

THE STATUTORY AUDIT SERVICES FOR LARGE COMPANIES MARKET INVESTIGATION

The Statutory Audit Services for Large Companies Market Investigation (Mandatory Use of Competitive Tender Processes and Audit Committee Responsibilities) Order 2014

Notice of making an Order under section 161 of the Enterprise Act 2002 issued under section 165 of and Schedule 10 to the Enterprise Act 2002

Background

1. On 21 October 2011, the Office of Fair Trading (OFT), in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the Act), referred the supply of statutory audit services to large companies in the UK to the Competition Commission (CC) for investigation and report.
2. The CC investigated the matters referred to it pursuant to sections 131 and 133 of the Act and, in accordance with section 134(1) of the Act, concluded that there are features of the market or markets which, either alone or in combination, prevent, restrict or distort competition in connection with the supply of statutory audit services to large companies in the UK and, in accordance with section 134(2) of the Act, that there were adverse effects on competition (AECs). The CC published its findings in a report under section 136 of the Act entitled *Statutory audit services for large companies market investigation: a report on the provision of statutory audit services to large companies in the UK* and notified on 15 October 2013 (the Report).
3. The CC considered, in accordance with section 134(4) of the Act, whether (a) action should be taken by it for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on customers; and whether (b) it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on customers; and (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
4. In the Report, the CC decided on a package of remedies to address the AECs that it found. The remedies included:
 - (a) that companies listed on the FTSE 100 and FTSE 250 indices must put their statutory audit services engagement out to tender not less frequently

than every ten years. The CC was of the view that many companies would benefit from going out to tender every five years but if they choose not to, then the Audit Committee should set out in the Audit Committee Report the financial year in which it next plans to go out to tender and why going out to tender in this year is in the best interests of its members; and

- (b) measures to strengthen the accountability of the auditor to the Audit Committee, including a stipulation that only the Audit Committee is permitted to negotiate and agree audit fees and the scope of audit work, influence the appointment of an audit engagement partner, initiate and supervise competitive tender processes, make recommendations for appointment of auditors and authorise the auditors to carry out non-audit services.
5. On 1 April 2014, the functions of the CC transferred to the Competition and Markets Authority (CMA) pursuant to Part 3 of the Enterprise and Regulatory Reform Act 2013 and the Enterprise and Regulatory Reform Act 2013 (Commencement No 6, Transitional Provisions and Savings) Order 2014.
 6. By virtue of section 138(3) of the Act, the remedies implemented by the CMA must be consistent with the findings in the Report unless there has been a 'material change of circumstances' or other 'special reason' for deciding differently since preparation of the Report.
 7. Since publication of the Report, the European Parliament and the Council have adopted measures reforming the statutory audit market, namely Directive 2014/56/EU and Regulation (EU) No 537/2014 (the Regulation). The CMA considers that this constitutes such a material change of circumstance or special reason to justify taking these measures into account in implementing the remedies decided upon in the Report.
 8. In particular, under the Regulation, public interest entities (PIEs) are required to change their statutory auditor every ten years. Member states can, however, by way of derogation, permit shorter rotation periods, and by way of further derogation, allow PIEs to extend the audit engagement to up to 20 years provided that retendering takes place at least every ten years.
 9. The CMA has considered the provisions of the Regulation and in particular the transitional provisions in Article 41.
 10. On 24 July 2014 in accordance with section 165 of the Act and paragraph 2 of Schedule 10 to the Act the CMA gave notice of its intention to make the proposed Order on mandatory use of competitive tender processes and Audit

Committee responsibilities and invited written representations on the draft Order.

11. The CMA received 18 responses to the public consultation. In light of the representations received following the public consultation, some modifications were made to the draft Order. The CMA does not consider those modifications to be material in any respect and has decided, in accordance with paragraph 5 to Schedule 10 of the Act, that the Order, as modified, does not require further consultation.
12. The CMA now gives notice of the making of the attached Order on mandatory use of competitive tender processes and Audit Committee responsibilities. The Order is made in accordance with section 138 and in exercise of the powers conferred by section 161 of and schedule 8 to the Act. The Order is made for the purpose of remedying, mitigating or preventing the AECs identified in the Report and for the purpose of remedying, mitigating or preventing detrimental effects on customers in so far as they have resulted from or may be expected to result from the AECs. The Order will come into force on 1 January 2015.
13. This notice, the Order, an Explanatory Note and a Response to public consultation have been published on the CMA website.

(signed) LAURA CARSTENSEN
Group Chair
26 September 2014