
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

Invitation to comment

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Publication date: 28 June 2019

Closing date for responses: 12 July 2019

Introduction

- 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”).¹
- 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 Ofcom has today published a guidance note on our website², setting out the process and timetable for preparing our report on the public interest considerations set out by the Secretary of State.

The accurate presentation of news ground

- 1.5 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 ground.
- 1.6 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.³
- 1.7 Our provisional view is that we will consider the accurate presentation of news ground in the light of the extent and nature of control, the persons exercising it, the market context and the conduct of the publications concerned in the UK since the transactions.
- 1.8 We are seeking views on all the issues set out above and any other issues respondents think we should consider in relation to the accurate presentation of news ground.

¹ Section 58 (2A) of the Enterprise Act.

² https://www.ofcom.org.uk/data/assets/pdf_file/0029/154586/Guidance.pdf

³ Department for Trade and Industry, Enterprise Act 2002: Guidance on the operation of the public interest merger provisions relating to newspaper and other media mergers, May 2004, paragraph 5.5. Available at [DTI Guidance](#).

The free expression of opinion ground

- 1.9 Previously Ofcom has been asked to consider 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.⁴
- 1.10 In our consideration of that merger, we took account of the statutory guidance on this ground. The guidance describes how free expression of opinion concerns ‘the extent to which the transaction would affect the freedom of editors to operate without interference from the proprietor’.⁵
- 1.11 Our provisional view is that we will consider the free expression of opinion ground in light of the market context and any measures which the parties may have put in place to preserve editorial freedom. We will also consider the extent to which those measures are sufficient to address the concerns (if any) which may arise from the transactions.
- 1.12 We are seeking views on all the issues set out above and any other issues respondents think we should consider in relation to the impact of these transactions on the free expression of opinion ground.

Advice and recommendation to the Secretary of State

- 1.13 Overall, Ofcom will consider how these completed transactions may affect each of the public interest considerations, taking account of representations and analysis of relevant information.

How to make submissions

- 1.14 Ofcom invites written submissions to be made by **12 July 2019**. We are seeking responses that provide views, supported by evidence, on the specific questions detailed above, or on other considerations stakeholders consider relevant. Due to timescales set by the Secretary of State, we may not be able to fully consider responses submitted after this date.
- 1.15 Please make representations via email to PublicInterestTest2019@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet (Annex 1).
- 1.16 Responses may alternatively be posted to the address below, marked with ‘Public interest test 2019’:

⁴ Ofcom, [Public Interest Test for the acquisition by Trinity Mirror plc of publishing assets of Northern & Shell Media Group Limited](#), 31 May 2018.

⁵ Department for Trade and Industry, Enterprise Act 2002: Guidance on the operation of the public interest merger provisions relating to newspaper and other media mergers, May 2004, paragraph 5.7. Available at [DTI Guidance](#).

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- 1.17 We do not need a hard copy in addition to an electronic version. Ofcom will not acknowledge receipt of responses.
- 1.18 Ofcom strictly observes confidentiality in all aspects of its operations. This applies to material supplied in response to this invitation to comment. We will give the Secretary of State (and the CMA in the event that this acquisition is referred by the Secretary of State) all relevant submissions (including confidential ones) to enable him to make his decision. If your submission includes material which is confidential, we will require a full version with confidential information omitted, together with reasons why the submission should be treated as confidential, in order to help establish what it may and may not be appropriate to refer to publicly in the course of this work.
- 1.19 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.⁶

⁶ Section 117 Enterprise Act 2002

A1. Response cover sheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing ☐

Name/contact details/job title ☐

Whole response ☐

Organisation ☐

Part of the response ☐

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)