



Department for
Digital, Culture,
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The Rt Hon John Bercow MP
Speaker
House of Commons
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Dear Mr Speaker

Acquisition of a 30% shareholding in Lebedev Holdings Ltd and Independent Digital News and Media

On 27 June, my predecessor as Secretary of State, the Rt. Hon. Jeremy Wright QC MP, issued an Intervention Notice in relation to the acquisition by International Media Company (IMC) of a 30% shareholding in Lebedev Holdings Ltd ("LHL"), (the majority shareholder of the Evening Standard) and the related acquisition by Scalable Inc of 30% shareholding in International Digital News and Media ("IDNM"). He also tabled a Written Ministerial Statement on 27 June (HCWS1677), setting out details of his decision and setting out his concerns about the structure of ownership, the lack of clarity around beneficial ownership of IMC and Scalable links between the various shareholders and Saudi Arabian State bodies. The Intervention Notice asked Ofcom and the Competition and Markets Association ("CMA") to submit reports to DCMS by 23 August.

LHL and IDNM challenged the Intervention Notice by means of an appeal to the Competition Appeal Tribunal on two technical rather than substantive grounds. On 16 August, the Tribunal found in LHL and IDNM's favour on one of the two grounds. Having reviewed the Tribunal's decision of 16 August and having considered the reports received from Ofcom and the CMA in response to the Intervention Notice, I have issued a statement today to confirm that I will not be appealing against the Tribunal decision. I have published the statement, together with the reports from Ofcom and the CMA on this matter, on the Gov.UK website - a copy of this is attached.



Department for Digital, Culture, Media & Sport

I am writing in the same terms to the Lord Speaker and will ensure a copy of this letter is placed in both House Libraries.

Yours sincerely

Nicky Morgan

Rt Hon Nicky Morgan MP
Secretary of State for Digital, Culture, Media and Sport

16 September 2019 - DCMS STATEMENT ON THE ACQUISITION OF A 30% SHAREHOLDER STAKE IN THE EVENING STANDARD AND INDEPENDENT.

At the end of January, through press reporting DCMS became aware of the possible acquisition of a stake in the Evening Standard by an unknown shareholder. Lebedev Holdings Limited (LHL), owner of the Evening Standard and Independent Digital News and Media Ltd (IDNM), choose not to inform either DCMS or the Competition and Markets Authority (CMA) of the transaction before completion. Though there is no statutory requirement to inform DCMS (or the CMA), the parties normally notify mergers and acquisitions in media or newspaper merger cases to DCMS.

Following an initial examination of the acquisition and correspondence with LHL to establish sufficient details about the complex ownership structure involving Cayman Island registered companies, the then Secretary of State (Rt Hon. Jeremy Wright QC MP) issued a Public Interest Intervention Notice on 27 June due to his concerns about the transaction. LHL challenged the Intervention Notice on two procedural grounds. The case was heard by the Competition Appeal Tribunal (CAT) on 23 July. On 16 August 2019 the CAT issued its judgment. The CAT decided that the Intervention Notice had been issued on time; however, it concluded that the deadline for any referral on public interest grounds was 1 July and directed that the Secretary of State would not be able to refer the transaction to the CMA for a Phase 2 Inquiry if, in the light of reports from Ofcom and the CMA, the Secretary of State concluded that the transaction did warrant a more detailed investigation.

The Secretary of State has considered the report submitted by the CMA on 1 July and the report submitted by Ofcom on 23 August, as well as the findings from the CAT. The CMA's report confirmed that the transaction was a relevant merger situation. Ofcom's report concluded that a reference for a Phase 2 Inquiry was not warranted on public interest grounds. Both reports have been published today on the Gov.UK website.

Having considered the reports from the CMA and Ofcom, the Secretary of State has decided not to appeal against the CAT's decision. In reaching this conclusion, the Secretary of State has had regard to the merits of the case and the very limited implications for future media merger cases. She also noted Ofcom's conclusion that LHL and IDNM's corporate structures: "include strong shareholders and the parties have put in place measures to preserve editorial freedom"; Ofcom's analysis of Independent's reporting since 2017 and its conclusion that the transaction does not appear to have had an editorial impact to date.

Nevertheless, the Secretary of State also noted that Ofcom was not, in the time available, able to clarify who the ultimate beneficial owner or owners are of the 30% share of Wondrous Investment Holdings LP and Scalable Inc. Ofcom's report also indicated that there remain gaps in their understanding about the transaction and the level of Saudi state involvement and in particular the role of Saudi Research and Marketing Group (SRMG). She also noted Ofcom's conclusion states that there remains a degree of future risk: "Overall, there may be some incentives and ability for the buyers to alter the accuracy or editorial stances of the publications, but there are also some restrictions on

the abilities of the buyers to do so.”

Overall, the Secretary of State’s conclusion is that Ofcom’s report goes a considerable way to satisfying her in relation to the public interest concerns relevant to this case and based on Ofcom’s conclusions she would not have referred the case to a Phase 2 investigation. However, she believes it is important for media and news organisations to be open and transparent about their ownership and it is concerning that LHL and IDNM have failed to fully clarify the ultimate beneficial owner of the 30% share. For this reason, the Secretary of State asked officials to discuss with LHL and IDNM whether it would be willing to take further actions to address the gaps in transparency and mitigate the risk of future inappropriate influence on editorial matters. The Secretary of State is disappointed that LHL and IDNM have stated that they are not willing to take any further steps.

NOTES

The Public Interest Intervention Notice (PIIN) was issued due to the concerns the previous Secretary of State had in regards to the possible effects of the merger on the accurate presentation of the news and free expression of opinion in newspapers - these public interest considerations are specified under section 58 of Enterprise Act 2002. He believed that the transaction therefore warranted further investigation by the regulators

LHL challenged the decision to issue a PIIN by way of judicial review to the Competition Appeal Tribunal (CAT).

The grounds of challenge were:

- Ground One - LHL’s position was that the Department wrongly calculated the point from which time began to run for the purposes of issuing a PIIN and therefore issued the PIIN too late. The CAT found in the Government’s favour on Ground One: they agreed with our arguments that insufficient ‘material facts’ relating to the merger had been ‘made public’ in press articles to start the clock running and that we had calculated the point correctly.
- Ground Two - LHL’s position was that the Department wrongly interpreted what has to be done by the end of the four month time period. The applicants claimed the PIIN, the CMA and Ofcom Phase One reports, and the making of a s.45 reference (to refer to a Phase Two investigation) all had to be completed within the four month limit. The CAT did not find in favour of the Government on this ground: the CAT declared the time limit for making a reference expired on 1 July 2019. Therefore the Secretary of State no longer has the power to progress the case to a Phase Two investigation even if she had wished to.

The Secretary of State’s decision on this has been taken in accordance with the standing guidance on the handling of quasi-judicial decisions and which applies to DCMS’s handling of all media public interest cases.

The Secretary of State has sent a copy of this public statement to the Speaker of the

House of Commons and the Lord Speaker. A copy of the statement has also been placed in the House Libraries.

DCMS

16 September 2019