

Completed acquisition by Mr. Sultan Muhammad Abduljadayel and Wondrous Investment Holdings L.P. of Independent Digital News and Media Limited and Lebedev Holdings Limited

Report to the Secretary of State for Digital, Culture, Media and Sport on the relevant merger situation and substantial lessening of competition

SUMMARY

Advice to Secretary of State

1. On 7 June 2017, Mr. Sultan Muhammad Abduljadayel and Wondrous Investment Holdings L.P (**Wondrous**) (together, the **Acquirers** and individually, an **Acquirer**), acting through the newly created company Scalable Inc (**Scalable**), acquired a 30% shareholding in Independent Digital News and Media Limited (**IDNM**). During a series of acquisitions on 7 December 2018, 14 December 2018 and 20 February 2019, the Acquirers, acting through the newly created company International Media Company (**IMC**), acquired a 30% shareholding in Lebedev Holdings Limited (**LHL**). IDNM and LHL are together referred to as the **Target Companies**. The Acquirers and the Target Companies are together referred to as the **Parties**. The acquisition by the Acquirers of the Target Companies is referred to as the **Merger**.
2. On 27 June 2019, the Secretary of State for Digital, Culture, Media and Sport (the Secretary of State), in exercise of his powers under section 42 of the Enterprise Act 2002 (the **Act**), issued a public interest intervention notice (the **PIIN**) in respect of the Merger. In accordance with sections 44 and 44A of the Act, the Competition and Markets Authority (**CMA**) and Ofcom were required to investigate and report to the Secretary of State by 23 August 2019.

3. As regards each of the decisions that the CMA is required to include in its report, pursuant to section 44(4) of the Act, the CMA:
 - (a) believes that it is or may be the case that a relevant merger situation has been created by the Merger; and
 - (b) does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom for goods or services. Accordingly, the CMA believes that the test for reference is not met on competition grounds.
4. In view of these conclusions, it has not been necessary to assess whether any of the exceptions to the duty to refer apply, or whether it would be appropriate to deal with competition concerns by way of undertakings in lieu of a reference.

Summary of competition assessment

5. The CMA believes that it is or may be the case that the Parties' enterprises have ceased to be distinct and that the turnover test is met. The four-month period under section 24 of the Act has not yet expired as of the date of the PIIN (ie 27 June 2019) and as of the date of this report (ie 28 June 2019). The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
6. Pre-Merger, there was no overlap between the activities of the Acquirers and the Target Companies in the UK. The Acquirers also did not supply any products or services in the UK that were vertically related to the services and products of the Target Companies.
7. The two Target Companies overlap in the supply of online news and digital advertising in the UK. The Target Companies publish between them the Independent Digital Edition and the Evening Standard Online. In addition, the Evening Standard is also available in print as a free circulation newspaper in London. The Target Companies were, however, under common control prior to the investments by the Acquirers and, therefore, did not provide a competitive constraint on each other.
8. The CMA believes, therefore, that the Merger does not raise competition concerns in any relevant frame of reference and does not give rise to a realistic prospect of an SLC.

9. The CMA has, nonetheless, briefly set out below its assessment of the relevant frames of reference and the Parties' activities in those frames of reference.

Legal framework

10. In the case of a completed merger, the CMA is required to make a reference under section 22(1) of the Act for a Phase 2 assessment where it believes that it is, or may be the case, that a relevant merger situation has been created, and the creation of a relevant merger situation has resulted, or may be expected to result, in an SLC within any market or markets in the United Kingdom for goods or services.¹
11. The Act permits intervention by the Secretary of State in cases where he or she believes that it is or may be the case that one or more public interest considerations is relevant to a consideration of the relevant merger concerned.²
12. In such a case, section 22(1) of the Act does not apply³ and instead the CMA is required to give a report to the Secretary of State within such period as he or she may require.⁴ The report must contain advice on the considerations relevant to the making of a reference under section 22 of the Act which are also relevant to the Secretary of State's decision as to whether to make a reference under section 45 of the Act.⁵
13. Where the PIIN relates to one or more media public interest considerations, the CMA's report may additionally contain a summary of any representations about the case which have been received by the CMA and which relate to those media public interest considerations and which are, or may be, relevant to the Secretary of State's decision as to whether to make a reference under section 45.⁶
14. In particular, the report must include decisions as to whether the CMA believes that it is or may be the case that:⁷

¹ Section 22(1) of the Act.

