

The Land Agreements Exclusion Order 2004



Background

The Land Agreements Exclusion Order exempts land agreements, such as the beer tie, from the Competition Act prohibition on agreements which restrict, prohibit and distort competition. The OFT has powers to withdraw this exemption from individual companies.

The Exclusion Order was originally introduced to avoid the need for companies to notify agreements to the OFT for clearance. Modernisation of competition law in 2004 removed the requirement to notify the OFT of individual agreements and so there has been no clear reason for the Order's existence. The revocation of this Order means that pub companies and breweries with beer tie agreements are required (from April 2011) to self assess their agreements to ensure they are compliant with Competition Law.

Government View

Following their recent consultation, the Government concluded that:

"We see no justification for retaining this exclusion order. We agree with the Competition Commission's view that requiring enterprises to self assess land agreements for compatibility with competition law, in the same way they must assess other types of agreement, would be wholly beneficial."

Impact of Revocation

From April 2011, companies will have to self-assess land agreements, such as the beer tie, to ensure they are compatible with competition law. This will include existing agreements, and so the OFT will publish revised guidance on the application of competition law to these agreements.

CAMRA's View

CAMRA supports the Government view and very much welcomes the announcement that the Order is to be revoked. The requirement on pub owning companies to self assess their own beer tie agreements will help encourage evolution of beer tie arrangements which will deliver a sustainable future for pubs and a fair deal for consumers. CAMRA also hopes self assessment will discourage the use of restrictive covenants to restrict competition, by preventing sold pubs being run as pubs by whoever purchases them.

The Order has created an unhealthy presumption of legality which has allowed exploitation of beer tie agreements by some companies leading to high prices in pubs, lower amenity, restricted choice and pub closures. The burden of self assessment will now fall on the larger companies.