Department for Business, Innovation & Skills

Pub companies and tenants - A government consultation

Response form

The consultation will begin on 22/04/2013 and will run for 8 weeks, closing on 14/06/2013

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation response form and, where applicable, how the views of members were assembled.

This response form can be returned to:

Pubs Consultation
Consumer and Competition Policy
Department for Business, Innovation and Skills
3rd Floor, Orchard 2
1 Victoria Street
Westminster
SW1H 0ET

Email: pubs.consultation@bis.gsi.gov.uk

Please tick one box from a list of options that best describes you as a respondent. This will enable views to be presented by group type.
Representative Organisation Vianet Group Plc
Trade Union
Interest Group
✓ Small to Medium Enterprise
Large Enterprise
Local Government
Central Government
Legal
Academic
Other (please describe):

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual response.

Vianet Group plc response to the Government Consultation dated 22nd April 2013

This document responds directly to the Government's consultation document "Pub Companies and Tenants – a Government Consultation" published on the 22nd of April 2013. It specifically addresses the consultation question Q8 part v. and addresses points 5.19, 5.20 and 5.21 within the body of the consultation document as listed below;

Q8. Do you agree that the Government should include the following provisions in the Statutory Code?

v. Provide that flow monitoring equipment may not be used to determine whether a tenant is complying with purchasing obligations, or as evidence in enforcing such obligations.

We disagree and the following document supported by Appendices 1 through 7 puts forward our case. In addition we address the specific supporting points made by the Government in support of its proposal listed below.

5.19
As acknowledged in the 2010 Select Committee Report, *"the accuracy of data from flow monitoring equipment and the analysis of that data are highly contentious issues."* It is clear that there is no consensus as to whether the equipment is accurate enough to be used to determine whether a tenant is complying with purchasing obligations. A further difficulty is that, as it appears likely that they are not in use for trade, their accuracy cannot be enforced by Trading Standards.
5.20
Clearly, it is entirely legitimate for one party to a contract to seek to ensure that the other party complies with the terms of that contract. However, the model of the tied public house has been part of the British pub industry since at least the 18th century and for the majority of that time modern flow monitoring equipment has not been available. It is therefore clearly possible to operate a tied estate and to enforce the tie without the use of flow monitoring equipment.
5.21
The Government therefore considers that the simplest and fairest solution is to mandate in the Code that information obtained from flow monitoring equipment may not be used for the purpose of determining whether a tenant is complying with purchasing obligations and that it may not be used or considered as evidence when enforcing purchasing obligations.

Executive Summary

Vianet Group plc (formerly Brulines) is an innovative UK technology company that prides itself on providing fact and evidence based information solutions to its customers and their tenants. The company is responding to the proposed changes, outlined in the Government Consultation document dated 22nd April 2013, that we feel are unjust and would have both a profound impact on our business and have far reaching negative consequences generally. We believe the proposals relating to beer flow monitoring are not based on fact or any substantiated evidence and indeed the only reason given for proposing effectively a ban on our company's core product is that it is considered 'controversial' by some parties who have made unproven accusations against our technology.

Whilst the Government appears to acknowledge that buying outside the tie existed in "successful" tied estates, and that it was possible to detect a breach and enforce the tie using methods available prior to flow monitoring, what it fails to acknowledge is that these methods were ineffective, resource intensive and highly intrusive with a low rate of success. Reference to this has been made in case law which accompanies this submission. The Government also acknowledges the right of a party to use legitimate means to ensure its contractual obligations are being met, yet seeks to limit the ability of a Pub company to assert this right through the use of new technology. Whilst pubs may have operated successfully before the advent of beer line cooling, electronic point of sale and electric lights were invented, nobody is suggesting they should go back to warm beer, paper book-keeping and the use of gas lanterns and candles.

Our ability to provide transparency (where previously there was none) to draught beer sales in pubs in which consenting adults have willingly entered into contracts with tied beer supply arrangements, appears to be at the centre of this controversy. It is an area where there are parties with a vested interest in there being no transparency. The impact of the proposed statutory code threatens both the very survival of our business together with significant job losses, and the removal of technology that drives better profits for pubs. As we did for the 2010 Select Committee, we will once again formally respond in detail to support the continued legal use of our products and services.

The Government Consultation claims to be based on principles of being both fair and lawful whilst increasing transparency within the pub sector. The proposals as they stand are a clear and fundamental breach of those principles, and remove valuable transparency which is available to the industry – be that to a pub company, lessee or other.

Fair & Lawful

For the last 20 years Vianet has installed maintained and serviced draught beer flow monitoring systems throughout the UK from our base in Stockton on Tees. In our commitment to growing internationally, the company exports flow monitoring solutions to Europe and has recently commenced a national roll-out in the USA. We provide an essential service in preventing and identifying suspected breaches of legitimate tied tenancy agreements. It cannot be right or fair to condemn a technology which provides a valuable source of information and transparency for both landlords and tenants, based on an assertion that it is 'controversial'.

Increased transparency

We are committed to producing transparent and reliable information that is available to all parties in tied tenancy agreements. Our reports and data, available to both pub companies and their tenants, provide a valuable source of management information. The tenant can check whether the information corresponds with the dispense levels shown on their till or stocktaking records. This transparency also supports existing, new and potential tenants by providing an irrefutable evidence base of trading levels which supports a level playing field in commercial negotiations. Business support can be targeted to address underperformance or business opportunities identified to drive tenant profitability. Our product is used to improve beer quality, increase product yields through identifying waste and provide detailed analysis of product performance. The introduction of what would effectively be a ban on the use of flow monitoring technology based information in large pub companies (500 or more pubs) would potentially remove a valuable business tool which drives better results for pub companies, lessees and their beer drinkers.

Controversial to some, the information we provide allows our pub company customers to identify potential breaches and collate further facts and evidence prior to any action being instigated with the tenant in line with the Pub Company Code of Practice. Vianet's technologies, its services and its procedures are fit for this purpose. Our service has been subject to legal scrutiny in a court of law on many occasions and the evidence provided by it has never been shown to be unfit for purpose. We have responded to the specific points made by the 2010 Select Committee, yet no reference to this evidence has been made in the latest Government Consultation. We have submitted the equipment for independent testing by the National Measurement Office and published the results. **Appendix 2** comprises a comprehensive guide to flow monitoring as previously submitted to the committee, which details the extensive validation processes and rigour we employ to ensure integrity of the flow monitoring information and availability to all parties.

We look forward to the Government exercising proper due diligence on the facts and evidence received from all parties prior to and during this consultation. We believe that the current proposals are founded on biased opinions rather than being based on facts and evidence, and do not support fairness, lawfulness and transparency to the extent of potentially being illegal.

Response to the Government Consultation

Our response will cover seven key areas:-

1. The incorrect assertions made against Vianet (Brulines) flow monitoring
2. Advances made since the 2010 Select Committee Report
3. The legal implications of the government proposals
4. Loss of income to the Treasury
5. The value equipment and services adds to pub owner, licensee and customer
6. Impact on our company and its employees
7. Conclusion

1. Incorrect assertions made against Vianet (Brulines) flow monitoring

From the submission that led to the 2009 select committee report until the end of 2010 there was a sustained campaign of misinformation against flow monitoring by the members of Fair Pint and the GMB union. That campaign relied on false assumptions and fictitious evidence.

1.1 We provided specific evidence to counter these false assertions in a document – Brulines Comprehensive Guide to Flow Monitoring. We provided answers and responses to 29 myths that had been portrayed as facts in the public domain by campaigning parties. This can be found in **Appendix 2.**

1.2 At the height of the campaign there were letters from Fair Pint to pub companies on 18 November 2010 and 3 December 2010. In **Appendix 3** there is a detailed response to the misinformation contained in those letters.

As an example of misinformation, we urge the Government to examine the evidence presented by members of Fair Pint and the GMB concerning a report prepared by SGS (a testing company) and submitted to the 2010 select committee which claimed to be based on tests of our flow monitoring equipment. The simple fact is that SGS tested a different meter from the type we use. Fair Pint members have known this fact since at least October 2010 but to the best of our knowledge have never issued a correction or clarified to the Select Committee that the main point of their evidence against our equipment was fundamentally flawed.

We will show that Fair Pint members provided misleading information to select committee enquiries, ignored evidence and continue to perpetuate fanciful myths about flow monitoring and our organisation which form the basis of their evidence. This is outlined in Appendices 2 (Page 72) and 3.

Since the NMO testing was published in January 2011 there has been very little controversy in the press concerning the use of our flow monitoring equipment.

2. Advances made since the 2010 Select Committee Report

The Consultation document refers to the 2010 Select Committee report as the source for its assumption that the equipment is contentious. We responded to the comments and recommendations made from both this and earlier reports:

2.1 In response to the select committee 2009 report we asked Stockton Trading Standards to test our equipment. The tests showed the equipment had a margin of error of less than 0.65%.

2.2 The Government's Response to the select committee 2010 report stated: *"Government is clear that the industry should voluntarily ensure that all such measuring equipment is calibrated by the National Measurement Office."* Vianet followed that recommendation and had the equipment tested by the National Measurement Office ('NMO') which is the UK's and the Government's leading authority on the testing of measuring equipment. The published test report, sent to the Government and the select committee in January 2011, demonstrated that the equipment was accurate to within acceptable tolerances. For instance, in relation to keg products the overall margin of error was 0.5%. Given that we complied with the Government's recommendation, it is surprising that there is no mention of the NMO testing in the Government's Consultation Document. The NMO report can be viewed in **Appendix 1**.

