

Inquiry Manager
Audit Market Investigation
Competition Commission
Victoria House
Southampton Row
London
WC1B 4AD

19 August 2013

Dear Sir,

Thank you for inviting views on your provisional decision on measures to remedy restrictions on competition in the statutory audit market. I am writing on behalf of Marks and Spencer Group plc in my capacity as Group Secretary and Secretary of the Audit Committee.

We note the debate on competition, transparency and quality in the audit market and we support some of the suggestions in the package of remedies aimed at improving transparency between the auditor, audit committees, regulators and investors. We note that the Competition Commission has acknowledged the concerns expressed by the market and companies and rejected mandatory rotation, which we believe would have had the effect of reducing audit quality and choice.

However, we remain concerned that the audit tender provisions in the 2012 Governance Code have not been allowed adequate time to be tested. Furthermore the mandatory five-year cycle for audit tendering which you are proposing would remove the "comply or explain" principle, which we believe is a fundamental tenet of UK governance which encourages transparency and responsible behaviours.

In addition, your investigation comes during a period in which the European Commission is developing legislation in the same area which might radically alter how the statutory audit market operates and may require further significant change.

We have commented on the five key remedies set out in the paper and expressed our support or concerns in each case.

Audit Tendering

The length of tenure of auditors at UK companies has been a topic of much debate, the recent introduction by the Financial Reporting Council ("FRC") of 10 year tendering of audits on a "comply or explain" basis has resulted in a step up in tendering activity.

Marks & Spencer has actively supported partner rotation every five years to maintain the objectivity of our audit process. The M&S Board has embraced the new provision in the UK Governance Code and led by our Audit Committee this year we have decided to tender our statutory audit contract, giving us first-hand experience of the level of resource required in conducting a truly robust tender.

As mentioned above, the Competition Commission's proposal that mandatory tenders take place at least every five years (deferred by 2 years in exceptional circumstances) raises a number of concerns:



- We note that the Competition Commission recognises that the period between tenders is a matter of judgement. We believe that this judgement is for the Audit Committee and can be best achieved through the tradition of “comply or explain”. The FRC’s recent amendments to the UK Governance Code requiring companies to tender every 10 years on a “comply or explain” is a sensible approach which lets companies determine the most appropriate time to tender in light of its specific circumstances. We are concerned that the FRC’s approach should be allowed sufficient time to take effect before the introduction of more punitive measures;
- We are concerned as to the lack of evidence to support any proposal to adopt a tendering period of five years;
- Conducting a robust audit tender is a resource intensive process; requiring significant commitment from a company’s Audit Committee Chairman, CFO and its tender team, drawn from across the business. For the audit firms, there is significant involvement required from Senior Partners through to the proposed engagement team. If companies are required to conduct a tender too frequently there is a danger that the tender processes could become a box ticking exercise. Similarly, the provider may be changed simply to meet a regulatory requirement and not because it would result in the best audit service for the company. Furthermore audit firms may choose not to participate in tenders, or to submit “boilerplate” proposals in order to manage costs, should they perceive the likelihood of winning the contract to be below a certain threshold. We are concerned that this would result in a decrease in genuine competition and/or a reduction in audit quality;
- The management of conflicts becomes harder the more movement there is in the audit services sector. An essential part of a well managed and robust tender process is to confirm that the selection of an audit firm would not result in a conflict, either as a result of other non-audit work they already perform for the company, or as a result of work they perform for a competitor or significant service provider. The need to avoid conflicts, against a background of frequent changes, might also result in a reduction in genuine competition.

FRC Review

We are supportive of both The Audit Quality Review (“AQR”) team increasing the frequency of its audit engagement reviews to at least once every five years and the Audit Committee disclosing its findings to shareholders. Increasing the objective oversight of audit quality across the FTSE 350 will drive up standards and quality across the industry, whilst greater disclosure and transparency of the findings, currently discussed only between the Audit Committee and the auditors, will enable shareholders to make a more informed judgement on the auditors.

Advisory Vote

Whilst we do not believe that an advisory vote is necessary to satisfy investors of the disclosures in the Audit Committee section of the Annual Report, we do support encouraging meaningful disclosure which enables shareholders to better appraise the effectiveness of the Audit Committee. It is unclear how an advisory vote would work in practice and we question the value of such a vote given that shareholders already have the right to raise questions on the audit and financial report at the AGM, and note their concerns by voting against the Annual Report, the auditor or the re-election of the Audit Committee Chairman and members of the Audit Committee. We favour the continued evolution of the UK Governance Code and the concept of “comply or explain” as the most effective tool to encourage long term shareholder engagement.

Audit Committee

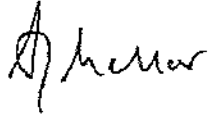
We support increasing the accountability of the external auditor to the Audit Committee and restating the Committee’s authority, independent of management, to negotiate audit fees, the scope of the audit work, initiate the tender process and make recommendations on the appointment of auditors. However, in reality due to the limited resource of the Audit Committee, much of the preliminary work will need to be carried out by management on behalf of the Audit Committee.

Contractual Restrictions

We do not believe that provisions in loan agreements should restrict a company’s choice of auditor and are therefore supportive of this proposal. However, whilst this removes a barrier for the mid-tier firms, suitability for appointment will depend more on the mid-tier firm’s ability to undertake the scope and complexity of a particular audit.

In conclusion, we agree on the importance of competition, transparency and quality in the audit market and we welcome some of the proposed remedies as a means of driving quality, competitiveness, transparency and independence. However, we remain concerned that nine months is insufficient time to judge the outcome of the FRC's requirements in relation to audit tendering and would request that more time is given to better understand if and how this might be improved. We are also concerned at the operational impact of tenders at too frequent an interval. We would therefore strongly urge the Commission not to make further changes at this stage.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A Mellor', written in a cursive style.

Amanda Mellor
Group Secretary