

# **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**

Guidance note

---

## Background and Ofcom's role

- 1.1 On 27 June 2019, the Secretary of State made a statement to Parliament concerning the recent acquisition of a 30% stake by the International Media Company ("IMC") in Lebedev Holdings Limited ("LHL") and the linked transaction involving the acquisition of a 30% stake by Scalable LP in Independent Digital News and Media Limited ("IDNM").
- 1.2 He issued a Public Interest Intervention Notice ("PIIN") 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:
  - The need for accurate presentation of news in newspapers ("accurate presentation ground"); and
  - the need for free expression of opinion in newspapers ("free expression of opinion ground").<sup>1</sup>
- 1.3 Ofcom is now required to report to the Secretary of State under section 44A of the Act. The PIIN states that Ofcom's investigation and report must be completed by midnight on 23 August 2019.
- 1.4 This document outlines how we will proceed.
- 1.5 Our role is to conduct an initial investigation into the public interest considerations and to provide advice and recommendations on the Secretary of State's decision on whether he should refer the case to the Competition and Markets Authority ("CMA") for further analysis. We will focus on the effects of the transactions on the considerations specified by the Secretary of State and will not deal with competition issues. These fall within the jurisdiction of the CMA. Our report to the Secretary of State will also include a summary of any representations about the case that we receive.
- 1.6 It is for the Secretary of State to decide whether to refer the case to the CMA for further investigation in the light of our report.

## Process guidance

- 1.7 Our process is divided into two main parts:
  - information gathering and analysis; and
  - preparing our advice to the Secretary of State.

### Information gathering and analysis

#### Publication of the invitation to comment:

- 1.8 We published an [invitation to comment](#) on our website on **28 June 2019**. This document outlines the points on which we would particularly welcome input and explains how to

---

<sup>1</sup> Section 58 (2A) of the Enterprise Act.

make representations to Ofcom on this issue. We invite written responses, supported by evidence, to be submitted no later than **12 July 2019**. Due to timescales set by the Secretary of State, we may not be able to fully consider responses submitted after this date.

- 1.9 Please note that if any person provides information to us in this context, which is false or misleading in a material respect, it is an offence which, on conviction, may be punished by a fine and/or two years' imprisonment.<sup>2</sup>

### Engagement with the parties to the transactions

- 1.10 Ofcom intends to request information from the parties to the transactions. Soon after the requests are made, they should discuss with Ofcom the availability of the requested data and the form in which it will be made available. Ofcom may also wish to discuss points raised in their submissions and any other associated questions.

### Engagement with third parties

- 1.11 Ofcom may also request information from third parties where appropriate and as allowed within the timescale set by the Secretary of State.
- 1.12 Ofcom strictly observes confidentiality in all aspects of its operations. We will give the Secretary of State all relevant submissions (including confidential ones) to enable him to make his decision. We will require a full non-confidential version of any confidential submissions, together with reasons why information should be treated as confidential.

### Internal analysis

- 1.13 Ofcom's analysis will draw as appropriate from stakeholders' submissions as well as information that we already have available in-house, and any other sources we deem relevant.

### Preparing our advice to the Secretary of State

- 1.14 As soon as practicable we will consolidate the results of our internal analysis and the points raised by stakeholders to reach a provisional position on our recommendation to the Secretary of State.
- 1.15 If our provisional position were that this case raises potentially material public interest issues we would send an *issues letter* to the parties to the transactions, setting out the core arguments and evidence in the case. If appropriate and practicable, the letter would include the offer of an *issues meeting* where the parties could discuss our draft position and the analysis underpinning it.
- 1.16 Ofcom will finalise its report and send it to the Secretary of State by **23 August 2019**, together with any other material that may be relevant to his decision.

---

<sup>2</sup> Section 117 Enterprise Act 2002.

- 1.17 The Secretary of State will then decide whether the case should be referred to the CMA for further analysis. The Secretary of State will publish his decision and our report simultaneously.
- 1.18 If the Secretary of State makes a reference to the CMA, Ofcom will make all relevant information in its possession available to the CMA to allow it to conduct its analysis.