2.3 On 16 December 2009, 30 December 2009, 13 January 2011, 21 January 2011, and 16 May 2011 we wrote offering further assistance and clarification if necessary and to invite members of the select committee to visit our headquarters, but oddly we have had no requests and the offers have not been taken up.

2.4 The issue of whether the equipment is covered by the Weights and Measures Act 1985 was clarified through direct engagement with Trading Standards. It was confirmed that the Weights and Measures Act 1985 does not apply to beer flow monitoring. This was further clarified by the courts in the cases of Unique v Onifas (2011), and Unique v Broad Green Tavern Ltd (2012). Copies of the judgments in those cases can be viewed in **Appendix 5** and **Appendix 6**.

2.5 Our services are part of a wider set of processes used by our customers to determine breaches of tied supply contracts. Within the published Sixth Edition (March 2013) of the UK Pub Industry Framework Code of Practice it clearly states:

"80. Where pub companies install flow monitoring equipment and intend to use such equipment to monitor purchasing obligations, such companies must develop and include a protocol setting out the terms under which flow monitoring equipment is to be installed, calibrated and the information obtained made available to tenants.

81. Evidence, other than that provided by flow monitoring equipment, must also be provided before taking enforcement action on purchasing obligations. "

We have and will continue to support our customers in working to this framework.

We have provided clarity on the points raised by the select committees, yet no reference to the information we have supplied has been made in the Consultation. We have also been omitted from the list of parties consulted. We believe that this represents a lack of a proper consultation, investigation and rigour by both the Select Committee and the Government.

3. The legal implications of the Government proposals

The proposals have not referenced any facts or evidence to support what is in effect a ban on the use of our product. We find this to be unacceptable and unjust. Further, we have been advised by leading counsel that the proposals are contrary to EU law, the European Convention on Human Rights ("ECHR"), as given effect by the Human Rights Act 1998. Further, these proposals could not in any event be adopted on a UK wide basis insofar as they concern the use of evidence in court as legislative competence in this area is reserved to the devolved administrations in Scotland and Northern Ireland (leading counsel's advice is at **Appendix 4**).

3.1. The introduction of what would effectively be a ban on the use of flow monitoring information in large pub companies (500 or more pubs) would inhibit the sale in the UK of flow monitoring equipment manufactured in other parts of the EU, and would therefore represent an infringement of the principle of the free movement of goods contrary to Article 34 of the Treaty on the Functioning of the European Union ("TFEU"). EU law is applicable here because Vianet's iDraught flow monitoring equipment is supplied to Vianet by a Dutch company which manufactures the equipment in the Netherlands. Vianet also now exports iDraught flow monitoring equipment to France, Spain and the Czech Republic.

3.2. It would also be an infringement of the principle of free movement of services contrary to Article 56 TFEU as Vianet is currently expanding its flow monitoring information business into other EU Member States as indicated above.

3.3. It is clear that Articles 34 and 56 TFEU therefore apply to the proposals and there is plainly a drastic restriction of Vianet's EU law right to trade in its goods and services, contrary to the general principles of EU law, including in particular proportionality and non-discrimination. Such a restriction could not be justified under Articles 36 and 52 TFEU or the case law of the Court of Justice of the European Union.

3.4. The proposals are clearly disproportionate. The Consultation document has failed to identify any legitimate objective compatible with EU law to be served, and has not considered any alternative less intrusive alternatives.

3.5. The proposals are also discriminatory in that they apply to pub companies with at least 500 pubs but not to smaller pub companies or pub operators. No justification compatible with EU law has been advanced for this discrimination.

3.6. As well as being contrary to EU law, the proposals are also contrary to the ECHR under the Human Rights Act1998.

First, the limitation on the use of flow monitoring equipment would be contrary to the right to peaceful enjoyment of property guaranteed by Article 1 of the First Protocol to the ECHR.

Second, the limitation on the use of information from flow monitoring equipment would be contrary to the right to freedom of expression guaranteed by Article 10 of the ECHR.

Third, the proposal to deprive persons of the right to make use of information from flow monitoring equipment in court would be an infringement of the right to a fair trial of civil rights and obligations guaranteed by Article 6 ECHR.

Each of those breaches of the ECHR is disproportionate and discriminatory for the same reasons as apply in relation to the breaches of EU law set out above.

3.7. **The proposals are therefore liable to challenge by way of judicial review for their incompatibility with EU law and the ECHR.**

3.8. Further, it is clear that the Consultation document has failed to give any consideration as to whether the proposals could be implemented on a UK wide basis as appears to be proposed. The proposal to deprive persons of the right to make use of information from flow monitoring equipment in court would be a rule of evidence in civil proceedings. The UK Parliament does not have the power to legislate on the admissibility of evidence in courts other than those of England and Wales. Since the Scotland Act 1998, the powers under the Civil Evidence (Scotland) Act 1988 are exercisable by the Scottish Government and Parliament, not by UK Ministers and the UK Parliament. In Northern Ireland, civil evidence is dealt with by the Civil Evidence (Northern Ireland) Order 1997. Northern Irish rules on evidence fall within the jurisdiction of the Northern Ireland Government and Assembly. This proposal would therefore be liable to be struck down on this ground in judicial review proceedings before

the Court of Session so far as it purported to apply to Scotland and before the High Court of Northern Ireland so far as it purported to apply in that jurisdiction.

In addition to those fundamental concerns as to the legality of the proposals, we have the following additional substantive points to make in response to the Consultation document.

3.9. The Consultation document states that it is possible to enforce the tie without flow monitoring equipment. This was specifically covered in the Onifas case in which His Honour Judge Behrens said of the other methods for monitoring compliance with the tie: *"These methods proved unreliable and unsatisfactory. It would be difficult to decide which pubs to investigate and the landlord's choice was often based on suspicion or guesswork. The investigations were expensive in man hours. Intrusive methods did not promote good relationships with tenants."*

Should the Government complete proper due diligence they will find that flow monitoring is the only proven and reliable method for monitoring compliance with the tie. All other solutions are less effective in that they do not provide transparency and are counterproductive in that they introduce high costs and an increasingly adversarial environment.

3.10. The Consultation document proposes that the equipment may not be used for the purpose of determining whether a tenant is complying with the tie. The equipment is not used to "determine" whether the tenant is complying, it simply provides information and trends that may lead to further investigation and evidence gathering. That information may be supported by, or contradicted by, other sources of information. Unless the parties agree, it is the court that "determines" whether the tenant is complying with the tie. Therefore it is unclear what the Government intends by this provision.

3.11. The Consultation document proposes that the information from the equipment may not be used or considered as evidence when enforcing the tie. The Civil Procedure Rules Part 31 requires a party to disclose all evidence relevant to the dispute. The flow monitoring information is relevant evidence and therefore will have to be disclosed to the court even if the pub company is not allowed to rely upon it. The Consultation's proposal would leave pub companies in the strange position that the tenant and the judge could consider the flow monitoring information, but the pub company could not without breaching the Code. In addition, for tenants and pub companies with less than 500 pubs to be able to use the information would undermine the principle that parties are equal under the law, enshrined in the Article 6(1) ECHR principle of 'equality of arms'.

If the Government ignores the evidence and legislates based on flawed information, then we will be obliged to challenge to the legislation by judicial review in the High Court in London and/or the appropriate courts in the other jurisdictions in the UK.

4. Loss of income for the Treasury

Our product provides an essential service in preventing and identifying suspected breaches of legitimate tenancy tied supply contracts, without which our figures indicate that up to 100 million pints per year would end up outside the tax system. When beer is bought outside the tied supply contract and sold through the licensed outlet it is unlikely to feature in the accounts for taxation purposes; this beer is generally unaccounted for as it is supplied for cash, drinks are in turn paid for in cash, and bar staff and tradesmen are paid cash. This undeclared income is unlikely to have had appropriate amounts of taxation applied and represents a significant loss to the Treasury and ultimately a cost to the tax payer.

4.1 The initial installation programmes of Vianet (Brulines) Dispense Monitoring Systems (DMS) generated an initial minimum 7% average growth in recorded beer volumes sold with immediate effect and this statistic has been validated by a number of our pub company customers. The deterrent effect of our system maintaining at least

7% of beer volume across the UK tenanted pub estate equates to over £173m of beer sales per annum that would be otherwise unaccounted for. Supporting calculations for this can be found in **Appendix 7**.

4.2 In addition to this deterrent effect we continue to support the identification of on-going breaches of tied supply contracts which account for a further c. 5% of total beer supply across UK pub estates. These on-going breaches across the largest UK pub estates equate to over £125m of beer sales per annum that are also potentially unaccounted for in the tax system.

The absence of flow monitoring would potentially lead to c £300m of draught beer sales being beneath HMRC radar. The banning of the use of our product to provide transparency represents a significant risk to the Treasury in terms of lost VAT, business taxes and also represents a significant amount of cash entering the black economy where suppliers and staff are paid cash in hand. In addition this undeclared income can materially affect the perceived value of the licensed outlet when being offered for sale to the existing tenant or on the open market.

