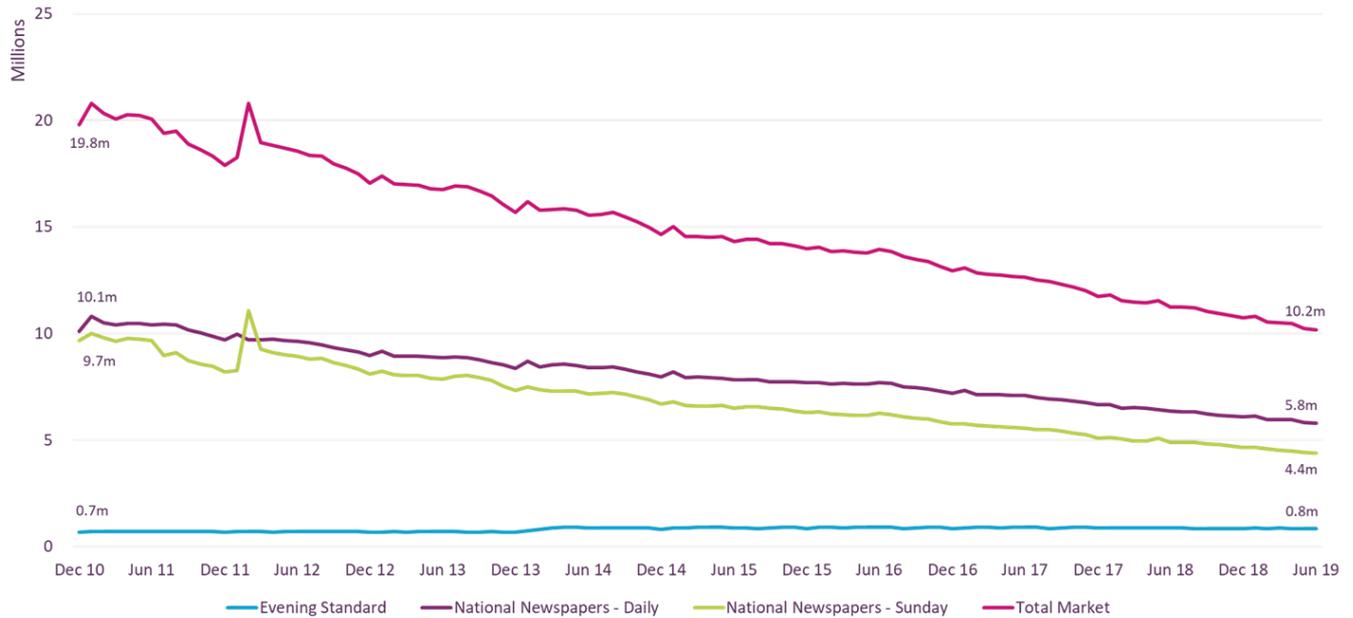
<sup>53</sup> The Cairncross Review, '[A Sustainable Future for Journalism](#)'

<sup>54</sup> Mediatique, [Overview of recent dynamics in the UK press market](#), April 2018. Report for the Department for Digital, Culture, Media and Sport.

<sup>55</sup> More recent examples of this include Trinity Mirror taking control of Local World in 2015, acquiring the 80% it did not already own in the company. In March 2018, Reach plc (the new name for Trinity Mirror) acquired the publishing assets of Northern & Shell including The Star and The Express newspapers.

<sup>56</sup> Audit Bureau of Circulation (ABC), June 2019

**Figure 2: Average UK net daily circulation of newspapers, December 2010 – June 2019**



Source: Audit Bureau of Circulation (ABC), December 2010 - June 2019

4.10 Looking at the readership of The Evening Standard and The Independent, as figure 3 below shows, each month The Evening Standard newspaper reaches around 4m adults. Its total monthly brand reach, incorporating readership across phone, tablet, desktop and print, amounts to around 17m adults. While digital-only, The Independent has an even larger reach of over 19m adults each month.

Figure 3: UK newspaper and website readership, April 2018 – March 2019

| UK Adults (15+)                        | Monthly reach ('000s) |        |        |         |       |
|--|-----------------------|--------|--------|---------|-------|
|  | Total                 | Phone  | Tablet | Desktop | Print |
| The Sun titles and websites            | 29,701                | 22,229 | 2,953  | 2,934   | 7,946 |
| The Mail titles and websites           | 31,115                | 21,478 | 3,085  | 6,694   | 7,496 |
| The Guardian/Observer and website      | 24,939                | 17,780 | 2,817  | 6,926   | 3,315 |
| The Mirror titles and website          | 25,278                | 19,638 | 2,651  | 2,628   | 3,965 |
| The Telegraph titles and website       | 22,669                | 15,336 | 2,721  | 5,658   | 3,178 |
| The Independent websites               | 19,476                | 14,664 | 2,091  | 5,000   | N/A   |
| Metro and website                      | 19,785                | 11,422 | 1,315  | 1,518   | 9,283 |
| Express titles and websites            | 20,200                | 14,937 | 2,372  | 3,463   | 1,921 |
| The Evening Standard title and website | 17,083                | 12,466 | 1,509  | 2,357   | 4,020 |
| The Times titles and websites          | 8,558                 | 3,453  | 702    | 1,154   | 4,625 |
| Daily Star titles and website          | 9,569                 | 6,986  | 811    | 972     | 1,642 |

Source: The Publishers Audience Measurement Company (PAMCo). Notes: Figures are based on nationally representative survey data for April 2018 to March 2019 combined with website readership data for March 2019. Figures are for total brand reach, and therefore they are a measure of the reach of all print and digital related content for each publisher brand.

4.11 Both The Evening Standard and The Independent attract more readers from the ABC1 socio-economic group than they do from the C2DE socio-economic groups. For the period April 2018 to March 2019, The Evening Standard brand reached 11m ABC1 readers on average, compared to 6m C2DE readers. Similarly, The Independent brand reached 12.8m ABC1 readers, compared to 6.7m C2DE readers over the same period.<sup>57</sup>

## Readers of The Evening Standard and The Independent tend to get their news from a large number of other sources

4.12 Ofcom uses a bespoke 'share of reference' metric that measures the share of total news consumption of individual providers, across different platforms or media used.<sup>58</sup> The Evening Standard (print and digital combined) has a relatively small share of reference of 0.47% and The Independent's share is 0.28%. These shares can be contrasted with the largest news sources such as the BBC (29.1%), Facebook (8.8%), Google (6.8%) and ITV (6.2%).<sup>59</sup>

4.13 While share of reference gives an indication of the strength of voice of different news providers, it may overstate or understate that strength of voice depending upon the range of other news sources readers also use. According to our survey, readers of The Evening

<sup>57</sup> The Publishers Audience Measurement Company (PAMCo). Figures are based on nationally representative survey data for April 2018 to March 2019 combined with website readership data for March 2019. Figures are for total brand reach, and therefore they are a measure of the reach of all print and digital related content for each publisher brand.

<sup>58</sup> Shares of reference are calculated by asking people which news sources they use and the frequency with which they use them. Each reference is then weighted for the frequency of use and summed. The share of each news source or provider can then be calculated based on their total number of references as a proportion of all references for all news sources.

<sup>59</sup> [Ofcom news consumption survey 2019](#).

Standard and The Independent use a relatively high number of different news sources. The average number of sources used by regular news users who use either the print or online version of The Evening Standard is 13.9. The average number of news sources used by regular news users who use The Independent website or app is 13.7. In comparison, the average number of sources used by all regular news users is 6.8.<sup>60</sup>

- 4.14 To get a fuller impression of how central The Evening Standard and The Independent are to their readers' news diets, it is useful to supplement these mean averages with the distribution of sources that people use. Among those that use either or both The Evening Standard print or digital versions, no one uses the publication as their sole source of news, 3% use two or three news sources and 97% use four or more sources. For readers of The Independent, again no one uses the publication as their sole source of news, 1% use two or three sources and 99% use four or more sources.<sup>61</sup>
- 4.15 This is consistent with data from ESI Readership survey provided to us by IDNM and LHL. The ESI Readership survey asks readers of The Evening Standard to rate how they feel if for any reason they do not get a chance to pick up a copy of the newspaper against a scale of 1 being "I feel less informed if I don't read The Evening Standard" through to 11 being "I have plenty of sources of news and information". The majority of respondents (70%) rated their feelings in such a situation as being between 6 and 11.<sup>62</sup>
- 4.16 This evidence indicates that, while The Evening Standard and The Independent reach significant numbers of people in the UK, the strength of voice of these titles is diluted as their readers also get their news from a relatively high number of different sources.

## **The perceived impact of The Evening Standard on its readers is comparatively low**

- 4.17 News providers may have a particular impact on the people who use them for news if they are trusted by their readers, viewers or listeners and can influence their opinions. A news source may also make an impact if users regard the news provider as a voice of authority. This may be because it operates as part of an established brand, or is perceived as accurate and trustworthy.
- 4.18 While quantifying impact is complex, we use a number of proxies from our news consumption survey, namely the perceived importance, impartiality, and trustworthiness of different news sources to their regular users, and the extent to which news sources help them to make up their minds about issues.

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<sup>60</sup> [Ofcom news consumption survey 2019](#). We define regular user as those users who use particular news sources on at least a weekly basis.

<sup>61</sup> [Ofcom news consumption survey 2019](#).

<sup>62</sup> ESI Readership Survey data provided in response to Ofcom information request to IDNM and LHL. We have been informed that the survey was carried out using an online sample of 1504 and 75% of the sample were Evening Standard readers. The data has not been weighted so it is not clear how representative it is with regard to frequency of readership or reader demographics. As such, we are not relying upon it, but note that it does not provide any reason to doubt the data on which we do rely.

