

MAIN PARTIES' RESPONSE TO ADDITIONAL THIRD PARTY COMMENT ON COMMISSION'S WEBSITE AS OF 7 MARCH 2005

Submission from?	Third party comment	How the parties have addressed this
<p>A retailer (6)</p>	<p>Preliminary comments:</p> <p>The Asset Access Protocol is biased against the retailer and would create a very burdensome SDEL-controlled working environment. The audit requirements are onerous. The intensive administration requirements will add cost.</p> <p>Section 1.3 seeks to allow SDEL to terminate the retailer's contractor, which is a considerable service risk.</p> <p>The retailer would prefer not to have a relationship directly with SDEL and would expect to agree mutual obligations with the brewers, as for distribution.</p> <p>The retailer would have no alternative going forward but to use SDEL – therefore it would be imperative to ensure at the outset that the relationship with SDEL is fully documented and that the retailer has effective recourse.</p>	<p>The Protocol cannot be biased against the retailer – it gives the retailer rights that the retailer does not have at present, on assets that are owned, provided and funded by SDEL. Any administrative burden would be on SDEL, not the retailer, and no cost will be imposed on the retailer. SDEL is entitled to require sub-contractor compliance to protect its TSE, and indeed it is in the retailers' and the brewers' best interests that quality is maintained. The retailer can always elect to purchase the assets.</p> <p>SDEL is not seeking to terminate the retailer's relationships but just to protect its TSE and thus the brand dispense characteristics of the brewers' brands.</p> <p>The brewer will retain its relationship with the retailer. SDEL's relationship with the retailer will be limited to the Asset Access Protocol. The brewer will still be strongly involved in the matters covered by the Protocol. If the retailer does not want to adopt the Protocol, it does not have to and could negotiate separately with the brewer.</p> <p>The retailer may use any TS sub-contractor that it wishes: hence the provisions of the Asset Access Protocol, or it may purchase its own TSE. In the event that it decides to continue to use SDEL's assets, but contracts TS separately, the Protocol provides a documented framework for the arrangements between the parties. None of this prohibits the retailer from entering specific or separate negotiations with the brewers on its commercial terms for the supply of beer.</p>

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	The retailer would like a further opportunity to comment on the detailed drafting of the Protocol.	The retailer will have a further opportunity to comment during the consultation period on the undertakings.
A retailer (6)	<p>Restructuring of SDEL and Inserve:</p> <p>The proposals seem to suggest that no sub-contractor would be given responsibility for all aspects within any region, which would prevent the growth of strong regional players.</p>	SDEL will allocate work on the basis of the 'most appropriate' principle. SDEL has every interest in the creation of a vibrant and competitive sub-contractor market including strong regional players, and indeed existing arrangements between brewers and TS sub-contractors have ensured the development of strong regional players, some of whom have used this to either springboard to national provision, i.e. City/Spirit, or as an opportunity to work together to provide national coverage, i.e. TS Sub-contractors that make up Inflow.
A retailer (6)	<p>Access to TSE:</p> <p>The increase in the call off amount to 15.4% (which equates to an average equipment life of 6.5 years) is not sufficient. The only fair solution would be to allow call off without limit.</p> <p>The cap on the call off would place an additional administrative burden on pubcos.</p>	<p>There has been no evidence from retailers that the amounts currently funded by the brewers is insufficient to adequately maintain generic dispense equipment in retailer's outlets. An unlimited call off amount would be unreasonable and SDEL could not afford to fund this. The 15.4% is not equivalent to an average equipment life of 6.5 years but to a notional average replacement rate of 6.5 years. Clearly the retailer still has the right to purchase the generic TSE from SDEL, or new from manufacturers, and agree their own replacement practices</p> <p>There will be no administrative burden on pubcos. SDEL will monitor the retailer's spend against its annual budget. and provide regular updates. It is unreasonable for the retailer to expect SDEL to sanction unlimited spend to be available in any retail estate, as they would not allow a similar practice to prevail with regards to capital or revenue expenditure on their estate, under their own</p>

