
From:
Sent: 11 June 2013 13:57
To: Pubs Consultation Responses
Subject: Consultation Response - Attached
Attachments: 13-718RF-pub-companies-and-tenants-a-government-consultation-response-form.doc

1072.

Hi

I have two pubs with PUBCOs and my response is attached.

I hope my response form can still be considered.

Rgds

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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.
<input type="checkbox"/> Representative Organisation
<input type="checkbox"/> Trade Union
<input type="checkbox"/> Interest Group
<input type="checkbox"/> Small to Medium Enterprise XXX
<input type="checkbox"/> Large Enterprise
<input type="checkbox"/> Local Government
<input type="checkbox"/> Central Government
<input type="checkbox"/> Legal
<input type="checkbox"/> Academic
<input type="checkbox"/> 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.

IT SHOULD COVER ALL PUB COMPANIES. WHO IS TO SAY WHEN COMPANIES WITH LESS THAN 500 PUBS WILL CHANGE THEIR POLICIES WITHOUT REGULATION

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?

THERE SHOULD BE A WAY TO SEE CLEARLY WHAT PROFIT IS BEING MADE BY BOTH PARTIES AND A FAIRER SHARE TO THE LEASEHOLDER

Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence.

THE PROBLEM INITIALLY IS THAT THE BIGGER PUB COMPANIES ARE IN SERIOUS FINANCIAL DIFFICULTY. REGARDLESS OF WHETHER THEIR GROWTH POLICY HAS CAUSED THIS OR NOT, IT IS A REAL PROBLEM FOR ALL PARTIES. IF YOU IMPOSE IMMEDIATE LEGISLATION ON PUB COMPANIES IN LINE WITH THE BUSINESS SECRETARIES POLICY (WHICH IS NEEDED), WHAT WILL HAPPEN TO PUNCH AND ENTERPRISE WITHOUT SHORT TERM (3 YEARS) SUPPORT FROM THE GOVERNMENT?

EXAMPLE

IN MY HOME TOWN THERE ARE TWO FREE HOUSES WITH RENT OF AROUND £20K AND SIMILAR ANNUAL SALES. I HAVE A LEASED PUB IN THIS TOWN WITH RENT OF £32K.

THE PUB COMPANY TAKES THE LEASE FEES AND AROUND £90K FROM WET SALES PROFIT (AGAINST THE OPEN MARKET PRICES – THEIR FIGURE NOT MINE). IF THE POLICY OF MAKING THE PUBCO TREAT US THE SAME AS THE FREE HOUSES, THEY SHOULD LOSE £12K IN RENT AND £90K IN PROFIT FROM WET SALES. IT SOUNDS WONDERFUL TO ME PERSONALLY, BUT CAN THE PUBCOs STAND SUCH LOSSES? WHAT WILL HAPPEN TO THE BIG PUBCO WHO IS CONSTANTLY REFINANCING THEIR DEBT ALREADY?

THE PUBCO SUGGESTED RECENTLY TO ME THAT IF THE TIE WAS REMOVED, THEY WOULD SIMPLY PUT UP THE LEASE BY £90K? THE FAIRNESS ISSUE LEASEHOLDER AGAINST FREEHOUSE HAS TO BE VERY CLEAR.

WHAT WILL HAPPEN TO THE PUB INDUSTRY? WE NEED TO ADDRESS THESE ISSUES AND HUGE UNFAIRNESS IN FAVOUR OF THE PUBCOs, BUT WE CANNOT

LEAVE A POTENTIAL VOID THAT WILL FURTHER DAMAGE THE INDUSTRY AND SOCIAL CLIMATE.

THE LARGER PUBCOs DO HAVE A SUPPORT NETWORK AND THEY WILL RELY HEAVILY ON THIS AS A REASON FOR THEIR EXTREMELY HIGH PRICES OF PRODUCT. HOWEVER IT IS WORTH NO MORE THAN AROUND £2K PER YEAR TO THE AVERAGE LEASEHOLDER.

PROBABLY NOT A VOTE WINNER, BUT THE ONLY REAL WAY OUT OF THIS TERRIBLE SITUATION IN THE SHORT TERM, IS FOR THE GOVERNMENT TO SUPPORT THE TRANSITION FINANCIALLY TO STABILISE THE INDUSTRY AND PROMOTE GROWTH. PUBCOs WILL HAVE TO SWALLOW A BITTER PILL AS WILL THEIR FINANCIERS. LEASEHOLDERS WILL HAVE TO HAVE SOME INCREASE IMMEDIATELY IN SHARE OF PROFITS, BUT THE POLICY IMPLEMENTED WILL LIKELY HAVE TO BE STEPPED OVER A TWO TO THREE YEAR PERIOD.

ONE THING IS FOR CERTAIN: IF WE HAVE SUCH A WIDE DIFFERENCE IN FINANCIAL RETURN, THE SOCIAL ASPECT OF THE PUB INDUSTRY WILL SUFFER FURTHER AND WILL CONSTANTLY BE IN DECLINE. LEASEHOLDERS ARE LARGELY EXPECTED IN UNFAIR ONE SIDED RISK LOADED CONTRACTS TO TRY AND MAKE A POOR LIVING IF "EVERYTHING GOES RIGHT". BY THIS I MEAN TWO PEOPLE WORKING AROUND 70 HOURS PLUS BETWEEN THEM PER WEEK FOR UNDER £20K PER ANNUM GROSS. IF THINGS GO WRONG AND THEY DO IN THE REAL WORLD, THIS FIGURE IS THEN REDUCED. DEMOTIVATED BUSINESS OWNERS, SHORT CUTS ON CLEANING AND MAINTENANCE ETC. THE PUBLIC ARE SHORT CHANGED BY THE SITUATION AND THE PUBS ARE CONSTANTLY DETERIORATING. IT HAS BEEN THIS WAY FOR MANY YEARS.

A BUSINESS SHOULD HAVE OPERATING COSTS AS WELL AS PROFIT MARGINS. THE PUBCOs LOOK FOR A 20% RETURN ON THEIR CAPITAL INVESTMENTS AND THIS CAN BE SIGNIFICANTLY HIGHER ON ANNUAL REVENUE FROM LEASES AND TIES. LEASEHOLDERS ARE LUCKY TO MAKE 2 or 3% WHERE THE FIGURE SHOULD BE AT LEAST 10% ABOVE ALL OPERATIONAL COSTS.

Q6. What are your views on the future of self-regulation within the industry?
AN ABSOLUTE MUST TO HAVE REGULATION OF THE INDUSTRY

Q7. Do you agree that the Code should be based on the following two core and overarching principles?

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

Q8. 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. YES**
- 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. YES**

Q9. Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered? COMMENTED ON THIS ABOVE

Q10. 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

Q11. Should the Government include a mandatory free-of-tie option in the Statutory Code? YES

Q12. 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? COMMENTED ABOVE IN Q5

Q13. Should the Government appoint an independent Adjudicator to enforce the new Statutory Code? YES

Q14. 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

Q15. 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? YES

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

III. Financial penalties? YES

Q16. Do you consider the Government's proposals for reporting and review of the Adjudicator are satisfactory? YES

Q17. 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