

From:
Sent: 04 June 2013 17:38
To: cablev@parliament.uk; Pubs Consultation Responses
Subject: Government Consultation Regarding Pub Companies and Tennants

Dear Rt Hon Vince Cable MP and the Pubs Consultation Committee,

☐ I am writing you as a substantial and long standing institutional shareholder in Enterprise Inns in response to the proposals recently put forward to regulate the pub industry. After a thorough reading of the consultation document and impact assessment, it would seem that a number of points need to be made.

For the last 32 years (1980-2012), 12 pubs per week have been closing in the UK. In the 18 months to September 2012, 12 pubs per week have been closing in the UK.

The Committee's own documents provide these statistics. The industry has been under terrific pressure from government action in the since 2007 from a variety of measures. Some of these, such as the smoking ban, have had a sound societal basis. Others such as the extreme rise in taxation applied to alcohol sold by the pub industry to the relative benefit of the grocery sector, have been patently prejudicial, anti-business and anti-employment. The fact that the government take from the pub industry has increased by 30p per pint since 2008 has put more pressure on the publican, whether subject to a beer tie or not, than any action by the tenanted pub companies.

It is not clear that what is proposed in the way of a conduct code will make any material advance upon what has been in place since 2011. The Industry Voluntary Framework has been taken as legally binding by the larger pub groups. It provides an independent rent review service (PIRRS) and an independent arbitration service (PICAS). These have been functioning well and at a low cost to individual pub landlords. The statistics regarding complaints in the Committee's documents have been shown to be of a dubious nature, as numerous press articles have reported. Perhaps the voluntary framework could be converted into law. However, the cost to all parties of moving the arbitration process over to the overburdened UK court system would seem to be irrational in light of the limited marginal benefit.

The pub companies have been supporting their tenants. The Committee should read the financial reports of Enterprise Inns and Punch Taverns to see the cost of the tenant support since 2008. These tenant support costs have been almost entirely enshrined in the new rental contracts upon the rent reviews. There has been negative rental inflation per pub owned by these pub companies for the past 3 years despite an active turnover of the pub portfolios to decrease exposure to structurally less attractive pubs during this time.

The investment in pubs has recently started to increase again now that approximate

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income stability has been achieved. The pub industry has every interest in attracting and supporting strong tenants. Since the economic downturn and since the voluntary code has been established, the pub companies have worked hard to ensure that they were attracting the strongest possible applicants to manage their pubs. The tenant has many alternative business models to work for in the pub industry. The OFT has stated clearly that there is effective competition as a result. Where there are aligned interests, the pub companies have put their money on the table to support the tenant at great short term cost to their shareholders and in the longer term interest of all parties. In the past 5 years, for example, Enterprise Inns has invested over 25,000 GBP per pub in its pub estate. This figure will rise if the industry operates in a stable economic and regulatory environment.

The proposals to change the beer tie to a free of tie system displays a patent lack of understanding of the way any rental relationship works. The pub tenant pays rent through a combination of a traditional fixed rent and a variable wet rent. This aligns the interest of the publican and the landlord. If volumes rise both benefit and if volumes fall both suffer. The variable wet rent protects the tenant in tough times by allowing some flexibility in what is paid to the pub owner. If the wet rent relationship is replaced with a free of tie relationship, the result will be an increase in the fixed rent by the pub owner to compensate for the missing variable rent. There will not be any transfer of value to the publican. Instead the publican will lose the protection of a key variable component to the rental cost. In the case of the weaker publicans highlighted frequently in the Committee's reports, this would be a catastrophe amidst a recession like that recently experienced.

What the pub industry needs, like any industry, is visibility over the medium term in the terms of trade. One pillar of visibility is a clear regulatory and fiscal framework. The recent steps to halt the rise in beer taxation is one important factor for which the Government should be applauded. The nearly annual interference in the industry through Parliament initiated regulatory reviews, however, could not be more against the very interests that the Committee's report claims to be seeking.

Without regulatory clarity, the industry will struggle to attract job creating investment. The UK needs to take full advantages of its strengths when attracting investment in its industries. The flexibility of the pub format and its already central position in much of British society creates an attractive basis from which to develop a leisure business demanded by the local community. In today's world there is great competition for the leisure Pound. Strong operators need to be developed supported by capital. The pub industry is an inherently attractive industry to draw such investment. There is a strong asset backing which provides the collateral support for bank lending missing from the British economy these days. This lending can be reinvested in the business thereby driving up employment.

The statements about the pub sector practices in these documents seem to show a

weak understanding of the pub industry, of the choices available to landlords and of the history of UK regulatory reviews. Even recently as 6 months prior to the Committee's publication date BIS Minister Jo Swinton (LibDem) confirmed that no intervention into the pub industry was necessary. What seems hard to fathom is why the politicians in the Committee would also place themselves at risk of humiliation at the hands of Europe where the Committee's proposals would be faced down by a European Commission review. The pub industry's contracts are well supported by European contract law reviews of the franchise restaurant industry – an industry far more harsh and controlling than the pub industry.

The Committee should work hard to provide the sound basis to attract capital and strong operators into the pub industry. The pub companies should be able to go to existing and prospective tenants with a business plan where both parties would be confident that the plan will be supported by a clear regulatory and fiscal policy.

Regards,

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