



Karl Harrison

Member of the Fair Pint Steering Group

For and on behalf of the Fair Pint Campaign

Review of the competition rules applicable to vertical agreements:

A Response from the Fair Pint Campaign

1. Summary

1.1 Exclusive purchasing and non-compete agreements in the UK pub sector are used both by pub owning companies who are also drinks manufacturers and other companies who are simply property investors who see the obligation as a way to increase the amount of income they are able to earn from their leased pub estates. The exclusive purchasing and non-compete obligations mean companies can extract income from their tenants through a combination of rents and the margins that can be earned by using these arrangements to sell products to tied lease holders at a price which is higher than the prevailing wholesale price on the open market.

1.2 The block exemption has been used to prevent an investigation by competition authorities into the effect of the parallel and similar exclusive purchasing and non-compete agreements on the pub market in the UK. We believe that any renewal of the block exemption should consider the damage that the current rules have had on the British pub sector.

1.3 We agree with the submissions to this consultation from CAMRA and the Federation of Small Business that the parallel and similar nature of these agreements, which in total account for more than half of the UK pub market, has restricted competition in the UK pub sector and led to significant consumer detriment. We therefore believe that it would be appropriate to lower thresholds at which individual companies are seen to be at risk of restricting competition in the market from the current threshold of control of 30% of the market. We also believe that overall effects of tied agreements on the market means that it would also be appropriate to lower the definition of the size at which companies are seen to have an *de minimis* effect on the market to below 5% in order to make it easier for the overall anti-competitive effects of these agreements to be addressed.

2. Consultation Response

2.1 The UK pub sector is facing a major crisis with over 52 pubs closing every week. There are 57,000 pubs in the UK, of which 54% are leased or tenanted by either a brewing or a non-brewing pub-owning company.

2.2 Exclusive purchasing and non-compete agreements in the pub sector exist in the following areas:

- Beer
- Other alcohol products
- Technical Services
- Technical Services Equipment
- Insurance
- Games and Prize Machines

2.3 The Fair Pint Campaign believes that one of the main reasons for the problems faced by the industry in the UK is the exploitation of the exclusive purchasing and non-compete agreements by pub owning companies. The price differential between the open wholesale market for products and the price at which pub owning companies sell the same product to their tied tenants has widened significantly over recent years as pub owning companies have sought to increase the total income from product sales and rents from their tied leased properties.

2.4 We agree with submissions which have been made in response to this consultation by CAMRA, the consumer organisation representing pub customers, that the experience of the Block Exemption within the UK pub market has been damaging to the interests of consumers and the pub industry because the application of exclusive purchasing and non-compete agreements have led to inflated prices, reduced competition and reduced amenity. We agreed with CAMRA's submission to this consultation that the detriment to consumers particularly applies to UK consumers, but its effect can be felt throughout the EU due to the restriction of trade between member states.

2.5 We believe that clear evidence of the damage which has been caused to the industry and the interests of consumers can be found in the UK Parliament's Business Enterprise Select Committee's Report on Pub Companies which was published on the 13th of May. The Committee's report can be downloaded by following this link:

<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmberr/26/2602.htm>

2.6 Oral and written evidence provided to the Committee by interested parties can be downloaded by following this link:

<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmberr/26/26we01.htm>

2.7 Evidence of the harm which has been caused to the interests of consumers along with evidence of the foreclosure of the market to smaller drinks manufactures was highlighted in a super-complaint submitted by CAMRA to the UK's Office of Fair Trading.

CAMRA's super complaint can be downloaded here:

<http://www.camra.org.uk/page.aspx?o=supercomplaint>

2.8 No one company in the UK pub market controls more than 30% of the market and the majority of pub companies who operate the tied lease model own less than 5% of the total UK pub market. However, because of their similar and parallel nature and the fact that the total number of tied pubs represents more than 54% of the total UK pub market these agreements have a significant effect in restricting competition through:

- preventing access, and particularly independent access, of small and medium sized brewers from the UK and any other EU member state to a substantial part of the UK pub market
- preventing access, and particularly independent access, of suppliers of technical services and technical service equipment from the UK and any other EU member state to a substantial part of the UK pub market
- hindering access for suppliers of other goods and services to the UK pub market
- hindering access of wholesalers from the UK and any other EU member state to the UK pub market
- Raising prices and restricting choice for consumers

2.9 We therefore believe that the thresholds for a single company to be having an effect on competition should be lowered to below 30% and that the level at which a company's control of the market should be seen as de minimis should be lowered to below 5%. We believe that lowering these thresholds would make it easier for the combined anti-competitive effects of these agreements to be addressed.

2.10 The UK's office of Fair Trading have in the past refused to investigate the UK pub market using the power that they have under Article 6 of the Block Exemption because of the existence of the Competition Act 1998 (Land Agreements Exclusion and Revocation) Order 2004. This piece of legislation means that land agreements such as pub tenancies are excluded from the Chapter 1 prohibition of the Competition Act 1998) which prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which have the object or effect of preventing, restricting or distorting competition within the UK. We believe that this piece of legislation has had the unintended effect of giving pub companies safe harbour from investigation by the UK's competition authorities and is one of the reasons why the exclusive purchase and non-compete agreements within the UK pub sector have been allowed to develop to such an extent.

2.11 We therefore believe that the Commission should begin preparatory work on a regulation under Article 7 to remove the protection of the Block Exemption from the UK pub sector in order to ensure the full application of Article 81 (1) and 81 (3) to agreements between pub owning companies and their tenants.

2.12 Fair Pint and other interested parties representing pub tenants and consumers will be making a further submission of evidence to support the case for regulation under Article 7.