We do not understand why the Government would want to limit the use of flow monitoring technology based on an overly simplistic view and deeply flawed evidence, and in the process put tax revenues at risk

5. The value that equipment and services adds to pub owner, licensee and customer

Our systems provide management information to drive improved profitability for pubs. It allows pub groups to focus investment and support, multiple operators to maintain standards across a group of pubs as well as providing site operators with an essential tool kit to drive greater profit from draught beer. Our customers have invested significantly in our services to support both their own operations and also those of their licensees. The management support tool this provides has driven significant economic benefit to their licensees with no cost to them for these services. This value is underlined as our web reporting services are accessed over 8,000 times per month by licensees and their management team.

5.1 Value to pub groups - our customers use our services to target business support activity, direct investment and quality driven initiatives. For example, the insight we provide allows poor line cleaning practice to be tackled through incentives, improving quality standards for consumers which in turn drives increased sales for licencees. Our service is part of a wider set of information and process used to identify a potential breach of tied supply contract and provides an efficient and targeted approach to this issue. This was highlighted by Judge Behrens who believed alternatives would cause significant disruption and costs to both pub groups and tenants.

5.2 Value to pubs and multiple operators - licensees use our services to target business opportunities through detailed trading information, improving draught beer profit through addressing highlighted quality issues and improving cash performance through ensuring till receipts tally with overall beer sales across the bar. These essential business tools are provided free of charge to the tenants as part of the tenancy support model. We are committed to working with our pub company customers to help them continue to support tenants making better use of our information to drive greater profitability. Additional reporting services can also be provided giving detailed site performance reports.

Mark Daniels, the licensee at the Tharp Arms, took an objective view of his installed Brulines equipment and found significant value for his business.

"(The system) **allows me to marry the figures Brulines provide to the figures my till provides.**" Mark Daniels – Tharp Arms. Published as an independent article 'Why I love my Brulines' in the Publican. This was followed up a year on in the published article 'Brulines – one year on and still satisfied'.

'(The system) helps publicans understand their beer sales and improve stock control but, sadly, many who have had it implemented aren't using the system to their advantage.' Mark Daniels – Tharp Arms, June 2011.

Mark suffered strong negativity and ridicule for voicing his experience of gaining real value from our systems. Many blogs reflected this such as: ***"Have you realised that this is not the place to be positive about anything, least of all pubcos and brulines. Utter madness on your part."*** Publican's Morning Advertiser recorded blog.

http://www.morningadvertiser.co.uk/Forums/News-Article-Comments/Brulines-One-year-on-and-still-satisfied/(offset)/40#553774

Tenants from community pubs to larger bars have found significant value from our system;

"I don't think that you would find any business person who would turn their nose up at a tool which can motivate your workforce and lead to greater profits."

"It's a phenomenal system. iDraught added an extra £30,000 per annum to our business."

6. Impact upon our company and its employees

Vianet provides valuable management information to clients across the fuel, retail and hospitality sectors. Our technology connects over 40,000 devices which provide business intelligence to customers on all aspects of their operations. Our clients span from large UK fuel retailers and international retail brands to hospitality businesses worldwide. We pride ourselves on driving innovation and leveraging technology to deliver great results for our customers. Our technology has won awards and is a valued part of our customers' management systems. It allows them to make informed decisions to drive down waste, target investment and deliver a great experience for their customers. We invest heavily in the development of new technologies, services and markets working in partnership with UK and Continental Europe based suppliers..

The effective ban of the use of our core product would cause significant damage to our business and would result in major job losses. The proposed Statutory Code as it currently reads will destroy our core business, the key dimensions for which can be summarised as follows:

1. North East based company with Head Office in Stockton on Tees
2. 270 people employed UK wide
3. Payroll costs of £8m per annum.
4. Products and services supporting our business sourced in UK and Europe - £10m per annum.

7. Conclusion.

This successful flow monitoring business has allowed us to invest in facilitating our growth and diversification into the fuel and vending sectors through acquisition and funding of once failing businesses. This has secured continued work for employees of those companies who might otherwise have found themselves unemployed. Vianet has continually worked to develop new markets and we are a major employer in the area operating from Stockton on Tees.

Within the Government's proposal, paragraph 5.21 states "the simplest and fairest solution is to mandate in the Code that information obtained from flow monitoring equipment may not be used". We believe this conclusion and

evidence it is based upon together with other provisions on flow monitoring are neither simple nor fair, and are deeply flawed for the following reasons:

i. The proposals relating to flow monitoring are likely to be illegal as they contravene established law
ii. The proposals are likely to lead to a decline in Treasury revenues
iii. The proposals as envisaged will cost jobs
iv. The equipment is fit for purpose and the data processes are transparent
v. The equipment has been subject to the scrutiny of the legal system many times and never found to be unfit for purpose
vi. The equipment has been independently tested by the NMO and found to be within parameters that give confidence that it is fit for purpose

Vince Cable said on employment reform in May 2012:

"We have always been clear that sensible and well thought-through reforms need a strong evidence base behind them, not just anecdotal experiences".

Vianet plc simply asks that the Government apply that very approach before condemning a successful, entrepreneurial company with real export opportunities, and putting c. 270 jobs at risk in an area of the UK where business success stories and employers creating jobs are rare.

We believe that if the Government takes time to understand the benefits of flow monitoring and the transparency it brings to the industry through a process of factual debate rather than relying on the deeply flawed evidence of 'self-interest' groups, they will recognise that flow monitoring should be a mandatory part of the solution as it;

i. Provides a high degree of transparency between landlords and potential / existing tenants on actual level of beer sales and thereby trade.
ii. Protects existing revenue to the treasury through preventing over the counter draught beer sales being unregistered and unaccounted for.
iii. Protects the drinker by preventing passing off and safeguarding quality by providing transparency on beer line cleaning

<u>Appendices</u>

Appendix 1 – NMO test results

Appendix 2 - Vianet's Guide and commentary on the NMO test results

Not published – already in public domain

Appendix 3 – Response to Fairpint's letters

Appendix 4 – Legal advice from Aidan Robertson QC

Appendix 5 - Summary and Judgment from Unique v Onifas

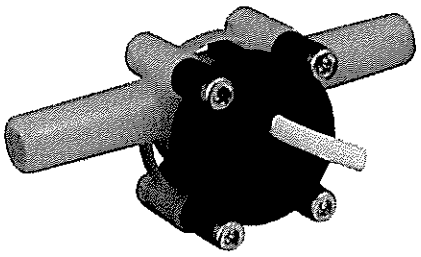
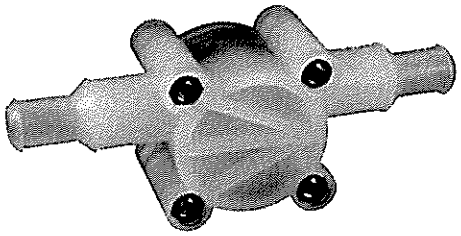
Appendix 6 - Judgment from Unique v Broad Green Tavern

Appendix 7 – Calculations of potential impact to the Treasury

Response to Fair Pint's letters of 18 November 2010 and 3 December 2010

- **Campaigners make highly misleading claims about the accuracy and lawfulness of our flow monitoring equipment to MPs, pub companies and the press.**
- **Vianet have shown the claims to be false.**
- **The campaigners refuse to admit their errors.**

Fair Pint's comments	Vianet's Response
Introduction	
	Fair Pint is a campaign group. The exact number of members they represent and their funding is unclear. In November and December 2010 they wrote to Enterprise Inns Plc letters setting out in full their challenge to the use of our flow monitoring equipment. The press were informed of the contents of the letters. The majority of the points raised in their letters were answered by the National Measurement Office ('NMO') test results and our Guide published in January 2011. However, in anticipation that they may try to repeat the same inaccuracies to influence this consultation, we will respond to them line by line. The structure of Fair Pint's letters makes them difficult to respond to, so we have quoted below the key sections and responded to them. The passages in bold below come from the text of their letters of 18 November and 3 December 2010.
Accuracy **'The equipment provided by Brulines PLC cannot, as that company concedes, determine what fluid it is measuring from time to time'.**	It is correct that the Titan 300-010 flow meter used by Vianet's standard DMS system cannot determine which fluid it is measuring. However the flow meter is only part of the DMS system and we have protocols in place to distinguish between beer/cider dispense and line cleaning (see Appendix 3 of our Guide). Most commonly, with keg products, the DMS system identifies line cleaning using the flow meter on the line cleaning water ring main. Our i-draught system can differentiate between liquid types, as explained at pages 25 onwards in our Guide. In the NMO tests the i-draught flow meter successfully identified what it was measuring 98.7% of the time (source page 10 of our Guide).
'To our knowledge there is no measurement equipment on the market, for the purpose to which your equipment is put, that can properly measure mixtures of gas and fluid (two phase flow).'	In the NMO testing both DMS and i-draught accurately dealt with the introduction of surplus gas in the beer line and were also proven not to be adversely affected by so called 'two phase flow' in the beer line.
'There are many other aspects of the equipment in its application in pubs that	The system has been in thousands of pubs, for many years. Any inherent problems, of the type they suggest, would have become apparent and would be properly evidenced. Fair Pint have not pointed to any such evidence.

mean it cannot be accurate'.	
'As you may be aware we have previously commissioned work in this regard from world leading company, SGS, and they found the equipment tested to be substantially inaccurate.'	The SGS report, sent by Simon Clarke (a member of Fair Pint) to the Select Committee with his submission of 18 November 2009, explains how they tested a version of the Titan 824 flow meter. For the last five years we have only used the Titan 300-010 flow meter in our DMS system. In other words, SGS tested the wrong type of meter. The manufacturer, Titan Enterprises, has confirmed that the two flow meters' specifications differ significantly. For example, the Titan 300-010 meter was designed primarily for lower speed beer flow monitoring applications in pubs, whereas the Titan 824 flow meter is particularly suited to arduous conditions, sometimes running continuously for 24 hours per day at high flow rates, monitoring fluids such as aggressive chemicals. The 300-010 and 824 flow meters look different, as is clear from the photographs below:  **Figure 1: Titan 300 – 010 Flow meter Used by Vianet's DMS system**  **Figure 2: Titan 824 – VOP- U Flow meter tested by Fair Pint/SGS** The SGS report describes how they bought the 824 flow meter directly from Titan. The report describes how SGS attended at the Eagle and put the 824 flow meter on the same beer line as the 300-010 flow meter installed by us. According to Titan this would have been difficult as the 824 flow meter does not have John Guest fittings and would need to be adapted to fit on the line. Despite this SGS either didn't spot that the flow monitor they installed was different or failed to explain their mistake in their report.