4.19 According to the results of our most recent news consumption survey, certain newspaper titles are more likely to be rated as important, accurate, trustworthy and influential (‘helps me make my mind up’) than others by their readers. As figure 4 shows, The Guardian and The Daily Telegraph are rated highly (between 7-10)<sup>63</sup> by the majority (70% or above) of their weekly readers. However, The Evening Standard is rated relatively low (below 60%) by its weekly readers on these impact proxies.<sup>64</sup> This suggests the perceived impact of The Evening Standard on its readers is relatively low when compared to other national newspapers.

**Figure 4: Perceived importance of newspaper sources and views on their attributes among those who use each source weekly or more often, 2019**



Source: Ofcom News Consumption Survey 2019.

QE2. How important is <BRAND> as a source of news to you personally? QE3. And to what extent do you think the following statements apply to <BRAND> as a news source? Answer using a scale of 1 to 10.

Base: All using each source for news at least weekly (or every 2-3 weeks for weekly newspapers). Figures show those who rate it highly (between 7-10) for each attribute.

Note: The results have not been tested for statistical significance.

4.20 This survey evidence does not capture possible wider impacts. We note that, under the editorship of former Chancellor George Osborne, editorials by the Evening Standard on certain political issues of the day have attracted widespread media attention.<sup>65</sup>

<sup>63</sup> Weekly readers of the source were asked to rate the source on a scale of 1 to 10 (with 1 being ‘not at all’ and 10 being ‘completely’) on a series of attributes such as importance, high quality and accuracy. We consider a rating of between 7 and 10 as being a high rating.

<sup>64</sup> [Ofcom news consumption survey 2019](#). This data relates to readers views of the print version of newspapers only.

<sup>65</sup> See, for example, [George Osborne: millions of Britons unhappy about Brexit political options](#), The Guardian 19 May 2018; [George Osborne’s Evening Standard backs Lib Dems for EU elections](#), The Guardian 22 May 2019; [Brexit: George](#)

4.21 For The Independent website or app, the ratings given by readers against its proxies for impact are largely in line with the ratings readers give for the online offers of other newspapers.<sup>66</sup> This is relevant as it may indicate that if they wished to influence readers, the buyers would be more likely to seek to influence the coverage of news in The Independent, since it is perceived to have a greater impact. However, as we explain in Section 7, we do not believe that the transaction has had an impact on the coverage in The Independent to date.

## The Evening Standard and The Independent are both adapting their business models

4.22 Like other news providers, both The Evening Standard and The Independent face financial challenges in a highly competitive news market. Both publishers are pursuing strategies to diversify their revenue streams.

4.23 As a free newspaper, The Evening Standard is heavily reliant on advertising revenue (both print and digital). For the year ending 30 September 2018, it made an operating loss before interest and tax of approximately £9.5m, a 5% reduction in losses compared to the previous year (figure 5). Its turnover increased by 2% due in part to a 29% year-on-year growth in digital revenues.<sup>67</sup>

Figure 5: Financial performance of The Evening Standard, 2014-2018

|                               | Year ending 28 Sept 2014 | Year ending 27 Sept 2015 | Year ending 2 Oct 2016 | Year ending 1 Oct 2017 | Year ending 30 Sept 2018 |
|-------------------------------|--------------------------|--------------------------|------------------------|------------------------|--------------------------|
| Turnover                      | £62.9m                   | £71.3m                   | £71.2m                 | £63.9m                 | £65.4m                   |
| Net operating profit / (loss) | £1.1m                    | £3.4m                    | £2.2m                  | (£10.0m)               | (9.5m)                   |

Source: Evening Standard Limited Full Accounts, published on Companies House. Note: Figures have been rounded to one decimal place

4.24 In order to improve its financial performance, it was reported in May 2019 that the Editor of The Evening Standard had announced plans to cut jobs at the paper as part of wider plans to merge its print and online teams.<sup>68</sup> Data provided to us by LHL shows that The Evening Standard is forecast [REDACTED]

4.25 In light of the changing market conditions, The Independent stopped publishing a printed edition and became an online-only provider of news in 2016. The majority of its revenue

[Osborne warns of economic Russian Roulette](#), BBC News 23 January 2019; [George Osborne's change of heart](#), The Spectator, 20 June 2019; [George Osborne u-turn: Project Fear architect backs Boris Johnson as Tory Leader](#), The Express, 21 June 2019.

<sup>66</sup> [Ofcom news consumption survey 2019](#).

<sup>67</sup> [Evening Standard Limited Annual Report and Financial Statements for the year ended 30 September 2018](#), 25 June 2019. Published on Companies House.

<sup>68</sup> [London Evening Standard cuts jobs in drive to reduce costs](#), The Guardian, 3 May 2019.

<sup>69</sup> Evening Standard Ltd business grown plan, 9 April 2019, provided in response to Ofcom information request to LHL.

also comes from advertising, but, unlike The Evening Standard, it is a profitable publication. For the year ending September 2018, it recorded an operating profit of approximately £3m, a marginal decline of approximately £0.2m against the previous year (figure 6).

**Figure 6: Financial performance of The Independent, 2016-2018**

|                                      | Year ending 2 Oct 2016 | Year ending 1 Oct 2017 | Year ending 30 Sept 2018 |
|--------------------------------------|------------------------|------------------------|--------------------------|
| <b>Turnover</b>                      | £14.3m                 | £22.2m                 | £24.8m                   |
| <b>Net operating profit / (loss)</b> | £1.7m                  | £3.3m                  | £3.0m                    |

Source: Independent Digital News and Media Limited Group of Companies' Accounts, published on Companies House.

Note: Figures have been rounded to one decimal place

4.26 Data provided to us by IDNM with forecasts for the next three years shows [REDACTED]  
[REDACTED]

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<sup>70</sup> IDNM 3 year growth plan, 26 November 2018, provided in response to Ofcom information request to IDNM.

## 5. Regulatory context

- 5.1 In this section we describe how newspapers and online news websites are regulated generally and specifically in relation to The Evening Standard and The Independent news websites.

### Newspapers are self-regulated

- 5.2 In the UK, newspapers and online news websites are self-regulated. They may handle complaints themselves, or may choose to be subject to one of the voluntary industry regulatory schemes in existence - the Independent Press Standards Organisation (“IPSO”) or the Independent Monitor for the Press (“IMPRESS”). Newspapers are allowed to be partisan and can take particular positions on public policy and political issues.
- 5.3 The Independent news websites and The Evening Standard are not regulated by IPSO or IMPRESS. They have instead established their own editorial complaints framework. This was the position before the merger took place. Some other major press organisations, including The Guardian<sup>71</sup> and The Financial Times<sup>72</sup>, have similarly decided to not join IPSO or IMPRESS.
- 5.4 By comparison, some other major national titles, including The Daily Mail<sup>73</sup>, The Daily Telegraph<sup>74</sup>, The Times<sup>75</sup>, and The Sun<sup>76</sup> have chosen to be regulated (for both print and online content) by IPSO. IPSO was established in 2014 and its stated mission is “*To support those who feel wronged by the press*”; “*To uphold the highest professional standards in the UK press*”; and “*To determine whether standards have been breached and provide redress if so*”.<sup>77</sup>
- 5.5 Other press publications including some regional press titles have chosen to be regulated by IMPRESS. IMPRESS states that they “*help to build understanding and trust between journalists and the public - and provide the public with trusted sources of news*”.<sup>78</sup> IMPRESS is the only press regulatory body to be recognised by the Press Recognition Panel.<sup>79</sup>

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<sup>71</sup> The Guardian, *How to make a complaint about Guardian or Observer Content*.

<https://www.theguardian.com/info/2014/sep/12/-sp-how-to-make-a-complaint-about-guardian-or-observer-content>

<sup>72</sup> Financial Times, *FT Editorial Code*, <https://aboutus.ft.com/en-gb/ft-editorial-code/>

<sup>73</sup> MailOnline, *How to Complain*, <https://www.dailymail.co.uk/home/article-3110773/How-Complain.html>

<sup>74</sup> The Telegraph, *Editorial Complaints Policy*, <https://www.telegraph.co.uk/contact-us/editorial-complaints-policy/>

<sup>75</sup> The Times, *The Times Editorial Complaints*, <https://www.thetimes.co.uk/static/the-times-editorial-complaints/>

<sup>76</sup> The Sun, *Editorial Complaints*, <https://www.thesun.co.uk/editorial-complaints/>

<sup>77</sup> IPSO, *Vision, mission and values*, <https://www.ipso.co.uk/what-we-do/vision-mission-and-values/>

<sup>78</sup> IMPRESS, *About*, <https://impress.press/about-us/>

<sup>79</sup> The Press Recognition Panel was established by Royal Charter in line with the recommendations of the Leveson Inquiry into the culture, practices and ethics of the press 2012.

