

## THE STATUTORY AUDIT SERVICES FOR LARGE COMPANIES MARKET INVESTIGATION

*Note on responses to formal consultation on The Statutory Services for Large Companies Market Investigation (Mandatory Use of Competitive Tender Processes and Audit Committee Responsibilities) Order 2014*

### Introduction

1. By virtue of section 138(3) of the Enterprise Act 2002, the remedies implemented by the Competition and Markets Authority (CMA) must be consistent with the findings in its report unless there has been a ‘material change of circumstances’ or other ‘special reason’ for deciding differently since publication of the report. Since publication of our report 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), the European Parliament and the Council of Ministers 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.
2. The CMA received 18 responses to its public consultation on the draft Statutory Services for Large Companies Market Investigation (Mandatory Use of Competitive Tender Processes and Audit Committee Responsibilities) Order 2014 (the Order), which was published on 24 July 2014. This paper sets out the main changes which have been made to the Order as a result of those submissions and also gives reasons why certain changes suggested in the submissions were not made. Minor changes (such as correction of typographical and spelling errors and changes to the date on which the Regulation came into force) are not discussed in this paper. References to specific articles in this paper refer to the final version of the Order, rather than to any earlier drafts.
3. The amendments we have made in light of this consultation have not, in our view, materially altered the meaning of the Order or the obligations of parties that are subject to it. The amendments where we have made them reflect suggestions by parties made in their responses and are intended to enhance the clarity of the Order. We therefore do not consider that the amendments,

individually or collectively, are sufficiently material to require a further consultation.

## **Transitional Provisions – Article 6**

4. Respondents welcomed our intention to align, as far as possible, the transitional provisions of the Order with those of the Regulation. This had initially been prompted by concerns voiced by respondents to our informal consultation in December 2013 that the combined effect of the transitional provisions in the Regulation and the transitional provisions envisaged in our Report may place undue burdens on FTSE 350 Companies.
5. We note that the relevant provisions of the Regulation provide for a system of rolling mandatory rotation, whilst the Order provides for a system of rolling mandatory tender processes, and acknowledge the inherent tension in the two approaches.
6. However, a number of respondents expressed concern that the effect of Article 6 of the Order is to bring the mandatory use of Competitive Tender Processes provisions into force earlier for FTSE 350 Companies who have switched Auditor most recently.
7. Article 41(3) of the Regulation provides that audit engagements of less than 11 years duration as at 16 June 2014 (and which are still in place as at 17 June 2016) ‘may remain applicable until the end of the maximum duration...’.
8. Article 41(3) of the Regulation does not expressly specify when the period for calculating the duration of the audit engagement should begin. At present, given the guidance that has come forward so far, and having considered what is most appropriate and effective for the purposes of our remedy implementation, the CMA considers that the duration of the audit engagement for the purposes of Article 41(3) of the Regulation should be calculated from first appointment (that is, from the first Financial Year covered in the audit engagement letter for which the Auditor has been appointed for the first time to carry out consecutive Statutory Audits). However, if substantial guidance on the interpretation of Article 41(3) of the Regulation is forthcoming, which differs significantly from the current interpretation, the CMA will review the operation of the Order as appropriate.
9. In view of this, and having carefully considered each of the responses on this issue, we do not propose to amend Article 6.1(c) of the Order.

## **Grace period for new entrants entering the FTSE 100 or FTSE 250 indices**

10. Some respondents submitted that there should be a period of time upon entry into the FTSE 100 or FTSE 250 indices before the provisions of the Order apply to a Company.
11. For a Company which is already a listed Company prior to entry into either index, we considered that the provisions of the Order reflect good corporate governance which Companies that aspire to join either index are likely to follow. In any event, Companies outside the FTSE 350 listing can plan for the application of the provisions of the Order. This position is reflected in the findings of our Report.

## **Definition of Competitive Tender Process**

12. We have incorporated a minor technical change to the definition of a Competitive Tender Process. This is now deemed to be completed on the day before the start of the Financial Year to which the Audit Appointment relates. This does not materially affect the obligations of any party but clarifies certain timing considerations in the Order.