² Section 42(2) of the Act. As to public interest mergers more generally, see Chapter 16, Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2), January 2014.

³ Section 22(3)(d) of the Act.

⁴ Section 44(2) of the Act.

⁵ Section 44(3)(a).

⁶ Section 44(5A) of the Act.

⁷ The full list of requirements is set out in sections 44(3) and 44(4) of the Act.

- (a) a relevant merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and,
 - (b) the creation of that situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets within the UK for goods and services.
15. Following receipt of the CMA's report, the Secretary of State may, pursuant to section 45 of the Act, make a Phase 2 reference to the CMA on public interest and/or competition grounds.

ASSESSMENT

Parties

The Acquirers

16. Scalable and IMC are holding companies without commercial activities. Wondrous and Mr. Sultan Muhammad Abduljadayel each hold 50% of the shares in both Scalable and IMC.
17. Wondrous is a limited partnership investment vehicle incorporated in the Cayman Islands. As an investment vehicle, the commercial activities of Wondrous Investment Holdings L.P. are to make investments. Mr. Sultan Muhammad Abduljadayel is a citizen of the Kingdom of Saudi Arabia.

The Target Companies

18. IDNM is a digital consumer media business delivering news and entertainment content through its websites *independent.co.uk* and *indy100.com* and its digital mobile application *The Independent Digital Edition*. Whilst IDNM's principal focus and headquarters are in the UK, IDNM also has a wholly owned US subsidiary (Independent News and Media Inc) which employs a small number of staff in an office in the USA (New York). IDNM does not publish a printed newspaper. The turnover of IDNM in the 2017/2018 financial year was £[REDACTED].⁸
19. LHL is a holding company that has no business activities on its own. It is the majority shareholder in Evening Standard Limited, the company which publishes the Evening Standard printed newspaper, which is distributed in

⁸ IDNM's response to the section 109 notice issued by the CMA on 13 June 2019.

London only, and the Evening Standard news website, a UK website. LHL is also the only shareholder in ESTV Limited, which owns the London Live TV channel. The principal activity of ESTV Limited is TV broadcasting.⁹ Evening Standard Limited also owns the majority of shares in ES London Limited, a company which owns a domain name and has negligible activities. The principal activity of ES London Limited is the provision of advertising services through digital sites and related domain names. The turnover of LHL in the 2017/2018 financial year was £ [REDACTED].¹⁰

20. Prior to the investment by the Acquirers, Mr. Lebedev held 67.66% of the shares in IDNM. Following the investment by the Acquirers, Mr. Lebedev remained the largest shareholder in IDNM with 40.69% of the shares. The Acquirers acquired 30% of IDNM and three other shareholders, Mr. Justin Byam Shaw, Mr. Zach Leonard and Mr. Manish Malhotra held 26.97%, 2% and 0.33% of the shares, respectively.
21. Prior to the investment by the Acquirers, Mr. Evgeny Lebedev held 100% of the shares in LHL. Following the investment by the Acquirers, Mr. Lebedev remained the majority shareholder in LHL, holding 60% of the shares (the Acquirers acquired 30% of the shares, and Mr. Justin Byam Shaw acquired 10% of the shares, in LHL).

Transaction

22. On 7 June 2017, Mr. Sultan Muhammad Abduljadayel and Wondrous, acting through the newly created company Scalable, acquired a 30% shareholding in IDNM. During a series of acquisitions on 7 December 2018, 14 December 2018 and 20 February 2019, Mr. Sultan Muhammad Abduljadayel and Wondrous, acting through the newly created company IMC, acquired a 30% shareholding in LHL.
23. The CMA has exercised its discretion under section 27(5) of the Act to treat the acquisitions by Mr. Sultan Muhammad Abduljadayel and Wondrous of IDNM and LHL as having occurred simultaneously on the date of the latest transaction (ie 20 February 2019). The CMA's approach on this issue takes into account the fact that the two transactions are successive events within a period of two years between the same parties or interests.

⁹ Due to the minimal revenue generated by London Live TV [REDACTED] with an operating loss of [REDACTED] in the last financial year), and the lack of any overlap between London Live TV and any activities of either the Acquirers or IDNM, this activity is not discussed further in this report with respect to competition.

¹⁰ LHL's response to the section 109 notice issued by the CMA on 13 June 2019.