## Newspapers are expected to be accurate but are free to be partisan

- 5.6 Newspapers that have agreed to be regulated by IPSO are subject to the Editors' Code of Practice ("the IPSO Code").<sup>80</sup> Press organisations that have agreed to be regulated by IMPRESS, are subject to the IMPRESS Standards Code ("the IMPRESS Code").<sup>81</sup> The codes are relevant in that they each set out what might be seen as an industry norm for standards. For example, the requirement for newspapers to take care not to publish inaccurate information or pictures appears to be an industry standard. The IPSO Code and the IMPRESS Code establish rules on, among other issues, accuracy, privacy, and harassment. For example, the IPSO Code states that:
- a) *"The Press must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text.*
  - b) *A significant inaccuracy, misleading statement or distortion must be corrected, promptly and with due prominence, and — where appropriate — an apology published. In cases involving IPSO, due prominence should be as required by the regulator.*
  - c) *A fair opportunity to reply to significant inaccuracies should be given, when reasonably called for.*
  - d) *The Press, while free to editorialise and campaign, must distinguish clearly between comment, conjecture and fact.*
  - e) *A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party, unless an agreed settlement states otherwise, or an agreed statement is published."*
- 5.7 Similarly, the IMPRESS Code states that:
- a) *"Publishers must take all reasonable steps to ensure accuracy.*
  - b) *Publishers must correct any significant inaccuracy with due prominence, which should normally be equal prominence, at the earliest opportunity.*
  - c) *Publishers must always distinguish clearly between statements of fact, conjecture and opinion.*
  - d) *Whilst free to be partisan, publishers must not misrepresent or distort the facts."*
- 5.8 The IPSO Code and the IMPRESS Code do not require newspapers to be impartial nor are newspapers prevented from taking partisan positions on public policy and political issues. The preamble to the IPSO Code states that the IPSO Code "...should be interpreted neither so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it infringes the fundamental right to freedom of expression — such as to inform, to be partisan...". Similarly, as identified above, the IMPRESS Code notes that publishers are free to be partisan.

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<sup>80</sup> IPSO, *Editors' Code of Practice*, <https://www.ipso.co.uk/editors-code-of-practice/>

<sup>81</sup> IMPRESS, *IMPRESS Standards Code*, <https://impress.press/standards/impress-standards-code.html>

- 5.9 This freedom to be partisan contrasts with, for example, the broadcasting sector. Section 319 of the Communications Act 2003 requires Ofcom to set standards for broadcast content which, among other things, secure that broadcast news is duly accurate and presented with due impartiality. Accordingly, Ofcom’s Broadcasting Code sets rules on due accuracy and due impartiality. Alongside other provisions to maintain editorial standards, the rules on due impartiality limit the extent to which broadcasters can take partisan editorial positions.
- 5.10 Our consideration of the need for free expression of opinion in newspapers takes into account that newspapers generally are not required to present all sides of an argument, and proprietors have historically had substantial freedom to control editorial content.

## The Evening Standard and The Independent have their own frameworks

- 5.11 As explained above, The Evening Standard and The Independent have established their own editorial complaints framework with their own code of conduct (“the Company Code”). Although, they are not regulated by IPSO, they say they require all members of their editorial staff, freelancers and business partners to comply with the IPSO Code in addition to the Company Code.<sup>82</sup> Like the IPSO Code, the Company Code does not require The Evening Standard or The Independent news websites to be impartial.
- 5.12 The Company Code contains rules on, among other things, pre-publication editorial and legal clearance, conflicts of interest, researching online and privacy. On the issue of accuracy, the Company Code includes the following guidance:
- a) *“It is our primary endeavour to publish information that is accurate and will not mislead readers. You must take care not to distort information either by disingenuous phrasing or by omission.*
  - b) *If you think that material has been published or broadcast that is wrong, you should notify your line manager and the managing editor’s office. It may be necessary to take corrective action but you should not generally proceed without discussion.”*
- 5.13 IDNM has told us that the Company Code was in place at the time of the transaction between Scalable Inc and IDNM. Further, IDNM has told us that no changes have been made to the Company Code and no new guidance documents have been issued since the transaction.<sup>83</sup>
- 5.14 IDNM has told us that, in addition to the Company Code, The Independent adopted a set of editorial guiding principles in December 2017 (“the Guiding Principles”).<sup>84</sup> The Guiding

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<sup>82</sup> The Evening Standard, *Code of Conduct & Complaints*, <https://www.standard.co.uk/service/code-of-conduct-complaints-7467885.html>; The Independent, *Code of Conduct*, <https://www.independent.co.uk/service/code-of-conduct-a6184241.html>

<sup>83</sup> IDNM’s response to Ofcom information request.

<sup>84</sup> IDNM’s response to Ofcom information request.

Principles reiterate that all editorial content must comply with the requirements of the law, the Company Code and any other additional internal policies.

5.15 IDNM has told us that the Guiding Principles were adopted to help newly hired journalists understand the spirit of The Independent.<sup>85</sup>

5.16 The Guiding Principles identify The Independent's values which include the following:

- a) *"The hallmarks of The Independent are: high-quality reporting, analysis, writing and video-making; a global, liberal, progressive and modern outlook; and an approach that elevates truth and integrity above mistruth, gossip and unwarranted invasions of privacy. This was the attitude of The Independent's founders in 1986 and it remains our outlook today – and in the era of "fake news", government spin and both political and corporate propaganda, its importance is greater than ever."*
- b) *"The Independent must always live up to its name: its journalists and its journalism must be free from any political influence, and independent of any shareholders' interests, corporate interests or agencies of the state. This is integral to The Independent's reputation for journalistic excellence and credibility."*

5.17 The Guiding Principles also set out The Independent's approach to accuracy. For example, the Guiding Principles include the following statements:

- a) *"Accuracy is crucial. The Independent puts evidence-based reporting at its core. We approach stories in a way that is proportionate, rigorous and fair – placing facts centre stage and avoiding both external bias and internal prejudice. That holds as true for a lifestyle piece as for an exclusive news report or a video package."*
- b) *"All those involved in the preparation and publication of Independent stories must ensure that: their pre-publication conduct is beyond reproach; they use their best efforts to get all the facts right; they do the necessary research and; they seek a response from the subject of an article if appropriate."*
- c) *"It should go without saying that accuracy is our primary endeavour. Headlines and sub-headings must not stand at odds with copy, though they may not (indeed cannot) tell the whole story: they should draw readers into wanting to know more, but should not mislead."*
- d) *"As it always has done, The Independent regularly works with external agencies and freelance reporters. Ultimately it is our responsibility that material we publish is accurate and meets the standards we would expect from staff writers."*

5.18 The Guiding Principles also cover comment, opinion and analysis. For example, paragraph 23 states:

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<sup>85</sup> Ofcom meetings with Editors of the Evening Standard and Independent, 1 August 2019.

a) *“Comment, opinion and analysis play a key role in The Independent’s output. Such material should not masquerade as news reporting. Where a writer or other content producer might have a potential conflict of interest, it should be made clear.”*

5.19 LHL has told us that no new documents, relating to editorial freedom and accuracy in news, have been issued since the transaction between IMC and LHL.<sup>86</sup> Therefore, the Company Code and the IPSO code still applies to The Evening Standard and it appears that the buyers have not changed the guidance that The Evening Standard uses to self-regulate.

## **Newspaper ownership is not restricted**

5.20 There has existed a general right to publish newspapers, books or magazines without the need for a licence or state approval from the late 1600s.<sup>87</sup> Since the late 1600s/early 1700s, newspapers have been owned by a range of individuals including foreign nationals and those with controversial views.<sup>88</sup>

5.21 There are no specific rules on transparency of newspaper ownership. However, there are company law rules that require, in broad terms, certain UK companies to keep a register of persons who have significant direct or indirect control over their company.<sup>89</sup> These rules apply to most UK companies with certain exceptions.<sup>90</sup> Companies subject to these rules are required to take reasonable steps to identify persons with significant control (“PSC”).<sup>91</sup> For an individual or legal entity to be considered a PSC, they must meet certain conditions, for example an individual who holds, directly or indirectly, more than 25% of the shares in a company would be considered a PSC for that company.<sup>92</sup>

5.22 The register of PSC may not always contain a complete list of those who have beneficial ownership in a company, for example companies may face difficulties identifying persons who have indirect beneficial ownership. IDNM and LHL appear to have disclosed their PSCs. IDNM lists 3 PSCs in its Companies House filings: Sultan Abuljadayel, Justin Byam Shaw, and Evgeny Lebedev.<sup>93</sup> LHL lists Evgeny Lebedev as a PSC.<sup>94</sup>

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<sup>86</sup> LHL response to Ofcom information request.

<sup>87</sup> Volume 1, part B, chapter 2 of the Leveson Inquiry into the culture, practices and ethics of the press 2012.

<sup>88</sup> This regime for newspapers contrasts with the UK broadcasting regime, where broadcasters are required to be fit and proper to hold a broadcasting licence.

<sup>89</sup> Part 21A and Schedule 1A of the Companies Act 2006.

<sup>90</sup> For example, companies with voting shares admitted to trading on a regulated market in the European Economic Area are not required to keep a register.

<sup>91</sup> Section 790D of the Companies Act 2006.

<sup>92</sup> Section 790C and Schedule 1A of the Companies Act 2006.

<sup>93</sup> Companies House, <https://beta.companieshouse.gov.uk/company/07320345/persons-with-significant-control> [last accessed on 21 August 2019]

<sup>94</sup> Companies House, <https://beta.companieshouse.gov.uk/company/06764905/persons-with-significant-control> [last accessed on 21 August 2019]

## 6. Incentives and ability to influence

- 6.1 In this section, we consider whether the buyers have the incentive and the ability to influence editorial matters in the publications. If the buyers have no incentive or ability, or have an incentive but no ability to influence the publications, there could be no public interest concerns.
- 6.2 Our assessment of the impact of the transactions to date is then presented in Section 7.