	The letter from Fair Pint of 18 November 2010 is carefully worded in that it does not say that SGS tested the flow meter used by DMS. Instead it states that "the equipment tested" was inaccurate. Fair Pint member, David Law (who is also Simon Clarke's business partner at the Eagle), is aware of the error: He posted a comment on the Morning Advertiser website on 27 October 2010 (just 3 weeks before their letter), trying to explain away the mistake:- "*However, the 300-10 or 'beverage meter' as it is commonly called, is still an 800 series meter, ie, 810. It is only slightly different in that it has John Guest fittings that restrict the flow in the pipe even further, thus affecting performance. Mr Thorn* [of Titan Enterprises] *appears to have misled Dr Mark* [of SGS]. *Could it be because his company rely heavily on keeping Brulines as their main customer?*" Titan Enterprises say that the 300-010 and 824 series flow meters are different and Mr Law accepts that the differences affect performance. Mr Law's conspiracy theory as to how SGS bought the wrong meter is denied by Titan and makes no sense: What would Titan gain by the wrong meter being tested? How would Titan have known that the expert from SGS would not spot the obvious physical differences between the 300-010 and 824 flow meters? The mistake as to the 824 flow meter was wholly the fault of SGS, and those who instructed them, and it is churlish to seek to blame anyone else. Fair Pint should have, at an early date, admitted the error to the Select Committee. Instead their members have repeatedly stated in correspondence and website postings that the SGS report shows the DMS system to be inaccurate. SGS's testing was carried out in a laboratory using mains water. Titan (the flow meter's manufacturer) has confirmed in the attached letter, that using mains water is likely to generate false results. One of the main reasons that SGS give for the equipment being inaccurate is that we overstate the amount used for line cleaning. We do this to be cautious and it is in the tenant's favour: It makes it less likely that the amount of beer dispensed will exceed that delivered.
'Similar tests carried out by Trading Standards Officers on equipment in different sites around the country have also highlighted failings in the equipment.'	Stockton Trading Standards carried out tests in May 2009 which showed that the DMS system had an accuracy of over 99%. The results are at Appendix 1a of our Guide and are consistent with the NMO findings. We are aware of a further case, involving a pub in Slough. This is a case that Karl Harrison (a Fair Pint member) referred to in Unique v Onifas, as an example of how flow monitoring data is used to calculate damages. The testing carried out did not show large variance on most of the lines. The other results were affected by a transcription error by Trading Standards and testing involving mains water. The tenant subsequently admitted that she had dispensed more tied products from third party sources, than the flow monitors indicated.
'We are currently commissioning further work	On 14 January 2011, just hours before the NMO Report was published, Fair Pint were reported in the press to have asked the NMO to prepare a further report and to

in this regard'.	have claimed that the NMO Report we were publishing would "*prove very little indeed*", without having seen it (source - Morning Advertiser). Fair Pint's prejudging of authoritative evidence, because it may contradict their firmly held prejudice, is not helpful to a rational debate. No second NMO report has been published by Fair Pint. Either: a) Fair Pint have not sought a second NMO report, in which case they should explain their change of mind. It may be that having read the NMO report they realised that a further NMO report would not support their opinions. b) They have obtained a report, but have suppressed it. Fair Pint should clarify whether they have sought an NMO report, and if not, why not? On internet forums, Fair Pint members have frequently chosen to personally criticise those who disagree with them, rather than engaging in a proper rational debate about the evidence:- "*Get a grip James* [Dickson CEO of Vianet] *the CEO of a big company and you're sounding like a silly schoolboy'* J Mark Dodds 19/5/09 "*Simon - why are spreading such baseless fear? I don't believe for one minute there is any risk to tenants of custodial sentences being imposed by courts for contractual offences. There is no risk of contempt at all such as you suggest and it is either dishonest or ill-informed of you to suggest that there is.'* Karl Harrison 4/3/10 "*Robert- stop being so high-handed. Playing patsy with pubcos failed the sector for years. Its important to retain the moral high ground on the issues at large but at the same time its no good taking a knife to a gun fight.'* Karl Harrison 4/3/10 Responding to Mark Daniels article "Why I love my Brulines" - "*You know its hard to know where to start on this rubbish from Mark Daniels. Frankly its embarrassing, looks scripted and reads like a commercial for soap powder. At some stage Mark decided he'd become a mouthpiece for Greene King and lord knows whether there was a genuine incentive or whether Mr Anand just loosened the thumbscrews a little."* Karl Harrison 1/12/10 *"Mark/James Dickson - not sure which one of wrote this article? Have you any shares in brulines Mark or is it that your just contempt to condone this inaccurate system even though you're fully aware of how this awful stick has been used to extract obscene amounts of money from tenants who, quite simply; don't deserve it."* Steve Corbett 3/12/10 "*J Mark Daniels Whoooooeeee! You must be nervous to have done that."* J Mark Dodds 6/12/10 Responding to Mark Daniels article "Brulines: One year on and still satisfied" "*Mark is more than likely to be a tied tenant under pressure. In a form of Stockholm Syndrome it is plausible that people in such a position will blame everything other than the one issue or person that is causing them the most difficulty...It is not impossible that a few positive words written or spoken give a little relief or 'concession' to a pliable and pressured tenant.'* Karl Harrison 7/6/11

Current Testing **'We are aware that Brulines PLC has privately commissioned the National Measurement Office ('NMO') to carry out tests on their equipment. It may be considered by both your company and Brulines PLC that those tests will produce some results that may add credibility to claims in favour of the system.'**	Fair Pint wanted the equipment to be tested by the NMO. Fair Pint's co-founder, Karl Harrison, in his oral witness evidence to the BISC on 8 December 2009 enquiry stated *'LACORS have also suggested that Brulines ought voluntarily to submit their system for testing in government labs. That has not been volunteered yet and we believe that is because it is not accurate and does not work'.* The Government in its response to the 2010 BISC report recommended that we submit the equipment to the NMO. We believe that it would have been reasonable for Fair Pint to have waited to see the NMO Report before making assumptions about it. In our view, the NMO Report does show that our equipment is fit for purpose.
'Our view is that [the NMO] tests, carried out in laboratory conditions on one piece of equipment, are likely to fail to address the main issues.'	The NMO Report states that *'The delivery tests were conducted at the Brulines R&D facility at their Stockton-on-Tees premises. This was due to the availability of equipment to perform the range of tests, with access provided to software and data. Brulines provided the test set up which emulated a typical set up that could be expected in a typical installation'.* The testing carried out by the NMO was in a variety of realistic scenarios, and several unrealistic ones, on 13 different flow meters. It was not a laboratory 'bench test' on one piece of equipment. Fair Pint's criticism of laboratory testing is unexpected, considering that SGS carried out laboratory 'bench tests' on one (wrong) flow meter when preparing the report they submitted to the BISC. Despite that they have trumpeted the SGS report as being authoritative. Will Fair Pint admit that, not only did SGS test the wrong type of flow meter, but they also carried out the wrong sort of tests? His Honour Judge Behrens in the Onifas case doubted the usefulness of in situ testing at one pub, as an indicator of how the system operates at other pubs.
Data Auditing and Manipulation **'It is apparent from admissions from Brulines PLC as well as representatives of your company that the data produced by the systems installed in pubs and received by Brulines PLC is the subject of considerable manual adjustment.'**	In their letter they refer to *manual adjustment, manipulation, falsification, manual data auditing, tampering, manual changing and manual construction.* We assume that all of these comments refer to the same thing: The removal of line cleaning data in relation to the DMS equipment (the i-draught system detects and removes water automatically). That is the only manual adjustment made by us, outside of very exceptional circumstances (see page 78 of our Guide). Our data auditing procedures are explained at page 57 of our Guide. In relation to keg products the process is almost entirely automated (which is accepted in SGS's report). We assume, therefore, that their criticism is limited to the removal of data relating to the cleaning of cask ale lines. Our Guide at page 74 explains that our processes are *'extremely prudent in favour of the licensee'.* Fair Pint's expert examined the treatment of line cleaning of cask lines at Simon Clarke's pub, the Eagle. SGS stated:-