24. In deciding whether it is appropriate to treat arrangements or transactions as having taken place between the same interests, the CMA must, in particular, have regard to the persons ‘substantially’ concerned in the transactions.¹¹ The CMA considers that the two transactions in this case were between the same parties or interests for the following main reasons:
- (a) Mr. Sultan Muhammad Abduljadayel and Wondrous were the ultimate acquirers under each transaction;
 - (b) Mr. Evgeny Lebedev was the majority shareholder of IDNM and LHL pre-transactions and remained the largest shareholder of IDNM and LHL post-transactions;
 - (c) The 30% shareholding acquired by Mr. Sultan Muhammad Abduljadayel and Wondrous in IDNM was sold, in its majority, by Mr. Evgeny Lebedev; and the 30% shareholding acquired by Mr. Sultan Muhammad Abduljadayel and Wondrous in LHL was sold by Mr. Evgeny Lebedev; and,
 - (d) The existing links between IDNM and LHL. Both Target Companies operate under ESI Media (an umbrella trading name) and share some common services (e.g. offices, staffing and some other resources) through an Inter Company Services and Representation Agreement.

Relevant merger situation

25. In the context of a completed transaction, a relevant merger situation exists where the following conditions are satisfied:¹²
- (a) two or more enterprises have ceased to be distinct; and
 - (b) either:
 - (i) the value of the target enterprise’s UK turnover exceeded £70 million in its last fiscal year (the turnover test); or
 - (ii) the enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description (the share of supply test); and

¹¹ Section 27(8) of the Act.

¹² Section 23 of the Act.

- (c) The enterprises ceased to be distinct within timeframes specified in the Act, in this case, four-months from the date on which the CMA was provided with material facts concerning the merger.¹³

Enterprises ceasing to be distinct

26. Enterprises cease to be distinct under section 26(1) of the Act if they are brought under common ownership or control. For the purpose of this assessment, a person or group of persons able, directly or indirectly, materially to influence the policy of a body corporate may be treated as having control of it.
27. The CMA considered whether:
- (a) each of (i) the Acquirers; and (ii) the Target Companies includes one or more enterprises;
 - (b) the Acquirers can be treated as ‘associated persons’ for the purpose of the acquisitions; and
 - (c) the acquisition of a 30% shareholding in each of IDNM and LHL has given the Acquirers the ability to exercise material influence.
28. First, the CMA considers that Wondrous is an ‘enterprise’ within the meaning of section 129 of the Act as it is engaged in making investments, which is a commercial activity. Each of Wondrous and Mr. Sultan Muhammad Abduljadayel may also control additional enterprises. The CMA also considers that IDNM and LHL are ‘enterprises’ within the meaning of section 129 of the Act as both Target Companies are engaged in commercial activities relating to delivering news and entertainment content.
29. Second, under section 127 of the Act, ‘associated persons’, and any bodies corporate which they or any of them control, are treated as one person for the purpose of deciding whether any two enterprises have been brought under common ownership or common control. This situation will most commonly arise where the acquiring persons are related or have a signed agreement to act jointly to make an acquisition.¹⁴
30. Given the way the relevant transactions were structured, the CMA has considered whether Mr. Sultan Muhammad Abduljadayel and Wondrous

¹³ Section 24(1) of the Act. The Act does not define ‘material facts’ but the CMA interprets these to be the information that is relevant to its determination of jurisdiction. In practice, this means information on the identity of the parties and whether the transaction remains anticipated or has completed (see [Mergers: Guidance on the CMA’s jurisdiction and procedure](#) (CMA2), January 2014, paragraph 4.44).

¹⁴ [Mergers: Guidance on the CMA’s jurisdiction and procedure](#) (CMA2), paragraphs 4.40 and 4.41.

should be treated as associated persons. The Target Companies told the CMA that Mr. Sultan Muhammad Abduljadayel and Wondrous acted in concert with one another in relation to the acquisition of a 30% shareholding in each of IDNM and LHL. With respect to each acquisition, the Acquirers formed a holding company in which each Acquirer had a 50% ownership stake, and those holding companies carried out the acquisitions. The CMA considers that Mr. Sultan Muhammad Abduljadayel and Wondrous should be viewed as having acted together in order to acquire a 30% shareholding in each of IDNM and LHL and therefore are associated persons within the meaning of section 127 of the Act.