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	<p>The proposal does not address what arrangements would ensue when a retailer purchases equipment outside of the cap. Ownership and support price rebates would require re-calculation.</p>	<p>funding and control.</p> <p>Equipment purchased by a retailer is outside the SDEL relationship and is a matter for the retailer alone. The retailer will remain free to seek to negotiate a commercial settlement with the brewer in these circumstances.</p>
A retailer (6)	<p>Sale of TSE:</p> <p>NBV would not be a suitable method of valuing TSE. 10% depreciation is not appropriate.</p> <p>It is not clear why this should be smaller than the 15.4% in relation to calling off TSE.</p> <p>It is not clear that a sufficient discount on the beer price would be passed on to the pubco.</p> <p>The "all or nothing" requirement will give rise to difficulty, in particular given that the cap on calling of TSE is likely to make this necessary.</p>	<p>The parties have explained why average NBV is a very fair measure of the value of the generic TSE.</p> <p>The two measures are different. 15.4% represents the amount SDEL spends each year on new and remanufactured equipment. The 15.3% discount for non-provision of TSE represents the amount the SDEL brewer would save by not renting TSE from SDEL.</p> <p>The discount proposed by the parties is cost-reflective and transparent.</p> <p>Allowing retailers to buy only some of the TSE in their outlets would lead to cherry-picking. It would be unreasonable for the retailer to have the right to cherry pick equipment on a fixed average price arrangement and retailers would not allow this to happen when conducting sales of their own estates.</p>
A retailer (6)	<p>Unbundled pricing:</p> <p>This does not correspond to a fair value for the cost of TS/TSE for the relevant outlets.</p> <p>£23.29 is substantially below the cost of obtaining TS from a third party: assuming 11 gallons per week per line, £23.29 per line equates to a discount of only £1.47 per barrel, but the retailer would expect to be charged around £3 per barrel by a third party supplier</p>	<p>The discounts proposed by the parties are cost-reflective and transparent.</p> <p>£23.29 is a sufficient figure to cover the costs of a third party provider. On average, outlets have 14 lines - thus the average total annual discount would be £326. The parties estimate that the costs of a technician are less than £30 per visit (based on technician cost of £200 per day, average of 7 calls per day). This would allow for</p>

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		<p>almost 11 visits per annum. This is around the number of visits per annum the parties estimate would be required where there is no one-stop-shop. The fact that one-stop-shop increases the scope for performing preventative maintenance TS suggests the expected number of visits would be less than this figure. This suggests the minimum figure of £23.29 would be sufficient. Each brewer could decide to give a higher discount.</p>
A retailer (6)	<p>Price and quality:</p> <p>The proposals do not set out the service level requirements that would be imposed on Innserve.</p> <p>Pubcos are not given a right to enforce service levels against SDEL/Innserve. It is not clear what incentive there is on SDEL to enforce service levels. There is no provision for compensation to the retailer if service levels are not met.</p>	<p>The Innserve KPIs would be published on SDEL's website.</p> <p>Any agreement between the brewer and the pubco may include terms as to KPIs and compensation. SDEL has every incentive to enforce service levels as its brewer shareholders will not risk allowing their brand quality to fall.</p>
A retailer (6)	<p>Adjudication:</p> <p>This is of very limited application. There is no rationale for not allowing large operators to benefit from fair valuation by means of adjudication.</p>	<p>All the remedies are readily enforceable. The majority of the remedies are contractual or quasi-contractual and are backed by suitable enforcement mechanisms. Once the contractual amendments have been made and the details of the undertakings worked out with the Commission, there will be minimal ongoing monitoring required. The Asset Access Protocol and the Code of Conduct will be public documents, enforceable by an adjudicator. The parties do not believe that the role of the adjudicator needs to be wider. As regards valuation of TSE, the parties have explained that allowing all retailers an independent valuation would be impractical. In estates of 200 or more outlets, there is a 98% probability that the average NBV of the TSE is within five percentage points of the average NBV across SDEL's TSE as a whole.</p>