### There may have been a commercial rationale for the transaction

- 6.3 The rationale for the transactions is not determinative of the likely conduct of the parties, since the opportunity to influence news may be a side-benefit of a transaction which takes place for more commercial reasons. However, a strong commercial rationale may suggest that the opportunity to influence news is not necessarily the parties' primary intention.
- 6.4 We asked the buyers and Evgeny Lebedev for copies of documents touching on the rationale for the transactions. None of them provided a document considering the transactions or weighing up their pros and cons. Both Sultan Abuljadayel and Wondrous GP Limited provided a copy of the business plan for The Evening Standard.<sup>95</sup> This suggested that the business would [REDACTED] [REDACTED] Based on this document, the implied return on investment seems very low: [REDACTED] [REDACTED] [REDACTED]
- 6.5 The parties provided no documents relating to IDNM. As set out in section 4, IDNM is profitable. In July 2018 it announced its plans to license The Independent's content to Saudi Research and Marketing Group (SRMG) for the creation of a number of international websites for news in Arabic, Urdu, Turkish and Persian.<sup>96</sup> They were to use some translated articles from independent.co.uk, together with SRMG produced content from SRMG journalists based in London, Islamabad, Istanbul, and New York, as well as operations teams in Riyadh and Dubai.<sup>97</sup>
- 6.6 The first site, [www.independentarabia.com](http://www.independentarabia.com), launched in January 2019<sup>98</sup>, the second and the third, [www.independentturkish.com](http://www.independentturkish.com) and [www.independenturdu.com](http://www.independenturdu.com) in April 2019<sup>99</sup> and the last, [www.independentpersian.com](http://www.independentpersian.com) in May 2019.<sup>100</sup> We understand from IDNM that the arrangement is not conditional on the acquisition or continued ownership by any

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<sup>95</sup> Responses to Ofcom information request by Sultan Abuljadayel and Wondrous GP Limited.

<sup>96</sup> The agreement was entered into around 5 months after the transaction took place, on 22 December 2017.

<sup>97</sup> [The Independent and SRMG announce major international expansion deal](https://www.independent.co.uk/news/media/uk-media-news/independent-announces-major-international-expansion-deal-8471111.html), The Independent, 19 July 2018.

<sup>98</sup> <http://www.srmg.com/en/node/1001>. The Arabic-language news service was to be staffed by a team of journalists from Saudi Arabia and the wider Arab world, and based in London.

<sup>99</sup> <http://www.srmg.com/en/node/1041>; <http://www.srmg.com/en/node/1046>

<sup>100</sup> <http://www.srmg.com/en/node/1051>

person, of shares in IDNM, and that the licence does not include any agreement between SRMG and IDNM relating to editorial matters save that “All editorial content appearing on the sites must conform to The Independent’s code of conduct and guiding principles.”<sup>101</sup>

- 6.7 Clearly, one reason one might invest in newspapers is to influence their editorial line. There are other possible reasons too. Investment returns are one, while ownership of a newspaper has historically been seen as prestigious and may be another. However, as in any case, it is not possible to obtain clear evidence in this case that there is no intention to influence.

## **Other factors might limit the potential incentives to influence the publications**

- 6.8 We also considered whether there are reasons for the buyers not to seek to influence the UK publications.
- 6.9 To the extent that the publications are funded by advertising, their brand is key. Advertisers may not wish to associate themselves with a damaged brand. However, the constraint this represents in practice is likely to be fairly limited, since any inaccuracies in news reporting or suppression of views in relation only to Saudi matters would be likely to need to be egregious before it tainted the reputations of those advertising. On the other hand, the UK generally has a good reputation for press freedom and accuracy which may make the brand attractive to expand or launch elsewhere.
- 6.10 As set out earlier in paragraphs 4.13 and 4.14, multi sourcing of news by readers of these publications appears high, and readers do not rely on them as their only source of news. This suggests that readers are not likely to be easily influenced by a strong move towards pro-Saudi or inaccurate coverage by these publications (reducing the incentive for the buyers to seek to influence). Readers may not quickly identify a failure to cover stories at all, but this is less likely to be problematic in the UK given the high level of multi sourcing, and particularly for readers of these publications. Other sources do present Saudi news along with other news.
- 6.11 A reputation for inaccuracy of news or suppression of views may cause readers to move away from the publications. However, according to Ofcom’s most recent news consumption survey, fewer than six in ten regular readers rate the publications highly for each of “trustworthiness” and “accuracy”<sup>102</sup> and they are, in any event, free to the reader. As such, we consider this is unlikely to represent a strong constraint in practice.
- 6.12 There may be an incentive for the publications themselves to restrict their editorial freedom, for example in order to facilitate IDNM’s acceptance in Saudi Arabia. However, we would expect that if this was going to affect coverage of stories by either publication, it

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<sup>101</sup> IDNM response to Ofcom information request.

<sup>102</sup> [Ofcom news consumption survey 2019](#). For the Evening Standard print newspaper in 2019, % of regular users rating the source highly (7-10), 54% “is accurate”; 58% “is trustworthy”; 49% “is impartial”. The Independent news website is at 58%, 57% and 47%.

would already be visible in the content published since the transaction. We set out our analysis of content in Section 7 of this report.

- 6.13 We cannot rule out that stronger incentives for the buyers to influence the publications' editorial stance on Saudi matters may arise in future.

## The corporate structures include other strong shareholders

- 6.14 Regardless of whether or not the buyers in these transactions have any incentive to limit the free expression of opinion in newspapers or the accuracy of news in newspapers, we have considered whether or not there would be any ability for them to do so.

- 6.15 As set out above, the transactions have not given the buyers majority control of either LHL or IDNM.

### LHL

- 6.16 The transaction has given IMC a 30% share in LHL. This is not on its face sufficient to confer control over editorial matters in The Evening Standard, since the other shareholders form a majority. A 30% shareholding is sufficient to block a special resolution, and therefore prevent the companies from taking certain actions such as reducing their share capital, changing their articles of association, disapplying shareholders' pre-emption rights, going public, or winding up. This is essentially a power of veto over key strategic decisions of the company, which may be powerful when the other shareholders wish to achieve something and cannot, but it is not usually enough to confer control over its day to day affairs.
- 6.17 The structure of the other shareholdings in the companies, and whether other shareholders are likely to exercise their voting rights, can in some circumstances give a 30% shareholder a very high degree of control in practice over a company. In this case, however, Evgeny Lebedev retained a 60% share in the company. He bought The Evening Standard, alongside his father, for a nominal sum some years ago, arguably rescuing it from closure.<sup>103</sup> The other shareholder is smaller, at 10%, but is the Chairman of The Evening Standard businesses. Both have long and intensive experience of the media sector. We consider that they are likely to be and to remain interested and committed investors, and a strong counterweight to the buyers.
- 6.18 The Editor of The Evening Standard told us that he meets Evgeny Lebedev once every couple of months and that while Evgeny Lebedev is hands off on the editorial line of the paper, he takes a particular interest in the Christmas campaign. He told us he usually meets Justin Byam Shaw once a year.<sup>104</sup> He told us that, to his knowledge, he has never met the Saudi shareholders; nor have their views been conveyed to him by others.<sup>105</sup> He also told us he was unaware why the buyers had wanted to invest in The Evening Standard. The buyers

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<sup>103</sup> [DMGT sells Evening Standard to Lebedev](#) The Financial Times, 21 January 2009; [Ex-KGB spy buys UK paper for £1](#), BBC News, 21 January 2009; [Oligarch, reinvented](#), The New Statesman, 1 July 2011.

<sup>104</sup> Ofcom meetings with Editors of the Evening Standard and Independent, 1 August 2019.

<sup>105</sup> Ofcom meetings with Editors of the Evening Standard and Independent, 1 August 2019.

are physically distant from the publications, such that frequent incidental contact between them and the editors of the publications is unlikely. While this lack of contact to date does not rule out that one or both of the buyers may seek to intervene in editorial matters, it makes it appear less likely.

- 6.19 Under the Articles of Association of LHL, there must be at least three directors, and directors' decisions are taken by simple majority. The holders of the "A Ordinary shares", i.e. at present, Evgeny Lebedev, have the power to appoint up to four directors and the holders of the "B Ordinary shares", i.e. at present, IMC, have the power to appoint up to two. LHL has told us that to date, IMC has not appointed any directors.<sup>106</sup> LHL currently only has two directors: Evgeny Lebedev and Manish Malhotra. If IMC used its right to appoint directors, it would have a power to influence corporate decision making, but would not have a majority.
- 6.20 However, under the Shareholders' Agreement certain Board decisions require approval by IMC. These include the approval of any Business Plan or changes to it, incurring expenditure in excess of the Business Plan, paying dividends, contracts costing more than [REDACTED], material changes to the business, joint ventures with third parties, agreements with a shareholder and the appointment of an MD or Chief Financial Officer. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>107</sup> These are potentially powerful rights in that they confer significant influence over key strategic decisions, [REDACTED]  
[REDACTED]. A deadlock between the shareholders could have a significant impact on the business' ability to adapt to changing circumstances. However, they are veto rights, and IMC's influence therefore remains somewhat limited by that of the other shareholders.
- 6.21 The immediate buyer of the LHL shares is a Cayman Island holding company with no commercial activities.<sup>108</sup> It is held half by Sultan Abuljadayel and half by a Saudi investment fund. At the very least, two persons – Sultan Abuljadayel and (practically speaking) the manager of the investment fund – are involved in the investment.
- 6.22 The buyers' 30% shareholding confers some ability to influence, although it is qualified by the presence of the other shareholders.

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<sup>106</sup> LHL response to Ofcom information request.

<sup>107</sup> [REDACTED]  
[REDACTED]

<sup>108</sup> CMA's advice to the Secretary of State.