31. Third, the ability to exercise material influence constitutes the lowest level of control that may give rise to two or more enterprises ceasing to be distinct. In this case, the CMA has considered whether the 30% shareholding in IDNM and LHL has given the Acquirers the ability, directly or indirectly, to materially influence the policy of IDNM and LHL.
32. The CMA notes that a 30% shareholding may give the Acquirers the ability to block special resolutions. As set out in the CMA's Guidance, *'given the nature of decisions that typically require a special resolution – and which the holder could therefore block – a share of voting rights of over 25% is likely to be seen as conferring the ability materially to influence policy – even when the remaining shares are held by only one person'*.¹⁵
33. The CMA also notes that Mr. Sultan Muhammad Abduljadayel and Wondrous have the right to appoint two directors to the IDNM board¹⁶ and two directors to the LHL board.¹⁷
34. The CMA considers that the acquisition of a 30% shareholding, combined with the board representation rights, is likely to give Mr. Sultan Muhammad Abduljadayel and Wondrous the ability to exercise material influence over IDNM and LHL.
35. For the reasons set out above, the CMA considers that, as a result of the Merger, it is or may be the case that two or more enterprises have ceased to be distinct.

¹⁵ [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), paragraph 4.19.

¹⁶ IDNM's response to the section 109 notice issued by the CMA on 13 June 2019.

¹⁷ LHL's response to the section 109 notice issued by the CMA on 13 June 2019.

The turnover test

36. The combined UK turnover of the Target Companies exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.¹⁸

The four-month period

37. As indicated above, the CMA has decided to exercise its discretion under section 27(5) of the Act to treat the acquisitions of IDNM and LHL as having occurred simultaneously on the date of the latest acquisition (ie 20 February 2019). The CMA considers that material facts (in particular, the identity of the acquiring parties, Wondrous and IMC) relating to this transaction were brought to the CMA's attention by officials of the Department for Digital, Culture, Media and Sport (DCMS) on 1 March 2019, and were not made public before this date. Therefore, the CMA considers that the four-month period under section 24 of the Act ends on 1 July 2019.

Conclusion

38. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created as of the date of the PIIN (ie 27 June 2019) and as of the date of this report (ie 28 June 2019).

Counterfactual

39. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.¹⁹

¹⁸ The CMA also considers that it is or may be the case that a special merger situation under section 59 of the Act has been created as a result of the acquisition by the Acquirers of a 30% shareholding in LHL. The Target Companies informed the CMA that the Evening Standard, a company owned by LHL, would be the only local or regional daily evening newspaper within central London and Greater London and, therefore, that its share of supply would be 100% on this basis. Therefore, the share of supply test applicable to special merger situations under section 59(3C) of the Act, read together with section 59A, is met.

¹⁹ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

40. In this case, there is no evidence supporting a different counterfactual, and the Target and third parties have not put forward arguments in this respect. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual, nothing that IDNM and LHL had a common majority shareholder prior to the investments by the Acquirers and, therefore, would not ordinarily be considered as having provided a competitive constraint on each other.

Industry background

41. The newspaper market operates as a two-sided market with two customer groups: readers and advertisers. Two-sided markets are generally characterised by indirect network effects, where the value of the product for the customer on one side of the market depends on the number of users on the other side. In the case of national newspapers, network effects are likely to operate in one direction only: while more readers will make the newspaper more attractive to advertisers, more adverts are unlikely to make the newspaper more attractive to readers.
42. The Target Companies have provided documentation that refers to the structural decline in the circulation of printed newspapers. The Target Companies have indicated that this decline is one of the main reasons behind the transaction (in particular in relation to LHL) as the continued structural changes in the industry threaten the long-term economic viability of print publishers.

Frame of reference

43. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.²⁰
44. The Acquirers and the Target Companies have no overlapping or vertically related activities. The Target Companies overlap in the supply of online news

²⁰ [Merger Assessment Guidelines](#), paragraph 5.2.2.

in the UK and the supply of digital advertising in the UK. The Evening Standard is published as a paper edition in London.

Product scope

45. As discussed at paragraph 39 above, the Target Companies earn revenues from two groups of customers; readers and advertisers. The range of substitutes may differ between each customer group, so the CMA has given separate consideration to each in considering the product frame of reference.
46. The Target Companies said that they only overlap in the online publishing of newspapers and the supply of digital advertising in the UK.
47. IDNM does not publish a printed newspaper, whilst the Evening Standard only publishes a printed newspaper for the London region.

