

12th June 2013

Dear Mr Bailey,

Following our brief discussion at the BIS hearing on Tuesday, I would like to say that I wholeheartedly concur with submission, but - and to save you having to read the same thing twice - I would like to expand on his reply to question 2.

Q2	<b>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</b>	Yes, but the 500 figure should relate to leased, tenanted (and perhaps franchised) pubs ONLY. There is also an argument that any tie - even if the threshold were to be more than 500 pubs - should relate ONLY to those beers (ales and lagers etc) manufactured by the company and not be all embracing to include other products. It would be illogical for either of these two issues to be ignored. Those companies with 500 pubs always have the choice of managing those sites instead of a lease/tenant. This means that only Brewers should be able to tie.
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I have been to every Select Committee hearing on pubco behaviour since 2004, the year that - who incidentally came up with the "Prime Principal" of tie vs free of tie fairness - put the case so eloquently on behalf of the FSB and the year that he and I started Freedom For Pubs which, in 2008, became Fair Pint.

Since Punch has now all but imploded, this whole thing is mainly about Enterprise - as Phil Dixon so rightly pointed out at Tuesday's hearing.

Enterprise is so heavily indebted (greater than all the 1st division football clubs put together) that £1 of every pint drunk in their (our) pubs is going to paying off - mainly foreign - debt. Without this pressure, we wouldn't all be in the mess we are in today. Enterprise simply cannot afford to comply with the statutory codes, their situation is precarious enough as it is, so why wait until they, and subsequently us, get into even more financial trouble.

The securitised (pubco) model is DEAD. "Captains of Industry" Guy Hands (who started it all) said it and so did Jon Moulton - years ago.

The death throes, with Tuppen lashing out and threatening everyone who crosses him, is an unnecessary burden on thousands of licensees and their families and staff and also on the Exchequer. Whilst the PIRRS and PICAS schemes are a fundamental step forward, without the **added** revision of the tie, the longer the pain goes on, the worse it will get. Waiting for each case, at each 5-year rent review, each lease end, each challenge, each strung out appeal, to work its way through the system, could take another decade, if ever, before there is a noticeable difference.

The other issue is that the Prime Principal. Whilst RICS say they have "always abided by it", it is rather like the climate change debate, where the attitude is "well they're not abiding by it, so why should we" and, because valuers hitherto have not been reprimanded for NOT enforcing this principal, RICS would lay themselves open to massive lawsuits were they to suddenly put their foot down.

The result is that, because pubs are valued on a profit basis, it is taking forever for this current recession to reflect in rent reviews as each new rent review is compared against a recent, but still (likely to be) over-rented, example.

We need an immediate panacea and the only solution is government legislation, to be introduced by a certain (very near future) date - say the day you publish your report. That will draw a very definite line in the sand.

In conclusion.

**1. The Prime Principal MUST be enshrined in law - to run from the date the law is passed - or the PIRRS and PICAS schemes are flawed.**

**2. The tie should be a privilege to those that brew, for the products they brew and limited to brewers with no more than 500 tenanted and leased pubs.**

With the tie still in place, Enterprise - in particular - can continue to duck and dive, offsetting beer prices (wet rent) against "countervailing benefits" which are then set against dry rent which, in turn are set against beer prices . . . . making it impossible to focus on the real issue.

Both these points should be implemented immediately

You will have observed how Enterprise and the BBPA keep procrastinating. Like Greece, the very idea that they will somehow emerge, blinking, into the light in years to come is laughable. They need to be put out of their misery now, while there is still some life in the industry.

If help is needed in legislating the above - which in our view is essential - then perhaps it would be helpful if a number of myths were dispelled. See *below*.

Yours sincerely,

CC. Brian Binley, Greg Mulholland.

# THE 10 MYTHS

or DEATH TO THE STATUS QUO.

## **Myth number 1. (Some brewers say) 500 pubs is too few.**

*From discussions with family brewers, it is felt that, should Enterprise go out of business, many regional and family brewers would like to pick up some of the pieces. Whilst the largest family brewer has 400+ pubs, it was felt that 500 max would limit their aspirations \*. **However the feeling is that if the 500 number were revised to include tenanted, leased and franchised\* pubs only, then this would be acceptable.** There need be nothing to stop them from managing another 500 pubs (possibly close to the brewery where they can keep an eye on them).*

*\* Note: The franchise issue is a comparative newcomer and has only been partially discussed (at the BIS meeting on the 11th June). Marstons are leading the way here.*

*Also, the logic of transporting real ale (with its short shelf life) all over the country, not to mention the cost, is totally flawed, so why would any (real ale) brewer want to homogenise our pubs to that degree. Obviously if a licensee or their customers in Edinburgh or Pontefract demanded Wychwood's Dog's Bollocks ale, then so be it, no need for Wychwood (Marston's?) to own the pub, surely!*

