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B A P T O

REPRESENTING SUPPLIERS OF
COIN-OP AMUSEMENT EQUIPMENT
EST. 1975

Dear Sir/Madam,

We are a representative organisation, we wish to give evidence to the Business Innovation and Skills Committee Consultation on establishing a statutory code for pub companies and tenants. Our response in the attached document is to answer question 8, section III.

BACTA is a long established (1975) trade association representing suppliers of coin operated Pool tables, Juke boxes, AWP machines etc. Our address and contact details are as follows:

BAPTO
P.O.Box 4734
Shrewsbury
SY1 9FQ

Telephone: 1

Email :

If this letter does not fulfil all your requirements please do not hesitate to contact me.

Yours sincerely

Micheal Dicks
Chairman
(Bapto)

BAPTO PO BOX 4734, SHREWSBURY SY1 9FQ

BAPTO

REPRESENTING SUPPLIERS OF
COIN-OP AMUSEMENT EQUIPMENT
EST. 1975

MEMORANDUM OF EVIDENCE FROM BAPTO **(BRITISH ASSOCIATION OF POOL TABLE OPERATORS)**

TO THE BUSINESS INOVATION AND SKILLS SELECT COMMITTEE **CONSULTATION ON ESTABLISHING A STATUTORY CODE FOR PUB** **COMPANIES AND TENANTS.**

Dear Sir/ Madam,

BAPTO is a long established (1975) trade association representing suppliers of coin operated Pool Tables, Juke Boxes, AWP Machines etc.

We have given written evidence to the Pubco inquiries in 2004, 2009, 2010 and 2011.

We are making this submission on the assumption that the consultation on establishing a statutory code for pub companies and tenants accepts recommendations by previous pubco inquiries that the AWP tie be removed, the recommendations that are of concern to us are 19 paragraph 129 of the T&ISC 2004 and 103 of the BESC 2009, They read as follows.

19 (Paragraph 129) The machine tie improves tenants' takings from amusement with prizes machines (AWP). However, as free of machine tie tenants retain 100 percent of these takings as income, while tied tenants by PUBCOS own admission receive an average 50 percent of these takings, it appears from the information the PUBCOS themselves submitted that in many cases free of tie tenants make more money from their second tier machines than tied tenants do from their more up-to-date models, In our opinion, PUBCOS do not add sufficient extra value from their deals to justify their claims to 50 percent of takings from AWP machines. **We remain unconvinced that the benefits of the AWP machine tie outweigh the income tenants forego and we recommend the AWP tie be removed.**

(103) in 2004 the Trade and Industry Committee concluded that "in our opinion Pubcos do not add sufficient extra value from their deals to justify their claims to 50% of the takings from AWP machines. We remain unconvinced that the benefits of the AWP machine tie outweigh the income tenants forgo and we recommend that the AWP tie be removed" **That conclusion remains valid.**

BAPTO PO BOX 4734, SHREWSBURY SY1 9FQ

We give you the following details to support our case:

1

TENANTS AND LESSEES ARE STILL PAYING HIGHER RENTS FOR THE LATEST AWP'S

Enclosure
Withheld

To prove this is the case we enclose the latest rent lists of (1) I enclose a current rent list which shows that tenants are paying £77.98 per week for top of the range AWP's, free of tie tenants would pay £60 per week for the same machines, add this to the £5 royalty for a pool table, £5 royalty for an SWP and £1.65 for a Juke Box and a tied tenant is paying out £29.63 per week more for the same machines than a free of tie tenant, this is 9 years after the first Pubco Inquiry recommended the end of the machine tie, this fact alone must prove while the machine tie exists Pubcos will always find ways to take advantage of their tenants, the only answer is to make the removal of the machine tie part of statutory regulation.

2

TENANT AND PUBCO A PARTNERSHIP ?

I enclose a copy of the section of a tenancy agreement (more a dictat than an agreement) (2) covering amusement equipment. This is from a current agreement and I think it sums up the whole attitude of Pubcos to their tenants when it come to Amusement Equipment, they feel that they are in control and will do as they like to satisfy their greed, Irrespective what anyone else thinks or does. The Pubcos attitude is worse now than it was before the Trade and Industry Select Committee decision in 2004 (nine years ago) and I fear it will never change until the machine tie is removed by statutory regulation.

This document is the key to the actual mechanism of the machine tie. The decision to have amusement machines and who is to supply them should be made by the the tenant/lessee not the Pubco (providing all legal requirements are met). This would be a big step towards creating fairness in the tenant/lessee Pubco relationship.

