



House of Commons  
Trade and Industry Committee

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**Pub Companies:  
Responses to the  
Committee's Second  
Report of Session  
2004–05**

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**Fourth Special Report of  
Session 2004–05**

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## The Trade and Industry Committee

The Trade and Industry Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department of Trade and Industry.

### Current membership

Mr Martin O'Neill MP (*Labour, Ochil*) (Chairman)  
Mr Roger Berry MP (*Labour, Kingswood*)  
Richard Burden MP (*Labour, Birmingham Northfield*)  
Mr Michael Clapham MP (*Labour, Barnsley West and Penistone*)  
Mr Jonathan Djanogly MP (*Conservative, Huntingdon*)  
Mr Nigel Evans MP (*Conservative, Ribble Valley*)  
Mr Lindsay Hoyle MP (*Labour, Chorley*)  
Miss Julie Kirkbride MP (*Conservative, Bromsgrove*)  
Judy Mallaber MP (*Labour, Amber Valley*)  
Linda Perham MP (*Labour, Ilford North*)  
Sir Robert Smith MP (*Liberal Democrat, West Aberdeenshire and Kincardine*)

The following Member was also a member of the Committee for part of this inquiry:

Mr Andrew Lansley MP (*Conservative, Cambridgeshire South*)

### Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [www.parliament.uk/t&icom](http://www.parliament.uk/t&icom).

### Committee staff

The current staff of the Committee is Elizabeth Flood (Clerk), David Lees (Second Clerk), Philip Larkin (Committee Specialist), Grahame Allen (Inquiry Manager), Clare Genis (Committee Assistant) and Joanne Larcombe (Secretary).

### Contacts

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### Footnotes

In the footnotes of this Report, references to written evidence are indicated in the form 'Appendix' followed by the Appendix number.

## Fourth Special Report

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The Committee published its Second Report of Session 2004–05<sup>1</sup> on 21 December 2004. The Government’s response was received on 22 February 2005 and the Office of Fair Trading’s response was received on 16 February 2005. They are published as Appendices to this Special Report.

### Appendix 1: Government Response

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I am writing in response to the Trade and Industry Committee’s report on pub companies which was published on 8 December 2004. In the report, there was one recommendation for the Government:

1. **“Since the British Beer & Pub Association (BBPA) code of practice was updated in 1997 the industry has changed and we suggest that this code of practice should be revised as a matter of urgency. This should involve consultation with the widest range of interested parties. The areas we believe a code should cover include: rent reviews, the role of BDMs; complaint and dispute procedures; disclosure and the availability of information; and the taking of legal and professional advice by prospective tenants.**
2. **“At this stage we do not think a legally binding code of practice necessary, but if the industry does not show signs of accepting and complying with an adequate voluntary code then the Government should not hesitate to impose a statutory code on it.”**

The Government agrees that a voluntary Code of Conduct, developed by the participants themselves, could go some way to resolving concerns of tenants about their contractual relationships with pub companies. The Government concurs with the Committee’s view that prospective tenants should seek independent financial and legal advice before committing themselves to a lease. The Government hopes that the industry will respond positively and constructively to the Committee’s recommendation and engage with interested parties to find a suitable way forward.

However, the Government sees difficulties with imposing a statutory Code of Practice upon the industry which would prescribe the terms and conditions for what are commercial arrangements. The Government does not believe that existing legislation would allow it to impose such a Code of Conduct; and believes that any competition concerns that may arise in relation to the behaviour of pub companies would be a matter for the competition authorities, not the Government, to consider and if necessary investigate and take appropriate action.

I understand that the Office of Fair Trading will be responding separately.

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1 Second Report from the Trade and Industry Committee, Session 2004-05, Pub Companies, HC 128-I

## Appendix 2: OFT Response

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In the Report the Committee recommended that the OFT:

- reconsider the definition of the retail market for beer and establish mechanisms for monitoring it; and
- keep the distribution market under close and regular scrutiny.

### **Market definition**

The OFT welcomes the Committee's comments on market definition in the beer sector. As a general matter the OFT approaches market definition on a case-by-case basis using precedent as a guide but not as a substitute for rigorous analysis of the facts of the case in hand and in light of prevailing economic and legislative circumstances. As John Vickers explained in Oral Evidence, "*It is not an issue of doctrine here that there is [a] unique way of doing it [...] You have got to look at all the evidence in the round.*" (Q610)

The OFT's consideration of the complaint submitted to it by the FSB reflects this approach. In assessing at a very preliminary stage whether the OFT had reasonable grounds to suspect an infringement of the Competition Act 1998, the OFT considered a number of possible market definitions. These included all "on-trade outlets" and "pubs only".<sup>2</sup>

Current evidence suggests to the OFT that the on-trade sector is reasonably competitive and that no one pub company holds a dominant position in the wholesale market for beer (conclusions confirmed by the Committee).<sup>3</sup> In keeping with a case-by-case approach, the OFT has to date left open the question of whether all on-trade premises are in the same market or whether pubs might comprise a separate market. However, the OFT has kept and continues to keep market definition in the beer sector under review.

