Strategic Review of CMA Markets Remedies

Impulse Ice Cream – Nestle UK Undertakings 2000

Froneri Ice Cream UK Limited Response

This document sets out Froneri Ice Cream UK Limited's (**"Froneri"**) response to the CMA's Strategic Review of CMA Markets Remedies[1]; in particular the Nestle UK Undertakings 2000 with respect to the UK supply of Impulse Ice Cream.

The relevant Nestle UK ice cream business subject to the Undertakings is no longer under the influence or control of Nestle UK Ltd ("**Nestle**"); the business is now under the control of Froneri International Limited (incorporated in the UK with Company Number 05777981 and registered address Richmond House, Leeming Bar, Northallerton, North Yorkshire, DL7 9U). Froneri Ice Cream UK Limited is a subsidiary of Froneri International Limited and operates the UK ice cream business of the Froneri Group. The Froneri Group is a joint venture between the Nestlé Group (Switzerland) and PAI Partners S.A.S. (France). As a result, Nestle has no UK ice cream business, in relation to the supply of impulse ice creams or otherwise, and the business is now operated by Froneri. Please see paragraph 2.2, below, for more detail.

1. INTRODUCTION

1.1 Following the Monopolies and Mergers Commission's ("**MMC**") report into the supply by manufacturers of impulse ice cream in the United Kingdom[2] (the "**Report**"), the Competition Commission ("**CC**") agreed certain remedies with Mars UK ("**Mars**"), Birds Eye Wall's Ltd ("**BEW**") and Nestle UK Ltd (the "**Undertakings**").

1.2 The Report found, *inter alia,* that:

1.2.1 BEW's establishment of a new contracted-out distribution system called Wall's Direct had adverse effects on competition between distributors, and in turn manufacturers, whose ability to compete effectively depended upon the availability of an independent wholesale sector able to supply their wrapped impulse ice cream products;

1.2.2 The practice of freezer exclusivity particularly by BEW but also by Mars and Nestle restricted competition between manufacturers and distributors;

1.2.3 Agreements between retailers and BEW, Mars, and Nestle to stock only their respective products had adversely affected competition between manufacturers and between distributors; and

1.2.4 BEW had offered retailers bonuses and other terms which operated retrospectively and unpublished accounts and price incentives which affected the ability of other manufacturers and distributors to compete.

1.3 The Report found that the effect on competition of each of these individual practices on the part of BEW was enhanced by the existence of the others, and by BEW's market share, its level of advertising expenditure, and its strong brand. The Report found that BEW enjoyed a scale monopoly position, and that there were complex monopolies in place for BEW, Mars, and Nestle, in respect of the supply of wrapped ice cream products in the UK.

[1] The CMA announced on 19 January 2026 that it is reviewing 33 markets remedies to assess whether they should be removed or amended. The strategic review will consider whether, by reason of any change in circumstances, each remedy included in the review is no longer appropriate and should be removed or amended. The CMA is consulting on these changes. https://connect.cma.gov.uk/strategic-review-of-cma-markets-remedies

[2] The Monopolies and Mergers Commission was asked to investigate and report on the supply of impulse ice cream in the UK on 22 December 1998. Section 45 of the Competition Act 1998, which came into force on 1 April 1999, dissolved the MMC and transferred its functions to the Competition Commission.

1.4 The Undertakings accepted by the CC, *inter alia,* restricted the ability of these manufacturers to impose exclusivity requirements in respect of outlets (for all three of BEW, Mars, and Nestle) and freezers (BEW only), and prohibited certain forms of retrospective rebate and bonus schemes (BEW only):

1.4.1 **Freezer exclusivity:** BEW was prohibited from entering into any agreement or arrangement for capacity in any freezer in any retail outlet used to stock wrapped impulse ice cream, to be reserved for BEW's products unless 50% of the display space and all of the storage space of the freezer was permitted to be used for other manufacturer's products, so as to allow other manufacturers and distributors to compete to supply the remaining space in the freezer;

1.4.2 **Bonuses, discounts and other terms:** BEW was also prohibited from offering any retailer or controller of a retail outlet any scale of discounts or rebates which operated retrospectively or under which the price for incremental sales is less than other incremental costs; and

1.4.3 **Outlet exclusivity:** Any manufacturer with a turnover of more than £10 million in wrapped impulse ice cream in Great Britain (which, at the time, included BEW, Mars and Nestle) was prohibited from entering into any arrangement with a retailer or controller of retail outlets that the wrapped impulse ice cream products of other manufacturers cannot be supplied at any outlet.

1.5 This Response will show that the change in circumstances since the Undertakings were imposed mean that these remedies are no longer appropriate as far as they apply to Nestle or Froneri in the UK market for impulse ice cream. In particular:

1.5.1 Nestle UK Ltd, the entity which gave the Undertakings in 2000, no longer has a UK ice cream business;

1.5.2 Froneri's business model takes a "category approach", which helps to ensure that its products are offered alongside those of its competitors to the ultimate benefit of consumers;

1.5.3 The Undertakings do not appear to have achieved their goal of increased choice, lower prices, better product quality, and more innovation; and

1.5.4 The change of UK regulatory approach from assessing "complex monopolies" to "adverse effects on competition" means that the views taken by the Competition Commission in respect to Nestle's market position in 2000 are not in line with the CMA's current approach to market interventions.