## **Myth number 2. 500 pubs would mean that Enterprise would split up their estate into tranches of 500.**

*With the restriction that the tie can only be applied to those products that the brewers brewed, that would end this escape route for non brewers.*

## **Myth number 3. Then Enterprise would simply go out and buy breweries.**

*Whilst they did put that forward in 2007 (I think) - and it was even mentioned by my Enterprise BDM a few weeks ago - most of their sales come from mainstream lagers. In no way could they afford to buy Anhauser Busch, Inbev or Molson Coors (or whatever the current big names are now called) and certainly not for only 500 pubs.*

## **Myth number 4. If Enterprise were to fold, thousands of pubs would be left stranded.**

*WRONG. A number of licensees would be in a strong position to buy their own pubs - after all it is much easier to get a mortgage on a freehold (impossible even, on a leasehold) and who better a buyer than the incumbent, often with years of trading figures behind them. Another proportion of licensees would get their customers to chip in to help buy the freeholds. Others would be bought up by family and regional brewers. I know that Fullers, for instance, would love to buy a number of pubs. Some more will be owned by banks and there will be deals to be struck. Perhaps the Government's "Help to buy" scheme could be extended to pubs or a "right to buy" option included, as a way forward. After all, our pubs are also our homes and a portion of each pub is always set aside as residential - paying residential council tax in the process.*

## **Myth number 5. Thousands would lose their jobs.**

*There are about 1,000 people employed by Enterprise and Punch between them. Whereas there are over 100,000 people employed in these two's pubs. If pub losses continue at the current rate, then the jobless total - with Enterprise still in the mix, free to continue to suck in "lamb's" and spit them out penniless - will be higher. Most pubco personnel will be absorbed by the newly-invigorated brewers.*

**Myth number 6. Beer prices will go up if the tie goes.**

*WRONG. Brewers with supply contracts are having to wait months to get paid. A constant beef at brewery sales meetings is how Enterprise squeezes them dry. I was told by a Heineken exec a few years back, that they made just £5 a barrel (36 gallons) from pub companies. It is a published fact - and admitted by Enterprise (although it is not a Heineken customer) - that Enterprise make £200 a barrel - and for that Enterprise does absolutely NOTHING. Brewers would be very happy if they could get freetrade prices from an extra 13,000 newly-freed (Punch and Enterprise) pubs.*

**Myth number 7. Removal of the tie would open up the market for big overseas brewers.**

*WRONG. Most multi-national suppliers supply lager (the biggest seller) to the large pubcos anyway. With a free of tie market, this would open up the market for such excellent UK brewers as Freedom and Meantime who cannot currently afford to supply (Enterprise). Also real ale sales would massively improve as small brewers could now get a foot in the door of thousands of untied pubs and at a price that people can afford. Also there are some wonderful premium "craft ales" that are simply too expensive to sell through a pub company.*

*With more money to invest in their (now freehold) pubs, micro-brewing would blossom. This would at once cut down on "beer miles", increase the competition, enliven an interest in home-grown products and help bring back the, sadly lacking, community spirit in the UK.*

**Myth number 8. If pubs go free of tie, they will lose lose their countervailing benefits.**

*There simply are no countervailing benefits - otherwise known in the trade as "countervailing penalties"! This was a ploy to get around (in particular) EU law to justify the massive premiums charged for their tied products. Brewers are squeezed so tightly by pubcos, that they cannot afford to supply Enterprise with branded glasses to pass onto their pubs. Also, whenever a complimentary keg is requested (usually for a massive event) even that is now declined - "nothing in the budget" is the mantra. There simply is no budget to the tied trade. Free-of-tie licensees are showered with goodies because the brewer's margin is that much better.*

**Myth number 9. The Exchequer will lose out if pubcos fail.**

*Interest payments by pubcos has been estimated at £500million a year. Mostly going overseas, this is "lost income". If these massive debts weren't in place then the better profits to the brewers and to the licensees - without the parasitical middlemen - would be huge. Couple this would the subsistence often needed when licencees lose their livelihoods (and their homes) at the hands of the pub companies.*

**Myth number 10. Enterprise has said (threatened) that it will convert to a REIT.**

*The claim that pub companies could benefit from conversion to a REIT must be taken with a pinch of salt. Asset values of pub companies would have to be realigned and profitability would fall substantially. Any conversion to a REIT model would require validation by auditors who should by then see the necessity of examining the basis and ultimate valuation of pub properties, and all the RICS member valuers would be reminded of their duty to observe accounting principles. Failure at that point would be tantamount to fraud against lenders and shareholder, a very dangerous financial risk for the professionals.*

Have faith and go for it. Its the only way forward. Pubs have everything to lose, if you don't.