



Department for  
Digital, Culture  
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**By Email**

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Dear Mr Lebedev  
Dear Mr Malhotra

**Lebedev Holdings Limited and Independent Digital News and Media Limited transactions - issuing of the Public Interest Intervention Notice by the Secretary of State.**

I refer to your letters both dated 17 June to the Department for Digital, Culture, Media and Sport and the Secretary of State respectively. Your letters were provided in response to our letter of 13 June which set out that the Secretary of State was minded-to issue a Public Interest Intervention Notice (PIIN) under section 42 of the Enterprise Act ("the Act") in relation to the completed transaction by International Media Company (IMC) of 30% of the share capital of Lebedev Holdings Limited (LHL) and the earlier acquisition, completed in 2017, by Scalable Inc of 30% of the share capital of Independent Digital News and Media Limited (IDNM).

The Secretary of State can now confirm that, for the reasons set out in the minded-to letter (subject to the points made below), he has issued a PIIN in relation to the merger and has asked Ofcom and the Competition Markets Authority ("CMA") to report to him by 23 August on the following grounds set out in section 58 of the Act:

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

## **Consideration of Representations**

Your written submission on 17 June raised a number of points about whether there was in fact a relevant merger situation which would allow the Secretary of State's to intervene in this case. The references below relate to the paragraphs in LHL's letter of 17 June.

### **(a) Issues relating to jurisdiction**

**(i) Creation of a relevant merger situation** - Your letter raised two specific arguments: (a) the share of supply and turnover tests are not met (para 17); (b) there is no basis for exercising the discretion in section 25 and section 27 of the 2002 Act as there is no common corporate parent company as LHL and IDNM are and operate as separate entities (para 20). You cited the CMA mergers guidance para 4.46 (para 21) and said that the only overlap between the Independent and Standard is online advertising with both having a small share (para 21). The Secretary of State's view is that the turnover test is met when the two transactions are viewed together, and that there is appropriate discretion to do this as a result of section 29 of the Act. This is because these are two transactions within two years which appear to enable a group of persons to directly or indirectly control or materially influence the policy of both LHL and IDNM, or are a step towards so enabling this. The Secretary of State therefore has reasonable grounds for suspecting that a relevant merger situation has been created.

**(ii) Creation of a Special Merger Situation** - You said the grounds for a special merger situation were not met on the basis that ES Media actually has PAMCo share of 24.5% (para 25). The calculation in the minded to letter of 13 June is based on 2019 PAMCo data and puts the figure at 25.3%. The difference appears to be that you have included Sunday titles. The Secretary of State believes the 25.3% figure is a reasonable basis for the assessment of the market. However, this is a moot point as he does not at this stage seek to issue a Special Intervention Notice.

### **(b) Issues relevant to the public interest considerations**

**(i) Economic Issues** – You said that intervention was disproportionate and SoS should consider the state of the news/newspaper market (paras 10-12). You noted that “The Evening Standard remains particularly vulnerable in terms of the continuing decline of print advertising revenue” (para 12) and that “the investment in LHL has provided a vital and necessary lifeline for the continued operation of the business, whilst offering IDNM the financial stability to further invest in its editorial team” (para 13). Your letter of 13 June also cited Mediatique's report for DCMS (para 11), business losses (para 12) and Cairncross (para 13) as evidence of the pressure the press is under. This was a point you stressed again at the meeting on 25 June. The Secretary of State notes that the public interest specified in the minded to letter is freedom of expression and accuracy of the news. In his view, the points here are important in terms of wider media plurality but are not specifically relevant to the public interest consideration in this case.

**(ii) Editorial/news independence protected already.** Your letter said that (a) Evgeny Lebedev remains effectively in control and able to appoint the majority of directors in both

IDNM and LHL (paras 7 and 8), (b) both the Evening Standard and the Independent produce coverage which is challenging to the Saudi regime and will continue to do so (para 4), (c) Clause 6.2 of the Shareholders Agreement makes clear that there can be no “strategic veto” by IMC (para 31), (d) IMC/Scalable can only appoint a minority of directors (para 31), (e) the directors appointed to IDNM by Scalable are experienced and independent (para 33). You also stated that there can be no question of IMC or its owners interfering in the Standard’s news agenda (para 32). The Secretary of State notes what you say and has seen the large ringbinder of news coverage since 2017 which you provided on 25 June. However, he is concerned that these assurances do not amount to long-term protections for editorial independence, particularly if Scalable/IMC were to acquire more shares and a greater role over time.