1.6 Froneri considers each of the examples of changes of circumstances given by the CMA (i) market developments; (ii) age and impact; (iii) regulatory landscape; and (iv) changes to the bound businesses, and why they are present in respect of the Undertakings, below.

2. APPLICABILITY OF THE UNDERTAKINGS TO FRONERI

2.1 As set out at paragraph 1.1, the Undertakings were imposed on Mars, BEW and Nestle. In particular, Nestle was prevented from entering into an agreement with a retailer which contained a provision limiting the supply of wrapped impulse ice cream products of any other manufacturer to that retailer in Great Britain (the "**Nestle Undertakings**").

2.2 However, the relevant Nestle UK ice cream business subject to the Nestle Undertakings is no longer under the influence or control of Nestle UK Ltd:

2.2.1 Following, *inter alia*, EU merger clearance[3], the relevant UK ice cream business is now under the control of Froneri International Limited. The Froneri Group is a joint venture between the Nestlé Group and PAI Partners S.A.S. (France):

2.2.2 Froneri combines Nestlé S.A.'s (Switzerland) and R&R Ice Cream plc's ice cream and frozen food businesses (excluding pizza) principally in Europe but also in certain markets outside Europe; and

2.2.3 As a result, Nestle has no UK ice cream business, in relation to the supply of impulse ice cream products or otherwise.

2.3 As explained by Nestle in email correspondence between Linklaters LLP and the CMA in 2017, Froneri has been willing to inform the CMA directly of its willingness to adhere to the spirit of the Nestle Undertakings.

3. CHANGE OF CIRCUMSTANCES 1: MARKET DEVELOPMENTS

3.1 The current market landscape in respect of the supply of ice cream for immediate consumption in the UK indicates that the Nestle Undertakings are no longer required so far as Froneri is concerned:

3.1.1 Froneri does not have a strong position in the UK wrapped impulse ice cream sector, nor a portfolio of leading brands in the sector. Froneri takes a "category approach" to retailers, and, even if it were to agree exclusivity with retailers (should this be requested by those retailers), such exclusivity would not be capable of foreclosing competitors, reducing choice, increasing prices, degrading the quality of products offered to consumers, or disincentivising innovation[4];

3.1.2 Froneri is a challenger in the wrapped impulse ice cream sector, whose limited market position does not necessitate any restrictions on its activities; and

3.1.3 The current market landscape can be evidenced by the following market shares, which may be used as a proxy for updated market shares compared to those found in the MMC's Report[5]:

(a) The Magnum Ice Cream Company (74%);

(b) Froneri (16%); and

(c) Mars (4.5%)[6],

though Froneri notes that the Neilsen report which contains these market shares considers a frame of reference for the supply of impulse ice cream to UK shops, and so excluding other retailers such as leisure, out of home (OOH), food service, and catering, etc., for which Froneri does not have access to market share data (though would not expect its position to be materially different in respect thereof). There also exists a tail of smaller competitors comprising the remaining 5% supply of impulse ice creams at the retail level in the UK.

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3 See http://ec.europa.eu/competition/mergers/cases/decisions/m7946_1121_3.pdf decision of July 2016.

4 The MMC's findings in its Report included that practices of outlet exclusivity, freezer exclusivity, and bonuses, discounts, and other terms imposed in the market for the supply of wrapped impulse ice cream in the UK: adversely affected the ability of other manufacturers and distributors to compete, resulting in: (i) a reduction of choice of wrapped impulse ice cream available to the consumer; (ii) a higher level of prices than would otherwise be the case; (iii) a reduction in the quality of product; and (iv) less innovation in the market.
See https://web.archive.org/web/20000919040856if_/http:/www.competition-commission.org.uk/cream.htm

5 See page 106 of the Report, which estimates that BEW had a market share at RSP in the UK of 44% (rising to 53% in GB), Nestle and Richmond (as proxy for Froneri) 13% (9% GB), and Mars 6% (7% GB), with a tail of smaller competitors forming 37% of the market at this level (51% GB).

6 According to Nielsen data for retail sales in the 52 weeks to the end of 2025.

3.2 The majority of retail sectors (*e.g.* petrol forecourts, major multiple supermarkets, symbol group grocery retailers and independent grocery retailers) prefer to stock a mix of brands, including more popular brands (than Froneri). Froneri takes a "category approach" to retailers, suggesting that its products be stocked alongside, rather than to the exclusion of, the more popular brands.

3.3 The only sector where retailers might look for a de facto exclusive relationship with the likes of Froneri is the leisure sector. This represents a small proportion of demand for wrapped impulse ice cream:

3.3.1 In this sector, customers often use formal and informal bidding processes to appoint providers and require significant up-front investment by providers (in point of sale and freezers);

3.3.2 Leisure retailer customers tend to appoint a single provider in order to justify the upfront investment required, rather than at the request or stipulation of, that provider; and

3.3.3 Any remedies which operated so as to prevent customers in this sector from appointing a single provider may undermine incentives for investment, in particular in the case of those manufacturers with a smaller position in the sector such as Froneri.