## IDNM

- 6.23 The transaction has given Scalable a 30% share in IDNM. This is not on its face sufficient to confer control over editorial matters in The Independent news websites, since the other shareholders form a majority.
- 6.24 As set out above, a 30% shareholding can in some circumstances give a shareholder a high degree of control in practice over a company. In the case of IDNM, however, the vast majority of the remaining shares are held by just two other shareholders, one of whom is Evgeny Lebedev whose family bought the business as above for £1 some years ago<sup>109</sup> and the other of whom is Justin Byam Shaw, the Chairman of The Evening Standard businesses. Both have long and intensive experience of the media sector. We consider that they are likely to be and to remain interested and influential investors, and a strong counterweight to the buyers.
- 6.25 The Editor of The Independent news websites in the UK told us that he meets with Justin Byam Shaw, who is in the building quite frequently. He sees Evgeny Lebedev much less, but sometimes at the quarterly board meeting, parts of which he may attend. By contrast, he told us that he has never met the Saudi shareholders or had any contact with them – we note that the transaction in the case of The Independent news websites took place in 2017.<sup>110</sup> In response to a question on whether the views of the Saudi shareholders had ever been conveyed to him he said that he read what he read about them, and could not tell us their opinion on anything because he does not know them. The buyers are physically distant from the publications, such that frequent incidental contact between them and the editors of the publications is unlikely. While this lack of contact to date does not rule out that one or both of the buyers may seek to intervene in editorial matters, it makes it appear less likely.
- 6.26 The Articles of Association of IDNM give the company’s directors responsibility for the management of the company’s business.
- 6.27 As set out above in relation to LHL, the immediate buyer of the IDNM shares is a Cayman Island holding company with no commercial activities.<sup>111</sup> It is held half by Sultan Abuljadayel and half by a Saudi investment fund. At the very least, two persons – Sultan Abuljadayel and the manager of the investment fund – are involved in the investment.
- 6.28 If the commercial strategy of IDNM relies on expertise provided by the buyers or goodwill in Saudi Arabia that arises as a result of the buyers’ involvement, this may confer a greater degree of control over IDNM. Given that the other major shareholders of IDNM are the same as LHL, it may be that such control could be leveraged across to LHL. However, the Editor of The Independent told us that he has no responsibility for the SRMG websites, he does not speak the relevant languages and would not know what stories to run because he

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<sup>109</sup> [Lebedev buys Independent newspapers](#), The Guardian, 25 March 2010.

<sup>110</sup> Ofcom meetings with Editors of the Evening Standard and Independent, 1 August 2019.

<sup>111</sup> CMA’s advice to the Secretary of State.

would not know what people in the areas targeted want to read about. There is a team of staff in The Independent who help the SRMG team know about upcoming stories. If they wish to use a story from The Independent, the SRMG websites must take the story complete, they cannot take part of a story and the story must be credited to the Independent.<sup>112</sup>

- 6.29 The National Union of Journalists (“the NUJ”) on behalf of The Independent NUJ chapel submitted to us that members of the editorial staff in The Independent NUJ chapel would like greater transparency around content selection, translation and compliance with editorial standards by the SRMG websites. While this is a concern relating to the link with SMRG and The Independent’s commercial strategy, we did not consider it relevant to this merger, since the specified public interest concerns relate to the UK. They also explained that they wanted the ability to veto the use by SRMG of articles they feel may compromise their safety or work in the field. We did not consider this concern to be relevant to the specified public interest concerns because it does not provide evidence of likely conduct at The Evening Standard newspaper.
- 6.30 Under the Articles of Association of IDNM, there must be at least three directors, and directors’ decisions are taken by a simple majority. The holders of the “A Ordinary shares” have no right to appoint directors. The holders of the “B Ordinary shares” (i.e. at present, Justin Byam Shaw) have the power to appoint up to two directors, the holders of the “C Ordinary shares” (i.e. at present, Evgeny Lebedev) have the power to appoint up to three directors, and the holders of the “D Ordinary shares” (i.e. at present, Scalable) have the power to appoint up to two directors. The buyers’ appointees therefore give them power to influence corporate decision making, but not a majority.
- 6.31 LHL has told us that a shareholders’ agreement gives Scalable the right to appoint two directors to the IDNM board. The directors Scalable has nominated are David-John Collins (a UK PR advisor and former head of communications at the Department for Education, formerly vice president of public policy and communications for Google EMEA (Europe, Middle East and Africa)<sup>113</sup> and Eric Lewis (a lawyer and the Chairman of US human rights body Reprieve US).<sup>114</sup> While both may have contacts and expertise in Saudi Arabian affairs we are aware of no reason to consider that either would interfere inappropriately in editorial matters.

## **The parties have made commitments to editorial independence**

- 6.32 Article 6.2 of a Shareholders Agreement between LHL, Evgeny Lebedev, Justin Byam Shaw and IMC states that the parties acknowledge that the editorial independence of The Evening Standard will be maintained and that the Managing Director and Editor (neither of

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<sup>112</sup> Ofcom meetings with Editors of the Evening Standard and Independent, 1 August 2019.

<sup>113</sup> [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/droi/dv/2\\_collinsbio\\_/2\\_collinsbio\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/2_collinsbio_/2_collinsbio_en.pdf)

<sup>114</sup> <http://reprieve.org/about/>

whom are or can be appointed by IMC) have day to day control over all editorial and commercial content.<sup>115</sup>

- 6.33 A similar shareholders' agreement signed by Scalable and IDNM rather than IMC and LHL exists in relation to IDNM.<sup>116</sup>
- 6.34 LHL told us that decisions in relation to the print edition of The Evening Standard are made by the desk editors in conjunction with the deputy editor (Charlotte Ross) and editor (George Osborne). Decisions in relation to the digital edition of The Evening Standard are made by the desk editors in conjunction with the digital editor in chief (David Tomchak). The news agenda is considered each day at regular conferences of editorial staff.<sup>117</sup>
- 6.35 LHL said that the appointment of a new editor of the print edition of the Evening Standard would be subject to the final approval of Evening Standard Limited's board. Other senior editorial appointments for the print edition are approved by the editor (George Osborne) and the Managing Director, ESI Media (Manish Malhotra).<sup>118</sup>
- 6.36 The Editor of The Evening Standard told us that he felt it was an affront to suggest that he would be influenced by Saudi investors and that he would resign if he were leaned on. This appears to us to be a disincentive for influence to be exerted, since Mr Osborne is a high-profile editor.<sup>119</sup>

## Conclusion

- 6.37 Overall, there may be some incentives and ability for the buyers to alter the accuracy or editorial stances of the publications, but there are also some restrictions on the abilities for the buyers to do so. The corporate structures include other strong shareholders, and the parties have put in place some measures to preserve editorial freedom and accuracy.
- 6.38 However, we would expect if there was a strong incentive and ability for the buyers to influence the editorial stance of the publications, this would have manifested itself in The Independent news websites already.<sup>120</sup> Our analysis of the effect of the transactions on the publications' conduct to date is set out in the next section.
- 6.39 We cannot, of course, rule out any suggestion that the buyers might in future, perhaps with the other shareholders' consent, seek to present more positive coverage of Saudi matters. Nor can we rule out that stronger incentives for the buyers to influence the editorial stance of the publications might arise in the future. However, this is a possibility in

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<sup>115</sup> Shareholders' Agreement Relating to LHL, 7 December 2018, provided in response to Ofcom information request to LHL.

<sup>116</sup> Shareholders' Agreement Relating to IDNM, 7 June 2017, provided in response to Ofcom information request to IDNM. See Article 6.1.

<sup>117</sup> LHL response to Ofcom information request.

<sup>118</sup> LHL response to Ofcom information request.

<sup>119</sup> Ofcom meetings with Editors of the Evening Standard and Independent, 1 August 2019.

<sup>120</sup> The parties were alerted by letter from DCMS on 12 February 2019 that the then Secretary of State was considering an intervention into the merger, and therefore we consider the content of the Evening Standard since the transactions to be less compelling evidence.

relation to other newspapers as well, for example, to any newspaper potentially seeking to expand overseas.

- 6.40 We note that if the shareholders sought to increase their holding, a shift from partial control to majority control would, if it met the turnover or market share jurisdictional thresholds in the Act, trigger UK merger control provisions once more.

## 7. Effect of the transactions to date

- 7.1 Since both of the transactions have already taken place, in this section we consider whether they appear to have had any impact to date on either of the publications.

### **The buyers do not appear to have interfered in the employment of editorial roles at either publication**

- 7.2 We have considered whether the transactions appear to have had any impact to date on the employment of those who hold key editorial roles at either publication.
- 7.3 The editor of The Independent is currently Christian Broughton, who has been in this role since 2016.<sup>121</sup> The editor of The Evening Standard is currently George Osborne, and he has been in this position since May 2017. Both editors were therefore in place some time before either of the publications' respective transactions, and have remained in place afterwards.
- 7.4 With regard to journalists who cover Middle Eastern affairs, we asked LHL and IDNM to provide us with the names of any who had joined either publication since the dates of the relevant transactions, as well as any who had left either publication or had their remits changed. In response, LHL stated that there had been no changes in the journalists who cover Middle Eastern affairs at The Evening Standard in this period.<sup>122</sup> IDNM informed us that three new journalists covering Middle Eastern affairs have joined The Independent since the transaction date. These were Bel Trew, Borzou Daragahi and Richard Hall. It also informed us that one journalist who covered Middle Eastern affairs, left The Independent in August 2018 to take up a post at the Guardian. This was Bethan McKernan.<sup>123</sup>
- 7.5 Having been supplied the names of the three new journalists and the departing journalist, we selected and considered a sample of their articles in order to assess whether they take or took a particular editorial stance or position on matters relating to Saudi Arabia. Bel Trew, Borzou Daraghi and Richard Hall have all published a variety of articles in The Independent since joining which make a significant reference to Saudi Arabia, including ones which present mixed, factual and critical views of the country. Therefore, they do not appear to have been hired in order to present a particular viewpoint, or been influenced to do so. Bethan McKernan also published articles which made significant references to Saudi Arabia and presented a variety of different views on the country within these, including negative and critical views. There did not appear to have been a difference in the range or stance of her articles after the date of the transaction. We therefore do not consider it likely that her departure was as a result of the transaction, nor do we consider it likely that

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<sup>121</sup> Christian Broughton became digital editor in 2012 and remained in this post when then Independent became an online-only publication in 2016.