**(iii) Incorrect application of public interest considerations by Secretary of State** Your letter of 16 June says that IDNM is outside the public interest regime as the Independent is not a ‘newspaper’ within the meaning of s.44(10) of the Act, and that the newspaper public interest consideration cannot therefore apply to it. You also argue that there must be exceptional circumstances for intervention in this merger (para 35), such as third party concerns about the transaction, as set out in the 2004 Media Mergers Guidance. The Secretary of State agrees that the definition of ‘newspaper’ is generally understood to refer to hard copy papers, but does not think that this prevents the relevant jurisdictional tests from being met. The guidance from 2004 is relevant, but purely guidance and cannot be indicative of the approach to be taken in all cases. It does not seem that this is an acquisition by a person with no media interests, but in any event we note both that acquisition of a stake by a foreign state may well be an exceptional circumstance, and that DCMS have received 2 Parliamentary Questions on this point. There has also been press reporting raising concerns about the transaction.

## **Conclusion**

We can confirm that nothing contained in your representations has caused the Secretary of State to change his views or dismiss his concerns about the mergers as set out in the minded-to letter. In reaching this decision the Secretary of State has continued to be mindful of the need to consider only relevant factors in his decision on intervention.

The Secretary of State does acknowledge the points you have both raised about the structure of the transactions and the turnover of the companies which have clarified the context for the transaction. Nonetheless, he still consider that there are reasonable grounds to suspect that a relevant merger situation has been created.

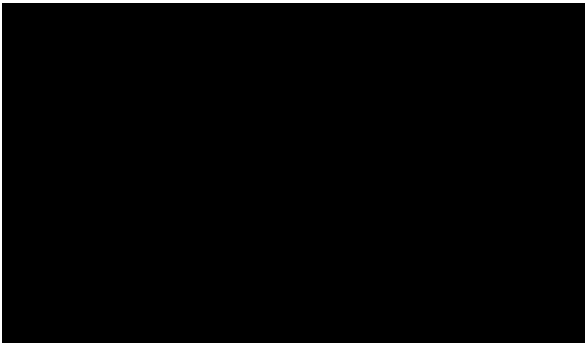
He also acknowledges the points made about the protection for editorial independence including the provisions contained in your Shareholding Agreement. Again, however, he still believes that it may be the case that the public interest considerations of freedom of expression and accurate news reporting are relevant to this merger. Therefore, he considers it appropriate to intervene in this matter in order to take more detailed advice on the transactions from the CMA and Ofcom.

Finally, the Secretary of State also noted that the representations from Mr Lebedev which emphasised the importance of the transactions in providing vital investment funding for the Evening Standard and the Independent, which like other news organisations are facing a challenging financial situation. In Parliament the Secretary of State has said that it is the role of any responsible Government to play an active part in supporting public interest journalism. However, the concerns raised by Mr Lebedev do not affect his decision to intervene in this case.

For the reasons set out in the minded to letter, and subject to the points made above, the Secretary of State has reasonable grounds for suspecting that a relevant merger situation has been created and believes that it is or may be the case that the accurate presentation of news and free expression of opinion public interest considerations are relevant to the consideration of the merger and has issued a PIIN<sup>1</sup> accordingly. The Secretary of State hopes that you will commit to fully engaging with Ofcom and the CMA as they prepare their reports in response to the PIIN.

Please note that the role of the Secretary of State in this process is quasi-judicial and procedures are in place to ensure that he acts independently and follows a process which is scrupulously fair, transparent and impartial.

Yours sincerely,



Director for the Media and Creative Industries Team  
Department for Digital, Culture, Media and Sport

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<sup>1</sup> The PIIN is available at:  
<https://www.gov.uk/government/collections/acquisition-of-30-stake-in-lebedev-holdings-limited-owner-of-the-evening-standard>