	'It is apparent from the table above that significantly more water is being attributed by Brulines to line cleaning of cask beers than would be expected in practice'.
It is our understanding that Sprecher Grier Halberstam, a firm of solicitors that previously acted for your company, published a general note of advice on remedies for breaches of contract in relation to 'buying out'. That note does not identify the use of flow monitoring equipment as being of evidential quality use in such remedies as they proposed.'	The article referred to does not mention flow monitoring equipment at all, because it was prepared at a time (February 2004) when flow monitoring equipment was not commonplace. Enterprise did not begin their programme of general installation until late 2005 / early 2006. The conclusions Fair Pint draw are therefore erroneous.
'There does appear to be some evidence of actions carried out by, or on behalf of, your company, that seek perhaps to exploit the vulnerability of small business people using allegations of contractual breach, backed by manually adjusted data, and in order that your company is able to secure monetary gain.'	That is a very serious allegation. Fair Pint have not produced any evidence or detail to support the same. Pub Companies operate under Codes of Practice approved by the British Institute of Innkeepers Benchmarking and Accreditation Service Committee (BIIBAS). Those codes include provisions as to how the company deal with flow monitoring data. We are not aware of any complaints regarding breaches of that part of the Code of Practice having been made to BIIBAS or PICAS.
'The testing being carried out by the NMO and by Trading Standards (under the Stockton protocol) also fails to address the issue of the manual data inputting in relation to delivery of goods by your nominees to your tenants.'	The process by which pub companies send us the data regarding the goods we have delivered to the premises is automated. The information on the delivery notes is automatically transferred on to the flow monitoring report. There is no manual data inputting.
<u>Legal Matters</u> **'1 There appears to be a growing body of evidence and opinion that the equipment is in use 'in trade' .**	The expression in the Act is 'in use for trade'. Fair Pint submitted an advice from Counsel on the point to the BISC enquiry. Simon Clarke (of Fair Pint) told BISC in his covering letter *'The legal opinion states that ..... use of Brulines to ... tied tenants means that it is probable that the equipment is 'used for trade'.* That statement was repeated by Karl Harrison (co-founder of Fair Pint) in his oral evidence to the BISC on 8 December 2009 (Q196) .

	Fair Pint's submissions were misleading. What their Counsel actually said was *'There is no clear answer as to whether or not the statutory definition 'use for trade' would include the position of a pubco using the Brulines device to impose fines on a lessee. I can conceive a respectable legal argument pointing in opposite directions. However, I am of the opinion that it is at least properly arguable that the Brulines device is in 'use for trade' and therefore liable to the strictures of the Weights and Measures Act 1985. ...The argument would be, although it would not be uncontroversial, that the Brulines device is being used for the purposes of a transaction (the monetary 'fine' imposed by the pubco) by reference to the quantity of beer alleged to have been bought out of tie by the lessee.'* Fair Pint's submissions therefore translate '*properly arguable*' into '*probable*'. Fair Pint have never admitted this error. In the cases of Unique v Onifas and Unique v Broad Green Tavern, the courts have ruled that the equipment is not in use for trade, and is not therefore covered by s.17 of the Weights and Measures Act 1985.
'....and should, whilst in such use, always have been prescribed under the relevant legislation. '	Page 1 of the NMO Report states *'Although the submitted equipment is not prescribed by regulation.....'*. Trading Standards have confirmed that the equipment is not prescribed under Section 11 of the Weights and Measures Act 1985 (page 52 of our Guide). Therefore the highest authorities have confirmed that equipment is not prescribed under the 1985 Act.
'2. It is possible that the equipment could be considered to be false and unjust under the relevant legislation. Again, if this is the case then it may be appropriate for there to be a prosecution'.	See above.
'3. If it were the case that manually adjusted or constructed data were to be presented to tenants, without explanation as to the origins of the data and its limitations, and in an attempt to secure an admission of breach and/or monetary gain, then a serious criminal allegation could be made against those seeking to use	In their letter of 3 December 2010 Fair Pint are more specific and point to potential offences under the Theft Act 1968 and Fraud Act 2006. The advice of Fair Pint's Counsel, Gary Grant, dealt with this issue in August 2009. However the part that dealt with allegations of potential criminal behaviour by pub companies was edited out before the Advice was sent to the BISC. The editing was carried out carefully, with paragraphs and notes being renumbered, so that one cannot tell that the Advice has been edited from the document itself. Simon Clarke's submission describes the Advice as 'abridged'. We can only assume that the Advice was so carefully edited because it was not helpful to Fair Pint's campaign (i.e. their Counsel did not agree with their view on the potential for criminal charges). A copy of the abridged advice was filed at the Parliamentary Library. We invite Fair Pint to disclose the full Advice to the Select Committee and to ourselves. The allegation of fraud (which we believe Fair Pint had been advised was not tenable) was nonetheless referred to in web postings and used in correspondence

potentially falsified evidence in this way.'	by campaigners to attempt to pressurise Pub Companies. In their letter of 3 December 2010 Fair Pint stated that they were considering seeking further advice from leading counsel on the issue. Nothing further has been heard and the point was not pursued in the Onifas case.
'4. If evidence from the equipment supplied by Brulines Plc is being used as in 3 above and further to secure injunctions or consent orders in the Court.....there may have been an act of contempt [of Court].'	The assertion is based on so many hypothetical and false premises, that the simplest way to answer it is: To the best of our knowledge there has never been an occasion when a Pub Company have been accused of being in contempt of Court in relation to flow monitoring equipment.
'5. In the case of flow monitoring equipment, or its use, that would fall foul of any of the above then subsequent adaptation to such equipment or a change to the circumstances of its use, are unlikely to form a defence against allegations that have occurred in the past or claims arising out of those matters.'	We do not know what is meant by "subsequent adaptations" or "a change in the circumstances of its use".
'We have seen a number of those Codes of Practice and there is mention in your code of variations in the data produced by flow monitoring equipment resulting in 'fines' to tenants'.	The Codes of Practice do not refer to *'variations'* or *'fines'*. They refer to 'damages' to compensate them for the volume variance. It is therefore inaccurate to put the word *'fines'* in quotation marks as if it were quoting from Codes of Practice.
'Whilst we do not accept that there is a contractual basis for such 'fines' - which may themselves be unlawful - then we also noticed that there is no mention of the manipulation of the data that is used to generate the monetary penalty.'	A breach of the purchasing obligations in the lease is a breach of contract. The pub company have the right to claim for loss of profits arising from that breach of contract. It is compensation, not a penalty. Pub Companies and ourselves, do take steps to explain to tenants how the system works. As for instance Enterprise Inns Code of Practice confirms; within three months of taking a pub, or having flow monitoring equipment installed, the tenant receives a visit from a qualified technician who will provide them with the necessary instruction on how the system operates and how to view and use the dispense data accessible on our website. That website has comprehensive information as to how the system operates (including the NMO Report and our

	Guide).
'We will provide the BII and the BBPA each with a copy of this letter. A copy will also be sent to the Chairman of the Business Innovation and Skills Select Committee Chairman, Adrian Bailey MP.'	We invite Fair Pint to send to those parties:- a. Confirmation that SGS tested the wrong meter. b. An unedited copy of Gary Grant's advice on the legal issues and any further advice they have received. c. Confirmation that Gary Grant did not advise that the equipment was probably 'in use for trade'. d. Confirmation that they accept the equipment is not prescribed by the Weights & Measures Act. e. Confirmation that they accept there are no offences being carried out under the Fraud Act or Theft Act. f. Confirmation that by manual adjustment, manipulation, falsification etc, they mean the removal of line cleaning water in relation to cask ales.
'It has been put to us that Brulines PLC may consider some of their customers to be putting its flow monitoring equipment to uses for which it was not wholly intended.'	We refer to our Guide. The way Pub Companies use the equipment is entirely consistent with that Guide.
'i. you accept the flow monitoring equipment installed in pubs in your company's estate is not wholly accurate, that it cannot directly identify different fluids and it cannot properly or accurately measure two phase flow.'	Pub Companies have had our flow monitoring equipment in their estates for nearly 20 years. Over the years, and in thousands of pubs, they have found them to be accurate and reliable flow monitoring systems.
'ii. you accept that limited testing of equipment in laboratory conditions relying on immediate and non-adjusted data is not an accurate reflection of the use of the flow monitoring equipment in pubs'.	The NMO testing was carried out in realistic cellar scenarios. In our extensive experience the flow monitoring equipment is accurate when installed in real pubs.
'iii. you accept that the data produced for you and tenants of your company by Brulines PLC is the subject of manual adjustment and manual data input.	Full details of the auditing of line cleaning data for cask ale lines is set out at page 57 of our Guide.

