



**Federation of Small Businesses**  
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FSB  
response to  
consultation  
on review of  
the  
competition  
rules  
applicable to  
vertical  
agreements

**September 2009**



The FSB recognises the importance of responding to the Competition Commission's proposal for a revised Block Exemption Regulation and Guidelines on supply and distribution agreements (vertical restraints). The FSB's response focuses solely on the tied pub sector where there is a significant imbalance in the larger pubco market share, with Punch Taverns and Enterprise Inns owning two thirds of the market and Admiral Taverns, Marston's, Greene King, Scottish & Newcastle Pub Enterprises and Wellington splitting the rest between them<sup>1</sup>. In addition there is also significant imbalance in the relationship between the two larger pubcos and their tied tenants and this is having a serious impact on the survival of community pubs and the local economy. For example, evidence gathered by a parliamentary select committee found that even where pubs had a turnover of more than £500,000 a year, over 50 per cent of lessees earned less than £15,000<sup>2</sup>.

By way of background, in 2004 a parliamentary select committee first investigated the pubco issue and put forward a number of recommendations intended to improve the relationship between the two parties<sup>3</sup>. In 2008-09 the committee revisited the investigation as a matter of formality and found that the situation had significantly worsened, so much so that the committee recommended in its May 2009 report that the Department for Business and Innovation and Skills (BIS) and the Competition Commission urgently investigate the matter<sup>4</sup>. In June 2009, the committee indicated that there had been significant developments since the publication of its report which explained the delay in the publication of the Government's response to the report<sup>5</sup>. Notably, the committee had received notice that the Campaign for Real Ale (CAMRA) had launched a super-complaint to the Office of Fair Trading<sup>6</sup> and that the Association of Licensed Multiple Retailers was working with an industry group to negotiate changes in the industry. The committee is keeping industry developments under review and will consider the matter again in October. Furthermore, BIS has brought forward its consultation on the future of the Land Agreements Exclusion and Revocation Order 2004. The Order currently exempts deals such as the beer tie from the ban on anti-competitive practices.

The FSB is calling for the current block exemption guidelines in relation to the tied pub sector to be revised as a matter of urgency. Given the nature of this particular market the FSB believes that the 30 per cent exemption threshold should be significantly reduced in order to recreate a level playing field for all.

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<sup>1</sup> Source CGA

<sup>2</sup> Commons Business and Enterprise select committee report on pub companies:  
<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmberr/26/26i.pdf>

<sup>3</sup> Commons Trade and Industry select committee report on pub companies:  
<http://www.publications.parliament.uk/pa/cm200405/cmselect/cmtrdind/128/128i.pdf>

<sup>4</sup> Commons Business and Enterprise select committee report on pub companies

<sup>5</sup> Commons Business and Enterprise select committee report update:  
<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmberr/798/798.pdf>

<sup>6</sup> CAMRA super-complaint: <http://www.camra.org.uk/media/attachments/305998/Super%20Complaint.pdf>



The issue of pubcos' anti-competitive behaviour and the treatment of its tenants is resulting in the closure of over seven pubs a day<sup>7</sup>. If pubs are not saved now, it will be impossible for the next generation to visit a British pub – a British institution.

The FSB's response is based on the results of two member surveys carried out in October 2008 and July 2009, the results of which were used to form a policy paper.<sup>8</sup> The FSB represents approximately 4,600 publicans, 62 per cent which are tied and 38 per cent which are untied. The UK pub market is made up of 57,500 pubs, almost 40,000 of which are tied<sup>9</sup>.

The tie is a contract between a pubco and a tenant which obliges the tenant not only to pay rent to the pubco but also to buy all tied products such as beer, wine, spirits and Amusement with Prize (AWP) machines. By contrast a free house pub can buy their beers, wines and spirits from any wholesaler on the open market and therefore seek the best deals. The tied contract is designed to give tenants certain discounts, but these are calculated without transparency and are dependent on sales volumes. It is therefore often the case that a tied tenant pays more for their products than a free house.

The FSB believes that the tie as managed by Punch Taverns and Enterprise Inns is the principal reason for the number of pubs closing on a weekly basis and that the market must be reformed. The argument in favour of the tie is that it offers cheap entry to the market for those who have no means of buying their own pub. The tie is intended to split the risk as well as profits of running the pub between the tenant and the pubco. However, numerous pieces of evidence and research by the FSB, show that the model does not work as intended with pubcos taking the majority of the profit. 69 per cent of respondents supported a new thorough investigation of the beer and pub market by the Competition Commission and 73 per cent of the FSB's publican members supported a full abolition of the tie. Though a complete and immediate removal of the tie may not be possible due to market circumstances, the tied model as it stands must be urgently reviewed.

Furthermore, the current lack of transparency in how rents are set and reviewed by Punch Taverns and Enterprise Inns is a major problem for their tied tenants.

As many as 75 per cent of FSB members supported the Business and Enterprise select committee's suggestion that tied publicans should be able to opt out of the tie at the signing of a contract or at each subsequent rent review.

The FSB recognises the importance of responding to the Competition Commission's proposal for a revised Block Exemption Regulation and Guidelines on supply and distribution agreements (vertical restraints).

The FSB is calling for the current block exemption guidelines in relation to the tied pub sector to be urgently reviewed and revised. The FSB believes that the 30 per cent exemption threshold should be significantly reduced in order to recreate a level playing field for all.

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<sup>7</sup> British Beer and Pub Association (BBPA): <http://www.beerandpub.com>

<sup>8</sup> FSB policy paper: Pubcos and tied tenants: [http://www.fsb.org.uk/021/assets/briefings/pubco\\_report.pdf](http://www.fsb.org.uk/021/assets/briefings/pubco_report.pdf)

<sup>9</sup> Commons Trade and Industry select committee report on pub companies:  
<http://www.publications.parliament.uk/pa/cm200405/cmselect/cmtrdind/128/128i.pdf>



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