3.4 As such the current market and competitive landscape, in particular Froneri's market position, mean that the Nestle Undertakings are no longer appropriate and should be removed.

4. CHANGE OF CIRCUMSTANCES 2: AGE AND IMPACT

4.1 The position of the leading players in the UK impulse ice cream market has not materially changed since the imposition of the Undertakings. In fact, rather than the Undertakings protecting smaller competitors, the position appears to have shifted in further favour of the leading brands, which appear to have gained market share (according to internal Froneri estimates).

4.2 Despite the Nestle Undertakings being in force for a very significant amount of time, they do not appear to have had an impact on market structure. As such, they do not appear to address the perceived, original theory of harm and/or consumer detriment which they were designed to remedy. In any case, as noted above, the scope for any exclusivity agreed by Froneri having any impact on competition is currently very limited.

5. CHANGE OF CIRCUMSTANCES 3: REGULATORY LANDSCAPE

5.1 The Undertakings were required under the old UK market investigations regime which focussed on the concepts of monopolies and complex monopolies, and the perceived harms caused thereby, as opposed to the "adverse effect on competition" ("**AEC**") test which has applied in respect of UK Competition law enforcement since 2003:

5.1.1 The findings in the Report on the supply of impulse ice cream were based on the premise that there were complex monopoly situations in place in favour of BEW, Nestle, and/or Mars, and a scale monopoly situation in favour of BEW in respect of the supply of impulse ice cream by manufacturers in the UK; and

5.1.2 The CMA's current regulatory practice is to assess whether there is an AEC in place as a result of certain features of the market, compared to what the market may look like absent the feature(s) and/or absent the effect of the feature(s).[7]

5.2 Further, the extensive nature of the Undertakings appears to suggest that they are not compatible with the 4Ps of driving greater pace, predictability, proportionality and better process[8]. In particular,

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[7] Guidance on CMA market reviews, market studies, market investigations and the monitoring and review of market remedies, page 16

[8] The CMA's current approach to market interventions to ensure its work supports economic growth, reduces uncertainty for businesses and investors, and delivers better outcomes for everyone is built on a central framework around the 4Ps of: (i)

Froneri's small market position shows the Undertakings are not proportionate to its business and the underlying landscape: (i) the Nestle Undertakings do not appear likely to secure benefits that would clearly outweigh the short-term and long-term costs of the CMA monitoring these restrictions – even if Froneri were to agree exclusivity (most likely at the request of the customer), there would be no prospect of this leading to an AEC for the reasons set out above; and (ii) the prospect of the Nestle Undertakings constituting a successful remedy that could deliver benefits to UK consumers, business, and the economy, appears very low. The Nestle Undertakings as they apply to Froneri do not appear to achieve the key aim of the CMA, namely promoting competition and/or protecting consumers with the goal of driving economic growth and improving household prosperity[9].

5.3 As such, the underlying regulatory landscape and enforcement priorities of the authority responsible for competition regulation in the UK have changed in the time since the Undertakings were given, and they are no longer appropriate in the current regulatory landscape.

5.4 Froneri submits that, in order to assess whether the Undertakings are still necessary in the current market, the CMA would have to investigate the functioning of the market today, in line with its AEC approach.

6. CHANGE OF CIRCUMSTANCES 4: CHANGES TO THE BOUND BUSINESSES

6.1 As set out at paragraph 2, Nestle no longer has a UK ice cream business. As such, the undertakings offered by Nestle in respect to the supply of impulse ice cream in the United Kingdom are no longer relevant to the Nestle business originally bound by the Nestle Undertakings.

6.2 Froneri's business model takes a "category approach", which can help to ensure that its products are offered alongside those of its competitors to the ultimate benefit of the consumer. Therefore, there is no justification for the imposition of undertakings similar to those required from Nestle in 2000 on Froneri today.

6.3 The structural changes to the Nestle business in the time since the Nestle Undertakings were implemented, and the market position of the ice cream business now held by Froneri, mean the Nestle Undertakings are no longer appropriate and should be removed.

7. CONCLUSION

7.1 As set out above, the changes in circumstances in respect of the UK market for impulse ice cream clearly show that the Undertakings are no longer appropriate; these longstanding remedies are no longer needed and should be removed in so far as they apply Froneri.

FRONERI ICE CREAM UK LIMITED

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pace – acting more swiftly to deliver timely outcomes; (ii) predictability – providing clarity on its processes and expectations; (iii) ensuring its actions are balanced and targeted; and (iv) process – improving how it engages with stakeholders throughout its work. See further: https://assets.publishing.service.gov.uk/media/68b6bd2dd723ba6f74dba8ca/The_CMA_s_approach_to_markets_work.pdf

9 As set out in the CMA's Draft 2026/27 Annual Plan.