

Anticipated acquisition by Lebedev Holdings Limited of The Independent and The Independent on Sunday newspapers

ME/4450/10

The OFT's decision on reference under section 33(1) given on 17 March 2010. Full text of decision published 23 March 2010.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

1. Lebedev Holdings Limited's (LHL) has a controlling interest in the Evening Standard Limited, the publisher of the Evening Standard, a free daily newspaper in London.
2. Independent News and Media (INM) is an international media company based in Dublin (listed on both the Irish and London stock exchanges) and currently publishes both The Independent and The Independent on Sunday newspaper titles.
3. The merger was notified by the parties on 24 February 2010 and the administrative deadline for a decision is 23 April 2010.

The Transaction

4. The transaction concerns the transfer of the staff, and assets of The Independent and The Independent on Sunday newspaper titles and their online activities (together the Target Business). It is intended that the transaction will be effected by way of an asset sale to Independent Print Limited (IPL), a newly incorporated entity that is a subsidiary of LHL.

Jurisdiction

5. On the basis of the information available to it, and for the reasons explained below, the OFT has decided that the anticipated acquisition of the Target Business by LHL does not qualify for investigation under the mergers provisions of the Enterprise Act 2002 (the Act).
6. A relevant merger situation arises where two or more enterprises cease to be distinct and either the UK turnover test or the share of supply test set out in the Act is met.
7. As a result of this transaction the Target Business and LHL will cease to be distinct. The OFT is satisfied that the combination of staff and assets that make up the Target Business are sufficient to form 'an enterprise' for the purposes of the Act and, therefore, that two or more enterprises would cease to be distinct.
8. The UK turnover of the Target Business in its last financial year was less than £70 million; therefore the turnover test in section 23(1)(b) of the Act is not met.
9. Qualification as a relevant merger situation capable of being investigated by the OFT therefore rests on the application (or not) of the share of supply test.
10. As mentioned above, LHL's only relevant asset in this context is its controlling interest in the London Evening Standard, a daily (Monday to Friday) free newspaper circulated in the Greater London area. The Independent is a national daily (Monday to Saturday) paid for newspaper. The Independent on Sunday is a weekly Sunday paid for newspaper. Therefore, the narrowest reasonable description of goods in the supply of which the parties could be said to overlap would be the distribution of all daily newspapers, free and paid for, in Greater London.
11. The parties' best estimates for their shares of supply for such London wide distribution is based on UK news trade sales for December 2009 and ABC circulation data for free newspapers for December 2009. This gives the parties an estimated combined share, based on circulation, of the supply of all daily newspapers in Greater London of [15-20] per cent (increment [zero-five] per cent). The OFT believes, based on information provided by the parties, that on any reasonable alternative basis, such as by newspaper

advertising revenue in the Greater London area, the share of supply figure would be lower than this. Therefore the OFT does not believe that the share of supply test in section 23(3) of the Act is met.

Conclusion

12. Therefore, since neither the UK turnover test nor the share of supply test in section 23 of the Act is met, the OFT has concluded that a relevant merger situation has not been created.