

Competition Commission report: impulse ice-cream

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Following a reference from the Secretary of State in December 1998, the Competition Commission's report into the supply of impulse ice-cream in the United Kingdom was published on January 28. The report concludes the third monopoly investigation into the impulse ice-cream market undertaken by the Monopolies and Mergers Commission/Competition Commission since 1994.

The Competition Commission made four principal findings in relation to the three manufacturers whose annual turnover in the impulse ice-cream market exceeds £10 million, namely Birds Eye Wall's (owned by Unilever), Nestle and Mars. The Competition Commission found that the following activities operated against the public interest:

- (a) arrangements made by Wall's for freezer exclusivity agreements with retailers,
- (b) arrangements made by Wall's, Mars and Nestle for outlet exclusivity arrangements with retailers,
- (c) the offering to retailers by Wall's of retrospective bonuses and price incentives, as well as the system of unpublished discounts,
- (d) the establishment of an exclusive distribution system by Wall's for a considerable part of its sales and deliveries, as well as the sale of products to independent wholesalers on terms below the cost of its own distribution system and below the level necessary to allow independent distributors to remain economically viable.

The Commission concluded that the use of an exclusive distribution system by Wall's adversely affected competition between distributors, which then affected the ability of manufacturers to supply their products to retailers. The system of retrospective bonuses (ie bonuses that are applied to all purchases, not only those made after a volume threshold has been reached) also adversely affected the ability of the other manufacturers to compete as the system provided incentives for retailers to purchase all their ice-cream from Walls.

The systems of freezer and outlet exclusivity practised by all three major manufacturers were considered by the Commission to adversely affect competition by making it difficult for other manufacturers to gain access to retail outlets. However, in the case of Mars and Nestle, the two smaller manufacturers, the Commission felt that benefits of freezer exclusivity outweighed the adverse effects in helping them to compete successfully with Wall's.

The Commission concluded that as Northern Ireland's ice-cream market is organised and operated on a different model, the conclusions of the inquiry would be limited to Great Britain.

The Commission's conclusions, as adopted by the Secretary of State, are as follows:-

- (a) Wall's, Mars and Nestle to be prohibited from making new outlet exclusivity agreements. Current agreements will be allowed to run their course. The ban will not apply to seasonal kiosk or van agreements until 1 January 2003.
- (b) Wall's to be prohibited from making agreements which reserve more than 50% of freezer display space or storage space to Wall's products. Kiosks and vans to be exempt until 1 January 2003.
- (c) Wall's to be prohibited from offering retrospective bonuses or rebates.
- (d) Interim measures to require Wall's to supply independent wholesalers on terms which will give them a discount of no less than 22.5% of the gross sales value of the order.

Undertakings in relation to the adopted conclusions are to be sought by the DGFT by 31 March 2000.

The Commission also recommended that Wall's be prohibited from distributing its own products, except to national accounts. The Secretary of State did not adopt this conclusion on the basis that stopping a company from distributing its own goods would be too drastic a step to take.

However, in relation to the distribution issue, the Secretary of State plans to consult interested parties before making a final decision. The principal idea suggested by the Secretary of State is the setting of minimum terms of supply, to be reviewed by the OFT. These terms would restrict the right of Wall's to refuse to supply retailers also selling other manufacturers' products. Comments on the terms of supply should be made to the DGFT by 31 March 2000.

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