3

JUKE BOXES, POOL TABLES, S.W.P.'S(QUIZ) – (NON AWP EQUIPMENT)

Pubcos sole argument in defence of the AWP tie is that they add value to the machine takings. This argument does not apply to none gaming equipment, yet they still charge royalties and take a share of the cash box. We enclose details of how this system works. We have used £80.00 per week (gross takings) in our examples but many of these machines take much more than this. The more the machines take, the more and more disadvantaged the tied Tenant becomes. As you study these figures it will become more and more apparent that the Pubcos will do anything they can to maintain the tie (all figures we have used are verifiable). In the examples shown overleaf (in which we have used like for like machines) a tied Tenant would be £68.97 per week worse off than their free of tie counterpart. There is no justification for this situation to exist and even less for it to be allowed to continue. The royalty payments used in these examples are those imposed by royalties are no longer called royalties they go under different headings, 'Administration Fee' 'Listing Fee' but they are infact Royalties.

POOL TABLE

(Pubcos charge a £5.00 per week Royalty fee on Pool Tables)

MACHINE TIED TENANT		FREE OF TIE PUBLICAN	
GROSS TAKE	£80.00	GROSS TAKE	£80.00
LESS £13.33 VAT	£66.67	LESS £13.33 VAT	£66.67
LESS £20 RENT (INC. ROYALTY FEE)	£46.67	LESS £15 RENT	£52.67
50% PUBCO	£23.23		
50% TO TENANT	£23.34	TO FREE OF TIE PUBLICAN	£52.67

In this example the Pubco would also receive a £5 Royalty payment from the supplier so the Pubco share would increase to £28.33

A free of tie Publican would receive £29.33 per week more than a tied Tenant.

JUKE BOX

(Pubcos charge a £1.65 per week Royalty fee on Digi Juke Boxes)

MACHINE TIED TENANT		FREE OF TIE PUBLICAN	
GROSS TAKE	£80.00	GROSS TAKE	£80.00
LESS £13.33 VAT	£66.67	LESS £13.33 VAT	£66.67
LESS £1.47 PPL	£65.20	LESS £1.47 PPL	£65.20
LESS £22.96 FRONT MONEY	£42.24	LESS £35 RENT	£30.20
50% TO SUPPLIER	£21.12		-
25% TO PUBCO	£10.56		
25% TO TENANT	£10.56	TO FREE OF TIE PUBLICAN	£30.20

In this example the Pubco would also receive a £1.65 Royalty payment from the supplier so that the Pubco share would increase to £12.21. These amounts relate to the same Juke Box.

A free of tie Publican would receive £19.64 per week more than a tied tenant.

S.W.P. (Quiz)

(Pubcos charge a £5 per week Royalty fee on S.W.P.'s)

MACHINE TIED TENANT		FREE OF TIE PUBLICAN	
GROSS TAKE	£80.00	GROSS TAKE	£80.00
LESS £13.33 VAT	£66.67	LESS £13.33 VAT	£66.67
LESS 60% TO SUPPLIER (£40.00)	£26.67	LESS 50% TO SUPPLIER	£33.33
20% TO PUBCO	£13.33		
20% TO TENANT	£13.34	50% TO FREE OF TIE PUBLICAN	£33.34

In this example the Pubco would also receive a £5 Royalty payment from the supplier so that the Pubco share would increase to £18.33.

A free of tie Publican would receive £20.00 per week more than a tied Tenant.

CONCLUSION

The removal of the machine tie is no nearer now than it was 9 years ago, despite four Pubcos inquiries stating 'The machine tie must be removed'. The Pubcos will never give up the tie until they are forced to, they have too much money to lose that rightfully belongs to their tenants. It is also a massive boost to their cash flow and gives them a mechanism to get their hands on the cash before the tenant.

Pubcos charging 'Royalties' or listing fees or admin charges whatever they like to call them and taking a share of the cash box from ancillary equipment (juke boxes, pool tables, SWP's etc) is a total disgrace, yet everyone ignores this issue and the Pubcos keep taking the money and don't even make a defence of to their right to do so.

A free of machine tie option for tenants will remain a dream until the removal of the machine tie is removed by statutory legislation history proves that.

The removal of the machine tie would be a massive boost to tenants but it would not be catastrophic for the pub industry. I would point out that after the brewers were compelled to sell off many of their pubs these pubs were leased out on long term leases with NO machine tie and that system worked well. It was only when Pubcos started to establish themselves that the machine tie stranglehold became the norm.

The removal of the machine tie will create many jobs in the amusement machine supply industry and would breathe new life into many small companies. At the moment there are 3 large companies (Gamestec, Sceptre Leisure, I.O.A.) and about 50 other smaller companies supplying machines under the tied system. There are 600 potential suppliers licensed by the Gambling Commission to supply this market. If the tie were removed it would introduce transparency and competition that would lead to lower rents and better service for tenants, the only losers being the Pubcos and the small number of existing suppliers who would have to compete for the business on a level playing field.