<sup>122</sup> LHL response to Ofcom information request.

<sup>123</sup> IDNM response to Ofcom information request.

the buyers sought to terminate her employment as a result of publishing critical articles, since other journalists who have also published articles of a similar tone remain in post.]

- 7.6 As part of our information request to the parties, we also asked Evgeny Lebedev, LHL, IDNM and both of the buyers to provide us with copies of any emails or records of discussions between the buyers and key members of staff and other shareholders relating to editorial appointments at either publication. We were informed that no such emails or records of discussions exist.<sup>124</sup>
- 7.7 Overall, it appears that the transactions to date have not led to the buyers seeking to interfere in the employment of editorial staff at either The Independent or The Evening Standard.

## There does not appear to have been a change in the types or tone of stories being covered in either publication

- 7.8 Ofcom has analysed articles sourced from Factiva<sup>125</sup> which were published in The Evening Standard (both the printed version and online) or published on The Independent website within specified time periods, in order to determine whether there has been any change in tone in news stories relating to Saudi Arabia as a result of the transactions.

### Methodology

- 7.9 We assessed all articles on the Factiva database which featured in The Evening Standard or were published on The Independent website during a particular time range which contained the word “Saudi” (excluding sport articles<sup>126</sup>).<sup>127</sup> The time period for the assessment for each publication was as follows:
- For **The Evening Standard**, we looked at a full year from **29<sup>th</sup> June 2018 – 28<sup>th</sup> June 2019**. This covered almost six months pre-transaction, three months over the course of the transaction, and four months post transaction (up until the date on which we began this public interest assessment).
  - For **The Independent**, we looked at a three-year period from **1 June 2016 – 31 May 2019**. This covered a year prior to the date of the transaction, and almost two years post transaction.
- 7.10 For each article, we made a note of:
- its title;

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<sup>124</sup> Responses to Ofcom information request by Evgeny Lebedev, LHL, IDNM, Sultan Abuljadayel, and Wondrous GP Limited.

<sup>125</sup> Factiva (<https://www.dowjones.com/products/factiva/>) is a Global News database produced by Dow Jones. It does not capture the [www.indy100.com](http://www.indy100.com) website, which has a very small readership.

<sup>126</sup> Sport articles were excluded since it was considered these would be most likely to be factual accounts, rather than to adopt positive, negative or neutral tones towards Saudi Arabia.

<sup>127</sup> We note that the editor of the Evening Standard also provided a sample of content in relation to the transaction. We only identified one article in this sample which had not been caught by our own analysis. Having considered this, we did not consider it made any difference to our analysis.

- its author;
- its date of publication;
- for The Evening Standard, whether it was published online, in print or both;
- its categorisation (business, editorial, review, world etc);
- its broad subject matter;
- its relevance to Saudi Arabia (low, medium or high); and
- whether it was positive, negative, mixed or factual in its references to Saudi Arabia.

## Findings

### The Evening Standard

- 7.11 We assessed 357 articles, of which **209** made a significant reference<sup>128</sup> to Saudi Arabia. None were considered positive in tone, while 124 were considered negative. The rest were either mixed or purely factual.
- 7.12 We found articles which we categorised as negative in their portrayal of Saudi Arabia published during the transaction period and after it had been completed (i.e. from December 2018 onwards). These articles include references to the “restrictive male guardianship system” in Saudi Arabia<sup>129</sup>, “oppression” in the Kingdom<sup>130</sup>, “a regime which has earned the opprobrium of the world in recent months”<sup>131</sup> and the “poor human rights records” of Saudi Arabia and a number of other countries.<sup>132</sup>
- 7.13 Overall there appears to have been no change in the types of, or tone of, stories about Saudi Arabia being covered in The Evening Standard after the transaction date.

### The Independent

- 7.14 We assessed 2819 articles, of which **1545** made a significant reference to Saudi Arabia. Of these, 45 were considered positive in tone (of which, many focused on improvements to human rights or cultural developments), while 785 were considered negative. The rest were either mixed or purely factual.
- 7.15 We gave particular focus to a period six months before and six months after the transaction and found that the publication of the negative stories appeared to be evenly split between these time periods (170 vs. 172). Negative references in the articles in this time period included to: “the world’s most thorough-going autocracy”<sup>133</sup>; the Kingdom’s

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<sup>128</sup> Those which we categorised as having a high or medium relevance to Saudi Arabia.

<sup>129</sup> [Rahaf Mohammed Alqunun latest: Thai officials halt plans to deport Saudi teen barricaded in hotel room](#), The Evening Standard, 7 January 2019.

<sup>130</sup> [Rahaf Mohammed: I feel born again, says Saudi who fled to Canada to escape ‘abuse’](#), The Evening Standard, 15 January 2019.

<sup>131</sup> [Russell Lynch: Jamie Dimon can’t lecture on morals while taking Saudi fees](#), The Evening Standard, 8 April 2019.

<sup>132</sup> [TfL Tube chiefs ban adverts from 11 countries over poor human rights](#), The Evening Standard, 2 May 2019.

<sup>133</sup> [Donald Trump puts US on Sunni Muslim side of bitter sectarian war with Shias](#), The Independent, 21 May 2017.

“severe restrictions on freedom of expression”<sup>134</sup>; the country being accused of the “large-scale slaughter of civilians in Yemen’s civil war”<sup>135</sup>; and “Riyadh’s shameful war in Yemen”.<sup>136</sup>

- 7.16 In the same time period, five of the positive articles were published pre-transaction, and six were post transaction.
- 7.17 Significantly, across the full time period of content we assessed, we also identified a number of opinion pieces covering the murder of Jamal Khashoggi<sup>137</sup> in The Independent that were highly critical. For example, Independent journalists referred to the killing of Mr Khashoggi as “the latest in a series of Saudi pratfalls showing comical ineptitude as well as excessive and mindless violence”<sup>138</sup>; “probably the most notorious abuse carried out under the Crown Prince’s rule”<sup>139</sup>; and having “inflated [sic] incalculable damage on Saudi Arabia’s image, even with her staunchest allies”.<sup>140</sup> On 18 October 2018, The Independent republished Mr Khashoggi’s final Washington Post article, which contained significant criticism of Saudi Arabia.
- 7.18 Overall there appears to have been no change in the types of, or tone of, stories about Saudi Arabia being covered in The Independent after the transaction.

## There have been no substantial claims of editorial influence

- 7.19 In the requests for information that we sent to the parties we asked IDNM, LHL, Sultan Abuljadayel and Wondrous GP Limited whether the buyers had ever attempted to influence the content of the English-language Independent news websites or The Evening Standard, and if so, what they had sought to do and how, and the impact, if any, this had had on coverage. All four parties stated in their responses that there had not been any attempts to influence the relevant publications.<sup>141</sup>
- 7.20 We received a response to our Invitation to Comment from the NUJ on behalf of editorial staff in The Independent’s NUJ chapel. With regard to editorial interference, they stated that in the months following from them being alerted about the transaction, there were a small number of incidents where staff feared that editors’ decisions regarding Saudi-related articles on The Independent homepage had been made with the new shareholder

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<sup>134</sup> [Saudi Arabia to behead disabled man 'for taking part in protests' after 'forced confession'](#), The Independent, 27 May 2017.

<sup>135</sup> [Stop selling arms to help Saudi Arabia wage war and reveal its links to extremists, British public urged](#), The Independent, 15 July 2017.

<sup>136</sup> [Vladimir Putin is positioning himself as the main player in the Middle East](#), The Independent, 19 October 2017.

<sup>137</sup> Jamal Khashoggi, author, columnist for The Washington Post and manager and editor-in-chief of Al-Arab News Channel, was murdered inside the Saudi consulate in Istanbul, Turkey, on 2 October 2018 (three months after the date of the Independent’s transaction).

<sup>138</sup> [Ignore the howls of protest – Trump's Syria withdrawal is a simple reflection of foreign policy realities](#), The Independent, 21 December 2018.

<sup>139</sup> [Saudi Arabia executed 37 people and all the UK did was shrug. What will it take for the west to speak up?](#), The Independent, 24 April 2019.

<sup>140</sup> [Matthew Hedges' case should prompt the west to reconsider who its allies are](#), The Independent, 23 November 2018.

<sup>141</sup> Responses to Ofcom information request by LHL, IDNM, Sultan Abuljadayel, and Wondrous GP Limited.

in mind. No specific examples were provided in their response. However, the response went on to confirm that this year, no incidents or concerns have been raised with The Independent NUJ chapel, and that they believe the publication's coverage of Saudi Arabia and its allies continues to be "accurate and tenacious in its pursuit of truth and accountability over human rights abuses and war crimes". They also explained that the process by which they pitch, research and write stories relating to Saudi Arabia has not changed at any point.

