Pubs Consultation
Consumer and Competition Policy
Department for Business, Innovation and Skills
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Response from Adnams PLC

As a company within the affected sector Adnams has various comments and concerns. As the owner of fewer than 70 pubs we are not affected by the 500 pub threshold. We do not have comments on all questions, but would like to respond to certain particular points. However, we would like to start by raising a fundamental issue with the analysis within the consultation document.

Paragraph 3.4 states that "The main benefit and aim of the policy is the estimated transfer from pub owning companies to tenants of £102m per year." Sadly there is a fundamental logical flaw in the analysis that produced this number and the extent to which there may or may not be a transfer between pub owning companies and tenants is entirely unproven.

The model used in the impact assessment assumes the same 50% split of divisible balance for both tied and free of tie pubs. This leads to the statement in paragraph 69 that "if the wet rent is higher than the SCORFA licensees are paying too much". A wet rent is just a turnover rent linked to a particular element of turnover. There is no reason why overall rent should be too much because wet rent exceeds SCORFA.

As an example assume:

1. Free of tie operating profit is 100
2. Dry free of tie rent is 50% (50)
3. There is no SCORFA
4. Tied wet rent is 20 (and so tied operating profit is 100-20=80)

The suggestion in the paper is that wet rent should be nil as SCORFA is nil, but this is the wrong principle. What matters is that total rent should be 50 and it is perfectly fair that wet rent stays at 20 provided that dry rent does not exceed 30 (which would be 37.5% of tied operating profit of 80). The conclusion that wet rent should not exceed SCORFA arises from the erroneous assumption that dry rent should be the same proportion of operating profit, regardless of whether the pub is tied or free of tie. The assumptions about the value of transfers per pub (paragraph 76 of the impact assessment) derive from comparisons of SCORFA and wet rent. They are logically flawed and of no practical value.

Our comments on particular questions are as follows:

Q1: Should there be a statutory code?

We appreciate the concern that large Pubco behaviour has had adverse effects that justify a statutory regulator. There have certainly been plenty of examples of such behaviour brought to

recent Select Committee enquiries. Nonetheless, it is our view that this is not the best way forward. We feel:

1. It is not clear to us that the self regulatory process, which is an evolving process, has failed.
2. The landlord tenant relationship is bound to create some friction and we suspect that the large Pubcos have managed it less well than many, but there is no monopoly of virtue. There will always be cases where tenants can rightly complain of poor treatment, but there are cases of poor tenant behaviour too.
3. We suspect that the real problems of over-renting are partly a sign of the times. The pub sector is having an incredibly hard time due to structural changes and also the current economic environment. Rents tend to be sticky downwards and what may be needed is a better means of facilitating reductions where they are justified. This does not in our view require statutory regulation.
4. It is true that Pubcos have size and knowledge that may give them an advantage in rent negotiation, but this is not a new phenomenon and it is true in very many commercial transactions that one side has such an advantage. If this is truly extreme then regulation may be justified, but we are not convinced that such a case has been made here. There is a danger of trying to apply regulation to almost all transactions.

Q2. Is 500 pubs the correct threshold?

It seems strange that companies are within the proposed code on the basis of total pub numbers rather than on the basis of tied pub numbers.

Q6. Future of self-regulation

We believe that continuing self-regulation remains the best way forward. Having a statutory regulator in "healthy competition" [para 4.29] to existing dispute resolution mechanisms seems expensive and wrong. Resolution is about the difficult task of being fair; we do not see how competition would help that task. We are also worried about the cost impact of the new proposed Adjudicator acting on all disputes.

Q7. Core principles

I. Fair and lawful dealing. Presumably if dealings are not lawful then there is already recourse to the law to rectify the issue. Fairness obviously seems right, though it may be hard to define and apply.
II. Tied tenants should be no worse off than free-of-tie tenants. We feel that this principle is not unambiguously fair and so potentially conflicts with the first principle. The suggested principle claims to produce a fair result and that might be so, but there are numerous alternatives such as the idea that the tenant should pay no more than the next best user of the property.

Q8. Code Provisions

I. Right to an open market rent review. There should be some assessment here as to the likely take-up and potential cost and strain on the available resource. This could encourage

automatic third party assessment of all rents every five years which might not be the most effective way of agreeing fair rents.

iv. Providing a guest beer option. We wonder how the value of this will be assessed. It is effectively a partial step towards a free of tie option and should be assessed as such when calculating rents.

If you have any questions arising from this submission please contact:

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