While the mechanism of the machine tie remains, any loss suffered by the Pubcos can be more than made up for at a later date by Pubcos increasing the 'Royalties' (or listing fees, administration charges) they charge and increasing their percentage share of the machine takings; It is the actual mechanism of the machine tie that needs to be removed (i.e. So that any Gaming Board certified supplier can supply a tenant without needing the approval of the Pubco).

The Pubcos have been given long enough to sort this issue out (9 Years). The last thing that is needed now is to give them more time, they have no intention of giving up the machine tie unless compelled to do so. The only answer to this issue is to make the removal of the machine tie part of statutory regulation, no ifs and no buts.

The final comment can be left to the T.ISC 2004 Chairman Martin O'Neill.

Committee Chairman Martin O'Neill was sufficiently moved to say that "The issue of machine income was the last blatant example of the profiteering that had been common place amongst pub Landlord companies historically."

Yours Sincerely

Micheal Dicks
Chairman
(BAPTO)

Amusement, audio-visual and other equipment

1 General obligations

- 1.1. You agree not to install any **equipment** at the **property** unless we give permission. We can withdraw any permission at any time.
- 1.2. You agree that you will install any **equipment** that we consider necessary to promote the **business**.
- 1.3. We can ask you to remove equipment we have not given permission for. If you do not remove it, we can remove it and charge you the cost of removing and disposing of the **equipment**.

2 Terms of Installation

You must make sure that all **equipment**:

- 2.1 is the exact model and type we have agreed to or asked for;
- 2.2 is installed and kept only in the location we have agreed to or asked for;
- 2.3 is from a supplier we have agreed to or asked for (if this applies) and we can change the supplier from time to time during the **agreement period**;
- 2.4 is available for public use whenever the **property** (or the parts of the **property** where the equipment is situated) is open for trade;
- 2.5 is maintained, serviced or replaced according to our (or the supplier's) current instructions and only using the engineers or repairers the supplier recommends or we require (if this applies); and
- 2.6 is kept in working order (and, if it is not working properly, you must tell the supplier at once so that the equipment is repaired or replaced).
- 2.7 You must agree and keep to the supplier's operating terms for each item of **equipment**. All keys for **equipment** are to be kept by suppliers unless we agree otherwise.

3 Removing equipment

- 3.1 If we ask you to, you will immediately stop using all or any of the **equipment** and will immediately remove it from public areas of the **property**.
- 3.2 From the time we ask you to stop using the **equipment**, you will no longer be able to recover your costs of operating the **equipment** as outgoings.

4 Amusement machines

- 4.1 In this section proceeds means:
 - all cash collected from amusement machines; and
 - the proceeds of selling tokens for use in amusement machines.

The following will also apply:

- If we ask, you will empty amusement machines of cash at regular intervals (and you will be accountable for it in line with this **agreement**). Otherwise we can empty them.
- Whoever receives the proceeds (you or us), will hold those proceeds for both of us. They will first be used to pay outgoings and then be classed as net proceeds in line with this section.

4.2 Only the following items of expenditure can be regarded as 'outgoings' for the purposes of this section.

- 4.2.1 Any money placed in any equipment as a float.
- 4.2.2 Any money refunded to customers of the business, as compensation for the equipment being faulty. You will act reasonably when making any payment of this type and you must get a receipt.
- 4.2.3 Any money that can be recovered (directly or indirectly) from the proceeds through VAT (or other taxes or duties) in the amusement machine takings.
- 4.2.4 All rent and other payments to the supplier of the amusement machines for use, maintenance, repair or replacement of the amusement machines. This refers to the gross amount of any such payment, before taking off any discount or other concession given by the supplier.
- 4.2.5 Licence duty and any similar tax or payment which is additional to or replaces it.
- 4.2.6 Charges for a phonographic performance licence.

Electricity consumed by amusement machines is not an outgoing.

4.3 In this section the 'net proceeds' of each amusement machine equal the proceeds (to date) from that item, less the outgoings (to date) on that item.

- 4.3.1 The proceeds made by each machine will be used first to reimburse outgoings (see paragraph 4.2 above) and then (subject to 4.3.5 below), the net proceeds will be shared between you and us equally.
- 4.3.2 Any losses (shown by a negative figure for net proceeds) will also be shared equally.
- 4.3.3 We will meet with you as often as is reasonably necessary to agree the proceeds, outgoings and net proceeds.
- 4.3.4 We may have to charge VAT on your share of the net proceeds. If this is the case, we will take the VAT off your share of the net proceeds so that you will receive the net amount while we receive our share of the net proceeds plus the relevant VAT. We will provide you with a VAT receipt for any amounts set off in this way.
- 4.3.5 Before we pay you your share of the net proceeds, we can deduct from these any rent or other sums that you owe to us under this agreement.
- 4.3.6 Proceeds and outgoings will be assessed and net proceeds will be distributed as often as we require.