'iv. you do not seek monetary compensation, injunctive relief or consent orders in reliance on the manually adjusted data produced by Brulines PLC.'	Flow monitoring evidence remains one of the types of evidence Pub Companies rely upon. Pub Companies use that evidence in accordance with their Codes of Practice. It is very rarely the only evidence the Pub Company will rely upon.
'v. you will write to all tenants of Enterprise Inns to make it clear that the data produced by Brulines PLC for you and them is capable of manual adjustment and by necessity will almost certainly have been the subject of such adjustment and that you will amend your company's code of practise (sic) accordingly.'	We believe that the steps we, and Pub Companies, take to inform our tenants as to how the systems operate are satisfactory. Those efforts are not helped by the misrepresentation of the evidence by Fair Pint members.
vi. you will write to all tenants of Enterprise Inns and the BII to confirm that you are not properly able to rely on the data produced by Brulines as primary evidence in legal proceedings relating to allegations of 'buying out' and accordingly that no employee of Enterprise Inns or any representative of Enterprise Inns, will hold out otherwise.'	See answer to question (iv) above.
	<u>Conclusion</u> We believe that Fair Pint in their submissions to the BISC enquiry in 2009:- a. Presented an expert report which tested the wrong flow meter and have since failed to admit the error. b. Presented a Counsel's advice which had been edited to remove parts which were unhelpful to their campaign c. Misled the BISC as to Counsel's view on whether the equipment was 'in use for trade'. d. Were wrong as to the prescription of the flow monitoring equipment under s.11 and s.17 of the Weights and Measures Act 1985. Subsequently they have repeated those errors in their literature, wilfully ignored

	credible testing by the NMO and shouted down those who disagree with their views. Rather than maintaining these unsustainable positions, we would invite Fair Pint to act in a responsible manner and confirm that they were wrong. Particularly as one of their founders is quoted in the Morning Advertiser article "*Simon Clarke - Master of all he surveys*" dated 6 September 2010 as saying:- *"Fair Pint has maintained the moral high ground in the main. It's given MPs the honest facts and it's proved them."*

IN THE MATTER OF:

VIANET GROUP PLC

PUB COMPANIES AND TENANTS: A GOVERNMENT CONSULTATION (APRIL 2013)

ADVICE

A. INTRODUCTION AND SUMMARY OF ADVICE

1. I am asked to advise Vianet Group plc ("Vianet") about the legality of proposals put forward by the Department for Business Innovation and Skills ("DBIS") in *Pub Companies and Tenants: A government consultation* published in April 2013 ("the Consultation document").

2. Annex A of the Consultation document sets out a draft proposed statutory code[1] to be called the 'Pubs Code of Practice' which it is proposed will apply to all pub companies ("pubcos") with more than 500 pubs, and would apply to those pubcos' non-managed pubs.

3. Vianet is the leading supplier of flow monitoring equipment and services to pub and bar operators in the UK[2], through its Dispense Monitoring system ("DMS") and its more recently developed iDraught system. Vianet also supplies its equipment and services to customers in France, Spain and the Czech Republic.

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1 Apparently to be imposed by primary legislation, although this issue is not addressed in the Consultation document. The definition of "Pub Company" in the draft code refers in square brackets to a "Pubs Adjudicator Act".

2 More information on these goods and services is set out in the merger clearance decision of the Office of Fair Trading under section 33(1) of the Enterprise Act 2002 No ME/3365/97 *Anticipated acquisition by Brulines (Holdings) plc of Nucleus Data Holdings Limited* (in which I acted for Brulines). Vianet changed its name from Brulines in April 2012.

4. Vianet's DMS is manufactured in the UK by Titan Enterprises Limited. The iDraught system is manufactured for Vianet by Applied Micro Electronics BV in the Netherlands.[3]

5. Paragraph 30 of the proposed code provides:

> "Information obtained from flow monitoring equipment may not be used for the purpose of determining whether a Tenant is complying with purchasing obligations, nor may it be used or considered as evidence when taking enforcement action on purchasing obligations."

6. This therefore encapsulates two restrictions:

- the use of information obtained from flow monitoring equipment for 'determining'[4] whether a Tenant is complying with purchasing obligations;
- the use of such information as evidence in enforcement proceedings in relation to purchasing obligations.

7. I am asked to advise on the legality of this proposal.

8. In my view, the proposal as set out in the Consultation document if implemented would clearly be unlawful for reasons summarised below.

9. As explained in detail in Part B of this Advice below, the proposal is unlawful under EU law.

(i) The introduction of what would effectively be a ban on the use of flow monitoring information in large pubcos (500 or more pubs) would inhibit the sale in the UK of flow monitoring equipment manufactured in other parts of the EU, and would therefore represent an infringement of the principle of the free movement of goods contrary to Article 34 of the Treaty on the Functioning of the European Union ("TFEU"). EU law is applicable here

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3 Applied Micro Electronics BV, Esp 100, 5633 AA Eindhoven, P.O. Box 2409, 5600 CK Eindhoven, The Netherlands.

4 It may be noted that use of the term 'determining' in this context is somewhat confusing and obscure. Flow monitoring equipment is not used to 'determine' whether a tenant is in breach of its contractual obligations. The equipment simply provides information which may be supported by, or contradicted by, other sources of information. Unless the parties agree, it is the court that 'determines' whether the tenant is in breach of its purchasing obligations.

because Vianet's i-Draught flow monitoring equipment is supplied to Vianet by the Dutch company which manufactures the equipment in the Netherlands. Vianet also now exports i-draught flow monitoring equipment to France, Spain and the Czech Republic.

(ii) It would also be an infringement of the principle of free movement of services contrary to Article 56 TFEU as Vianet is currently expanding its flow monitoring information business into other EU Member States.

(iii) There is also a clear restriction of Vianet's right to pursue its trade in these goods and services contrary to the general principles of EU law. Such a restriction could not be justified under Articles 36 and 52 TFEU or the case law of the Court of Justice of the European Union ("CJEU").

(iv) The proposals are clearly disproportionate. The Consultation document has failed to identify any legitimate objective compatible with EU law to be served, and has not considered any alternative less intrusive alternatives.

(v) The proposals are also discriminatory in that they apply to pubcos with at least 500 pubs but not to smaller pubcos or pub operators. No justification compatible with EU law has been advanced for this discrimination.

10. As explained in detail in Part C of this Advice below, the proposals would also be contrary to the European Convention on Human Rights ("ECHR") under the Human Rights Act 1998.

(i) First, the proposal to deprive persons of the right to make use of information from flow monitoring equipment as evidence in court would be an infringement of the right to a fair trial of civil rights and obligations guaranteed by Article 6(1) ECHR.

(ii) Second, the limitation on the use of information from flow monitoring equipment would be contrary to the right to freedom of expression guaranteed by Article 10 of the ECHR.

(iii) Third, the limitation on the use of flow monitoring equipment would be contrary to the right to peaceful enjoyment of property guaranteed by Article 1 of the First Protocol to the ECHR.

(iv) Each of those breaches of the ECHR is disproportionate and discriminatory for the same reasons as apply in relation to the breaches of EU law set out in ¶9 above.

11. Finally, as set out in Part D, the proposal to restrict the use of evidence in court proceedings could not be extended to Scotland or Northern Ireland, as the power to legislate in that regard lies with the devolved administrations.

12. The proposals are therefore liable to challenge by way of judicial review for their incompatibility with EU law and the ECHR, and domestic law in Scotland and Northern Ireland.

B. BREACH OF EU LAW

Free movement of goods

13. Article 34 TFEU legislates for free movement of goods within the EU, providing that:

> "Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States."

14. While the proposals would not on their face impose a quantitative restriction on Vianet's imports of iDraught equipment from the Netherlands, it is plain that the proposals would fall within the category of a measure having equivalent effect. This is because the prohibition on the use of information from flow monitoring equipment by large pubcos, including as evidence in court, would effectively close down Vianet's market for its equipment and thus in practice operate as an import ban.[5]

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[5] A prohibition on sales of cigarettes through vending machines was held to be a measure having equivalent effect under Article 34 TFEU in relation to imports of such machines by both the English and Scottish appeal courts in the *Sinclair Collis* litigation. See *R(Sinclair Collis v Secretary of State for Health* [2011] EWCA Civ 437, [2012] QB 394; *Sinclair Collis v Lord Advocate* [2012] CSIH 80, [2013] SLT 100, see in particular [53].

15. Therefore, the proposals would require justification under Article 36 TFEU or under the case law of the CJEU.

16. Article 36 TFEU provides:

> "The provisions of Article[...] 34 ... shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States."

17. It is clear that the proposals do not fall within any of the possible grounds for justification listed in Article 36 TFEU.[6]

18. Therefore, it is necessary to consider whether there is a potential justification under the case law of the CJEU. That case law, which has developed since the CJEU's landmark judgment in *Cassis de Dijon*[7], establishes that non-discriminatory measures having equivalent effect may be justified if adopted as a proportionate means of addressing a public interest objective (or "mandatory requirement" in the language of the CJEU in *Cassis de Dijon*) taking precedence over free movement of goods.[8] The CJEU has stated that a mandatory requirement may only be relied upon if it is proportionate:

> "It is also necessary for such rules to be proportionate to the aim in view. If a Member State has a choice between various measures to attain the same objective it should choose the means which least restrict the free movement of goods."[9]

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6 This is in contrast to *Sinclair Collis*, which concerned "the protection of health" by seeking to reduce the availability of cigarettes to children by banning sales through vending machines.

7 Case 120/78 *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein (Cassis de Dijon)* [1979] ECR 649.

8 See Joined Cases C-267 & 268/91 *Keck and Mithouard* [1993] ECR I-6097, [15].

9 Case 261/81 *Rau* [1982] ECR 3961, [12].

19. The burden of proof would be on DBIS (i.e. the Secretary of State) to demonstrate that implementation of the proposals complied with the principles of proportionality.[10]

20. Turning to the application of these principles, it is clear that the Consultation document fails to address what public interest objective (i.e. mandatory requirement) is served by the proposals in relation to flow monitoring equipment.

21. None of the categories of mandatory requirement considered in the CJEU's case law to date (fiscal supervision, public health, fairness of commercial transactions, consumer protection and environmental protection) would appear to be relevant as a justification for the proposals.

