

Impulse Ice Cream (Birds Eye Wall's Ltd)

1. Title of report: Impulse Ice Cream: a report on the supply by manufacturers of Impulse Ice Cream in the United Kingdom (MMC - Cmnd 4510)

2. Published: 28 January 2000

3. Orders: N/A

4. Date of original undertakings: 19 July 2000 **Press release:** 20 July 2000

5. Companies giving undertakings: Mars UK Ltd, Birds Eye Wall's Ltd (BEW) and Nestle UK Ltd

6. Undertakings:

Outlet exclusivity

1 Birds Eye Wall's Ltd (BEW) will not after the date of these undertakings:

- (a) enter into an agreement or arrangement with a retailer which contains,
- (b) enforce an agreement or arrangement with a retailer which was entered into after 28 January 2000 in so far as it contains, or
- (c) extend an agreement or arrangement with a retailer in so far as it contains –

a provision limiting the supply of wrapped impulse ice cream products of any other manufacturer to that retailer in Great Britain;

PROVIDED THAT nothing in paragraph 1 shall prevent BEW from entering into or enforcing such an agreement or arrangement before 31 December 2002 to the extent that it relates to:

- (d) mobile outlets, or
- (e) seasonal kiosks, but
- (f) not all mobile outlets or seasonal kiosks on a site.

Freezer exclusivity

2 BEW will not after 14 April 2000:

- (a) enter into an agreement or arrangement with a retailer which contains, or
- (b) enforce an agreement or arrangement with a retailer in so far as it contains –

a provision that capacity in a freezer shall be reserved for stocking of BEW wrapped impulse ice cream products;

PROVIDED THAT nothing in paragraph 2 shall prevent BEW:

(c) from entering into or enforcing such an agreement or arrangement if the retailer is permitted unconditionally to use:

- (i) 50% of the display space, and
- (ii) the entire storage space –

for stocking wrapped impulse ice cream products of:

- (i) BEW,
- (ii) one more other manufacturers; or
- (iii) BEW and one or more other manufacturers; or

(d) from entering into or enforcing before 31 December 2002 such an agreement or arrangement to the extent that it relates to:

- (i) mobile outlets, or
- (ii) seasonal kiosks, but
- (iii) not all mobile outlets or seasonal kiosks on a site.

(e) from enforcing an agreement or arrangement which contains a provision limiting the supply of wrapped impulse ice cream products of any other manufacturer to that retailer in Great Britain which was entered into before 28 January 2000 and is not prohibited by paragraph 1.

3. BEW will after 14 April 2000 take no action which would have the effect of restricting the access of any other manufacture to the space in a freezer not reserved for the stocking of BEW wrapped impulse ice cream products.

4. Without prejudice to the generality of paragraph 3 BEW will not after 14 April 2000:

- (a) (i) restrict a retailer from using, or
- (ii) induce a retailer not to use –

space in a freezer not reserved for the stocking of BEW wrapped impulse ice cream products;

PROVIDED THAT nothing in sub-paragraph (a) shall prevent BEW from restricting a retailer from entering into an agreement or arrangement reserving that space for stocking products of any other manufacturer;

- (b) stipulate BEW products which the retailer must stock in space in a freezer reserved for the stocking of BEW wrapped impulse ice cream products; or
- (c) restrict the use by a retailer of material promoting the products of any other manufacturer which are stocked in a freezer;

PROVIDED THAT nothing in sub-paragraph (c) shall prevent BEW from reserving for the promotion of its own products 50 per cent of:

- (i) the total visible space on the four sides and the lid of a freezer, and
- (ii) the space available for signs immediately above a freezer.

5. BEW will include in any agreement made after 14 April 2000 with a retailer by which capacity in a freezer is reserved for the stocking of BEW wrapped impulse ice cream products a provision that the retailer may terminate the agreement:

- (a) on its first anniversary, or
- (b) by 28 days notice expiring thereafter.

Bonuses, discounts and other terms

6. BEW will not after 14 April 2000 offer or give to any retailer in Great Britain any scale of bonuses, discounts or rebates relating to wrapped impulse ice cream:

- (a) by which the amount payable is contingent upon the amount purchased over a retrospective period and which applies a higher level of bonus, discount or rebate to the full value of wrapped impulse ice cream purchased when a specified amount of wrapped impulse ice cream is purchased; or
- (b) under which any price for incremental sales is less than incremental costs

PROVIDED THAT nothing in paragraph 6 shall prevent BEW from entering into or enforcing before 31 December 2002 an agreement to the extent that it relates to mobile outlets within proviso (d) to paragraph 1.

Compliance

2 BEW will promptly comply with such written directions as the Director General may from time to time give:

- (a) to take such steps within its competence as may reasonably be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings, and

- (b) to do or refrain from doing anything so specified or described which it might be required by these undertakings to refrain from doing.
- 3 BEW will procure that each of its subsidiaries complies with these undertakings as if it had given them.
- 4 BEW will promptly provide to the Director General such information as he may from time to time reasonably require for the purpose of monitoring compliance by BEW and its subsidiaries with these undertakings.

INTERPRETATION

For the purpose of these undertakings:

'BEW' means Birds Eye Wall's Ltd

'the Director General' means the Director General of Fair Trading;

'freezer' means a freezer used for the storage or display of wrapped impulse ice cream in a retail outlet in Great Britain but excludes a vending machine;

'ice cream' includes:

- (a) water ices, ice lollies, frozen yoghurt and ice cream to which fruit, fruit pulp, fruit puree, fruit juice, chocolate, nuts or any other substance is added,
- (b) (except in relation to retail supply) soft ice cream mix and syrup for the production of slush by retailers, and
- (c) any similar frozen product;

'manufacturer' includes an importer;

'mobile outlet' means an outlet of a retailer who sells impulse ice cream from a mobile van or trailer;

'retailer' includes a person who controls or manages premises or a site at which wrapped impulse ice cream is sold;

'site' means any land controlled or managed by a single undertaking;

'subsidiary' has the meaning given by section 736(1) of the Companies Act 1985 (as substituted by section 144(1) of the Companies Act 1989); and

'wrapped impulse ice cream' means ice cream:

- (a) which is purchased by consumers for immediate consumption except as part of a meal; and
- (b) which is:
 - (i) wrapped, or

(ii) packaged in individual portions not exceeding 150 ml;
and

(c) which is intended to be eaten hand-held.

7. Date of amendments: N/A

8. Index information: Tying, exclusivity

9. Further MMC reports: Ice Cream and Water Ices: a report on the supply in the United Kingdom of ice cream and water ices (MMC - Cmnd 7632)

Date of report: 14 December 1978 **Published:** August 1979

Ice cream: a report on the supply in the United Kingdom of ice cream for immediate consumption (MMC - Cmnd 2524)

Date of report: 14 January 1994 **Published:** 29 March 1994