
From: com]
Sent: 13 June 2013 16:59
To: Pubs Consultation Responses
Subject: submission by an operator

Attachments: 13-718RF-pub-companies-and-tenants-a-government-consultation-response-form.doc

Ther attached submission comes from a small comapny operating two pubs tied to Enterprise Inns. We believe we are a classic example of a business that should be thriving, based on our investment and our success in dramatically improving the turnover and community profiles of our pubs and yet we are failing to break even, let alone make a profit, because of the exploitative pricing imposed by Enterprise's "tie".

If we were free to pay the prices available in any wholesale store we would be a profitable business able to secure the employment of our staff. lift our community engagement and reward our investment and work.

If the government or the relevant parliamentary committee would like to question and hear evidence from an operator struggling under this burden please contact us.

cheers

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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	
Trade Union	
Interest Group	
Small to Medium Enterprise	XX
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 responses.

Consultation questions

Q1. Should there be a statutory Code?

Yes

Q2. Do you agree that the Code should be binding on all companies that own more than 500 pubs? If you think this is not the correct threshold, please suggest an alternative, with any supporting evidence.

Yes

Q3. Do you agree that, for companies on which the Code is binding, all of that company's non-managed pubs should be covered by the Code?

Yes

Q4. How do you consider that franchises should be treated under the Code?

Without destroying the concept of tied pubs as a business model, there must be proper supervision to prevent excesses and exploitation of pub operators. The most glaring example is forcing operators to buy drinks at prices which are often twice the market rate.

In our case, running two pubs tied to Enterprise Inns, those exploitative prices have stopped us from making any profit at all despite the fact that we have dramatically increased the turnover and quality of offering at each of our pubs since taking them over. At one of our pubs we have lifted turnover from a previous weekly performance of about £3k to regularly topping £13k but we are still struggling financially because of the excessive prices charged by Enterprise Inns. We have detailed figures showing that buying our supplies on the open market while paying a normal commercial rent would leave us nicely profitable.

At our second pub we have more than tripled turnover since taking it over three years ago but our investment and performance have not been rewarded with profits because of our tie to Enterprise Inns.

What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence.

Limiting the wholesale prices that can be imposed on pubs, in order to make them reflect market prices, would transform the fortunes of operators like us. We would be instantly profitable and in a position to increase employment, investment and our role in the community.

Q5. What are your views on the future of self-regulation within the industry?

This is a last chance for hundreds of operators because if there is no reform to the industry structure many operators will have to accept that their businesses are unviable. Under the current structure companies such as Enterprise Inns seem to be so overwhelmed by their own debts and short-term duties to their shareholders that they cannot see that their own long-term success depends on treating operators as partners rather than "cows" to be milked dry.

Q6. Do you agree that the Code should be based on the following two core and overarching principles?

- i. *Principle of Fair and Lawful Dealing***
- ii. *Principle that the Tied Tenant Should be No Worse Off than the Free-of-tie Tenant***

Yes.

Q7. Do you agree that the Government should include the following provisions in the Statutory Code?

- i. *Provide the tenant the right to request an open market rent review if they have not had one in five years, if the pub company significantly increases drink prices or if an event occurs outside the tenant's control.***

Yes

- ii. *Increase transparency, in particular by requiring the pub company to produce parallel 'tied' and 'free-of-tie' rent assessments so that a tenant can ensure that they are no worse off.***

Yes

- iii. *Abolish the gaming machine tie and mandate that no products other than drinks may be tied.***

- iv. *Provide a 'guest beer' option in all tied pubs.***

Yes

- 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.***

No

Q8. Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered?

Q9. Do you agree that the Statutory Code should be periodically reviewed and, if appropriate amended, if there was evidence that showed that such amendments would deliver more effectively the two overarching principles?

Yes.

Q10. Should the Government include a mandatory free-of-tie option in the Statutory Code?

Yes.

Q11. Other than (a) a mandatory free-of-tie option or (b) mandating that higher beer prices must be compensated for by lower rents, do you have any other suggestions as to how the Government could ensure that tied tenants were no worse off than free-of-tie tenants?

By strictly monitoring the prices charged for tied products, compared to market prices, and enforcing limits on how much an operator can be charged.

Q12. Should the Government appoint an independent Adjudicator to enforce the new Statutory Code?

Yes

Q13. Do you agree that the Adjudicator should be able to:

i. Arbitrate individual disputes?

Yes

ii. Carry out investigations into widespread breaches of the Code?

Yes

Q14. Do you agree that the Adjudicator should be able to impose a range of sanctions on pub companies that have breached the Code, including:

I. Recommendations?

II. Requirements to publish information ('name and shame')

III. Financial penalties?

Financial penalties are the only real penalties. Naming and shaming, self-regulation and guidance have all failed.

Q15. Do you consider the Government's proposals for reporting and review of the Adjudicator are satisfactory?

Q16. Do you agree that the Adjudicator should be funded by an industry levy, with companies who breach the Code more paying a proportionately greater share of the levy? What, in your view, would be the impact of the levy on pub companies, pub tenants, consumers and the overall industry?

Yes. The impact of the levy on pub operators would be negligible compared to the benefits that would flow from wiping out the exploitative and abusive practices now widespread in the industry.