22. Moreover, it is impossible to see how an outright ban on the use of information, in particular its use as admissible evidence in court, could be seen as a proportionate response to any legitimate objective that might be served by the proposals.

23. Therefore, the proposals are not justified under the case law of the CJEU and would be in breach of Article 34 TFEU.

Free movement of services

24. Vianet supplies its equipment and services elsewhere in the EU. It currently has customers in France, Spain and the Czech Republic, and is looking to expand elsewhere.

25. If Vianet's domestic market is closed down by the proposals, it is evident that Vianet's continued existence would be seriously prejudiced and it would have to withdraw from offering its goods and services elsewhere in the EU.

26. This would be in breach of Vianet's right to provide services freely throughout the EU. It would moreover be in breach of Vianet's right to trade under EU law.

27. The right to provide services is enshrined in Article 56 TFEU which provides that:

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10 *R(Sinclair Collis v Secretary of State for Health* [2011] EWCA Civ 437, [2012] QB 394, [164] citing Case C-170/04 *Rosengren* [2007] ECR I-4071, [50].

> "... restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended."

28. Article 52 TFEU permits proportionate derogations provided that these are justified on grounds of "public policy, public security or public health".

29. As with free movement of goods, the case law of the CJEU has developed to permit non-discriminatory measures limiting free movement of services if adopted as a proportionate means of addressing a public interest objective.

30. As has already been noted in relation to free movement of goods, the Consultation document omits any reference to or consideration of these issues.

Right to pursue a trade

31. The CJEU has developed a general principle of EU law, that of the right to pursue a trade or profession This has been set out in following terms:

> "According to the case-law of the Court, the freedom to pursue a trade or profession, like the right to property, is one of the general principles of Community law. Those principles are not absolute rights, however, but must be considered in relation to their social function. Consequently, restrictions may be imposed on the exercise of the freedom to pursue a trade or profession, as on the exercise of the right to property, provided that the restrictions in fact correspond to objectives of general interest and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the rights guaranteed."[11]

32. Limitations on the right to trade thus fall to be analysed in the same was those on free movement of goods and services. As has already been noted in relation to those freedoms, the Consultation document omits any reference to or consideration of these issues.

C. BREACH OF THE ECHR

33. The ECHR is applicable pursuant to the Human Rights Act 1998.

34. The proposals breach three rights under the ECHR:

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[11] Case C-210/03 *Swedish Match v Secretary of State for Health* [2004] ECR I-11893, [72], in which an EU ban on the sale of oral snuff was held to be justified in the interests of public health.

- the right to a fair trial under Article 6(1);
- the right to freedom of expression under Article 10;
- the right to peaceful enjoyment of property under Article 1 of Protocol 1.

Article 6(1) ECHR

35. Article 6(1) provides that:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

36. This right to a fair trial in civil matters includes the concept of "equality of arms", namely that the parties to a civil dispute should have a fair right to test each other's evidence. Thus:

> "The principle of 'equality of arms' involves striking a 'fair balance' between the parties, in order that each party has a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent."[12]

37. However, the proposals in the Consultation document are specifically designed to prevent there being equality of arms by placing large pubcos at a substantial disadvantage *vis-à-vis* tenants.

38. Part 31 of the Civil Procedure Rules, applicable to any dispute between a pubco and tenant, requires a party to disclose all evidence relevant to the dispute. The flow monitoring information is relevant evidence and therefore will have to be disclosed to the court even if the pubco is not allowed to rely upon it. This would leave pubcos in the anomalous position that while the tenant (and indeed the judge) could consider and rely upon the flow monitoring information, but the pubco could not without breaching the Code. That would be in blatant disregard of the principle of equality of arms.

39. Moreover, flow monitoring information would be admissible evidence in disputes between tenants and pubcos with less than 500 pubs. This then leads to

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[12] Simor and Emmerson's *Human Rights Practice* (looseleaf) at ¶6.145.

discrimination against large pubcos, similarly in breach of the principle of equality of arms.

Article 10 ECHR

40. Article 10 ECHR provides:

> "(1) Everyone has the right to freedom of expression. this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

41. Article 10(1) thus guarantees the right "to receive and impart information". It is clear that the proposal to prevent large pubcos from making use of "information obtained from flow monitoring equipment ... for the purpose of determining whether a Tenant is complying with purchasing obligations" is a restriction of this right.

42. Article 10(2) sets out the circumstances in which that right may be restricted. In particular, such restrictions must be "necessary" (i.e. that "the means employed must be proportionate to the aim pursued"[13]) to achieve one of the aims set out in Article 10(2).

43. It is clear that none of the aims set out in Article 10(2) would justify the implementation of the proposals. Further, it is also clear as explained in Part B above that the Consultation document omits any reference to or consideration of the question of the proportionality of what is proposed.

Article 1, Protocol 1 ECHR

44. Article 1 of the First Protocol to the ECHR provides:

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13 Simor and Emmerson's *Human Rights Practice* (looseleaf) at ¶10.027.

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

45. The proposals fall within the ambit of the first paragraph of Article 1 Protocol 1 as the limitation on the use of flow monitoring equipment would be contrary to the right to peaceful enjoyment of that property, just as the ban on sales of cigarettes through vending machines was considered to infringe the right to peaceful enjoyment of those machines in the *Sinclair Collis* litigation.[14]

46. The Court of Appeal in England held in that litigation that although Article 1 Protocol 1 was concerned with different issues from Articles 34 and 36 TFEU, the identity and weight of the factors relevant to whether that ban was proportionate so as to be justifiable under the second paragraph of Article 1 Protocol 1 were sufficiently similar to those relevant to the same question under Article 36 TFEU for it to be unnecessary to give separate consideration to the question of proportionality under Article 1 Protocol 1.[15] The Inner House of the Court of Session in Scotland took a similar view.[16]

47. The same principles apply to the factors relevant to the question of proportionality under Article 36 TFEU and the *Cassis de Dijon* mandatory requirements in the present case. As has already been explained above, the Consultation document omits any reference to or consideration of the proportionality issue.

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14 See *R(Sinclair Collis v Secretary of State for Health* [2011] EWCA Civ 437, [2012] QB 394; *Sinclair Collis v Lord Advocate* [2012] CSIH 80, [2013] SLT 100.

15 *R(Sinclair Collis v Secretary of State for Health* [2011] EWCA Civ 437, [2012] QB 394, [54], [147], [192]-[194].

16 *Sinclair Collis v Lord Advocate* [2012] CSIH 80, [2013] SLT 100, [65].

D. THE LIMITS ON THE POWER OF THE UK PARLIAMENT TO IMPLEMENT THE PROPOSALS

48. There a further ground of domestic challenge to the proposals, arising out of the way in which legislative powers are now allocated between the UK government and the devolved administrations.

49. It is clear that the Consultation document has failed to give any consideration as to whether the proposals could be implemented on a UK wide basis as appears to be proposed. The proposal to deprive persons of the right to make use of information from flow monitoring equipment in court would be a rule of evidence in civil proceedings.

50. The UK Parliament does not have the power to legislate on the admissibility of evidence in courts other than those of England and Wales.

51. Since the Scotland Act 1998, the powers under the Civil Evidence (Scotland) Act 1988 are exercisable by the Scottish Government and Parliament, not by UK Ministers and the UK Parliament.

52. In Northern Ireland, civil evidence is dealt with by the Civil Evidence (Northern Ireland) Order 1997. Northern Irish rules on evidence fall within the jurisdiction of the Northern Ireland Government and Assembly.[17]

E. CONCLUSION

53. Should the proposals be implemented as set out in the Consultation Document, the legislation (whether primary or secondary) would be liable to challenge by way of judicial review for incompatibility with EU law and the ECHR.

54. Further, a purported implementation of this proposal would therefore be liable to be struck down on this ground in judicial review proceedings before the Court of Session so far as it purported to apply rules to evidence to Scotland and before the

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[17] I add the *caveat* that the advice in ¶¶50-52 also involves consideration of Scots and Northern Irish law, on which appropriate advice should also be sought from lawyers qualified in those jurisdictions.

High Court of Northern Ireland so far as it purported to apply rules of evidence in that jurisdiction.

AIDAN ROBERTSON QC

6th June 2013

Brick Court Chambers

7-8 Essex Street

London WC2R 3LD

Unique Pub Properties Limited, Enterprise Inns Plc -v- Onifas Limited

Summary

- **Fair Pint campaigner takes on pub company to prove flow monitoring equipment is inaccurate and illegal.**

- **The Judge who hears the case is experienced in dealing with cases involving flow monitoring equipment.**

- **The Judge finds that previous methods for investigating breaches of the tie were unreliable, unsatisfactory and intrusive, and that flow monitors provided pub companies with a useful management tool.**

Unique and Enterprise Inns Plc ('the Landlords') let premises known as The Bedford Public House, 77 Bedford Hill, Balham, SW12 9HD to Onifas Limited. The Director of Onifas Limited was Karl Harrison who is a co-founder of Fair Pint and has campaigned against pub companies, the tie and beer flow monitoring equipment.

The Landlords had installed Brulines DMS system in the public house. It appeared to be working properly. For instance:-

- In the period 2 March 2009 to 4 October 2009 for keg products, the Bedford's till records and the flow monitoring data disagreed by only 1.1%.

- In the period 8 March 2010 to 6 March 2011 for cask ales the Bedford stocktaking report and the flow monitors disagreed by only 0.06%.

