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Mr D Kelly
Competition and Markets Authority
Victoria House
Southampton Row
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WC1B 4AD

28 August 2014

Dear Mr Kelly

Response by the Group A firms to the draft Order – The Statutory Audit Services for Large Companies Market Investigation (Mandatory Use of Competitive Tender Processes and Audit Committee Responsibilities) Order 2014

I am writing to you on behalf of the senior partners of the ‘Group A’ firms¹ (the ‘mid-tier’, the eight next-largest firms, beyond the ‘Big 4’, Grant Thornton, and BDO), in relation to the above draft Order, making two suggestions in relation to it.

The draft Order is an important piece of legislation, in that the intention is faithfully to give effect to one of the principal conclusions (tempered by EC Regulation 537/2014 on similar ground) of the earlier Competition Commission report, by introducing Compulsory Tender Processes in relation to the provision of Statutory Audit Services.

A principal public policy objective underscoring this conclusion was to cause market iniquities (‘Adverse Effects on Competition’) to be removed, through regulatory means that would secure a greater degree of recourse by end-user limited companies to a larger number of suppliers.

The CMA has, in light of the European exercise, amended the CC’s insistence on a 5-yearly maximum tendering period, by building derogations into the text which allow a longer period, provided the Audit Committee of the entity concerned sanctions it.

One of the two issues we have concentrated in this response is on that objective, and in particular how the intended transitional provisions may give effect to it as evenly as possible. It is the potential for lack of evenness, in the Order as drafted, that we comment on first.

Article 6.1(c) says, “*Where an Incumbent Auditor has been the subject of Auditor Appointments with a FTSE 350 Company in relation to less than 11 consecutive Financial Years as at 17 June 2014, Articles 3.1(a) and 4.4² shall apply in respect of that and all subsequent Auditor Appointments.*”.

¹ Baker Tilly, Crowe Clark Whitehill, Haines Watts, Kingston Smith, Mazars, Moore Stephens, Saffery Champness, and Smith & Williamson.



Working through the analysis of these three clauses, what that might cause to happen (and we cannot imagine this was the intention) is that companies with relatively *short* audit relationships with a firm might have to end them proportionately more quickly than those which started with a much *longer* relationship period at the point when the Order becomes effective, 17 June 2016.

The text, as presently drafted, would cause a company whose auditor has been in place for less than 11 consecutive years as at 17 June 2014 and which is still in place on 17 June two years later, to put its audit out to tender, whereas those companies which have had the incumbent auditor in place for already more than 11 years, could extend the future length of the appointment till 2020, or even longer. That cannot, surely, have been the intention but it is the effect of the current wording. All of this downstream consequential interpretation is probably only a function of ambiguous wording in Article 41(3) of the European Regulation but unless the CMA approach is changed, it may have the result we have drawn attention to above.

The second point we wish to draw attention to is in relation to Articles 4 and 5 (the essential features of a Competitive Tendering Process. If the objective of the CMA was to meld the CC's conclusions with the terms of EU Regulation 537/2014, it is not clear why, that being the case, it has not sought to reflect an important aspect of Article 16 of the Regulation in the draft Order: it would be purposeful, in our opinion, to include the obligation on the audited entity set out in that Article to prepare tender documents that "*contain transparent and non-discriminatory selection criteria that shall be used by the audited entity to evaluate the proposals made by...audit firms*". Doing so would more fully embody the public policy underscoring the compulsory tendering provisions of the Regulation and the CC's own conclusions.

We hope you will find our response helpful.

Yours faithfully

A handwritten signature in black ink that reads "T M McMorrow".

T M McMorrow
Secretary to the Group A firms

¹ Article 3.1(a) says, "*An Auditor and a FTSE 350 Company must not enter into or give effect to a Statutory Audit Services Agreement unless...the FTSE 350 Company has made an Auditor Appointment pursuant to a Competitive Tender Process in relation one or more of the preceding nine consecutive Financial Years or has conducted a Competitive Tender Process for an Auditor Appointment in relation the next Financial Year immediately subsequent to the nine preceding Financial Years.*". Article 4.4 says, "...[T]he FTSE 350 Company, in preparing its tender documents, must have regard to the need to ensure that tender documents allow Bidders to understand its business and the type of Statutory Audit to be carried out."