Supply of Newspapers

48. In its recent Reach decision,²¹ the CMA considered it appropriate to define the product frame of reference as including all national newspaper types (without further segmenting between popular, mid-market and quality newspapers) due to the many dimensions of differentiation between newspapers. The CMA also considered, on a cautious basis, that the supply of online news in the UK constituted a separate frame of reference from the supply of printed news in the UK because market testing indicated that competition was closer within printed newspapers and particularly within the categories of popular, mid-market and quality printed newspapers. However, the CMA took into account the constraints from other media in its competitive assessment.
49. In its recent decision in *Fox/Sky*,²² the European Commission did not conclude on the exact product frame of reference, including whether the segmentation between national, regional and free print newspapers was still appropriate in the UK.
50. The Target Companies submitted that online news and print news were not horizontally overlapping products. The CMA did not receive any third party evidence to suggest that different frames of reference would be appropriate.

²¹ Completed acquisition by Reach Plc of certain assets of Northern & Shell Media Group Limited, CMA decision of 20 June 2018, case ME/6741/18

²² Case M.8354 - Fox / Sky

Supply of advertising

51. With regard to advertising, the European Commission's market investigation in *Fox/Sky*²³ indicated that advertising on TV channels and advertising in print newspapers should be treated as separate product markets. In relation to advertising in print newspapers, the European Commission's market investigation confirmed that daily and non-daily newspapers form separate relevant markets and that national and local newspapers are not substitutable.
52. In its recent *Reach* decision,²⁴ the CMA considered it appropriate to treat digital advertising and print advertising as separate frames of reference because there were specific reasons for advertising in newspapers as opposed to other channels, such as a fast turnaround for adverts, engaging a hard-to-reach audience, or the relatively lower price of delivering a message to wide audience than when using alternative media. However, the CMA took into account the constraints from other media in its competitive assessment.
53. The Target Companies did not identify digital advertising and print advertising as horizontally overlapping products. The CMA did not receive any third party evidence to suggest that different frames of reference would be appropriate.

Conclusion

54. For the reasons set out above, on a cautious basis the CMA has considered the impact of the Merger in the following frames of reference:
 - (a) The supply of online news;
 - (b) The supply of local printed news;
 - (c) The supply of digital advertising; and
 - (d) The supply of local print advertising.
55. However, it was not necessary for the CMA to reach a conclusion on the product frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

²³ Case M.8354 - Fox / Sky

²⁴ Completed acquisition by Reach Plc of certain assets of Northern & Shell Media Group Limited, CMA decision of 20 June 2018, case ME/6741/18

Geographic scope

56. In previous cases, the CMA has considered the geographic frame of reference for national newspapers to be national in scope.²⁵ Similarly, the European Commission in *Fox/Sky* considered both the advertising and newspaper publishing markets to be national in scope.²⁶
57. In its Reach decision, the CMA considered the geographic frame of reference for the supply of news to be UK-wide given the very limited level of localisation for national newspapers.
58. The Target Companies told the CMA that the overlap products are both UK websites that readers can access from around the world. However, whilst the Evening Standard newspaper does cover national and international news, its focus and distribution is only within London.
59. From the advertising side, the Target Companies told the CMA that both IDNM and Evening Standard Limited sell advertising space to clients all over the world. All advertising is booked through IDNM and Evening Standard Limited in the UK. Evening Standard Limited and IDNM trade using any regional, national or international requirements set out in the media brief by the client / agency. They can geographically targeted (e.g. postcode-specific), or broad national or international campaigns, across all of their web sites. These campaigns can target a single audience profile, e.g., UK females, 35-45, in the market to purchase a home loan.
60. The limited evidence provided by the Target does not support a conclusion that the relevant geographic frame of reference should be wider than national. The CMA did not receive any third party evidence to supporting the Target Companies view for wider than national frames of reference.

Conclusion on frame of reference

61. For the reasons set out above, on a cautious basis, and in line with previous cases, the CMA has considered the impact of the Merger in the following frames of reference:
 - (a) The supply of online news in the UK
 - (b) The supply of local printed news;

²⁵ See, for example, the geographic scope of the analysis undertaken by the CC in its report on Trinity Plc/Mirror Group Plc and Regional Independent Media Holdings Ltd/Mirror Group Plc, Cm. 4393 (July 1999), paragraphs 4.18-4.33 and 4.88.

²⁶ Case M.8354 – Fox/Sky, paragraphs 118 and 135.