- 7.21 We did not receive any submissions from journalists at The Evening Standard to say whether or not there has been a change in the types of stories they are able to cover, or the positions they should take when writing articles, since the LHL transaction.
- 7.22 As set out above, we also met the editors of the publications and asked whether they had ever had the views of the new shareholders conveyed to them. Both of the editors said that they had not.<sup>142</sup>
- 7.23 In response to our request for information, LHL informed us that it received a complaint from a former journalist at The Independent in relation to three articles published in The Evening Standard before the date of the LHL transactions.<sup>143</sup> The complainant claimed that The Evening Standard had received assistance from the Saudi air force and that its journalists had been accompanied by soldiers from Saudi's special forces and Evgeny Lebedev. The complainant felt that the articles should have made clear that The Evening Standard had received such assistance, given there had been Saudi investment in The Independent. LHL informed us that no action was taken in response to this complaint. We have considered the articles in question to determine whether, if there had been any assistance from Saudi's special forces, it had an impact on the stance or tone of the articles, and do not believe this to be the case. They portrayed Saudi Arabia in varying lights; we considered one to be positive in tone (it refers to Saudi Arabia's involvement in helping refugees in Yemen), and the other two we considered to be negative (both refer to accusations of possible human rights abuses and aerial bombings by Saudi Arabia).
- 7.24 Overall, based on the evidence we have received, we are not of the view that there has been any substantial editorial interference in either publication as a result of the transactions.

## **There does not appear to have been an impact on the accuracy of news in both publications**

- 7.25 As explained in Section 5, neither of the publications is a member of either of the press self-regulatory schemes. This has no particular relevance to the free expression of opinion ground since such schemes do not regulate that. It arguably has some impact on accuracy of news in that membership of the schemes provides a quick and cheap avenue of redress

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<sup>142</sup> Ofcom meetings with Editors of The Evening Standard and Independent, 1 August 2019.

<sup>143</sup> LHL response to Ofcom information request.

where there have been inaccuracies. However, the decision not to be members was taken before the transactions, so its principal relevance in this context is that there is no independent third-party source of statistics on accuracy complaints pre and post the transactions.

- 7.26 Where a publication has chosen not to join a scheme, complaints can only go to the publication itself and are dealt with by it. We asked LHL and IDNM for information about accuracy complaints pre and post transaction for The Evening Standard and The Independent news websites respectively.
- 7.27 In their responses, both IDNM and LHL explained that The Independent and the Evening Standard do not categorise editorial complaints, and so they were not able to provide information about the number of complaints specifically related to accuracy. Instead, they provided us with the total number of editorial complaints they had received over the time period for which data was available.<sup>144</sup> We therefore asked IDNM and LHL to provide us with information regarding any complaints they had received which featured any of the following three terms: “Saudi Arabia”; “Crown Prince”; and “Yemen”.
- 7.28 Between 11 July 2016 and 14 July 2019, The Independent received 36 complaints featuring any of the three specified search terms.<sup>145</sup> Of these, we would categorise 14 as being complaints questioning the accuracy of articles. Four of these complaints were received prior to the date of the transaction, and ten were received afterwards. However, IDNM informed us that comparable data for complaints is not available for the period prior to July 2016, and so the time period for the data it provided covers two years post transaction, compared to one year prior, and so it is not possible to compare the total numbers of complaints pre and post-transaction. Seven of the accuracy complaints were received between 7 June 2017 (the date of the transaction) and 6 June 2018, and three between 7 June 2018 and 4 July 2019. As such, it does not appear that there has been a substantial difference in the number of complaints related to accuracy year-on-year since the transaction for The Independent. In terms of corrections, nine of the complaints led to The Independent taking action such as amending the relevant articles or withdrawing the articles. There was no significant difference in how often this happened either pre or post transaction. We also note that the accuracy complaint which appears to be the most serious was made prior to the date of the transaction.<sup>146</sup>
- 7.29 With regard to The Evening Standard, only one complaint was received between 30 April 2018 and 4 July 2019 which featured any of the three specified search terms, and we did not categorise this as a complaint about the accuracy of articles.<sup>147</sup> As such, it also appears

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<sup>144</sup> Responses to Ofcom information requests by LHL and IDNM.

<sup>145</sup> IDNM response to Ofcom information request.

<sup>146</sup> This was a complaint about an article which reported that Saudi Arabia's ambassador to Iraq had been expelled because he had failed to denounce a cousin who had died fighting for Isis. This was not true and so the article was withdrawn and the Independent issued an apology to the ambassador.

<sup>147</sup> LHL response to Ofcom information request. Information about the complaint is presented in paragraph 7.23 above.

that there has not been a change in the number of complaints related to accuracy since the transaction for The Evening Standard.

7.30 We also considered that serious accuracy breaches, for example those which are libelous, could lead to litigation. As such, we searched public records for cases involving these publications pre and post transaction and found no relevant cases that began post the transactions.

7.31 We are aware of no suggestion from either journalists or readers that the transactions have had any impact on the accurate presentation of news. The editors of both publications indicated that their processes including for accuracy checking have not changed as a result of the transactions.<sup>148</sup> We also note that our content analysis indicated that there has been no effect on the opinion or editorial stance of either publication. Since it is easier to influence the stance of a publication without readers noticing and our view is that this has not happened, we infer that it is unlikely for there to have been an impact on the accuracy of news either.

## Conclusion

7.32 Overall, based on the information available, we do not believe that the transactions have had an editorial effect on either publication to date. While past behaviour is not necessarily a guarantee for future behaviour, we consider this to be good evidence that the buyers are unlikely to influence the content of the publications in future.

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<sup>148</sup> Ofcom meetings with Editors of The Evening Standard and Independent, 1 August 2019.

## 8. Conclusions

- 8.1 As set out in the Section 2, the public interest considerations specified for this merger relate only to The Evening Standard newspaper, as The Independent news websites are not “newspapers” as defined in the relevant legislation. However, as explained in Section 2, we have considered the parties’ conduct in relation to The Independent news websites because it is relevant as evidence of how the parties are likely to behave generally.
- 8.2 We consider that the buyers may have some incentive and ability to influence the editorial stance in The Evening Standard. But there are also some restrictions on the abilities for the buyers to do so. The corporate structures include other strong shareholders, and the parties have put in place measures to preserve editorial freedom and accuracy.
- 8.3 We would expect if there was a strong incentive and ability for the buyers to influence the editorial stance of the publications, this would have manifested itself in The Independent news websites already. In considering the impact of the transactions on accuracy and freedom of expression of opinion in The Evening Standard newspaper, we place significant weight on the fact that there has been no evidence of any influence in practice in either The Evening Standard or The Independent news websites to date.
- 8.4 We cannot, of course, rule out any suggestion that the buyers might in future, perhaps with the other shareholders’ consent, seek to present more positive coverage of Saudi matters. Nor can we rule out that stronger incentives for the buyers to influence the editorial stance of the publications might arise in the future. However, this is a possibility in relation to other newspapers as well, for example, to any newspaper potentially seeking to expand overseas.
- 8.5 We note that newspapers are self-regulated and are able to take particular editorial positions. It is not always necessarily contrary to the public interest for newspaper proprietors to take an interest in the content of their newspapers, or for newspapers to express strong or controversial views. The publications involved in this transaction were already controlled by an active proprietor with some editorial views and overseas links. The risk to accuracy or freedom of expression in newspapers is not in our view significantly greater where a Saudi consortium takes a 30% stake in a newspaper that is 60% controlled by an Anglo Russian, than where that newspaper was 100% controlled by an Anglo Russian.
- 8.6 We also consider it important, in light of the challenging market context for newspapers in the UK, that investment in the industry is generally encouraged, as this will help to sustain a plurality of news providers.
- 8.7 We do not consider that concerns about the transparency of the transactions on their own justify a reference. Press coverage and the current merger control process has already made public the possible influence of Saudi interests over the editorial coverage of the publications. Readers of the publications, including The Evening Standard newspaper, tend to multi source their news and are therefore less likely to be adversely influenced by any change in editorial approach.

8.8 In all the circumstances, we do not consider that a reference is warranted either on the accurate presentation of news ground or the free expression of opinion ground.

*The overview at the front of this document is a simplified high-level summary only. Our full advice and our reasoning are set out in the full document.*

## A1. Summary of responses to invitation to comment

- A1.1 We received four responses to our invitation to comment, from: IMPRESS, a press regulator in the UK; David Hutchison, an academic with a particular interest in media policy, a member of the public and the National Union of Journalists (“NUJ”) on behalf of members of The Independent’s NUJ chapel.
- A1.2 As part of this process, the CMA provided us with submissions received from 2 [REDACTED] organisations as part of their consideration of the merger.
- A1.3 Finally, we also received a submission from Independent Digital News and Media Limited (“IDNM”) and Lebedev Holdings Limited (“LHL”).

### Main points raised relating to accurate presentation of news in newspapers

- A1.4 IMPRESS stated that it was unable to express a view on the transactions’ impact on the accurate presentation of news. David Hutchison, a Scottish-based academic, with a particular interest in media policy, raised concerns about the transactions’ impact on the accurate presentation of news. He believed that the transactions, involving buyers from a country that was not, according to the academic, a liberal democracy, represented a possible threat to the provision of accurate information about developments at home and abroad. He outlined his view that any assurances offered by the companies involved should be treated with skepticism. He argued that the transactions should be rescinded in the public interest.
- A1.5 IDNM and LHL took the view that the transactions do not raise any public interest concerns in relation to the accuracy of news in newspapers.
- A1.6 IDNM and LHL believed that there is no commercial incentive to influence the editorial position with a view to restricting the accuracy of news as to do so would likely result in a decline in readership with a consequent adverse effect on advertising revenues.
- A1.7 The Independent NUJ Chapel stated that, in 2019, The Independent’s coverage of Saudi Arabia and its allies has continued to be accurate.

