RETAINED VERTICAL BLOCK EXEMPTION REGULATION
CMA CONSULTATION JULY 2021

ABOUT

SIBA was established in 1980 to represent the then growing number of independent breweries in the UK. Having peaked three years ago at 831 members, today SIBA has around 723 who between them brew 80-85% of the country's independently brewed beer. Significantly 67% of the beer produced by small brewers is cask-conditioned fresh beer, which can be sold only in pubs. SIBA's membership encompasses a broad range of brewers from very small nano-breweries to larger firms owning pubs, taprooms and shops.

CONTACT INFORMATION

For further information please contact:

Barry Watts
Head of Policy and Public Affairs
The Society of Independent Brewers
Unit 4, the Old Laundry Ripon, HG4 1NL
Tel: [redacted]
Email: [redacted]

INTRODUCTION

The Society of Independent Brewers (SIBA) welcomes the opportunity to respond to the Competition and Markets Authority (CMA) review of the retained Vertical Block Exemption Regulation (VBER). SIBA firmly believes that a clear, effective competition regime is essential in order that its members can conduct their business fairly and profitably. The Society's view is that the present framework is not delivering a functioning market, to the detriment of competing businesses and of the consumer.

CURRENT MARKET CONDITIONS

The UK's beer market is currently dominated by four global companies (ABInBev, Heineken, Carlsberg and Molson Coors) that produce 88% of the steadily reducing amount of beer consumed in the UK. While the number of small independent breweries in the UK is far from certain and estimated at widely varying levels by different sources, we believe that the number currently in commercial production is now in slow decline and may currently be no more than 1400. However, these still account for only in the region of 6% of the beer consumed in the UK. The balance is made up of other internationally owned brands and a number of large, regional 'family' brewers, whose beers are primarily sold through their own pub estates which are largely closed to any other brewers' beers.

The vast majority of the beer our members produce (around 80%) is, in normal times, sold in public houses in the UK. The structure of this market means that many public houses are not readily accessible to small brewers to sell their beers and therefore consumer choice is diminished. According to 2019 figures[1], 49% of UK pubs were independently owned (known as the 'free trade') and 51% were owned by Pub Companies (PubCos) or large breweries. Of these 51%, 21% were managed and 30% were tenanted or leased. This results in a significant part of the market being foreclosed to small brewers, with only 5% of their beer sold in tied pubs and 52% sold to free trade pubs.[2]

The industry has been hit hard by the Covid-19 pandemic, with 200 million fewer pints of craft beer being produced last year with the enforced closure of pubs – representing 10 years of lost growth and a 34% fall in production.[3] In the last quarter of 2020, brewers experienced a 45% fall in sales during the critical Christmas period. Small brewers have accumulated around £30,000 of debt each and over the past year, we have seen more than 40 breweries closing for good and others are on the verge of shutting.

BEER TIES

Those subject to a beer tie are generally obliged to buy part or all their beers from the pub owner or according to the pub owner's direction. Where pubs previously owned by brewers have been sold, the new owners have generally inherited those purchasing ties already incorporated in existing leases and since these have significant rental value, they have often been retained by the new owners even though they are not themselves brewers, for the additional income stream they furnish. This means that licensees of not only the 51% mentioned above but also many "independent" pubs are all precluded from buying beers from our members unless at a significant premium imposed by the pub owner. This means the 'the free trade' is not necessarily free and consumer choice here too, is limited.

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[1] British Beer and Pub Association Statistical Handbook 2020

[2] https://www.siba.co.uk/SIBA-British-Craft-Beer-Report-2020.pdf

[3] SIBA Survey January 2021 - https://www.siba.co.uk/2021/02/12/200-million-fewer-pints-craft-beer-brewed-2020/

SUPPLIER TIES

Where the tenant of licensed premises is not subject to such a tie in their lease, then larger brewers can attempt to "tie" the pub to buying only from them by other methods including lending money to the customer (known as 'soft loans') or offering special discounts in exchange for a sole supply contract.

The access and usage conditions of beer dispensing equipment can be considered another form of 'tie' in addition to these. The control of 'technical services' (the supply, ownership, installation and maintenance of dispense beer equipment) is incredibly important but often overlooked as another barrier to market access and therefore restriction of consumer choice.

Beer dispense equipment is in the majority provided and owned by a 'lead brewer' which is again dominated by large companies. Heineken is the largest provider and is lead brewer in around 25% of pubs nationally. They are followed by Molson Coors, Carlsberg and ABInbev. These lead brewers apply different payment or rental methods on those using the equipment. For example, Heineken requests that smaller brewers who use those lines in pubs pay a monthly charge. If the brewer fails to pay this, then pubs are charged on their behalf. Other 'lead brewers' request a one-off connection fee which can vary between £315-£395. This imposes a barrier to entry by restricting the ability of small brewers to supply their beers in these pubs. A minority of pubs in the UK own their own equipment, although data on these is difficult to acquire. Companies then provide the supply, installation and maintenance of this equipment on behalf of the 'lead brewer' or owner of the equipment.

MARKET SHARE THRESHOLD

SIBA's view is that the market share thresholds applied under the present regime permit oligopolistic or complex monopoly behaviour by its members' principal competitors. Whether the 30% figure should be reduced or whether thresholds for tolerable combinations of market share exceeding that figure should be more robust, or the rules governing the prevention of market sharing behaviour should be tightened is not clear to SIBA.

DUAL PRICING

SIBA believes that the current regime should be tightened to address the problem of dual pricing within its market, whereby manufacturers' products are price loaded by intermediaries so as to ensure they become uncompetitive to the ultimate retailer and the end consumer, a consequence of the permissibility of the application of the brewers' tie to constrain and distort the market to the disadvantage of the retailer and restrict consumer choice and force up retail price.

It is significant that there are no realistic alternative channels to market for cask-conditioned beers to exert downward pressure on prices and upward pressure on choice in the on trade, since they cannot easily be sold in the "off" trade or online, thus frustrating the principle, articulated in paragraph 4.38, that "every distributor should be allowed to use the internet to sell products".

NON-COMPETE OBLIGATIONS

SIBA's view is the five-year limit most definitely operates against the consumer interest in its market and should be replaced. A reasonable alternative in SIBA's view would be a sole-supply contract which could be assigned to an alternative supplier at any time on a short period of notice and a fair "buy-out" procedure, with an arbitration process to resolve disputes.

DEVOLVED ADMINISTRATIONS

On the matter of the separate jurisdictions of the devolved administrations, and in particular in relation to the environmental and sustainability questions raised, SIBA believes that all new obligations which may be imposed in relation to Deposit Return Schemes, and also to health-related information, should be evaluated for its market distortive effects under competition legislative framework, so that all governments' and departments' requirements are assessed for their cost and market distortive effects in addition to their primary aims.

TRANSITIONAL PERIOD

SIBA's view is that the proposed transitional period of a year is realistic and reasonable.