- In the period 8 March 2010 to 6 March 2011 for keg products, the Bedford's till records and the flow monitors disagreed by only 0.71%.

The Landlords did not suspect Onifas Limited of breaching the tie and there had been no dispute with Onifas Limited in connection with the flow monitoring equipment.

Onifas Limited and its director Mr Harrison, appeared to wish to create litigation with the Landlords over its contractual right to install the flow monitoring equipment.

On 4 March 2010 Mr Harrison posted a comment on the Morning Advertiser Website encouraging tenants to remove their Brulines equipment and stating *'The Court is not going to interfere with that through injunction. There is no possibility of contempt, you are wrong'.*

On 10 March 2010 Mr Harrison emailed the Landlords stating that he considered the flow monitoring equipment to be illegal under a host of criminal offences, including those under the Theft Act, Proceeds of Crime Act, Fraud Act and a series of health and safety statutes. He gave the Landlords 10 days notice to disconnect and remove the flow monitoring equipment or he would.

On 23 March 2010 the Landlord's solicitors sought an undertaking from Onifas Limited that the threat to remove the equipment would not be carried out. They informed Onifas that if they failed to provide those undertakings then the Landlords would apply to Court for an injunction to restrain the removal of the equipment.

Mr Harrison's response was to state *'I will be content for you to seek an injunction - it will offer me the opportunity to ventilate the matter fully in Court.... I see that Government has this week again reconfirmed its own concerns about the Bruline system and I will certainly be drawing the Government's attention to these proceedings as they develop'.*

Injunction proceedings were issued by the Landlord and by a Consent Order Onifas Limited agreed not to remove the equipment during the course of the proceedings without first providing notice.

Onifas Limited's challenge to the equipment was based on an assertion that the right to install was subject to an implied term that the Landlords could not install equipment that was unlawful and inaccurate. They asserted that the Brulines' flow monitors were not accurate and put the Landlords to proof as to their lawfulness.

In relation to accuracy, Onifas Limited sought to rely on expert evidence from a Dr Graham of Sud Tuv Nel. That expert evidence was served late and was only served some three weeks before the trial.

The expert report was based on testing Dr Graham had carried out at the Bedford. The results of that testing were fundamentally undermined because, as she admitted in a letter dated 28 October 2011, Dr Graham did not know the details of how the EDIS box processed information or how the system carried over data.

The point that Dr Graham did not understand was that Brulines' DMS system records all dispense, but only adds a half pint to the report once a full half pint is reached. Therefore at the start of an hour's testing the system had up to ½ a pint of dispense data stored. This is why it is necessary for Trading Standards, when they carry out tests, to be in contact with Vianet so that the system can be set to zero for the period of testing.

As an example, Dr Graham poured 1.79 pints of San Miguel in a particular hour. The flow monitoring equipment could have registered 1.5 pints or 2 pints depending on how many pulses were stored from the previous hour. In fact, the flow monitors recorded 2 pints, which caused Dr Graham to assert that the system had wrongly over recorded by 11.6%.

Because Dr Graham poured a small amount and in quantities that were short of ½ pint, there were seven of her tests where the system could not possibly have recorded a result within 10% of the measured volume. Dr Graham's standard was plus or minus 5% on a measured dispense of 1 pint. There were 18 out of 32 tests she carried out where it was impossible for the DMS figure to be within 5% of the value measured. These and other errors in Dr Graham's testing could have been avoided had Onifas accepted the Landlords' offer of assistance from Vianet in carrying out the testing.

The matter went before His Honour Judge Behrens in the High Court in London in mid-November 2011 for a two day trial. His Honour Judge Behrens had had experience with Brulines flow monitoring because he sat in the High Court Leeds where Punch Taverns issue the majority of their injunction cases. He was therefore familiar with the operation of the system and the information it produced.

The obvious faults in Dr Graham's evidence were such that the Landlords were prepared to waive the lateness of service of Dr Graham's report and go ahead with the trial without their own expert, provided that Onifas did not challenge the admissibility of evidence in response from a Director of Vianet. Onifas turned down that offer and objected to the evidence from Vianet. Therefore the case proceeded on the preliminary issue of whether there was an implied term of accuracy and lawfulness in the lease.

His Honour Judge Behrens concluded in his judgment:-

- The main (but not the only) purpose of flow monitoring equipment is to enable the landlord to identify breaches of the tie. The other methods of monitoring compliance with the tie (ie rights of entry, access to tenant's books, cover surveillance) had proved unreliable and unsatisfactory. The barrister for Onifas did not attempt to challenge that evidence.

- It is, of course, open to a tenant to challenge readings from flow monitors that are said to be inaccurate. VAT returns and other records may prove the tenant has not been buying out of the tie.

- There was no contravention of Weights & Measures Act 1985.

- There is no necessity for the implied term as to lawfulness and accuracy asserted by Onifas Limited.

Following the judgment being handed down, the Barrister for Onifas attempted to argue that the case should continue on public interest grounds for the benefit of other tenants. His Honour Judge Behrens stated that he had reservations as to whether the testing carried by Dr Graham was relevant to other pubs as there were points that were fact sensitive. His Honour Judge Behrens stated that Mr Harrison and Onifas, if they wished the point to be resolved through the Courts, could always support with funding a challenge to the system on behalf of another tenant who was accused of breaching the tie.

Enterprise Inns Plc -v- Broad Green Tavern Limited (1) Daniel Joseph Dempsey (2)

Summary

- **The tenant had their own flow monitoring system installed in the pub but objected to Vianet's iDraught being installed.**

- **One of the tenant's arguments was that the equipment was unlawful under Section 17 of the Weights & Measures Act 1985.**

- **Judge found that the equipment is not 'in use for trade' and is not covered by the Weights & Measures Act 1985.**

Unique Pub Properties Limited ('the landlord') let Premises known as the Broad Green Tavern, Croydon to Broad Green Tavern Limited.

The landlord wished to install Vianet's iDraught system in the public house. The tenant objected to the installation on the grounds that:-

- The obligation in the lease to allow access to the landlord did not cover flow monitoring equipment for the purpose of monitoring compliance with the tie.

- The right of entry did not cover the installation of equipment which is unlawful.

- The right to install equipment did not cover equipment that would interfere substantially with reasonable operation of a public house.

- The tenant required the landlord to prove that the equipment satisfied the requirements for electrical safety and food hygiene.

The tenant had installed their own flow monitoring system from a company called Searflo which they used for stocktaking and staff training purposes. They claimed not

to object to the installation of flow monitors per se, but they had a particular objection to the installation of any product manufactured by Vianet. They claimed to have had poor experiences with Vianet's products in the past.

The Judge rejected the tenant's arguments that the flow monitors were not of the type of equipment the landlord was entitled to install under the lease.

The main substance of the case centred on whether the equipment was covered by the Weights & Measures Act 1985. It was put to the Judge by the tenant's barrister that the equipment was in 'use for trade' because there were transactions with which it was used in connection with or with a view to. The transactions the tenant's barrister identified were:-

a. The sale of beer and cider to customers.

b. The purchase and sale of beer and cider from third parties in breach of the tie.

c. The raising of a damages claim by the landlord against the tenant for breaches of the tie.

The Judge analysed each argument and rejected them. The Judge referred to the authority of the Onifas case on the issue of the Weights & Measures Act and effectively agreed with His Honour Judge Behrens. The Judge concluded '*Accordingly I conclude that BGTL and Mr Dempsey have no arguable defence which seeks to rely on the provisions of Section 7 and 17 W&MA.*'

The Judge went on to conclude that he could see no argument to support any allegation that the landlord's decision to install the equipment would substantially interfere with the operation of the tenant's business or that the landlord's decision to install was arbitrary, capricious or unreasonable.

Financial analysis of the potential loss of revenue from the effective banning of flow monitoring in pub companies with over 500 pubs

	Assumptions	Actual data	Calculations
Customer's actual data			
Pub companies (>500 pubs) sites with flow monitoring		13,494	
Delivered barrelage (12 months)		2,288,444	
Average barrels per site		169.59	
Input Data			
All pub company sites with flow monitoring		17,267	
Potential loss % (see below)	7%		
Price per pint (see below)	£3.00		
Workings			
Total delivered volume (over all sites) *Extrapolated over all sites (i.e. 17,267 sites x 169.59 barrels per site)*			2,928,310
Potential lost barrelage *7% of the total deliveries (2,928,310 barrels)*			204,982
Potential lost pints *Loss converted to pints (i.e. 204,982 x 288)*			59,034,816
Revenue over bar ***Lost pints at assumed price per pint (59,034,816 pints x £3)***			**£177,104,448**

Assumptions analysis

- A brewer's barrel is 36 gallons or 288 pints. Note: Beer is normally supplied in 9, 10, 11, 18 or 22 gallon kegs
- Barrelage for all sites has been based upon the average barrelage for pub companies with more than 500 sites extrapolated over all tenanted / leased sites with flow monitoring. The total barrelage is believed to be a prudent view of the market. Figures from the BBPA assessed the barrelage from the tenanted and leased market to be circa 4 million barrels (2011 figures)
- The loss of 7% equates to the immediate uplift in average deliveries generally achieved when flow monitoring is first installed. This can be verified by customers of Vianet.
- The retail sale of £3.00 per pint is a prudent assessment of the average sales price of a pint of beer across the country.