### Main points raised relating to free expression of opinion

- A1.8 IMPRESS stated that it was unable to express a view on the transactions’ impact on the free expression of opinion in newspapers.
- A1.9 IDNM and LHL noted that the shareholders agreement relating to LHL includes a commitment by the parties to the editorial independence of The Evening Standard and to the continued day to day control over all editorial and commercial content by the managing director and editor of The Evening Standard (neither of whom are or can be

appointed by Independent Media Company (“IMC”). IDNM and LHL stated that there was no evidence of editorial interference.

- A1.10 IDNM and LHL also argued that The Independent and The Evening Standard have consistently held Saudi Arabia and its rulers to account before and after the transactions. They believed that the frequency and robustness of the coverage in both news outlets is the match of any other media organisation.
- A1.11 IDNM and LHL asserted that the transactions do not result in a change of overall control. They believed that there was no question of IMC or its owners having control or influence over The Evening Standard’s news agenda.
- A1.12 IDNM and LHL argued that Scalable Inc, which has the same owners as IMC, has appointed two highly respected and independent minded individuals to the board of IDNM. They believed that this strongly supports a conclusion that past conduct does not give rise to any public interest concerns.
- A1.13 IDNM and LHL stated that Evgeny Lebedev, in seeking investment in both IDNM and LHL, was mindful of the need to ensure that any new investor should not be able to exert any control or influence over the editorial output of the news content. IDNM and LHL believe that this has been achieved by restricting the voting and other rights of IMC.
- A1.14 IDNM and LHL also took the view that even if IMC were to seek to exert influence, it would be constrained by the safeguards in the shareholders agreement relating to LHL and would be outvoted at both board and shareholder level.
- A1.15 IDNM and LHL believed that there is no commercial incentive to influence the editorial position with a view to restricting freedom of expression as to do so would likely result in a decline in readership with a consequent adverse effect on advertising revenues. They believed that the commercial and financial incentives to LHL and its shareholders is to maintain as broad an audience share as possible to generate circulation and readership numbers that will sustain advertising revenue at the necessary levels to maintain the survival of the newspaper.
- A1.16 IDNM and LHL took the view that the transactions do not raise public interest concerns in relation to freedom of expression.
- A1.17 The NUJ, on behalf of The Independent NUJ chapel, stated that following a press report about the IDNM transaction, the editor of The Independent emailed staff. The editor stated in this email, according to The Independent NUJ chapel, that The Independent will remain truly independent of any shareholders or business interests in accordance with a new shareholder agreement and it will be able to continue to publish as it sees fit about Saudi Arabia and the rest of the Middle East.
- A1.18 According to The Independent NUJ chapel, over the months that followed the editor’s email, there were a small number of incidents where staff feared that editors’ decisions regarding Saudi-related news stories, comment pieces and the position of articles on The Independent homepage had been made with the new shareholder in mind. But in 2019, no incidents of concern were raised to The Independent NUJ chapel.

- A1.19 Further, The Independent NUJ chapel believed that, in 2019, The Independent’s coverage of Saudi Arabia and its allies has continued to be tenacious in its pursuit of truth and accountability over human rights abuses and war crimes.
- A1.20 The Independent NUJ chapel stated that the process by which editorial staff pitch, research and write stories relating to Saudi Arabia has not changed at any point.
- A1.21 The Independent NUJ chapel noted the rise of interest from gulf countries in sport, which will necessitate critical coverage. They stated that there have at present been no restrictions or influence on reporting.

## Main points raised relating to the broader context

- A1.22 IMPRESS explained its role in the regulation of the UK press. It argued that membership of an approved press regulator was the best means to address concerns about The Evening Standard and The Independent’s commitment to editorial independence, free expression and accuracy.
- A1.23 David Hutchison noted that the ownership of media organisations is a matter of public concern. He argued that there are serious questions to be asked about which foreign companies are fit and proper to have partial or total control of media organisations.
- A1.24 David Hutchison took the view that where foreign ownership of media organisations has been accepted, the general expectation has been that such ownership should be located in liberal democracy or a country with similar values to the UK.
- A1.25 One member of the public suggested that the transactions did not raise any issues as long as there was balanced and fair presentation of news in newspapers.
- A1.26 Two [REDACTED] organisations expressed concerns to the CMA about the lack of transparency of ownership of IMC and Scalable Inc. One, [REDACTED] took the view that not knowing who was behind IMC and Scalable Inc and the extent to which they will seek to influence editorial decisions raised concerns. Another [REDACTED] believed that there may be public interest concerns once the question of ownership is resolved, for example over conflicts of interest.
- A1.27 IDNM and LHL argued that the specific public interest considerations did not apply to The Independent because it is not a newspaper for the purposes of section 58(2A) of the Enterprise Act 2002 (“the Act”). IDNM and LHL believed that this position is supported by the 2004 statutory guidance from the Department of Trade and Industry (“DTI Guidance”) and by a statement made in a letter to the parties by the then Secretary of State dated 27 June 2019.
- A1.28 They submitted that Ofcom may only consider the public interest questions in relation to The Evening Standard. They believed that evidence relating to the conduct of IDNM and the content of The Independent would only be relevant to Ofcom’s consideration of whether public interest concerns exist about The Evening Standard.

- A1.29 IDNM and LHL referred to section 6 of the DTI Guidance, which contains indications of the general approach to the policy considerations on intervention in newspaper public interest cases. They argued that there was a legitimate expectation that DTI Guidance would be followed.
- A1.30 They further argued that the public interest regime is intended to apply only in exceptional cases. They explained that The Evening Standard is a local, free, daily newspaper that is published and distributed only in London from Monday to Friday. They further explained that The Evening Standard's national presence is limited, and its coverage of international news is significantly more limited than national titles. In addition, they noted that according to the Publishers Audience Measurement Company ("PAMCo"), the printed Evening Standard had a daily brand reach of 1.2 million, just over 2% of PAMCo's weighted audience. They further explained that, according to the Audit Bureau of Circulations, The Evening Standard's circulation for May 2019 accounts for around 13% of all UK daily newspapers by circulation.
- A1.31 IDNM and LHL noted that the DTI Guidance states that acquisitions by persons with no existing newspaper interests are only likely to raise public interest concerns in exceptional circumstances. LHL asserted that the buyer's only pre-existing media interest in the UK arises through a minority shareholding in IDNM.
- A1.32 IDNM and LHL took the view that in assessing whether the high threshold of exceptional circumstances has been met, Ofcom needs to consider third party comments and evidence of editorial interference. They stated that they were not aware of any significant third-party concerns raising public interest concerns and there was no evidence of editorial interference.
- A1.33 IDNM and LHL noted the concern expressed by the then Secretary of State that the *"acquisition of a stake [in a newspaper] by a foreign state may well be an exceptional circumstance"*. They assumed this was a reference to a concern that any connection to the Saudi state could hamper freedom of expression or the accurate presentation of the news. They took the view that it was imperative that Ofcom reviews coverage of Saudi Arabia by The Independent in the period since the IDNM transaction and coverage by The Evening Standard on Saudi issues both prior and subsequent to the LHL transaction.
- A1.34 IDNM and LHL stated that there has been no change in overall control at LHL, where Evgeny Lebedev retains a majority shareholding. They added that, at its highest, the transactions amount to the acquisition of material influence, the lowest level of control under the UK merger regime.
- A1.35 They further noted that the minority shareholding acquired by IMC in LHL conferred no additional strategic veto rights beyond standard minority protection items. They took the view that IMC does not have the ability to control the LHL board.
- A1.36 considered that Scalable Inc's influence has been limited because, as a financial investor, Scalable Inc has less expertise and knowledge of media affairs than IDNM's other major shareholders. IDNM also noted that the shareholders agreement in relation to IDNM does

not give Scalable Inc any additional strategic veto rights other than ordinary minority shareholder protection rights.

- A1.37 The Independent NUJ chapel stated that they had been disappointed at management's lack of transparency and engagement with staff over the acquisition of shares by Sultan Abuljadayel and subsequent licencing deal with Saudi Research and Marketing Group ("SRMG"). They stated that they were not told that a Saudi investor had bought significant shares in IDNM until it was publicised in the press on 28 July 2017. They explained that they were shocked that they had not been notified or consulted.
- A1.38 The Independent NUJ chapel explained that they were notified of the licencing deal with SRMG in July 2018, but were disappointed at management's refusal to answer questions regarding the details of the agreement and safeguards around its operation.
- A1.39 The Independent NUJ chapel noted that, at periodic "town hall" meetings, they have been assured that parties to the licensing deal have signed documents requiring them to abide by The Independent's editorial standards. However, The Independent NUJ chapel stated that they did not know how those standards are being effectively monitored as their articles are translated and original content is being added to SRMG websites by SRMG's own staff.
- A1.40 The Independent NUJ chapel stated that they would like more information regarding the oversight of SRMG's content; the sanctions available for any breaches of agreed standards; the management structure of the SRMG websites and what, if any, powers of veto and vetting Independent editors have.
- A1.41 The Independent NUJ chapel explained that they would like a more transparent process around recruitment and compliance checks. They also want the ability to veto the translation of any articles they feel may compromise their safety or work in the field. The Independent NUJ chapel further explained that staff want translated stories to display an automatic message saying they have been translated from English and a link to the original English version.