(c) The supply of digital advertising in the UK; and

(d) The supply of local print advertising.

62. However, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Competitive assessment

Horizontal unilateral effects

63. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.²⁷ Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of online news in the UK and the supply of digital advertising in the UK.

The supply of online news, digital advertising, local print news and local print advertising in the UK

64. The Target Companies told the CMA that they overlap in the supply of online news and the supply of digital advertising and that the Evening Standard also publishes a print version of its newspaper. The Target Companies further told the CMA that the Acquirers' only commercial activities in relation to media and/or advertising in the UK arise through their minority shareholdings in LHL and IDNM. Pre-Merger, the Acquirers were not active in any of the frames of reference listed above in paragraph 59.
65. No third party raised competition concerns about the Merger.²⁸
66. As noted above, the Target Companies had a common majority shareholder prior to the investments by the Acquirers and, therefore, would not ordinarily be considered as having provided a competitive constraint on each other. The Acquirers are not active in the supply of online news, digital advertising, local print news and local print advertising in the UK. The CMA therefore considers that the Parties were not competitors pre-Merger in any of the frames of

²⁷ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

²⁸ The CMA issued an Invitation to Comment on 13 June 2019 (see [case page](#)) and contacted a number of customers and competitors (see paragraphs 76 and 77 below).

reference listed above and that the Merger did not lead to an increase in market concentration.

67. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to any of the frames of reference listed paragraph 59.

Vertical effects

68. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or a downstream competitor of the supplier's customers.
69. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.²⁹
70. As stated above in paragraph 64, the Acquirers do not supply any products and/or services that are vertically related to the supply of online news, local printed news, digital advertising or local printed news advertising in the UK. As stated above in paragraph 66, the Target Companies could not be considered as having provided a competitive constraint on each other prior to the Merger.
71. No third party raised any competition concern about the Merger.³⁰
72. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to any of the frames of reference listed paragraph 59.

Barriers to entry and expansion

73. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA

²⁹ In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

³⁰ The CMA issued an Invitation to Comment on 13 June 2019 (see [case page](#)) and contacted a number of customers and competitors (see paragraphs 76 and 77 below).

considers whether such entry or expansion would be timely, likely and sufficient.³¹

74. The Target Companies said that the largest barriers to entry for any new news content providers will be their ability to attract sufficient high quality journalists to generate high quality, trusted, accurate and integral content that readers wish to read. This will in turn drive a reputation in the market that will assist in increasing readership numbers. In addition, the Target Companies said brand awareness will be important. Whilst a large number of news content consumers will consume their news from a variety of sources, there will be a certain degree of inertia for new sites and brands.
75. The CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

76. The CMA contacted customers and competitors of the Parties. Most competitors raised concerns regarding public interest points discussed below. No competitors or customers raised competition concerns as a result of the Merger.
77. Third party comments have been taken into account where appropriate in the competitive assessment above.

Conclusion on competitive assessment

78. For the reasons given above, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.

Public interest considerations

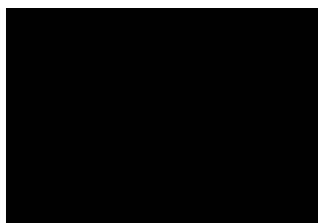
79. A number of third parties raised concerns on public interest aspects of the Merger. In summary third party concerns focused on the lack of transparency in the ownership of IMC and Scalable. One third party said that once the question of ownership was clearer this could give rise to public interest concerns. Another third party felt that the lack of clarity in the ownership of IMC and Scalable gave rise to concerns of possible influence over editorial decisions. The CMA has passed these concerns to Ofcom for consideration in

³¹ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

their report to the Secretary of State on the media public interest considerations mentioned in the PIIN.

Advice to Secretary of State

80. As regards each of the decisions that the CMA is required to include in its report, pursuant to section 44(4) of the Act, for the reasons set out above, the CMA:
- (a) believes that it is or may be the case that a relevant merger situation has been created as of the date of the PIIN (ie 27 June 2019) and as of the date of this report (ie 28 June 2019); and
 - (b) does not believe that it is or may be the case that the relevant merger situation has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom for goods or services.
81. In view of these conclusions, it has not been necessary to assess whether any of the exceptions to the duty to refer apply, or whether it would be appropriate to deal with competition concerns by way of undertakings in lieu of a reference.



Director, Mergers
Competition and Markets Authority
28 June 2019