

**BUSINESS & ENTERPRISE SELECT COMMITTEE**  
**PUBC INQUIRY**

- The Business and Enterprise Select Committee published its report into the relationship between pubcos and their lessees on 13<sup>th</sup> May. Although the original inquiry was designed to determine whether the recommendation of the 2004 inquiry into the pubcos had been implemented and effective, this report represents a fundamental root-and-branch review of this part of the sector and the business model on which it is predicated. The implications could, therefore, be wide-reaching.
- This note summarises the main recommendations and the opinions stated are those of the Committee. It also gives a flavour of the tone and emphasis where appropriate.

**Overall Approach**

- The report tries to be well-balanced and is certainly a very thorough examination of the main arguments, complaints and defences put forward during the inquiry. The focus of its investigation is the national pubcos and in particular Punch and Enterprise. The Committee focused on these companies because of their dominance in the market.
- The report acknowledges that not all the problems in the industry come from the tied house model and clearly states that the tie does not operate unfairly in the regional brewer estate. It also acknowledges that the imbalance of power it highlights is not present in all pubco relationships – a point emphasised by *ALMR* in its evidence.
- It also accepts that the 70 critical submissions made by licensees represent a small proportion of the total and that in some instances they were naïve. Nevertheless, it states that there was “consistency of lessees complaints” and that they were “assiduous in providing us with verifiable information”.
- In contrast, the Committee appears to be less convinced by the merits of the case presented by the pubcos. It states that Punch and Enterprise were often misleading in their evidence and made assertions which were “very partial ... or positively false ... repeated slips in evidence undermined the reliability of their evidence”. This tone of scepticism peppers the report whenever references are made to pubco claims.
- Whilst the publicity surrounding the report has focused on the tie, the report ranges more widely. The focus is on the imbalance in buying power and information between the landlord and the lessee of the major pubcos and it is this which they believe adversely impacts on the overall fairness of the model. It is this which they believe to be the source of the present problems in certain companies.
- The report quotes extensively from the *ALMR*'s evidence to the Committee – indeed we are the strongest industry voice – and picks up on our two principal recommendations. Namely, that lessees should be offered a genuine choice between a tied and free of tie lease and the basis for assessing and calculating rents should be more transparent, with a better understanding of all income streams, determining operating costs and a fair division of profits. The *ALMR* Benchmarking Survey is recommended.

## Rent Assessments/Rent Review

- The 2004 Select Committee Inquiry recommended that guidelines should be developed on rental valuations, lessees be provided with a breakdown of how rent is calculated and a national register of rent reviews be established. The Report is highly critical that no steps have been taken to meet these and the recommendations are repeated in full.
- The Committee argues that “transparency on how rent is calculated and access to figures for comparable premises would properly strengthen the lessees negotiating position”. Without this, it believes rent calculations are open to “manipulation by the pubcos” eg the deflation of operating costs. The Committee recommends that guidelines such as the *ALMR* Benchmarking Survey be used in rent negotiations.
- The report also calls for full trading history to be shared with lessees. This is an area where they felt that the pubcos misled them, claiming that they categorically did not have access to lessees books and therefore could not provide this information.
- It argues that unless these measures can be taken to improve transparency about how rent is calculated “as a matter of urgency, there are compelling arguments for abandoning the FMT method entirely”. It also states that Government action in these areas should take priority over matters related to the tie.

## The Tie

- The report systematically examines all the evidence presented by the pubcos to justify the benefits of the tie. In each case it implies that this is overstated and concludes that the disadvantages of the tie to lessees outweigh the benefits:
  - **lower dry rent:** “not been presented with any substantial evidence that rents for tied pubs are significantly less than for equivalent free of tie pubs”
  - **low cost entry model:** “overstated”. Their survey of lessees suggested that this was not a factor in taking on a tied pub – it was what they had to do to get that site. Committee suggests that pubcos are diminishing competition by forcing lessees to adopt their business model to take on specific sites
  - **Benefits of pubco buying power:** extolled by Punch and Enterprise as offering greater product choice and reduced admin but the Committee concluded that it was selective and “seriously misleading” to promote it if they didn’t pass the benefit on in terms of price and discounts
  - **Business support:** BDMs “too many offer little help or support... some bully and intimidate .... A culture which can reach further up the company”
  - **Financial assistance:** Committee believe that the pubcos misled them in oral evidence by implying that this was widely available and offered without strings. Two thirds of lessees felt that the pubco added little value
  - **Training:** lessees were sceptical of the benefits and costs
- The report concludes that prices in the pubco tied estate are higher than they would otherwise be in the managed estate – both in terms of the price paid for product and the price charged to the consumer. The Committee concludes that this is evidence that the pubco and lessees interests are not aligned as if they were the pubco would want a system which allowed its lessees to remain price competitive.

- Evidence is provided by Mark Brumby and Morgan Stanley which suggests that the profits from the business are not being fairly shared between pubcos and their lessees. Its survey of lessees reveals that two-thirds are earning less than £15,000 pa. Only 1% earned more than £45kpa. Earnings did not equate to turnover as half of those with a turnover of more than £500,000 had an income of just £15k.
- No specific recommendation is made on the tie, and the committee accepts it is important to regional brewers. In its opinion, the tie should be “severely limited” or the block exemption from EU competition law be removed to allow companies to apply on an individual basis where there is no evidence of harm.

### **Other Issues**

- The 2004 Inquiry recommended that the AWP tie should be abandoned. This report restates that the benefits of the AWP tie are outweighed by the cost to the lessee and that the pubcos do not add sufficient value to justify the claim to half the takings.
- Lessees also raised concerns about the pubcos insurance policies. The Committee makes no specific recommendation in this area, but suggests that the pubcos should share the details of the policy with lessees to allow them to compare the costs of other types of provision. The lessee should not be required to pay for benefits to the pubco.
- Concern is also expressed about the use of Brulines equipment to enforce claims against lessees buying outside the tie. Doubts are thrown about the accuracy of equipment and the Committee recommends weights and measures legislation be amended to cover it.
- The 2004 Inquiry called for an independent, low cost dispute resolution process to be adopted. Reference is made to the putative BII Independent Expert Model, but the Committee is sceptical that the pubcos will commit to this voluntarily.

### **Key Recommendation**

- The Committee suggests that both sides could prove their competing claims about the benefits or otherwise of the tied model by offering all new lessees a genuine choice between a tied or free of tie lease. For existing lessees, this choice could be offered when leases are reviewed or renewed as part of a phased programme.
- The report acknowledges that the industry could work to deliver this on a voluntary basis, but suspects that the pubcos will not be willing to act unilaterally and therefore calls on the Government to consult on ways of achieving this. “status quo is not an option”. The Committee notes that its recommendation on the process for agreeing rents would need to be implemented first to avoid penalising lessees.
- The report concludes “the supply ties operated by the national pubcos may well be anti-competitive and detrimental to the pub market”. It cites beer prices in pubs rising faster than brewery prices and prices rising faster in the leased than managed estate as evidence of this. As the OFT is unwilling to re-visit its 2004 assessment, the Committee therefore calls on the Secretary of State to refer supply ties in the pub industry to the Competition Commission for a full market investigation.