The OFT fully concurs with the Committee's observation that, from a consumer's viewpoint, there is a difference between going out for a drink at a pub and going out for a meal at premises where alcohol may be consumed. As noted in the OFT Report on the Supply of Beer (2000), the retail on-trade market has become increasingly differentiated and subject to changing fashions.<sup>4</sup> Likewise we agree that there is no simple distinction between pubs and other on-trade premises.<sup>5</sup>

As the Committee identifies, the changing licensing laws could have an impact on the issue of market definition in this sector.<sup>6</sup> For this reason, the OFT last autumn approved the commissioning of an independent study in relation to market definition in the beer retail market for the purposes primarily of merger review. The study, which has now

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2 OFT letter to FSB, 27 March 2003.

3 Pub Companies Report, paragraphs 19 and 46.

4 OFT 317, paragraphs 2.15 and E13-E20.

5 OFT submission to the Committee, 02 June 2004, paragraph 4.

6 Pub Companies Report, paragraph 37.

commenced on a feasibility basis, is specifically considering the increasing differentiation of the retail on-trade market in addition to addressing the implications of the forthcoming licensing changes. Although the emphasis of the study is on merger analysis its findings will also inform the OFT's consideration of allegations of anti-competitive behaviour.

### ***Distribution***

The Report concludes that in the distribution market for beer there is the strong possibility of anti-competitive consequences.<sup>7</sup> The OFT has reviewed with interest the Committee's concerns in relation to this market. As discussed with the Committee, the OFT has not received any complaints relating to the distributors and has no evidence that the distributors may be party to agreements or be abusing a position of dominance in a manner which infringes competition law.<sup>8</sup> If such were the case, we reiterate our statements in Oral Evidence that we would very much welcome evidence of it. The evidence the OFT has does not suggest that any of the distributors is dominant and we refer in particular to the two recent mergers reviewed by the OFT and the European Commission respectively cited below.

As the Committee confirms, the OFT has examined relevant mergers which have affected this market in the UK. In 2002, the OFT investigated the acquisition by TradeTeam of the distribution business of Interbrew.<sup>9</sup> The acquisition by Scottish & Newcastle of Bulmers (which owned The Beer Seller) in 2003 triggered the thresholds in the EC Merger Regulation and therefore fell under the jurisdiction of the European Commission rather than the OFT (although the OFT submitted comments to the European Commission on it). In its Decision, the European Commission considers the Beer Seller's role as an independent wholesaler but concludes that no competition concern arises.<sup>10</sup>

In conclusion, the OFT is grateful to the Committee for highlighting the potential for anti-competitive consequences in the distribution market and the difficulties faced by small brewers in gaining access to retail outlets. The OFT stands ready to consider any allegations of anti-competitive agreements or conduct in this market, in addition to reviewing any further mergers in this sector.

### ***Further comments***

More generally, the OFT agrees with the Committee's finding that no one company holds a dominant position in the supply of beer nationally and that the brewing and on-trade sectors are reasonably competitive. That being so, the difficulties faced by tenants and small brewers—in particular relating to contractual matters—do not constitute grounds upon which the OFT can exercise its competition enforcement powers. The OFT's powers of investigation are circumscribed by law. As the Committee is aware, the OFT can only exercise its investigatory powers under the Competition Act 1998 if it has reasonable

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7 Pub Companies Report, paragraph 71.

8 OFT letter to the Committee, 27 September 2004, question 6.

9 This Decision is not public, but background information on it was provided to the Committee. OFT letter to the Committee, 27 September 2004, question 6.

10 Case No COMP/M.3182, 30 June 2002, paragraphs 27 – 38.

grounds for suspecting that the Act has been infringed<sup>11</sup> or under the Enterprise Act 2002 if it has reasonable grounds for suspecting that the structure of the market or conduct of suppliers, purchasers, or customers is harming competition.<sup>12</sup>

Nevertheless, the OFT recognises that some tenants and small brewers are facing real and serious difficulties and we welcome the Committee's work in highlighting them and its recommendations to industry to address them. In particular we support the Committee's comments on the importance to tenants of obtaining full information and professional advice before entering into a lease agreement.

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11 OFT letter to the Committee, 27 September 2004, question 6.

12 OFT submission to the Committee, 02 June 2004, paragraph 26.